

CLAYTON UTZ

Deed of appointment of receivers and managers under charge

Trust Company Fiduciary Services Limited
ABN 21 000 000 993

Appointor

Anthony Gregory McGrath

First Receiver and Manager

Joseph David Hayes

Second Receiver and Manager

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Our reference 146/80082728

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Deed of appointment of receivers and managers made at Sydney on
2 October 2008

Parties Trust Company Fiduciary Services Limited ABN 21 000 000 993 of Level 4, 35 Clarence Street, Sydney
("Appointor")
Anthony Gregory McGrath of Level 31, 60 Margaret Street, Sydney
Joseph David Hayes of Level 31, 60 Margaret Street, Sydney
(jointly and severally the "Receivers")

Background

- A. Pursuant to the Security, the Security Provider granted security in favour of the Appointor over the Security Property.
- B. Money secured by the Security has fallen due and has become presently payable and the Security Provider has failed to pay the same.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

"Corporations Act" means the *Corporations Act* 2001 (Cth) as amended from time to time.

"Receivership" means the receivership and management of the Security Provider as contemplated by this deed.

"Security Property" means all of the property charged pursuant to the Security.

"Security Provider" means Mariner Treasury Limited ACN 113 215 802.

"Security" means the charge granted by the Security Provider in favour of the Appointor, which has been registered in the register of charges under the *Corporations Act* (ASIC Charge Number: 1150337).

"Trust" means the trust constituted by the Note and Security Trust Deed dated 29 March 2005 between the Appointor and the Security Provider.

"Trust Fund" means the proceeds recovered from the Security Property.

1.2 Interpretation

In this deed, wherever the context so requires, words importing the singular include the plural (and vice versa).

2. Appointment of Receivers

The Appointor, being entitled under the powers conferred by the Security to appoint a receiver and manager of the Security Property, in the exercise of such powers hereby appoints the

Receivers to be the joint receivers and managers and each of them to be the several receivers and managers of the Security Property with all the powers conferred upon the Receivers by the Security and by law.

3. Agency

The Receivers shall be the agents of the Security Provider and shall not be personally liable for any acts or omissions of the Security Provider.

4. Remuneration

- (a) The Appointor fixes the remuneration of the Receivers for work done by them, their partners, employees and clerks in the course of the Receivership at the cost of the Receivership calculated on the normal time basis on hourly rates usually charged by McGrathNicol, for work done on liquidations or on receiverships in New South Wales.
- (b) The Appointor covenants with the Receivers that, subject to clause 5, it will pay the remuneration referred to in clause 4(a).
- (c) The remuneration referred to in clause 4(a) may be drawn by the Receivers at the end of each calendar month from bank accounts conducted by them in the name of the Security Provider.

5. Appointor's limitation of liability

- (a) The Appointor enters into this deed only in its capacity as trustee of the Trust.
- (b) A liability under or in connection with this deed, including to pay or recoup money, is limited to and can only be enforced against the Appointor to the extent to which it can be satisfied out of the Trust Fund out of which the Appointor is actually indemnified. This limitation of the liability of the Appointor applies despite any other provision of this deed other than this clause 5 and extends to all liabilities and obligations in any way connected with any representation, warranty, conduct or omission by the Appointor related to this deed.
- (c) The Receivers may not sue the Appointor in any capacity other than as trustee of the Trust.
- (d) The provisions of clause 5(c) shall not apply to any obligation or liability of the Appointor to the extent that is it not actually indemnified for the obligation or liability as a result of the Appointor's fraud, gross negligence or wilful default.
- (e) No attorney, agent, receiver or receiver and manager appointed by the Receivers in respect of the Appointor as trustee of the Trust has authority to act on behalf of the Appointor in a way which exposes the Appointor to any personal liability and no act or omission of any such person will be considered fraud, gross negligence or wilful default of the Appointor for the purpose of clause 5(d).
- (f) The Appointor is not obligated to do or refrain from doing anything under this deed (including incur any liability) unless the Appointor's liability is limited in the same manner as set out in clauses 5(a), 5(b) and 5(c).

6. Receivers to keep Appointor informed

The Receivers will from time to time or upon request by the Appointor keep the Appointor informed regarding their progress with the Receivership and will from time to time furnish the Appointor with such accounts and will give the Appointor such information concerning the progress of the Receivership and the affairs of the Security Provider as the Appointor may reasonably require.

7. Termination of receivership

The Appointor may, without prejudice to any or all other rights and remedies it may have under this deed or applicable law, terminate this deed by giving 7 days' written notice to the Receivers. The Receivers must formally retire from the Receivership by executing an appropriate deed of retirement prior to the end of the notice period given by the Appointor.

8. Governing law and jurisdiction

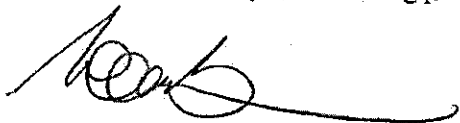
- (a) This deed is governed by and must be construed according to the law applying in New South Wales.
- (b) Each Receiver irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of New South Wales with respect to any legal action or proceedings which may be brought at any time relating in any way to this deed.
- (c) Each Receiver irrevocably waives any objection he may now or in the future have to the venue of any action or proceedings relating to this deed including any objection he may now or in the future have that any such action or proceeding has been brought in an inconvenient forum.

9. Counterparts

This deed may be executed in any number of counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

Executed as a deed.

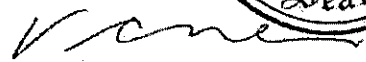
Executed by Trust Company Fiduciary Services Limited acting by the following persons or, if the seal is affixed, witnessed by the following persons:



Signature of Authorised Officer

Authorised Officer - Michael Britton

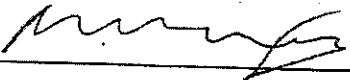




Signature of Director

Vicki Allen

Signed sealed and delivered by Anthony
Gregory McGrath in the presence of:

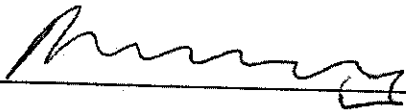


Signature of Witness

Barry Frederic Kogan

Name of Witness in full

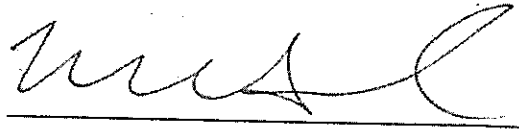
Signed sealed and delivered by Joseph David
Hayes in the presence of:



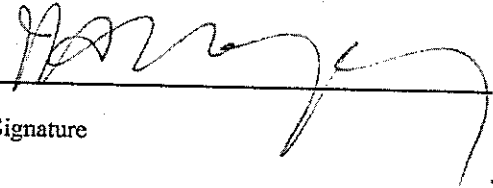
Signature of Witness

Barry Frederic Kogan

Name of Witness in full



Signature of Murray Smith as
Attorney for Anthony Gregory
McGrath under a Power of
Attorney dated 10 June 2008.



Signature