

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: BS3383 of 2013

Applicants: RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED  
(IN LIQUIDATION) ACN 077 208 461 IN ITS CAPACITY  
AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE  
INCOME FUND

AND

Second Respondent: THE MEMBERS OF THE LM FIRST MORTGAGE  
INCOME FUND ARSN 089 343 288

AND


Third Respondent: ROGER SHOTTON

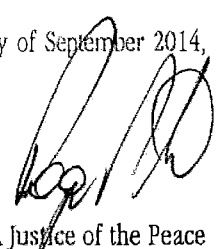
AND

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

CERTIFICATE OF EXHIBIT

Volume 2 of exhibit "DW-1" to the Affidavit of DAVID WHYTE sworn this 9<sup>th</sup> day of September 2014,  
comprising items 12 to 20 and pages 214 to 403 of the exhibit

  
Deponent

  
A Justice of the Peace

70956

CERTIFICATE OF EXHIBIT:  
Form 47, R.435

TUCKER & COWEN  
Solicitors  
Level 15  
15 Adelaide Street  
Brisbane, Qld, 4000  
Tele: (07) 300 300 00  
Fax: (07) 300 300 33

Filed on behalf of the Applicant, Mr David Whyte

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3	Constitution of FMIF with amendments	10.04.2008	13-76
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8	ASIC company search of Bridgewater Lake Estate Pty Ltd	09.10.2013	135-167
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26	RBLL Securities	various	511-571
27	Deed of Appointment of LMIM as agent (RBLLD)	09.02.2011	572-576
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31	Notices of appointment of managing controller	08, 09.08.2011	595-604
32	Letters between DB Receivers and LMIM liquidators, and deed of indemnity	various	605-621
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## ASIC & Business Names

### ORGANISATIONAL SEARCH ON CAMEO ESTATES LIFESTYLE VILLAGES (LAUNCESTON) PTY LTD

#### Historical Extract

This information was extracted from ASIC database on 09 October 2013 at 09:48AM

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

<b>098 955 296</b>	<b>CAMEO ESTATES LIFESTYLE VILLAGES (LAUNCESTON) PTY LTD</b>	<b>DOCUMENT NO.</b>
	098 955 296	
ABN	34 098 955 296	
Registered in	WA	
Date Registered	04-Dec-2001	
Review Date	04-Dec-2013	

#### Current Organisation Details

Name	CAMEO ESTATES LIFESTYLE VILLAGES (LAUNCESTON) PTY LTD	7E2275130
Name Start	20-Sep-2002	
Status	EXTERNALLY ADMINISTERED	
	For information about this status refer to the documents listed under the heading "External Administration and/or Appointment of Controller", below.	
Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	

#### Ceased/Former Organisation Details

Details Start	20-Sep-2002	018187477
Details End	24-Jun-2009	
Name	CAMEO ESTATES LIFESTYLE VILLAGES (LAUNCESTON) PTY LTD	
Name Start	20-Sep-2002	
Status	REGISTERED	
Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	
Details Start	04-Dec-2001	015193184
Details End	19-Sep-2002	
Name	CAMEO ESTATES LIFESTYLE VILLAGES (NEWPORT) PTY LTD	

Name Start 04-Dec-2001  
Status REGISTERED  
Type AUSTRALIAN PROPRIETARY COMPANY  
Class LIMITED BY SHARES  
Subclass PROPRIETARY COMPANY  
Disclosing Entity NO

**Current Registered Office**

Address RICHWOOD ACCOUNTANTS, 201 BURSLEM DRIVE, 1E3886054  
MADDINGTON, WA, 6109  
Start Date 06-Dec-2007

**Ceased/Former Registered Office**

Address C/- ADAMSON AND CROSS CHARTERED ACCOUNTANTS, 104 09895529L  
OUTRAM STREET, WEST PERTH, WA, 6005  
Start Date 04-Dec-2001 (AR 2001)  
End Date 05-Dec-2007

**Current Principal Place of Business**

Address 'MOWBRAY LINKS', 30 JANEFIELD STREET, MOWBRAY, TAS, 1E3956712  
7248  
Start Date 13-Dec-2007

**Ceased/Former Principal Place of Business**

Address 12 STARFIRE CLOSE, HALLS HEAD, WA, 6210 09895529M  
Start Date 22-Jan-2003 (AR 2002)  
End Date 12-Dec-2007

Address SUITE 6, 103 COLIN STREET, WEST PERTH, WA, 6005 09895529L  
Start Date 29-May-2002 (AR 2001)  
End Date 21-Jan-2003

**Current Director**

Officer Name BARRY WAYNE TURNER 1E4121264  
ABN Not available  
Birth Details 09-Mar-1948 HOBART TAS  
Address 18 RALPH STREET, WEYMOUTH, TAS, 7252  
Appointment Date 31-Oct-2002

**Ceased/Former Director**

Officer Name PETER ANTHONY BURKE 1E4121264  
ABN Not available  
Birth Details 24-Jun-1945 PERTH WA  
Address 68C CRESCENT ROAD, HAMILTON, QLD, 4007  
Appointment Date 07-Dec-2001

Cease Date	15-Sep-2011	
Officer Name	NEIL FRANCIS PETTIT	018877830
ABN	Not available	
Birth Details	27-Apr-1959 ELSDON NEW ZEALAND	
Address	28 BOWEN AVENUE, ALBANY CREEK, QLD, 4035	
Appointment Date	31-Oct-2002	
Cease Date	22-Jul-2010	
Officer Name	STEPHEN MICHAEL DEAN	1E3956712
ABN	Not available	
Birth Details	12-Jun-1943 SOUTHALL UNITED KINGDOM	
Address	12 STARFIRE CLOSE, HALLS HEAD, WA, 6210	
Appointment Date	07-Dec-2001	
Cease Date	20-Feb-2009	
Officer Name	GRAHAME BRETT NELSON	015193184
ABN	Not available	
Birth Details	26-Feb-1951 PRESTBURY UNITED KINGDOM	
Address	8 YORK TERRACE, MOSMAN PARK, WA, 6012	
Appointment Date	04-Dec-2001	
Cease Date	07-Dec-2001	

**Ceased/Former Secretary**

Officer Name	STEPHEN MICHAEL DEAN	1E3956712
ABN	Not available	
Birth Details	12-Jun-1943 SOUTHALL UNITED KINGDOM	
Address	12 STARFIRE CLOSE, HALLS HEAD, WA, 6210	
Appointment Date	07-Dec-2001	
Cease Date	20-Feb-2009	
Officer Name	GRAHAME BRETT NELSON	015193184
ABN	Not available	
Birth Details	26-Feb-1951 PRESTBURY UNITED KINGDOM	
Address	8 YORK TERRACE, MOSMAN PARK, WA, 6012	
Appointment Date	04-Dec-2001	
Cease Date	07-Dec-2001	

**Current Receiver Manager**

Officer Name	ANDREW HEWITT	7E2275130
ABN	Not available	
Address	GRANT THORNTON, LEVEL 2, 215 SPRING STREET, MELBOURNE, VIC, 3000	
Appointment Date	25-Jun-2009	
Officer Name	MICHAEL GERARD MCCANN	7E5320260
ABN	Not available	

Address C/- GRANT THORNTON AUSTRALIA LIMITED, 'KING GEORGE CENTRAL' LEVEL 18, 145-147 ANN STREET, BRISBANE, QLD, 4000  
 Appointment Date 25-Jun-2009

**Current Managing Controller**

Officer Name LM INVESTMENT MANAGEMENT LIMITED 027507004  
 ACN 077 208 461  
 ABN Not available  
 Address LEVEL 4 RSL CENTRE, 9 BEACH ROAD, SURFERS PARADISE, QLD, 4217  
 Appointment Date 21-Feb-2011

Officer Name THE TRUST COMPANY (PTAL) LIMITED 027507005  
 ACN 008 412 913  
 ABN Not available  
 Address LEVEL 4, 9 BEACH ROAD, SURFERS PARADISE, QLD, 4217  
 Appointment Date 21-Feb-2011

**Current Issued Capital**

Type Current 022579001  
 Class ORD  
 ORDINARY  
 Number of Shares/Interests issued 153895  
 Total amount paid/taken to be paid \$153895.00  
 Total amount due and payable \$0.00

Type Current 022579001  
 Class REDP  
 REDEEMABLE PREFERENCE SHARES  
 Number of Shares/Interests issued 518702  
 Total amount paid/taken to be paid \$518702.00  
 Total amount due and payable \$0.00

Note: For each class of shares issued by a proprietary company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

**Current Members**

Class ORD 022579001  
 No. Held 1298  
 Beneficially Owned YES Fully paid YES  
 Name ANG ACQUISITIONS PTY LTD  
 ACN 102 552 885  
 ABN 50 102 552 885

Address	28 BOWEN AVENUE, ALBANY CREEK, QLD, 4035		
Joint Holding	NO		
Class	ORD		022579001
No. Held	236		
Beneficially Owned	YES	Fully paid	YES
Name	PETTIT, NEIL FRANCIS		
ACN	Not available		
ABN	Not available		
Address	28 BOWEN AVENUE, ALBANY CREEK, QLD, 4035		
Joint Holding	NO		
Class	ORD		1E4121264
No. Held	152361		
Beneficially Owned	YES	Fully paid	YES
Name	CAMEO ESTATES (QLD) PTY LTD		
ACN	102 546 798		
ABN	Not available		
Address	68C CRESCENT ROAD, HAMILTON, QLD, 4007		
Joint Holding	NO		
Class	REDP		022579001
No. Held	518702		
Beneficially Owned	YES	Fully paid	YES
Name	ANG ACQUISITIONS PTY LTD		
ACN	102 552 885		
ABN	50 102 552 885		
Address	28 BOWEN AVENUE, ALBANY CREEK, QLD, 4035		
Joint Holding	NO		

**Ceased/Former Members**

Class	ORD		09895529L
No. Held	1		(AR 2001)
Beneficially Owned	YES	Fully paid	YES
Name	BURKE, PETER ANTHONY		
ACN	Not available		
ABN	Not available		
Address	8 HIPWOOD ROAD, HAMILTON, QLD, 4007		
Joint Holding	NO		
Class	ORD		09895529L
No. Held	1		(AR 2001)
Beneficially Owned	YES	Fully paid	YES



Name DEAN, STEPHEN MICHAEL  
 ACN Not available  
 ABN Not available  
 Address 12 STARFIRE CLOSE, HALLS HEAD, WA, 6210  
 Joint Holding NO

**Documents Relating to External Administration and/or Appointment**

This extract may not list all documents relating to this status. State and territory records should be searched.

Received	Form Type	Processed	No. Pages	Effective	
23-Jul-2013 524N	524 PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	23-Jul-2013	11	24-Jun-2013	7E5389165
26-Jun-2013 506L	506 NOTIFICATION OF CHANGE OF ADDRESS OF NOTICE OF CHANGE OF ADDRESS OF EXTERNAL ADMINISTRATOR(ELEC)	26-Jun-2013	4	26-Jun-2013	7E5320260
11-Jun-2013 524Q	524 PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)	22-Jul-2013	10	20-Feb-2013	028644093
24-Jan-2013 524N	524 PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	24-Jan-2013	11	24-Dec-2012	7E4977556
05-Oct-2012 524Q	524 PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)	16-Oct-2012	11	20-Aug-2012	027347927
20-Jul-2012 524N	524 PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	20-Jul-2012	11	24-Jun-2012	7E4602547
20-Mar-2012 524Q	524 PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)	23-Mar-2012	15	20-Feb-2012	027963972
18-Jan-2012 524N	524 PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER	18-Jan-2012	11	24-Dec-2011	7E4221575
29-Aug-2011 524Q	524 PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)	29-Aug-2011	16	20-Aug-2011	027687773
21-Jul-2011 524N	524 PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER &	21-Jul-2011	13	24-Jun-2011	7E3828026

MANAGER

22-Feb-2011	505	22-Feb-2011	5	21-Feb-2011	027507004
505Q	NOTIFICATION OF APPT OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)				
22-Feb-2011	505	22-Feb-2011	5	21-Feb-2011	027507005
505Q	NOTIFICATION OF APPT OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)				
22-Feb-2011	504	22-Feb-2011	4	21-Feb-2011	027507006
504E	NOTIFICATION OF APPOINTMENT OF A BY APPOINTMENT OF MANAGING CONTROLLER				
22-Feb-2011	504	22-Feb-2011	4	21-Feb-2011	027507007
504E	NOTIFICATION OF APPOINTMENT OF A BY APPOINTMENT OF MANAGING CONTROLLER				
22-Jul-2010	524	22-Jul-2010	16	24-Jun-2010	7E3059687
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
22-Jan-2010	524	22-Jan-2010	16	24-Dec-2009	7E2666845
524N	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF RECEIVER & MANAGER				
30-Oct-2009	507	30-Oct-2009	11	05-Oct-2009	7E2517815
507F	REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)				
07-Oct-2009	507	07-Oct-2009	12	08-Sep-2009	7E2471098
507F	REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)				
25-Aug-2009	507	31-Aug-2009	11	25-Jun-2009	025819954
507G	REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/MANAGER				
24-Aug-2009	507	24-Aug-2009	24	25-Jun-2009	7E2386301
507G	REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/MANAGER				
14-Aug-2009	507	19-Aug-2009	10	04-Aug-2009	025927015
507F	REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)				
13-Aug-2009	507	13-Aug-2009	12	30-Jul-2009	7E2367511
507F	REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)				
13-Aug-2009	507	13-Aug-2009	13	04-Aug-2009	7E2367509
507F	REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)				
12-Aug-2009	507	18-Aug-2009	11	30-Jul-2009	025809983
507F	REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)				
01-Jul-2009	504	06-Jul-2009	4	26-Jun-2009	025610804
504B	NOTIFICATION OF APPOINTMENT OF A RECEIVER AND MANAGER				

30-Jun-2009	505	30-Jun-2009	2	25-Jun-2009	7E2275130
505B	NOTIFICATION OF APPOINTMENT OF RECEIVER AND MANAGER				

**Document Details**

Received	Form Type	Processed	No. Pages	Effective	
20-Nov-2009	370	20-Nov-2009	3	20-Nov-2009	026111175
370	Notification By Officeholder of Resignation or Retirement				
25-Feb-2008	484	25-Feb-2008	2	21-Feb-2008	1E4121264
484	Change to Company Details				
484A1	Change Officeholder Name or Address				
484A2	Change Member Name or Address				
21-Dec-2007	484	21-Dec-2007	2	19-Dec-2007	1E3956712
484	Change to Company Details				
484C	Change of Principal Place of Business (Address)				
484A1	Change Officeholder Name or Address				
29-Nov-2007	484	29-Nov-2007	2	23-Nov-2007	1E3886054
484B	Change to Company Details Change of Registered Address				
09-Jan-2006	309	09-Jan-2006	30	16-Dec-2005	020642630
309A	Notification of Details of a Charge				
21-Nov-2005	484	22-Nov-2005	9	22-Nov-2005	022579001
484	Change to Company Details				
484O	Changes to Share Structure				
484N	Changes to (Members) Share Holdings				
24-Jan-2003	316	11-Feb-2003	3	23-Jan-2003	09895529M (AR 2002)
316	Annual Return				
316T	Change to Principal Place of Business				
316P	Change of Name or Address of Officeholder				
316L	Annual Return - Proprietary Company				
15-Jan-2003	207	21-Jan-2003	1	20-Dec-2002	018877831
207	Notification of Share Issue				
15-Jan-2003	304	21-Jan-2003	2	31-Oct-2002	018877830
304A	Notification of Change to Officeholders of Australian Company				
20-Sep-2002	205	20-Sep-2002	2	13-Sep-2002	018187477
205A	Notification of Resolution Changing Company Name				
18-Apr-2002	316	29-May-2002	3	18-Apr-2002	09895529L (AR 2001)
316L	Annual Return Annual Return - Proprietary Company				
11-Feb-2002	304	26-Feb-2002	2	07-Dec-2001	017755474
304A	Notification of Change to Officeholders of Australian Company				
11-Feb-2002	284	26-Feb-2002	1	07-Dec-2001	017755473

284A Notification of Share Cancellation Redeemable Preference Shares

11-Feb-2002	207	26-Feb-2002	1	07-Dec-2001	017755472
207	Notification of Share Issue				
04-Dec-2001	201	04-Dec-2001	4	04-Dec-2001	015193184
201C	Application For Registration as a Proprietary Company				

**Annual Returns**

Year	Return Due Date	Extended Due Date	AGM Due Date	Extended AGM Due Date	AGM Held Date	Outstanding
2001	30-Apr-2002	30-Apr-2002				N
2002	31-Jan-2003					N

Section 146A of the *Corporations Act 2001* states 'A contact address is the address to which communications and notices are sent from ASIC to the company.'

Address	PO BOX 151, MADDINGTON, WA, 6989
Start Date	15-Nov-2007
End Date	13-Oct-2009

\*\*\* End of Extract \*\*\*

BUTLER MCINTYRE & BUTLER  
GPO BOX 980  
HOBART TAS 7001

## Certificate of Entry of a Charge

Corporations Act 2001 Sub-section 272 (3)

This is to certify that a notice in respect of a charge on the property of

**CAMEO ESTATES LIFESTYLE VILLAGES  
(LAUNCESTON) PTY LTD**

**Australian Company Number 098 955 296**

was lodged at 11:08 (E.S.T.) on the ninth day of January 2006  
and particulars of the charge were entered in the Australian Register  
of Company Charges in accordance with Chapter 2K.2 of  
the Corporations Act 2001.

The charge was allotted number **1251021**.

The name of the chargee is

**PERMANENT TRUSTEE AUSTRALIA LIMITED**



Given under the seal of the  
Australian Securities and Investments Commission  
on this ninth day of January, 2006.

-----  
A delegate of the Australian Securities and Investments Commission

"A"

Cameo Estates Lifestyle Villages (Launceston) Pty Ltd A.C.N. 098 955 296  
("the Mortgagor")

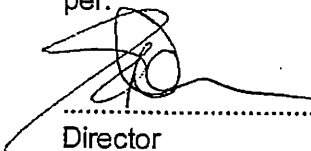
and

PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913  
("the Mortgagee")

### Fixed and Floating Charge

This is the Annexure marked "A" of \_\_\_\_\_ pages referred to in the Form 309 Details of Charge  
signed by me and dated the 16<sup>th</sup> day of December 2005

per:

  
.....  
Director

LM INVESTMENT MANAGEMENT LTD  
LEVEL 4,9 BEACH ROAD  
SURFERS PARADISE QLD 4217

PHONE: 07 5584 4500  
FAX: 07 5592 2505

**Cameo Estates Lifestyle Villages (Launceston) Pty Ltd A.C.N. 098 955 296**  
("the Mortgagor")

and

**PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913**  
("the Mortgagee")

## **Fixed and Floating Charge**

LM INVESTMENT MANAGEMENT LTD  
LEVEL 4, 9 BEACH ROAD  
SURFERS PARADISE QLD 4217

PHONE: 07 5584 4500  
FAX: 07 5592 2505

## FIXED AND FLOATING CHARGE

THIS CHARGE is made on the date specified in Item 1

BY: The company described in Item 2 ("the Mortgagor")

IN FAVOUR OF: The company described in Item 3 ("the Mortgagee")

### 1. INTERPRETATION

1.1 In this Charge, unless the contrary intention appears:

"Authorised Officer" means:

- (a) in relation to the Mortgagee:
  - (i) a director or a secretary, or an officer of the Mortgagee whose title contains the word "manager" or a person performing the functions of any of them; and
  - (ii) a lawyer acting for the Mortgagee; and
- (b) in relation to the Mortgagor:
  - (i) a person appointed by the Mortgagor to act as an Authorised Officer for the purpose of this Charge; and
  - (ii) if the Mortgagor is a corporation, a director or secretary of the Mortgagor.

"Borrower" means the person described in Item 4.

"Business Day" means a day other than Saturday, Sunday or other day on which the Mortgagee or trading banks generally are closed or obliged to close in Brisbane.

"Charge" means any charge constituted by this document.

"Encumbrance" means:

- (a) any interest in or right over property;
- (b) any matter or thing which prevents, restricts or delays registration of any interest of the Mortgagee over any property; and
- (c) any matter or thing which detracts from an unfettered exercise of an owners rights powers and interest in any property,

including, without limitation, any title retention arrangement, trust, profit a prendre, restrictive covenant, right of set-off, assignment of income or monetary claim and any agreement to create any of them, and any notice issued by a government or statutory body seeking recovery of moneys against property.

"Event of Default" means any of the events referred to in clause 10 and any other event agreed by the Mortgagee and the Mortgagor to be an event of default for the purposes of this Charge.

"Financial Records" includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain;
  - a. the methods by which financial statements are made up; and
  - b. adjustments to be made in preparing financial statements.

"Guarantor" means the person, if any, described in Item 5 and any other person who may from time to time guarantee the payment of the Money Secured.



"Insolvency Event" means the happening of any of these events:

- (a) a court order that body corporate be wound up or an application for same is made; or
- (b) a liquidator or provisional liquidator is appointed in respect of a body corporate, or an order seeking appointment of such is sought; or
- (c) a meeting is convened or a resolution is passed to appoint an administrator in respect of a body corporate; or
- (d) except to reconstruct or amalgamate while solvent on terms approved by the Mortgagee, a body corporate enters into, or resolves to enter into, a deed of company arrangement, a scheme of 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; or
- (e) a body corporate 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 Mortgagee or is otherwise wound up or dissolved; or
- (f) a person is or states that such person is unable to pay its debts when they fall due; or
- (g) any of the events described in sections 459C(2)(a) to (f) or 585 of the Corporations Act 2001 occurs in relation to a body corporate; or
- (h) a person takes any step to obtain protection or is granted protection from such person's creditors, under any applicable legislation; or
- (i) a person becomes an insolvent under administration as defined in section 9 of the Corporations Act 2001 or action is taken which could result in that event; or
- (j) a receiver, controller, managing controller or administrator is appointed to a body corporate; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

"Material Adverse Effect" means a material adverse effect upon any of:

- (a) the Mortgagor's ability to comply with its obligations under this Charge;
- (b) the effectiveness; priority or enforceability of any Security; or
- (c) the financial position; management or business operations of the Mortgagor.

"Money Secured" includes:

- (a) all money now or hereafter owing or payable to the Mortgagee by the Security Provider and/or Mortgagor either alone or jointly with another person now or in the future, whether directly or indirectly or contingently under this Charge or on any other account whatsoever, and including all such money arising from:
  - (i) any guarantee, deed, indemnity, bond, account, document or other agreement in writing including the Security;
  - (ii) interest payable on the Money Secured including interest which has been capitalised;
  - (iii) interest on any judgment entered by the Mortgagee against the Security Provider and/or the Mortgagor in respect of the Money Secured;
  - (iv) all costs, expenses or losses incurred or sustained by the Mortgagee in relation to any failure by the Security Provider or the Mortgagor to comply with the terms of the Security; and
  - (v) all advances, further advances, loans, credits or financial accommodation whether made created or given on or before the signing hereof or that may hereafter be made created or given by the Mortgagee in its absolute discretion to for or on account of or at the expressed or implied request of the Mortgagor or the Security Provider;
- (b) postage, commissions, valuation fees, fees, charges and expenses relating to the Security, according to the usage and course of business of the Mortgagee;
- (c) stamp duty, financial institutions duty or any other levy, final impost or tax payable or arising out of or in connection with this Charge or the Security;
- (d) all costs charges and expenses incurred by the Mortgagee in enforcing the Security (including legal expenses on a full indemnity basis or solicitor and own client basis whichever is the greater)

which in the Mortgagee's opinion are required or desirable for or in connection with:

- (i) the drawing accepting or discounting of any bill of exchange at the request of, or for the accommodation of, any Security Provider or the Mortgagor under the Security;
- (ii) the Mortgagee protecting its interest under the Security including all moneys which the mortgagee or any receiver or any attorney appointed under any Security may have paid or may pay in the exercise or enforcement or attempted exercise or enforcement of any right power or remedy conferred on the Mortgagee by the Security;
- (iii) the preparation, execution, stamping or registration of the Security;
- (iv) full or partial release or discharge from, transfer or variation of the Security;
- (v) any advice in respect of the Security;
- (vi) any breach of or default of any covenant contained or implied in the Security; or
- (vii) the Mortgagee making good any default by any party (other than the Mortgagee) under the Security,

or any rights which the Mortgagee may have under any Law,

**AND SHALL** where the context so admits mean and include any part thereof.

**"Other Securities"** means any security over the Secured Property other than this Charge or a Security.

**"Receiver"** means a person or persons appointed under or by virtue of this Charge as receiver or receiver and manager.

**"Secured Property"** means all of the property, rights, assets and undertaking of the Mortgagor whether owned as at the date of this Charge or acquired in the future, including without limitation the goodwill of any business carried on by the Mortgagor (alone or jointly with another person), its uncalled and called but unpaid capital and share premiums and all the present and future rights, property and undertaking comprising the trust fund of the Trust (if any).

**"Secured Agreement"** means the document or documents described in Item 6 and all agreed variations thereto from time to time.

**"Security"** means each and every document, agreement or other security including any Encumbrance provided or entered into from time to time which secures or provides for the payment of the Money Secured or the performance of obligations of the Security Provider in favour of the Mortgagee, which may be executed or provided by the Security Provider or any other person (including this Charge, the Secured Agreement and those documents described in Item 7).

**"Security Provider"** means each and every party to, or provider of, the Security including the Borrower, the Mortgagor and the Guarantor, other than the Mortgagee.

**"Trust"** means each trust (if any) of which the Mortgagor is now or becomes the trustee and all assets of such trust.

**"Trust Deed"** means the deed establishing the Trust as varied in accordance with that deed from time to time.

1.2

In this Charge, unless the contrary intention appears:

- (a) a reference to this Charge or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes an individual, a firm, a body corporate, a partnership, an unincorporated association or an authority and references to any person include the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (e) an agreement, representation or warranty on the part of two or more parties binds them jointly and severally;
- (f) a reference to any thing (including, without limitation, the Money Secured, any other amount and the Secured Property) is a reference to the whole and each part of it and a reference to a group of persons (including without limitation the Mortgagor) is a reference to all of them collectively, to

- (g) any two or more of them collectively and to each of them individually;
- (h) a reference to an Item is a reference to an Item contained in the Schedule hereto; and time shall be of the essence.

1.3 Headings are inserted for convenience and do not affect the interpretation of this Charge.

**2. CONSIDERATION AND CAPACITY AS MORTGAGOR**

2.1 The Mortgagor acknowledges, by the Mortgagor's execution of this Charge, that it gives this Charge and incurs obligations and gives rights under this Charge for valuable consideration received from the Mortgagee.

**2.2 Capacity of Mortgagor**

2.2.1 If the Secured Property or any part of it is held by or becomes held by the Mortgagor on trust then this clause 2.2 shall apply.

2.2.2 In this clause "Trustee" means the Mortgagor in its capacity as trustee.

2.2.3 The Trustee must disclose in writing to the Mortgagee every trust of which it is or of which it becomes trustee and the assets which are the subject of the Trust. Failure to disclose any trust does not detract from the application of the remainder of this clause 2.2 in relation to that Trust.

2.2.4 The Trustee declares and acknowledges in respect of each Trust of which it is trustee that:

- (a) it has entered into this Charge in both its personal capacity and its capacity as trustee and shall be liable under this Charge in both its own right and in its capacity as trustee;
- (b) its successors as trustee will be bound by the terms of this Charge; and
- (c) the assets of the Trust are available to meet the liabilities of the Trustee under this Charge.

2.2.5 The Trustee represents and warrants that:

- (a) all of the powers and discretions conferred by the Trust Deed have not been varied or revoked except as otherwise advised by the Mortgagor to the Mortgagee in writing and are capable of being validly exercised by the Trustee as trustee of the Trust;
- (b) the Trust is a valid and subsisting trust;
- (c) the Trustee is the sole trustee of the Trust;
- (d) the Trustee has full and unfettered power under the Trust Deed to charge the assets and undertaking of the Trust, to enter into the obligations assumed by it in this Charge and to execute this Charge;
- (e) all necessary resolutions and procedures (if any) have been passed or followed;
- (f) the execution of this Charge is part of the due and proper administration of the Trust and for the benefit of the beneficiaries of the Trust; and
- (g) there is not limitation of any type on the right of indemnity of the Trustee out of and lien of the Trustee over the assets of the Trust.

2.2.6 Until the Money Secured has been repaid in full, the Trustee will not without first obtaining the Mortgagee's consent procure or consent to any of the following:

- (a) any resettlement, appointment, or distribution of uncalled and called but unpaid capital and share premiums of the Trust;
- (b) the retirement or replacement of the Trustee or appointment of a new trustee of the Trust;
- (c) any amendment to the Trust Deed;
- (d) the giving of an Encumbrance over any of the assets of the Trust;
- (e) any breach of the provisions of the Trust Deed;
- (f) termination of the Trust or variation of the vesting date;
- (g) the creation of any restriction whatever on the Trustee's right of indemnity out of and lien over the assets of the Trust; or
- (h) if the Trust is a unit trust the Trustee will not permit or agree to any transfer or issue of units in the Trust.

2.2.7 The Trustee charges the Trustee's right of indemnity out of the assets held on trust by the Trustee with payment of all money payable, owing but not currently payable, contingently owing or remaining unpaid by the Trustee to the Mortgagee for any reason or circumstances. The Charge will be a floating charge until the occurrence of an Event of Default, whereupon it will automatically become a fixed charge.

### 3. CHARGE

The Mortgagor charges, as beneficial owner, all of the Secured Property held by it beneficially and if the Mortgagor is a trustee, as trustee, charges all of the Secured Property comprising the trust fund of the trust, to the Mortgagee as security for payment of the Money Secured.

### 4. NATURE OF CHARGE

#### 4.1 This Charge is:

- (a) a fixed charge over any interest of the Mortgagor in any present and future:
  - (i) uncalled and called but unpaid capital and share premiums; and
  - (ii) goodwill; and
  - (iii) interests in real property (other than those which the Mortgagor is prohibited by law from charging or is incompetent to charge by a fixed charge); and
  - (iv) interests in fixtures, buildings, plant and machinery; and
  - (v) securities, instruments (negotiable or otherwise) and documents of title at any time deposited with the Mortgagee by the Mortgagor for any purpose; and
  - (vi) books of account, invoices, statements, ledger cards, computer software and records and other media relating to the business transactions of the Mortgagor; and
  - (vii) licences; and
  - (viii) interests in personal property not referred to above that are not acquired for disposal in the ordinary course of the Mortgagor's business; and
- (b) a fixed charge on the assets (if any) described in Item 11; and
- (c) a floating charge on the rest of the Secured Property.

4.2 The Mortgagee may convert the floating Charge created by this Charge to a fixed Charge over any property by giving notice of such conversion, specifying the property converted.

4.3 The floating Charge shall automatically and immediately crystallise and operate as a fixed Charge over the Secured Property (without the necessity for any act or notice by the Mortgagee) upon the happening of any of the following events:

- (a) the Mortgagee entering into possession of the Secured Property or any part thereof;
- (b) the appointment by the Mortgagee of a Receiver to any part of the Secured Property;
- (c) the happening of an Insolvency Event in relation to the Mortgagor; or
- (d) if the Mortgagor shall deal with, dispose of or purport to dispose of all or any part of the Secured Property other than in the ordinary course of its ordinary business. The Mortgagor agrees that on this event happening the floating Charge shall automatically become fixed to all of the Secured Property at the moment immediately prior to such dealing or disposal or the purported dealing or disposal.

4.4 The Mortgagee may convert a fixed Charge over any of the Secured Property into a floating Charge by notice in writing to the Mortgagor specifying this and describing that part of the Secured Property to which it relates.

### 5. PAYMENTS

5.1 The Mortgagor will pay to the Mortgagee the Money Secured (without set-off or counterclaim and without deductions for any tax or other governmental charge) at the times and place and in the manner or the amount specified in the Security or as otherwise agreed in writing by and between the Mortgagor, the Borrower and/or the Guarantor and the Mortgagee. In the absence of such agreement then the Money Secured shall be payable upon demand or as otherwise advised in writing by the Mortgagee to the Mortgagor from time to time.

5.2 Each payment to the Mortgagee under this Charge must be made:

- (a) in the currency in which the Money Secured is payable under the Secured Agreement or as otherwise agreed in writing; and
- (b) by and in immediately available funds to the account and in the manner directed by the Mortgagee.

### 6. OTHER UNDERTAKINGS BY THE MORTGAGOR

#### 6.1 Other Securities over Secured Property

- (a) The Mortgagor shall not without the prior written consent of the Mortgagee:

- (i) dispose of, deal with or part with possession of any interest in the Secured Property over which this Charge is fixed; or
  - (ii) dispose of, deal with or part with possession of any interest in the Secured Property over which this Charge is floating except in the ordinary course of its business or as permitted by a specific provision of this Charge; or
  - (iii) create or allow to come into existence an Encumbrance which affects the Secured Property except an Encumbrance which arises by operation of statute to secure an amount payable to any authority which amount has been due for payment for no more than 14 days; or
  - (iv) dispose of any interest in or permit a set-off or combination of Financial Records in respect of a book debt.
- (b) If the Mortgagor creates or allows to exist an Encumbrance over the Secured Property without the consent of the Mortgagee, then, despite anything contained in any Security:
- (i) the Mortgagor must ensure that a priority agreement is entered into between the persons receiving the benefit of the Encumbrance and the Mortgagee; and
  - (ii) such priority agreement must be in a form acceptable to the Mortgagee.

The Mortgagee's other rights which arise if the Mortgagor so creates or allows an Encumbrance to exist are not affected by this clause.

## 6..2

**Insurance**

The Mortgagor agrees to:

- (a) insure and keep insured the Secured Property:
  - (i) to the full insurable value thereof (and whenever required by the Mortgagee on such reinstatement and replacement value and/or other conditions as the Mortgagee may reasonably require);
  - (ii) and to the extent that they are capable of being so insured against loss or damage by fire, storm and tempest and such other risks as the Mortgagee may from time to time reasonably require;
  - (iii) with an insurer approved by the Mortgagee; and
  - (iv) in the joint names of the Mortgagor and the Mortgagee for their respective rights and interests; and
- (b) upon the Mortgagee's demand produce any insurance policy over the Secured Property and any evidence of renewal of same, which policy or policies may be retained by the Mortgagee;
- (c) promptly notify the Mortgagee in writing of any act, omission, accident, damage, loss, occurrence or matter which gives or may give rise to a right to claim under such insurance and the Mortgagor shall not do, omit or suffer to be done any act or matter that may contravene any term of such policy;
- (d) to pay each premium in respect of such insurance at least three days before the due date, and upon demand deposit the receipt for that premium with the Mortgagee; and
- (e) not to do or permit to be done anything which may prejudicially affect such insurance.

## 6..3

The Mortgagor hereby irrevocably authorises and agrees that the Mortgagee alone shall have power to make, enforce, settle and compromise and receive all claims and the benefits thereof in respect of insurance and to sue for, recover, receive and give discharges for all insurance moneys without any responsibility for any loss occasioned thereby. Any such insurance moneys received shall be applied at the option of the Mortgagee either in or towards repayment of the Money Secured or in or towards reinstating or rebuilding the Secured Property damaged or destroyed. If at any time the Mortgagor is entitled to the benefit of any insurance in respect of the Secured Property which has been effected in addition to the Mortgagor's obligations under this Charge then all moneys received by virtue of such insurance shall if the Mortgagee so requires be applied as if such insurance had been effected in accordance with this Charge.

## 6..4

**Other undertakings**

The Mortgagor must:

- (a) perform within the time allowed for performance all statutory, contractual and other obligations affecting its property, and cause its subsidiaries (if any) to do likewise; and
- (b) maintain and protect the Secured Property, keep it in good condition, and on being required to do so by written notice from the Mortgagee promptly rectify any defect in its condition; and

- (c) not without the prior written consent of the Mortgagee:
  - (i) call up or receive in advance of calls any of its uncalled capital; or
  - (ii) pass a resolution under section 254N of the Corporations Act 2001 or
  - (iii) appoint an administrator of the Mortgagor; and
- (d) carry on its business in a proper and efficient manner without changing its general character, and cause its subsidiaries (if any) to do likewise; and
- (e) give notice to the Mortgagee within twenty-four hours after the happening of any event which renders any lease or licence under which any part of the Secured Property is held liable to be terminated; and
- (f) deliver to the Mortgagee on demand receipts for all payments referred to in this clause; and
- (g) deposit with the Mortgagee immediately or as soon as the Mortgagor receives them:
  - (i) anything evidencing an Encumbrance and any document of title given to the Mortgagor to secure the payment of a monetary obligation to the Mortgagee; and
  - (ii) any documents of title relating to property over which this Charge operates as a fixed charge; and
- (h) comply on time with terms attaching to any approval or consent given by the Mortgagee in connection with this Charge; and
- (i) do everything necessary to ensure that no Event of Default occurs; and
- (j) whenever requested by the Mortgagee, promptly provide the Mortgagee with a certificate which states whether an Event of Default or event which with the giving of notice, lapse of time or fulfilment of any condition would be likely to become an Event of Default continues unremedied; and
- (k) notify the Mortgagee promptly after it occurs of full details of an Event of Default or an event which with the giving of notice, lapse of time or fulfilment of any condition, would be likely to become an Event of Default, and the steps taken to remedy it; and
- (l) notify promptly the Mortgagee of the particulars of any real property acquired by the Mortgagor; and
- (m) give the Mortgagee as soon as the Mortgagor receives it any notice or order received from an authority about the use or condition of the Secured Property; and
- (n) prosecute with reasonable diligence applications which the Mortgagee requires the Mortgagor to make to any person for permission to use the Secured Property for any purpose which the Mortgagee reasonably specifies; and
- (o) not increase or allow to be increased the amount secured by an Encumbrance over the Secured Property other than this Charge; and
- (p) not alter, pull down or remove from its position at the date of this Charge immovable property, buildings, plant, fixtures, fittings or machinery forming part of or used in connection with the Secured Property without the consent of the Mortgagee. But the Mortgagee may not withhold that consent unreasonably if the alteration, pulling down or removal is:
  - (i) necessary because the immovable property, building, plant or machinery is worn out or damaged (when it must be replaced by the Mortgagor with property of a similar nature and of no lesser value); or
  - (ii) required by law or in connection with its refurbishment or improvement.

## 6.5

**Environmental laws**

The Mortgagor hereby agrees to:

- (a) comply in all respects with all statutes and other laws relating to the protection, preservation and safety of the environment and the proper containment and release of any contaminant at any time from the Secured Property or any part thereof;
- (b) monitor such compliance;
- (c) minimise the effect of and rectify any non-compliance;
- (d) report to the Mortgagee at such times as the Mortgagee requires on its compliance with this provision and the steps taken by it to rectify any breaches;
- (e) indemnify and keep indemnified the Mortgagee against any costs, expenses, demands, damages and liability incurred by the Mortgagee because of a failure by the Mortgagor to comply with this provision or because of any requirement imposed on the Mortgagee to comply with any statute or law of the kind mentioned in this provision in relation to the Secured Property or any part thereof; and
- (f) on the Mortgagee's request, the Mortgagor will promptly and at its own cost provide to the

Mortgagee a certificate (in such form and with such terms of reference as the Mortgagee may approve) from an appropriately qualified and experienced person approved by the Mortgagee as to whether or not the Mortgagor has complied with its obligations under sub-clauses 6.4(b), 6.5(a) and 6.5(b).

For the purposes of this clause the following words have the following meanings:

"contaminant" means any substance, odour, heat, sound or radiation which:

- (i) has been declared by an authority as being something which requires particular control, usage or storage procedures for reasons related to its potential hazard to any person, animal or plant or its likely potential to degrade the environment; and
- (ii) is not safely contained so as to prevent harm or likely harm to the Secured Property or the environment or any person.

"environment" is deemed to include the meaning given to that term in any legislation in force in the jurisdiction of the Secured Property.

6..6

#### Supply of Information

The Mortgagor undertakes to give to the Mortgagee on demand by the Mortgagee:

- (a) copies of its audited Financial Records and the audited consolidated Financial Records of the Mortgagor and the entities it controls from time to time, during each financial year commencing with the financial year ending immediately before the date of this Charge, as soon as they are available and in any event within 120 days from the end of that year; or

at the Mortgagee's absolute discretion:

- (b) copies of its unaudited Financial Records and the unaudited consolidated Financial Records of the Mortgagor and its entities it controls from time to time prepared by the Mortgagor's accountant during, each financial year commencing with the financial year ending immediately before the date of this Charge, as soon as they are available and in any event within 120 days from the end of that year; and
- (c) unaudited Financial Records of the Mortgagor and unaudited consolidated Financial Records of the Mortgagor and the entities it controls from time to time during, the first 6 months of each financial year within 90 days of the end of that 6 months; and
- (d) any other information and supporting evidence as the Mortgagee may request at any time.

6..7

#### No Derogation from Security

The Mortgagor shall not do anything which prejudicially affects the security created by this Charge.

6..8

#### Further Assurances

- (a) The Mortgagor agrees to
  - (i) execute in favour of the Mortgagee, or as the Mortgagee directs, and in form stipulated by the Mortgagee, further documents, including, without limitation, Encumbrances; and
  - (ii) do the things the Mortgagee stipulates,

to provide more effective security to the Mortgagee over the Secured Property for the payment of the Money Secured and to enable the Mortgagee to exercise its rights in connection with the Secured Property.

- (b) The Mortgagee or an Authorised Officer of the Mortgagee may fill in any blanks in this Charge and complete in favour of the Mortgagee or anyone purchasing under the powers given by this Charge any instrument executed by or on behalf of the Mortgagor in blank and deposited with the Mortgagee in connection with this Charge.
- (c) The Mortgagee may register this Charge at the Mortgagor's expense as a charge on any appropriate register and the Mortgagor agrees to obtain all requisite consents under any Encumbrance over the property of the Mortgagor created prior to this Charge. The Mortgagor agrees to procure the execution of all documents required by the Mortgagee which are necessary to register this Charge.

6..9 **Independent Experts**  
The Mortgagor:

- (a) acknowledges that, upon the occurrence of an event or series of events which in the Mortgagee's reasonable opinion may have a Material Adverse Effect, the Mortgagee may appoint independent experts including, without limitation, investigating accountants, auditors, solicitors and valuers to review any matter relating to the Mortgagor or any Security Provider and its property including, without limitation, to review its financial position, value its property, conduct stocktakes and perform any other tasks considered by the Mortgagee to be relevant to the assessment of its current position and compliance with its obligations under the enforceability of the Security;
- (b) will provide or cause to be provided all necessary assistance and access to records, information, personnel and property of the Mortgagor any Security Provider as may be reasonably required by the Mortgagee, or any officer, employee, contractor or agent of the Mortgagee and any independent expert appointed by the Mortgagee; and
- (c) will indemnify and keep indemnified the Mortgagee against all costs and expenses incurred as a result of any action taken by the Mortgagee under this clause 6.

7. **RESUMPTION OR COMPULSORY TRANSFER OF SECURED PROPERTY**

7..1 If the Mortgagor receives notice of any intended resumption or transfer of the Secured Property or any part thereof the Mortgagor will:

- (a) immediately notify the Mortgagee of the notice;
- (b) without delay forward to the Mortgagee a copy of the notice and related material which the Mortgagor may have received or obtained;
- (c) upon the request of the Mortgagee lodge a claim for compensation with the proper authority of an amount and with particulars first approved by the Mortgagee, without delay; and
- (d) if such a claim is lodged proceed to obtain a prompt decision on such claim, provided that the Mortgagor will not reduce or compromise any such claim without the prior written consent of the Mortgagee.

7..2 The Mortgagor hereby agrees that the Mortgagor will not lodge a claim for compensation without first obtaining the written approval of the Mortgagee to the amount and particulars of such claim which approval will not be unreasonably or capriciously withheld. Any compensation moneys shall at the option of the Mortgagee be paid in or towards satisfaction of the Money Secured whether or not the time for payment thereof shall have arrived.

8. **MORTGAGEE'S RIGHTS TO ENTER AND TO RECTIFY DEFAULTS; VALUATIONS**

8..1 Any person authorised by the Mortgagee may enter upon any land or buildings owned or occupied whether as licensee, lessee or otherwise by the Mortgagor or any of its subsidiaries at all reasonable times, without notice to the Mortgagor, to:

- (a) inspect the condition of the Secured Property;
- (b) determine whether the terms of this Charge are being complied with;
- (c) inspect and take copies of any Financial Records or any other documents relating to the Mortgagor's business;
- (d) exercise the rights of the Mortgagee under this Charge; or
- (e) investigate the affairs and financial position of the Mortgagor.

8..2 The Mortgagee may do any thing which should have been done by the Mortgagor under the terms of this Charge but has not been done or done properly, but without any obligation to do so and without prejudice to its other rights, powers and remedies under this Charge.

8..3 The Mortgagee may at any time on the Mortgagor's behalf and at the Mortgagor's expense arrange for valuations or revaluations of the Mortgagor's property and assets to be carried out either by the Mortgagee or by outside consultants nominated by it. Where the Mortgagee itself effects a valuation or revaluation, it shall be entitled to levy a fee therefor which shall be payable by the Mortgagor on demand, but shall not be obliged to provide a copy of any document or correspondence to the Mortgagor or to discuss the results of the valuation or revaluation with the Mortgagor.

8..4 The Mortgagor shall do everything on its part and cause and permit its Related Bodies Corporate (as defined in the Corporations Act) to do everything on their part which is necessary or desirable to enable the Mortgagee to exercise its rights under this clause 8 and, without limitation, the Mortgagor shall enable the Mortgagee to use the facilities and have the services of the personnel of the Mortgagor and those Related Bodies Corporate to the extent reasonably required by the Mortgagee for that purpose.



**9. WARRANTIES BY MORTGAGOR**

9..1

The Mortgagor warrants that:

- (a) it has good title to the Secured Property, free of Encumbrances other than those disclosed in writing to the Mortgagee before this Charge was executed;
- (b) it has been duly incorporated in accordance with the laws of its place of incorporation, is validly existing under those laws, duly owns its rights, property, undertaking and assets and has power and authority to carry on its business as it is now being conducted; and
- (c) it has power to enter into and observe its obligations under this Charge; and
- (d) it has in full force and effect the authorizations necessary to enter into this Charge, observe obligations under it, and allow it to be enforced; and
- (e) its obligations under this Charge are valid and binding and are not void, voidable or unenforceable; and
- (f) this Charge and the transactions under it do not contravene its constituent documents or any law, regulation or official directive or any obligation of or undertaking by the Mortgagor or cause a limitation on its powers or the powers of its directors, to be exceeded; and
- (g) the most recent unaudited Financial Records of the Mortgagor and unaudited consolidated Financial Records of the entities it controls are a true, fair and accurate statement of its financial position and their consolidated financial position as at the date to which they are prepared and disclose or reflect all actual and contingent liabilities; and
- (h) there has been no material adverse change in the financial position of the Mortgagor or (where appropriate) in the consolidated financial position of the Mortgagor and the entities it controls since the date as at which the Financial Records of the Mortgagor and (where appropriate) the entities it controls; current as at the date of this Charge, were prepared; and
- (i) it has fully disclosed in writing to the Mortgagee all facts relating to the Mortgagor, the entities it controls, this Charge, the Secured Property and anything in connection with them which are material to the assessment of the nature and amount of the risk undertaken by the Mortgagee in entering into this Charge and doing anything in connection with it; and
- (j) no Event of Default or event which with the giving of notice, lapse of time or fulfilment of any condition would be likely to become an Event of Default continues unremedied; and
- (k) save where agreed to in writing by the Mortgagee, it does not hold any interest in the Secured Property or enter into this Charge in the capacity of a trustee of any trust or settlement; and
- (l) it is the beneficial owner of and has good title to all property held by it or on its behalf and all undertakings carried on by it are free of any security, third party interest or Encumbrances other than those agreed to in writing by the Mortgagee; and
- (m) the Mortgagor benefits by executing this Charge and any collateral security to which it is a party.

9..2

These warranties are taken also to be made:

- (a) on each date on which the Mortgagee provides accommodation to or at the request of the Mortgagor; and
- (b) every 3 months after the date of this Charge.

**10.**

10..1

**EVENTS OF DEFAULT**

The Mortgagor shall at the option of the Mortgagee be immediately in default without the necessity for any notice or demand upon the occurrence of any of the following Events of Default:

- (a) the Mortgagor and/or any Security Provider fails or neglects to pay on the due date for payment any part of the Money Secured at the time or times and in the manner provided by the Secured Agreement or under any Security; or ;
- (b) the Mortgagor and/or any Security Provider fails or neglects to observe or perform any of the covenants conditions or agreements contained in the Secured Agreement or any Security; or
- (c) the Mortgagor and/or any Security Provider does not fully and punctually observe or comply with its agreements, undertakings or obligations in respect of the Money Secured or any Security or any other agreement or instrument between the Mortgagor or the Security Provider and the Mortgagee; or
- (d) an Insolvency Event occurs in respect of the Mortgagor or any of its subsidiaries or any Security Provider; or
- (e) a receiver administrator or controller of any of the real or personal property of the Mortgagor or the Security Provider shall be appointed; or
- (f) any judgement which is obtained against the Mortgagor or the Security Provider remains unsatisfied for more than 14 days; or
- (g) any execution, distress or Encumbrance is enforced or levied against any of the property or the

- assets of the Mortgagor or the Security Provider, or can be rendered enforceable by the giving of notice, lapse of time or fulfilment of any condition; or
- (h) the Mortgagor or any of its subsidiaries or any Security Provider stops payment, ceases to carry on business or a material part of it, or threatens to do either of those things, except to reconstruct or amalgamate while solvent on terms approved by the Mortgagee; or
  - (i) default is made under any agreements other than the Security which are given by the Mortgagor or the Security Provider (whether in the Mortgagor's or the Security Provider's personal capacity or in its capacity as a trustee, or a partner of any partnership) with or without any other person in favour of the Mortgagee; or
  - (j) the Mortgagor or any of its subsidiaries or the Security Provider takes action to reduce its capital or buy back any of its ordinary shares or passes a resolution referred to in section S254N of the Corporations Act 2001, in any case without the consent of the Mortgagee; or
  - (k) if the Mortgagor or the Security Provider breach any undertaking at any time given to the Mortgagee or its legal advisers from time to time or if any condition imposed by the Mortgagee in agreeing to any matter (including any waiver) is not complied with or fulfilled or if any warranty or representation by the Mortgagor or the Security Provider to the Mortgagee prior to or subsequent to the date hereof is untrue or false; or
  - (l) a person is appointed under legislation to investigate or manage any part of the affairs of the Mortgagor or any of its subsidiaries or any Security Provider; or
  - (m) any Security is or becomes wholly or partly void, voidable or unenforceable, or is claimed to be so or loses the priority which it has at or after the date of this Charge (other than by an act or omission of the Mortgagee) or a claim to that effect is made by the Mortgagor or the Security Provider, by anyone on either of their respective behalf or by anyone who claims to have an interest in the property the subject of such Security Document; or
  - (n) a change occurs in a circumstance which is warranted or taken to be warranted under any terms and conditions applicable to the Secured Property, Money Secured or any Security to exist or in the business assets or financial condition of the Mortgagor, or of the Mortgagor and its subsidiaries taken as a whole or of any Security Provider, which in any case in the reasonable opinion of the Mortgagee may have a material adverse effect on the ability of the Mortgagor or the Security Provider to observe its obligations, or on the rights of the Mortgagee, in respect of the Money Secured or under any Security; or
  - (o) the Mortgagor or the Security Provider shall mortgage or otherwise encumber (except as expressly permitted by Section 80 of the Queensland Property Law Act 1974 or equivalent legislation in the State set out in Item 10) or sell or dispose of or attempt or contract to sell or dispose of any land mortgaged or charged in favour of the Mortgagee without the previous consent in writing of the Mortgagee; or
  - (p) the Mortgagor or the Security Provider ceases to be a subsidiary of any company which is its holding company at the date of this Charge; or
  - (q) in the reasonable opinion of the Mortgagee the value to the Mortgagee of any Security is materially and adversely affected or any of the property secured by any Security is in jeopardy, other than as a result of any act or omission of the Mortgagee; or
  - (r) if any other event occurs or circumstances arise which in the reasonable opinion of the Mortgagee, is likely to materially or adversely effect the liability of the Mortgagor or any Security Provider to observe and perform all or any of its obligations under this Charge or otherwise to comply with the terms of this Charge or any Security; or
  - (s) if the Mortgagor or any Security Provider is a trustee, whether or not the fact is notified to the Mortgagee, the Mortgagor or Security Provider carry out or permit to occur any of those events described in clause 2.2.6 hereof without the Mortgagee's prior written consent; or
  - (t) any Security Provider or any other person liable for the payment of any part of the Money Secured to the Mortgagee shall do or suffer any of the above;

**AND** a determination by the Mortgagee that any of these events has occurred shall be final and binding on the Mortgagor. The Mortgagor shall promptly inform the Mortgagee in writing upon the happening of any of the events described in this clause.

## 10.2

If this Charge has not otherwise taken effect as a fixed charge under this Charge or by operation of law, it takes effect as a fixed charge automatically and immediately:

- (a) if an Event of Default described in sub-clause 10.1(d) or sub-clause 10.1(h) occurs; or
- (b) over the Secured Property affected if an Event of Default described in clause 10.1(g) occurs; or
- (c) if an Event of Default occurs and this Charge has not already become a fixed charge, on receipt by the Mortgagor of a notice from the Mortgagee to that effect; or

- (d) if the Mortgagor does not pay taxes on time, over the Secured Property that constitutes money or rights to money:
- (i) due, accruing or which may become due to the Mortgagor; or
  - (ii) which is held on account of the Mortgagor, or by a person for payment to the Mortgagor, or on account of a person for payment to the Mortgagor.

10..3 At any time after this Charge has taken effect as a fixed charge over any or all of the assets of the Mortgagor, the Mortgagee may by notice in writing to the Mortgagor from time to time declare that this Charge shall resume the status of a floating charge over those assets or any of them.

## 11. APPOINTMENT OF RECEIVER

11..1 At any time after an Event of Default has occurred the Mortgagee may appoint a Receiver of the whole or any part of the Secured Property. This power may be exercised whether or not a Receiver of part of the Secured Property has previously been appointed under clause 11.2.

11..2 At any time after an Event of Default has occurred, the Mortgagee may appoint a Receiver of all or any of the assets over which this Charge then operates as a fixed charge ("the relevant assets"). The Receiver may exercise powers only in relation to the relevant assets, and not in relation to any other asset forming part of the Secured Property. The appointment of a Receiver under this clause shall have no effect on the rights of the Mortgagor to deal with any of the Secured Property other than the relevant assets in the manner permitted by this Charge.

11..3 The Mortgagee may also remove any Receiver appointed under sub-clause 11.1 or 11.2, and in the case of removal, retirement or death may appoint a new Receiver.

11..4 Delay by the Mortgagee in appointing a Receiver shall not prejudice the Mortgagee's right to make the appointment.

11..5 A Receiver appointed by the Mortgagee shall be the agent of the Mortgagor and the Mortgagor shall be solely responsible for anything done or not done by the Receiver, and for the Receiver's remuneration. This clause shall cease to apply if the Mortgagee notifies the Mortgagor in writing that the Receiver is to act as the agent of the Mortgagee.

11..6 The Mortgagee may fix the remuneration of any Receiver at an amount or rate of commission agreed between the Mortgagee and the Receiver or in the absence of agreement at an amount or rate determined by the Mortgagee. The Receiver's remuneration shall form part of the Money Secured.

11..7 Where more than one person is appointed as Receiver in respect of the Secured Property or the same part or parts of it, the Mortgagee may provide in the terms of the appointment that the rights, powers and authorities of the Receiver vest in them jointly and severally or jointly.

11..8 The power to appoint a receiver or receiver and manager over all of the Secured Property may be exercised whether or not a Receiver has already been appointed over part of it.

## 12. OTHER POWERS OF MORTGAGEE

12..1 All of the powers which howsoever may be conferred on a Receiver appointed under this Charge shall also be exercisable by the Mortgagee at any time after an Event of Default has occurred and whether or not a Receiver has been or could be appointed under this Charge.

12..2 The Mortgagee or a Receiver need not give notice or a demand to the Mortgagor or allow time to elapse before exercising a right, power or remedy under this Charge or conferred by law, unless notice or demand or a lapse of time is required by a law which cannot be excluded or the Mortgagee or any Receiver appointed hereunder wishes to exercise any power referred to in clause 13.1(a) hereof in respect of freehold or leasehold property. If the law requires that a period of notice must be given or a lapse of time must occur or be permitted before a right, power or remedy under this Charge or conferred by law may be exercised, then:

- (a) when a period of notice or lapse of time is mandatory, that period of notice must be given or that lapse of time must occur or be permitted by the Mortgagee; or
- (b) when the law provides that a period of notice or lapse of time may be stipulated or fixed by this Charge, one day is stipulated and fixed as that period of notice or lapse of time and, without

limitation, where applicable, one day is stipulated and fixed as the period of notice or lapse of time during which:

- (i) default must continue before a notice is given or requirement otherwise made for payment of the Money Secured or the observance of obligations under this Charge; and
- (ii) a notice or requirement for payment of the Money Secured or the observance of obligations under this Charge must remain not complied with before the Mortgagee's rights, powers or remedies may be exercised.

12..3 The Mortgagee may at any time give up possession of any part of the Secured Property.

### 13. POWERS OF RECEIVER

13..1 In addition to all other powers which howsoever may be conferred on him, the Receiver may exercise any or all of the following powers, unless they are specifically excluded by the terms of his appointment, at the time, in the manner and on terms (in addition to any terms expressly specified below) which the Receiver thinks fit (and the Mortgagee may vary these powers at any time by notice given to the Mortgagor and the Receiver):

- (a) enter, take possession of, have access to and make use of the Secured Property as often as the Receiver deems expedient;
- (b) receive rents and profits derived from the Secured Property;
- (c) exercise the rights, powers and remedies of the Mortgagor over, in connection with or comprising part of the Secured Property;
- (d) manage the Secured Property;
- (e) carry on any business or pursuit within the powers of the Mortgagor;
- (f) subject to obligations imposed by law, sell or agree to sell the Secured Property on any terms, including, without limitation, the following:
  - (i) the sale may take place whether or not the Receiver has taken possession of the Secured Property;
  - (ii) the sale may be by public auction, private treaty or by tender;
  - (iii) the sale may be in one lot or in parcels, and with or without special provisions about title, or time, or mode of payment of purchase money, or otherwise;
  - (iv) fixtures may be severed and sold apart from any real property;
  - (v) allow the purchase money to remain secured by a mortgage or charge of the property sold, or secured by other security, or without security, and on any other terms, without being responsible for any resultant loss;
  - (vi) enter into, rescind or vary a contract for sale, and resell without being responsible for loss, and execute assurances of the Secured Property in the name and on behalf of the Mortgagor or otherwise;
  - (vii) do anything to complete any sale which the Receiver considers desirable, and set aside from the proceeds of sale the amount which the Receiver considers desirable to meet future claims until the possibility of claims being made is ended;
- (g) obtain the benefit of any agreement entered into by the Mortgagor (including, without limitation, by specific performance), whether or not the agreement is entered into in the exercise of the rights, powers and remedies conferred by this Charge;
- (h) institute, conduct, defend, submit to arbitration, settle, compromise or defer in the name of the Mortgagor or otherwise on any terms, any proceeding, claim, question or dispute in connection with the Secured Property or this Charge and execute releases or other discharges in connection with them;
  - (i) call and get in capital;
  - (j) delegate the Receiver's powers including this power of delegation to any person for any period;
  - (k) pull down, rebuild, erect, alter, improve, subdivide, provide services to, insure, and maintain the Secured Property;
  - (l) lease or license, end, renew, surrender, or accept the surrender of a lease or licence of, the Secured Property, and compromise with or make concessions to tenants, lessees or licensees, or agree to do any of these things, for any period and on any terms;
- (m) give a person an option to purchase, lease or license the Secured Property on any terms, and give, create, release or vary easements, profits a prendre or restrictions relating to the Secured Property;

- (n) surrender or transfer the Secured Property to any person;
- (o) exchange the Secured Property with a person for an interest in other property of any tenure (with or without giving or receiving other consideration). The property so acquired may be dealt with by the Receiver as if it were part of the Secured Property and the Receiver may grant an Encumbrance over that property for the payment of the Money Secured;
- (p) remove personal property from the Secured Property and store that property in the name of the Mortgagor without liability for loss or damage suffered by the Mortgagor;
- (q) do anything which should have been done by the Mortgagor under this Charge but which has not been done or which the Receiver considers has not been done properly;
- (r) borrow or raise from the Mortgagee or from another person in the name and on behalf of the Mortgagor or otherwise money required from time to time for any of the purposes mentioned in this clause 13 and do any ancillary act (including, without limitation, draw, accept or endorse bills of exchange). (Neither the Mortgagee nor any other person providing accommodation to the Receiver need enquire about the necessity or propriety of a borrowing or raising or is to be responsible for the misapplication or non-application of money borrowed or raised);
- (s) exercise all powers (including, without limitation, the powers of the directors of the Mortgagor) in connection with the transfer of shares held by any person in the Mortgagor;
- (t) secure money borrowed or raised by Encumbrance over the Secured Property so that the Encumbrance ranks in priority to, equally with, or after this Charge;
- (u) employ or engage persons (including, without limitation, employees of the Receiver and consultants and professional advisers) in connection with the powers conferred on the Receiver by this clause 13;
- (v) do or cause to be done anything to protect the priority of this Charge, to protect the Mortgagor's or the Mortgagee's estate or interest in the Secured Property, to enforce this Charge, to recover the Money Secured or to protect or enhance the Secured Property; and
- (w) expend money or incur liabilities in exercising the powers conferred on the Receiver by this clause 13.

#### 14. APPLICATION OF MONEY

##### 14..1

The Mortgagee shall have an absolute discretion (without the need to communicate its election to anyone) to apply at any time any payment received by it in reduction of such part of the Money Secured as it shall elect. Any surplus money received by the Mortgagee shall not bear interest, and the Mortgagee's liability to account for the surplus money may be discharged in full by:

- (a) the Mortgagee depositing it to the credit of an account in the name of the Mortgagor in any bank the Mortgagee thinks fit;
- (b) the Mortgagee crediting it to an account in its books in the name of the person to whom it is payable; or
- (c) by the Mortgagee paying it into court.

##### 14..2

In applying any moneys toward satisfaction of the Money Secured, the Mortgagor shall be credited only with so much of those moneys as are actually received by the Mortgagee or the Receiver and such credit is to date from the time of such receipt. This provision shall apply notwithstanding that in exercising any power of sale the Mortgagee or the Receiver may have transferred the Secured Property (in whole or in part) and taken an Encumbrance to secure the unpaid balance of purchase money. If the Mortgagee takes any mortgage, promissory note, bill of exchange or other security in payment of or to secure the payment of any purchase moneys on sale of the Secured Property by the Mortgagee, no amount representative of such security shall be credited in or towards payment of the Money Secured until all moneys payable under or the proceeds from such security is received by the Mortgagee in cash.

##### 14..3

If the Mortgagee receives money in connection with this Charge when part of the Money Secured is contingently owing or falls within paragraph (d) of the definition of "Money Secured", then the Mortgagee may deposit in any financial institution thought fit by the Mortgagee an amount not exceeding that part in an interest-bearing deposit account on terms which the Mortgagee thinks fit with any person until that part becomes actually payable or no longer falls within the definition of "Money Secured". At that time the Mortgagee may retain for its own account the amount which is then actually payable to it. The balance is to be paid in accordance with clause 14.1.

#### 15. NO WAIVER

##### 15..1

The Mortgagee is not to be taken to have waived its rights in respect of any Event of Default except to the extent that those rights have been expressly waived in writing by an Authorised Officer of the Mortgagee.

15..2 In particular and without limiting the generality of clause 15.1, the power of sale under this Charge may be exercised notwithstanding that the Mortgagee or the Receiver may have previously waived or refrained from exercising that power; and no demand or notice of sale made or given under this Charge shall be waived by the acceptance of any payment on account of the Money Secured, or by any negotiations between the Mortgagee and the Mortgagor.

**16. NO MERGER**

16..1 This Charge does not merge with, postpone, lessen or otherwise prejudicially affect any other right to which the Mortgagee is entitled.

16..2 This Charge does not affect a collateral security or any other right, power or remedy of the Mortgagee at law or in equity.

16..3 The Mortgagee need not resort to any other collateral security it holds for payment of the Money Secured, nor commence proceedings or enforce any other right against the Mortgagor, before it resorts to this Charge.

**17. NO SUSPENSION OF LIABILITY TO PAY**

17..1 The Mortgagee may:

- (a) demand payment of the Money Secured and exercise its rights and powers under this Charge even if any negotiable instrument, security, contract or other obligation relating to the Money Secured is still current or has not matured or fallen due; and
- (b) vary, exchange, renew, modify, release, assign, refuse to complete or to enforce any judgment, specialty, indemnity, guarantee or other security or instrument negotiable or otherwise held by the Mortgagee and whether satisfied by payment or not without affecting or discharging the Mortgagor's liability under this Charge.

**18. CONTINUING SECURITY**

18..1 This Charge shall be a continuing and running security notwithstanding any settlement of account or any other matter or thing whatsoever and shall remain in full force and effect until the Charge shall be under no further obligation whatsoever to advance moneys under this Mortgage and all moneys payable by the Mortgagor and/or the Security Provider under the Security have been paid or recovered in full and the Mortgagee has executed a full release hereof.

**19. OTHER SECURITIES HELD BY THE MORTGAGEE**

19..1 Nothing in this Charge affects any other Encumbrance of any kind which the Mortgagee now holds or may take at any time in the future:

- (a) in the property of the Mortgagor; or
- (b) in the property of any other person as security for payment of the Money Secured or any of them,

and nothing in this Charge shall affect any other right or remedy of the Mortgagee at law or in equity.

**20. DISCHARGE OF PRIOR-RANKING DEBTS**

20..1 The Mortgagor shall comply with the provisions of Other Securities and shall not vary or agree to vary any of the provisions of the Other Securities without the Mortgagee's prior written consent. If the Mortgagor and/or any other person makes default or is deemed to have made default under the Security the Mortgagee can pay all moneys secured under the Other Securities and seek a transfer or release of the Other Securities.

20..2 The Mortgagor authorises and directs the Mortgagee to do all acts and sign all instruments necessary to give effect to the provisions of this Part.

20..3 The Mortgagee is not required to lend or advance or otherwise provide the Money Secured if there are Other Securities, except where the holders of the Other Securities have executed a priority agreement on terms and conditions acceptable to the Mortgagee.

20..4 The Mortgagor authorises the Mortgagee to provide details concerning this Charge and the Money Secured to the holders of the Other Securities.

**21. DOCUMENTS OF TITLE**

21..1 While this Charge remains current the Mortgagee is entitled to custody of all documents of title (including any indicia of title or leases to leasehold premises) to the Secured Property, except for those held by the holder of a prior-ranking Encumbrance.

**22. SET-OFF**

22..1 At its sole discretion the Mortgagee may at any time apply (without notice) any credit balance in any currency in any account of the Mortgagor with the Mortgagee towards satisfaction of any amount then payable by the Mortgagor to the Mortgagee. The Mortgagor authorises the Mortgagee in the name of the Mortgagor to do anything (including, without limitation, to execute any document or effect the conversion of any currency) that is required for such purpose.

**23. NO MARSHALLING**

23..1 The Mortgagee shall be under no obligation to marshal in favour of the Mortgagor any security held by it or any fund or asset on which it has a claim.

**24. SUSPENSION OF MORTGAGOR'S RIGHTS**

24..1 As long as any of the Money Secured is owed by the Mortgagor to the Mortgagee (whether or not the Mortgagor has become liable for those moneys), the Mortgagor shall not:

- (a) in reduction of its liability under this Charge, raise a defence, set-off or counterclaim available to itself or a co-surety or co-indemnifier or any customer or debtor of the Mortgagee for whom the Mortgagor is acting as surety, in each such case against the Mortgagee;
- (b) make any claim or enforce any right against such co-surety (if the Mortgagee has then made or is entitled to make any demand for payment of the Money Secured) or prove in competition with the Mortgagee if such co-surety, co-indemnifier or customer or debtor becomes insolvent or (where such co-surety, co-indemnifier or customer or debtor is an individual) dies, whether in respect of any amount paid by the Mortgagor under this Charge, in respect of any other amount (including the proceeds of any Encumbrance) applied by the Mortgagee in reduction of the Mortgagor's liability under this Charge, or otherwise; or
- (c) be entitled to, or to any share in, the benefit of any security or guarantee now or subsequently held by the Mortgagee for the Money Secured; or
- (d) claim or enforce any right of contribution against any such co-surety, co-indemnifier or customer or debtor.

24..2 The Mortgagor irrevocably appoints the Mortgagee, any Receiver appointed by the Mortgagee and each Authorised Officer of the Mortgagee severally its attorneys.

24..3 Each attorney may:

- (a) in the name of the Mortgagor or the attorney do anything which the Mortgagor may lawfully do or exercise a right of proof of the Mortgagor following an Insolvency Event occurring in respect of such co-surety, co-indemnifier or customer or debtor in connection with any matter whether or not connected with the Mortgagor's rights as a surety (including, without limitation, executing any Security over the Secured Property or any other property of the Mortgagor, deeds and instituting, conducting and defending legal proceedings and receiving any dividend arising out of that right); and
- (b) delegate its powers (including, without limitation, this power of delegation) to any person for any period and may revoke a delegation; and
- (c) exercise or concur in exercising its powers even if the attorney has a conflict of duty in exercising its powers or has a direct or personal interest in the means or result of that exercise of powers.

24..4 The Mortgagor agrees to ratify anything done by an attorney or its delegate in accordance with clause 24.3.

24..5 The Mortgagor may not exercise the right of proof referred to in clause 24.3 independently of the attorney.

24..6 The attorney need not account to the Mortgagor for any dividend received in the exercise of that right of proof until the Mortgagee has received all of the Money Secured.

**25. PRESERVATION OF THE MORTGAGEE'S RIGHTS**

25..1

The liabilities under this Charge of the Mortgagor and the rights under this Charge of the Mortgagee, a Receiver or an attorney appointed under this Charge are not affected by anything which might otherwise affect them at law or in equity including, without limitation, one or more of the following (whether occurring with or without the consent of a person):

- (a) the Mortgagee or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with, or wholly or partially releasing the Mortgagor or another person in any way;
- (b) laches, acquiescence, delay, acts, omissions or mistakes on the part of the Mortgagee or another person or both the Mortgagee and another person;
- (c) any variation or novation of a right of the Mortgagee or another person, or material alteration of a document, in respect of the Mortgagor or another person including, without limitation, an increase in the limit of or other variation in connection with the Money Secured;
- (d) the transaction of business, expressly or impliedly, with, for or at the request of the Mortgagor or another person;
- (e) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise whether or not the Mortgagor or another person was a member;
- (f) the loss or impairment of any collateral security or a negotiable instrument;
- (g) a person dealing in any way with an Encumbrance, guarantee, judgment or negotiable instrument;
- (h) the death of any person or an Insolvency Event occurring in respect of any person;
- (i) a change in the legal capacity, rights or obligations of a person;
- (l) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- (k) a judgment against the Mortgagor or another person;
- (l) the receipt of a dividend after an Insolvency Event or the payment of a sum or sums into the account of the Mortgagor or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
- (m) the Money Secured being irrecoverable;
- (n) an assignment of rights in connection with the Money Secured;
- (o) the acceptance of repudiation or other termination in connection with the Money Secured;
- (p) the invalidity or unenforceability of an obligation or liability of a person other than the Mortgagor under this Charge;
- (q) invalidity or irregularity in the execution of this Charge by the Mortgagor or any deficiency in the powers of the Mortgagor to enter into or observe its obligations under this Charge;
- (r) the opening of a new account by the Mortgagor with the Mortgagee or another person or the operation of a new account;
- (s) any obligation of the Mortgagor or any other person being discharged by operation of law or otherwise;
- (t) property secured under an Encumbrance being forfeited, extinguished, surrendered, resumed or determined; or
- (u) any fact matter act or thing.

25..2

The liability of the Mortgagor under this Charge is not affected because:

- (a) any other person who was intended to become a co-surety or co-indemnifier for payment of the Money Secured has not done so or has not done so effectively; or
- (b) a person who is a co-surety or co-indemnifier for payment of the Money Secured is discharged under an agreement or under statute or a principle of law or equity.

25..3

If a claim is made that all or part of any payment, obligation, settlement, transaction, conveyance or transfer in connection with the Money Secured is void or voidable under any law relating to Insolvency Events and the claim is upheld, conceded or compromised, then:

- (a) the Mortgagee is entitled immediately as against the Mortgagor to the rights in respect of the Money Secured to which it would have been entitled if all or that part of such payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and



- (b) the Mortgagor agrees to do any act and sign any document promptly on request from the Mortgagee to restore to the Mortgagee any security interest, guarantee or other rights held by it from the Mortgagor immediately before that payment, obligation, settlement, transaction, conveyance or transfer.

**26. COSTS, CHARGES, EXPENSES AND INDEMNITIES**

26..1 The Mortgagor will upon the Mortgagee's demand pay to the Mortgagee or as directed by the Mortgagee all costs expenses and other amounts payable incurred or paid by the Mortgagee in respect of this Charge. These costs shall include:

- (a) legal costs on a full indemnity or on a solicitor and own client basis, whichever is the greater;
- (b) costs resulting from or on account of any default by the Mortgagor or any Event of Default;
- (c) the cost of obtaining any advice reasonably required by the Mortgagee from time to time;
- (d) the costs of the Mortgagee in connection with the negotiation, preparation, execution, stamping and registering or causing to be registered this Charge and any Security (or a copy thereof) with such government body or registrar as the Mortgagee reasonably requires;
- (e) costs resulting from the exercise or purported or attempted exercise or of any of the Mortgagee's rights or powers under this Charge;
- (f) all costs associated with the appointment, remuneration, actions and undertakings of an attorney or a Receiver under this Charge; and
- (g) any stamp duty loan duty or other duty or financial impost including duties and taxes on receipts or payments and any fines or penalties arising directly or indirectly,

in respect of this Charge and/or the Security or any transaction contemplated thereby.

26..2 The Mortgagor indemnifies the Mortgagee against any liability or loss arising from, and any costs, charges and expenses incurred in connection with:

- (a) the payment, omission to make payment or delay in making payment of an amount referred to in clause 26.1 ; or
- (b) an Event of Default; or
- (c) actions, proceedings, costs, claims and demands in connection with the Secured Property (including, without limitation, those arising from the use or occupation of or presence of any person on the Secured Property),

including in each case, without limitation, legal costs and expenses on a full indemnity basis or a solicitor and own client basis, whichever is the greater .

26..3 The Mortgagor agrees to pay the Mortgagee an amount equal to any liability, loss, costs, charges or expenses of the kind referred to in clause 26.2 suffered or incurred by:

- (a) any Receiver or other controller (as defined in the Corporations Act) appointed under or by virtue of this Charge or any attorney appointed under this Charge; or
- (b) any employee, officer, agent or contractor of the Mortgagee or an entity referred to in sub-clause 26.3(a).

26..4 If a judgment, order or proof of debt in connection with the Money Secured is expressed in a currency other than the currency in which the Money Secured is due, then the Mortgagor indemnifies the Mortgagee against:

- (a) any difference arising from converting the other currency if the spot rate of exchange for converting the other currency into the due currency available to the Mortgagee when the Mortgagee receives a payment in the other currency is less favourable to the Mortgagee than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and
- (b) the costs of conversion.

The Mortgagor acknowledges that it may be necessary to convert the other currency through more than one currency to ascertain the spot rate of exchange available to the Mortgagee.

26..5 Anything which the Mortgagor is required to do under this Charge must be done at the Mortgagor's cost.

**27. NO DUTY OF ENQUIRY**

27..1

It shall not be necessary for any purchaser or any other person dealing with the Mortgagee, or any Receiver, or any attorney appointed under this Charge or a person to whom is tendered for registration any instrument duly executed by any of them to inquire whether any money is in fact owing under this Charge, whether any default has been made, whether the power of sale or any other power which the Mortgagee may have exercised or attempted to exercise has properly arisen or been properly or regularly exercised or as to any other matter or thing in relation to the due execution of any power or otherwise. No such person shall be affected by express or constructive notice that the Money Secured has actually been paid or that default has not been made or that any such power has not arisen or been properly or regularly exercised.

**28. INVESTIGATING ACCOUNTANTS**

28..1

In addition to its other rights and powers under this Charge, the Mortgagee may in its discretion appoint accountants ("investigating accountants") to investigate the affairs and financial position of the Mortgagor and any subsidiary companies. In addition to being authorised by the Mortgagee under clause 8.1, the investigating accountants are authorised by the Mortgagor to take all actions which may be reasonably necessary for the purpose of their investigation, and the Mortgagor shall give them all reasonable assistance for that purpose.

28..2

The Mortgagor shall be liable for the costs and expenses of any investigation under this clause, and shall pay those costs and expenses on demand by the Mortgagee. The Mortgagee may advance to the Mortgagor an amount sufficient to pay those costs and expenses, and the Mortgagor authorises the Mortgagee:

- (a) to make such an advance;
- (b) to debit the amount of the advance to an account in its name at the Mortgagee; and
- (c) to pay that amount to the investigating accountants in payment of their costs and expenses.

Any amount so advanced shall form part of the Money Secured.

**29. MORTGAGEE'S AND RECEIVER'S LIABILITY ON TAKING POSSESSION**

If the Mortgagee or a Receiver exercises a right under this Charge, exercises its rights conferred by law or takes possession of all or any part of the Secured Property, then neither of them is liable to account as mortgagee in possession or for any loss upon realisation or for any default or omission for which a mortgagee in possession might be liable.

**30. POWER OF ATTORNEY**

30..1

In addition to clause 24, the Mortgagor irrevocably appoints the Mortgagee, each Authorised Officer of the Mortgagee and any Receiver appointed by the Mortgagee, severally, as attorney of the Mortgagor, with power to in either the name of the Mortgagor or the attorney:

- (a) do all acts which ought to have been done by the Mortgagor under this Charge;
- (b) issue any demand, institute proceedings, defend proceedings or take any action in relation to the Secured Property;
- (c) take such actions and execute any documents necessary to more satisfactorily secure the Secured Property or which the Mortgagee considers necessary or expedient to exercising its rights hereunder; to more readily execute deeds including transfers of any estate or interest in land and instituting, conducting and defending legal proceedings);
- (d) do anything which the Mortgagor may lawfully authorise an attorney to do in connection with this Charge or the Secured Property or which in the attorney's opinion is necessary or expedient to give effect to any right, power or remedy conferred on the Mortgagee by this Charge, by law or otherwise;
- (e) delegate its powers (including, without limitation, this power of delegation) to any person for any period and may revoke a delegation; and
- (f) exercise or concur in exercising its powers even if the attorney has a conflict of duty in exercising its powers or has a direct or personal interest in the means or result of that exercise of powers.

30..2

The Mortgagor agrees to ratify anything done by an attorney or its delegate in accordance with this clause.

30..3

This power of attorney is granted for valuable consideration (the receipt of which is hereby acknowledged by the Mortgagor) as and by way of security for the payment of the Money Secured and is deemed irrevocable.

**31. NOTICES**

31..1 Any notice, consent or demand given in relation to this Charge shall be in writing in order to be valid and shall be deemed to have been duly served if it is:

- (a) posted by pre-paid post to:
  - (i) in the case of the Mortgagor to such address as the Mortgagor may from time to time notify to the Mortgagee or the last known place of abode or business of the Mortgagor known to the Mortgagee; and
  - (ii) in the case of the Mortgagee, such address as the Mortgagee may notify to the Mortgagor from time to time, and failing such notification to the registered office of the Mortgagee; or
- (b) sent by facsimile to the facsimile number specified in the Schedule hereto for the relevant party,

and shall be deemed to have been served:

- (c) in the case of posting, on the third day after posting, or
- (d) in the case of the facsimile on receipt of a transmission report confirming the successful transmission.

31..2 Any notice, consent or demand given by the Mortgagee may be given or made in writing signed by an officer of or solicitor for the Mortgagee and such writing may in addition to the methods of service contained in paragraph 31.1 be delivered personally to the Mortgagor or left at or upon the usual or last known place of abode or business of the Mortgagor.

31..3 The Mortgagor or the Mortgagee may from time to time by notice in writing given in accordance with this Mortgage nominate a new address and/or facsimile number for this purposes of clause 31.1, and such new address or facsimile notice shall apply from the date of service of such notice.

### 32. PROSPECTIVE LIABILITY

32..1 For the purposes only of section 282(3) of the Corporations Act 2001 the specified maximum amount of the prospective liability secured by this Charge is the amount referred to in Item 9. The nature of the prospective liability is as shown on the notice lodged with this Charge with the Australian Securities Commission, but nothing in this clause will:-

- (a) create any obligation on the Mortgagee to do any act or thing so as to increase or limit the amount of the Money Secured; or
- (b) limit or affect the provisions of section 279(2) of the Corporations Act 2001.

### 33. ASSIGNMENT

33..1 The Mortgagee may assign or otherwise dispose of or deal with its rights under this Charge. The Mortgagee may disclose to a potential assignee or any other person who is considering entering into contractual relations with the Mortgagee in connection with this Charge all information about the Mortgagor, any related document and any party to any Security and the transactions contemplated thereby as the Mortgagee considers appropriate.

33..2 The Mortgagor may not, without the Mortgagee's prior consent, create or allow to exist any Encumbrance over or an interest in this Charge or assign or otherwise dispose of or deal with its rights under this Charge.

### 34. MISCELLANEOUS

34..1 A certificate signed by the Mortgagee or its solicitors about a matter or about a sum payable to the Mortgagee in connection with this Charge is sufficient evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be false.

34..2 The Mortgagee or an attorney appointed under this Charge may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by the person does not prevent a further exercise of that or an exercise of any other right, power or remedy. Failure by the person to exercise or delay in exercising a right, power or remedy does not prevent its exercise. The person with the right, power or remedy is not liable for any loss caused by its exercise, attempted exercise, failure to exercise or delay in exercising it whether by reason of its negligence or otherwise.

- 34..3 Any present or future legislation which operates to vary the obligations of the Mortgagor in connection with this Charge, the Money Secured or the Secured Property with the result that the Mortgagee's right, powers or remedies are adversely affected (including, without limitation, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.
- 34..4 The Mortgagee or any attorney appointed under this Charge may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion, unless this Charge expressly provides otherwise.
- 34..5 The rights, powers and remedies provided in this Charge are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Charge.
- 34..6 Each indemnity in this Charge is a continuing obligation, separate and independent from the other obligations of the Mortgagor and survives termination of this Charge. It is not necessary for the Mortgagee to incur expense or make payment before enforcing a right of indemnity conferred by this Charge.
- 34..7 Time is of the essence of this Charge in respect of an obligation of the Mortgagor to pay money.
- 34..8 The receipt of a Receiver or an Authorised Officer of the Mortgagee releases the person paying money to the Receiver or the Mortgagee in connection with this Charge from:
- (a) liability to enquire whether the Money Secured has become payable;
  - (b) liability for the money paid or expressed to be received; and
  - (c) being concerned to see to its application or being answerable or accountable for its loss or misapplication.
- 34..9 This Charge may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.
- 35. GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS**
- 35..1 This Charge shall be governed and construed in accordance with the laws of the State referred to in Item 10 (herein called "the State").
- 35..2 The Mortgagee irrevocably submits to and accepts to generally and unconditionally the non-exclusive jurisdiction of the Courts of the capital city of the State and the Appellant Courts of the State with respect to any legal action or proceedings which may be brought in any way relating to this Charge.
- 36. PARTNERSHIP**
- 36..1 Where this Charge is given in respect of the indebtedness of a partnership:
- (a) this Charge shall be deemed to constitute a Charge entered by the various persons which may be included in the definition of the words "the Mortgagor" over their joint and several assets and to constitute separate charges by all of such persons and every one or more of them over all assets and property of such persons which are Secured Property and whether such assets and property are owned by such persons singularly or jointly and where two or more of such persons are now or may hereafter be trading in partnership over the assets of each and every such partnership;
  - (b) this Charge shall continue to be binding notwithstanding any changes which may from time to time take place in the constitution of the partnership and notwithstanding that the partnership ceases to carry on business, and shall continue to bind the Mortgagor notwithstanding that the Mortgagor or one of the persons included in the definition of "the Mortgagor" is not a member of the partnership or having once been a member of the partnership the Mortgagor or one of the persons included in the definition of "the Mortgagor" is no longer a member thereof; and
  - (c) the definition of "Money Secured" shall include all moneys, obligations and liabilities which are now or may hereafter become owing or payable to the Mortgagee by the Mortgagor singularly jointly or as a partner with any other person, or where the definition of "the Mortgagor" includes more than one person, by each person singularly jointly or as partners.
- 37. COLLATERAL AGREEMENT**
- 37..1 The parties hereto agree:
- (a) this Charge is collateral to the Security for stamp duty purposes;
  - (b) the Money Secured owing under this Charge is secured by the Security;

- (c) the Security shall be read and construed and be enforceable as if the covenants, conditions and provisions of this Charge, with necessary changes are read into and form part of the Security; and
- (d) a default under any of the Security will constitute a default of this Charge;

and vice versa.

37..2

Notwithstanding any provision contained in this Charge or any rule of law or equity to the contrary, the granting of any time or other indulgence by the Mortgagee to the Mortgagor or any Security Provider in relation to any existing or future default under any Security or this Charge shall not effect or diminish the Mortgagee's right to exercise its rights under the Security or this Charge at any subsequent time.

THE SCHEDULE

Item 1

Date of Execution:

16<sup>th</sup> December 2005

Item 2

The Mortgagor:

Cameo Estates Lifestyle Villages (Launceston) Pty Ltd A.C.N. 098 955 296  
 C/- Adamson and Cross Chartered Accountants, 104 Outram Street, West Perth W.A. 6005

Item 3

The Mortgagee:

PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913  
 C/- Level 4, 9 Beach Road, Surfers Paradise QLD 4217

Item 4

The Borrower:

Cameo Estates Lifestyle Villages (Launceston) Pty Ltd A.C.N. 098 955 296  
 C/- Adamson and Cross Chartered Accountants, 104 Outram Street, West Perth W.A. 6005

Item 5

The Guarantor:

Peter Anthony Bourke  
 9A Hipwood Road, Hamilton QLD 4007

Stephen Michael Dean  
 12 Starfire Close, Mandurah W.A. 6210

Neil Francis Pettit  
 28 Bowen Avenue, Albany Creek QLD 4035

Barry Wayne Turner  
 194 Relbia Road, Relbia Tas 7258

DUTIES ACT 2001-TAS LICENCE 21322	
Document Number	1196333
Document Code	CLM
Lodgement Date	20/12/05
Consideration	\$ 0.00
Duty	\$ 26.00
Interest	\$ 0.00
Initials	TP

Item 6

Secured Agreement

Loan Agreement intended to be executed and dated on the same date hereof between the Borrower and the Mortgagee.

**Item 7  
Security**

- (a) Deed of Guarantee and Indemnity intended to be executed on the same date as this Agreement and delivered by the Guarantor in favour of the Lender.
- (b) Mortgage intended to be executed on the same date as this Agreement by **Cameo Estates Lifestyle Villages (Launceston) Pty Ltd A.C.N. 098 955 296** as the mortgagor and the Lender as the Mortgagee over land situated at 30 Janefield Street, Mowbray, Launceston Tas 7249 being all that land contained in Volume 43058 Folio 1 to be registered as a first mortgage;
- (c) First registered Deed of Charge intended to be executed on the same date as this Agreement by **Cameo Estates Lifestyle Villages (Launceston) Pty Ltd A.C.N. 098 955 296** as mortgagor in favour of the Lender as mortgagee over all the property, assets and undertaking of **Cameo Estates Lifestyle Villages (Launceston) Pty Ltd A.C.N. 098 955 296** of whatsoever nature and kind and wheresoever situated, present and future.

**Item 8**

**Address for Notices (Clause 31)**

(a) Mortgagor: **Cameo Estates Lifestyle Villages (Launceston) Pty Ltd A.C.N. 098 955 296**  
Address: C/- Adamson and Cross Chartered Accountants, 104 Outram Street, West Perth  
W.A. 6005

Facsimile No.: 07 3262 8688

(b) Mortgagee: **PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913**  
Address: C/- Level 4, 9 Beach Road Surfers Paradise 4217  
Facsimile No.: 07 5592 2505

**Item 9**

**Maximum Prospective Liability (clause 32)** Eighteen Million Dollars (\$18,000,000.00)

**Item 10**

**Governing law (clause 35)** Tasmania

**Item 11**

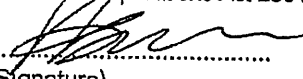
**Fixed Assets (clause 4.1(b))**

**Item 12**

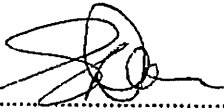
Any Contracts, Loan Licences or Rental Agreements entered into by the Mortgagor with prospective buyers and/or lessees/licencees of the property at 30 Janefield Street, Mowbray, Launceston, Tasmania being all that land described in Volume 43058 Folio 1.

EXECUTED as a Deed.

EXECUTED by Cameo Estates Lifestyle Villages )  
(Launceston) Pty Ltd A.C.N. 098 955 296 in accordance with )  
section 127 of the Corporations Act 2001 (Cth): )

  
.....  
Director (Signature)

*PETER ANTHONY BURKE*  
.....  
Full name

  
.....  
Director/Secretary (Signature)

*STEPHEN MICHAEL DEAN*  
.....  
Full name



Appointment of Agent  
Cameo Estates Lifestyle Villages (Launceston)  
Pty Ltd (ACN 098 955 296)

The Trust Company (PTAL) Limited

LM Investment Management Limited

o

# Appointment of Agent

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Date

9 February 2011

**By this Deed Poll** The Trust Company (PTAL) Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the *Mortgagee*)

**Witnesses as follows:**

Recitals

- A **Cameo Estates Lifestyle Villages (Launceston) Pty Ltd** (ACN 098 955 296) (the *Company*) of Richwood Accountants, 201 Burslem Drive, Maddington in the state of Western Australia is indebted to the Mortgagee.
- B The Mortgagee holds a Fixed and Floating Charge given by the Company dated 16 December 2005 and registered with the Australian Securities and Investments Commission as charge no. 1251021 (the *Charge*), under which the Company charged the Secured Property (as that term is defined in the Charge) (the *Charged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Charge).
- C In the events which have happened the security constituted by the Charge has become enforceable.
- D By virtue of the powers in the Charge, the Mortgagee is entitled to appoint any person or persons to be the agent of the Mortgagee to exercise any of the rights, powers and remedies exercisable by the Mortgagee pursuant to the Charge, and the Mortgagee wishes to exercise this power.

---

## Accordingly:

1. The Mortgagee appoints **LM Investment Management Limited** (ACN 077 208 461) to be the agent (the *Agent*) of the Mortgagee, to exercise all rights, powers, privileges, benefits, discretions and authorities conferred on the Mortgagee under and pursuant to the Charge and by law.
2. The Mortgagee reserves the right at any time to:
  - (a) revoke the Agent's appointment;
  - (b) impose conditions or restrictions on the terms of appointment of the Agent; or
  - (c) appoint an additional or a replacement agent in place of the Agent.
3. This appointment of the Agent shall take effect from the actual time it is accepted by the Agent signing below.

# Appointment of Agent

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## 4. Limit of Liability

- 4.1 The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.
- 4.2 A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
- 4.3 A person other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- 4.4 The provisions of this clause 6 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- 4.5 Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
- 4.6 Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- 4.7 The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- 4.8 No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 6.4.
- 4.9 The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.

## Appointment of Agent

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- 4.10 A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
- (a) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
  - (b) was in accordance with a lawful court order or direction or otherwise required by law.
- 4.11 All of the terms, clauses and conditions of this Deed are subject to this clause 6.
5. This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

# Appointment of Agent

---

**EXECUTED** and delivered as a deed in Brisbane.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

The Trust Company (PTAL) Limited ACN 008 412 913, by its Attorney who states that he/she has had no notice of revocation of the Power of Attorney dated 12 July 2010:

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Geoffrey Funnell

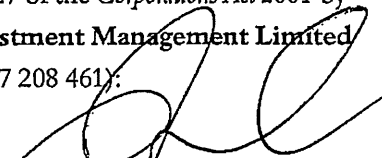
State Manager – Corporate and Legal Services  
(Qld)

**The Agent accepts** the above appointment at the time and on the date written below:

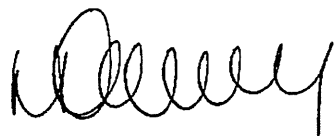
Date Accepted:

Time Accepted:

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **LM Investment Management Limited** (ACN 077 208 461):

  
\_\_\_\_\_  
Director Signature

PETER CHARLES DANCE  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director/~~Secretary~~ Signature

LISA MARIE OARCY  
\_\_\_\_\_  
Print Name

**Appointment of Agent  
Cameo Estates Lifestyle Villages (Launceston)  
Pty Ltd (ACN 098 955 296)**

**The Trust Company (PTAL) Limited**

**LM Investment Management Limited**

# Appointment of Agent

---

Date

9/2/2011

**By this Deed Poll** The Trust Company (PTAL) Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the *Mortgagee*)

**Witnesses as follows:**

Recitals

- A **Cameo Estates Lifestyle Villages (Launceston) Pty Ltd** (ACN 098 955 296) (the *Company*) of Richwood Accountants, 201 Burslem Drive, Maddington in the state of Western Australia is indebted to the Mortgagee.
- B The Mortgagee holds a Fixed and Floating Charge given by the Company dated 16 December 2005 and registered with the Australian Securities and Investments Commission as charge no. 1251021 (the *Charge*), under which the Company charged the Secured Property (as that term is defined in the Charge) (the *Charged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Charge).
- C In the events which have happened the security constituted by the Charge has become enforceable.
- D By virtue of the powers in the Charge, the Mortgagee is entitled to appoint any person or persons to be the agent of the Mortgagee to exercise any of the rights, powers and remedies exercisable by the Mortgagee pursuant to the Charge, and the Mortgagee wishes to exercise this power.

## Accordingly:

1. **The Mortgagee appoints LM Investment Management Limited** (ACN 077 208 461) to be the agent (the *Agent*) of the Mortgagee, to exercise all rights, powers, privileges, benefits, discretions and authorities conferred on the Mortgagee under and pursuant to the Charge and by law.
2. The Mortgagee reserves the right at any time to:
  - (a) revoke the Agent's appointment;
  - (b) impose conditions or restrictions on the terms of appointment of the Agent; or
  - (c) appoint an additional or a replacement agent in place of the Agent.
3. This appointment of the Agent shall take effect from the actual time it is accepted by the Agent signing below.
4. **Limit of Liability**
  - 4.1 The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the

## Appointment of Agent

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Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.

- 4.2 A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
- 4.3 A person other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- 4.4 The provisions of this clause 6 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- 4.5 Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
- 4.6 Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- 4.7 The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- 4.8 No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 6.4.
- 4.9 The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- 4.10 A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
  - (a) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or



## Appointment of Agent

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(b) was in accordance with a lawful court order or direction or otherwise required by law.

4.11 All of the terms, clauses and conditions of this Deed are subject to this clause 6.

5. This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

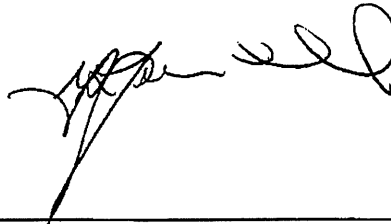
# Appointment of Agent

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**EXECUTED** and delivered as a deed in Brisbane.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

The Trust Company (PTAL) Limited ACN 008 412 913, by its Attorney who states that he/she has had no notice of revocation of the Power of Attorney dated 12 July 2010:



---

Geoffrey Funnell

State Manager – Corporate and Legal Services  
(Qld)

**The Agent accepts** the above appointment at the time and on the date written below:

Date Accepted:

Time Accepted:

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **LM Investment Management Limited** (ACN 077 208 461):

---

Director Signature

---

Print Name

---

Director/Secretary Signature

---

Print Name

**Agents Indemnity**  
**Cameo Estates Lifestyle Villages (Launceston)**  
**Pty Ltd (ACN 098 955 296)**

The Trust Company (PTAL) Limited  
LM Investment Management Limited

# Agents Indemnity

Date

9 February 2011

**By this Deed Poll** The Trust Company (PTAL) Limited (ACN 008 412 913) of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the *Mortgagee*)

**Witnesses as follows:**

Recitals

- A **Cameo Estates Lifestyle Villages (Launceston) Pty Ltd** (ACN 098 955 296) (the *Company*) of Richwood Accountants, 201 Burslem Drive, Maddington in the state of Western Australia is indebted to the Mortgagee.
- B The Mortgagee holds a Fixed and Floating Charge given by the Company dated 16 December 2005 and registered with the Australian Securities and Investments Commission as charge no. 1251021 (the *Charge*), under which the Company charged the Secured Property (as that term is defined in the Charge) (the *Charged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Charge).
- C In the events which have happened the security constituted by the Charge, the First Mortgage and the Second Mortgage has become enforceable.
- D By a Deed of Appointment of Agent dated 2011 (the *Deed of Appointment*), the Mortgagee has determined to appoint the Agent to be the agent of the Mortgagee.
- E The Agent agreed to accept such appointment (the *Agency*) on the condition that the Mortgagee indemnify the Agent (so far as the Mortgagee is legally able to do so) in the manner provided in this Deed.

**IT IS AGREED** as follows:

## 1. Indemnity

The Mortgagee shall, subject to the provisions of clause 2 of this deed, indemnify the Agent against liabilities for or arising out of all actions, proceedings, claims, suits and demands, and all payments, costs and expenses (all included in the word *Liabilities*) incurred by the Agent in or arising out of the due exercise or purported exercise of any of the rights, powers, discretions or authorities vested or purported to be vested in the Agent by virtue of the Deed of Appointment, or otherwise incurred or to be incurred in the due course of the conduct of the Agency, including specifically:

# Agents Indemnity

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- (a) all Liabilities arising out of any defect in the Charge, the First Mortgage or any invalidity or unenforceability of the Charge, the First Mortgage or the appointment pursuant to the Deed of Appointment;
- (b) all Liabilities consequent upon any bona fide mistake, omission, oversight, error of judgment or want of prudence on the part of the Agent;
- (c) all Liabilities incurred or threatened in respect of any matter or thing done or omitted to be done by the Agent in exercise or purported exercise of the Agent's rights, powers, discretions or authorities in the Agency; and
- (d) all Liabilities and obligations of any nature incurred by the Agent in the course of or directly or indirectly resulting from the Agency.

## 2. Exclusions from Indemnity

---

The indemnity in the preceding clause shall not extend to:

- (a) any liability arising out of the wilful default, dishonesty or gross negligence of the Agent or any of the Agent's agents or employees in the performance or exercise or purported performance or exercise of the Agent's rights, powers, discretions or authorities or as a result of the Agent or the Agent's agent or employees knowingly exceeding the scope of the Agent's rights, powers, discretions and authorities; or
- (b) any liability admitted by the Agent without the prior written consent of the Mortgagee, other than any liability incurred by the Agent in the ordinary course of the business of the Mortgagor.

## 3. Expenses and Fees

---

The Mortgagee shall pay to the Agent all reasonable charges, costs, fees and expenses payable to or incurred by the Agent in relation to the Agency, to the extent to which the Agent does not apply moneys available to it as such Agent for that purpose, and the Agent is entitled to claim a lien over the Charged Property, the First Mortgaged Property in respect of all amounts referred to in this clause.

## 4. Emergency Preference Payments

---

Notwithstanding the provisions of the Charge, the First Mortgage, the Mortgagee (so far as it is competent to do so but not otherwise) authorises the Agent to apply the whole or any part of any moneys coming into the Agent's control in the Agency in payment of claims of creditors of the Mortgagor (whether those claims have priority over the claims of the Mortgagee or not) if, in the reasonable opinion of the Agent, it is necessary to make such payment to protect the goodwill or other assets of the Mortgagor.

# Agents Indemnity

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## 5. Warranties

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The Agent warrants to the Mortgagee that at the time of execution of this Deed, the Agent had not received any claim in respect of the liability to which the indemnity contained in clause 1 extends or notice of any such claim, and the Agent is not aware of any circumstances in respect of which any such claim is threatened or apprehended.

## 6. Agent's Obligations

---

The Agent undertakes and agrees with the Mortgagee that:

- (a) in the event of any claim being threatened or received in respect of any liability to which the indemnity in this Deed extends, the Agent shall immediately notify the Mortgagee in writing, and shall furnish the Mortgagee with all information available to the Agent in relation to such claim;
- (b) if so requested by the Mortgagee, the Agent shall (at the expense of the Mortgagee) defend any such claim, and for that purpose shall, if required by the Mortgagee, employ solicitors nominated by the Mortgagee and co-operate fully with the Mortgagee and the nominated solicitors in the conduct of such defence;
- (a) other than as specified in clause 2(b) and clause 4, the Agent shall not, without the prior written consent of the Mortgagee, compromise or settle or make any admission in regard to any claim or liability to which such indemnity extends; and
- (b) the Agent shall give full details to the Mortgagee of all liabilities admitted or debts paid pursuant to the discretion conferred by clauses 2(b) and 4 within one month of the same being admitted incurred or paid (as the case may be).

## 7. Limit of Liability

---

- (a) The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund (the *Trust*), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited (ACN 077 208 461) (the *Responsible Entity*) dated 4 February 1999 (*Custody Agreement*) and in no other capacity.
- (b) A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
- (c) A party to this Deed other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.

## Agents Indemnity

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- (d) The provisions of this clause 7 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- (e) Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
- (f) Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- (g) The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- (h) No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 7(d).
- (i) The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- (j) A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
  - (i) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
  - (ii) was in accordance with a lawful court order or direction or otherwise required by law.
- (k) All of the terms, clauses and conditions of this Deed are subject to this clause 7.

# Agents Indemnity

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EXECUTED and delivered as a deed in Brisbane.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

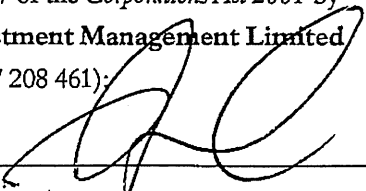
The Trust Company (PTAL) Limited ACN 008 412 913, by its Attorney who states that he/she has had no notice of revocation of the Power of Attorney dated 12 July 2010:

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Geoffrey Funnell

State Manager – Corporate and Legal Services  
(Qld)

Executed as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**LM Investment Management Limited**  
(ACN 077 208 461):




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Director Signature

PETER CHARLES ORACE

Print Name



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Director/~~Secretary~~ Signature

LISA MARIE DARBY

Print Name



**Agents Indemnity**  
**Cameo Estates Lifestyle Villages (Launceston)**  
**Pty Ltd (ACN 098 955 296)**

**The Trust Company (PTAL) Limited**  
**LM Investment Management Limited**

# Agents Indemnity

Date

9/2/2011

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## Agents Indemnity

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# Agents Indemnity

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- (b) if so requested by the Mortgagee, the Agent shall (at the expense of the Mortgagee) defend any such claim, and for that purpose shall, if required by the Mortgagee, employ solicitors nominated by the Mortgagee and co-operate fully with the Mortgagee and the nominated solicitors in the conduct of such defence;
- (c) other than as specified in clause 2(b) and clause 4, the Agent shall not, without the prior written consent of the Mortgagee, compromise or settle or make any admission in regard to any claim or liability to which such indemnity extends; and
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- (b) A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
- (c) A party to this Deed other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- (d) The provisions of this clause 7 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- (e) Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of

## Agents Indemnity

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the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.

- (f) Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- (g) The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- (h) No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 7(d).
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- (j) A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
  - (i) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
  - (ii) was in accordance with a lawful court order or direction or otherwise required by law.
- (k) All of the terms, clauses and conditions of this Deed are subject to this clause 7.

# Agents Indemnity

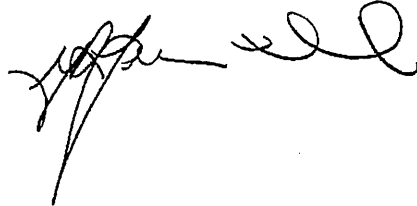
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**EXECUTED** and delivered as a deed in Brisbane.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

The Trust Company (PTAL) Limited ACN 008 412 913, by its Attorney who states that he/she has had no notice of revocation of the Power of Attorney dated 12 July 2010:

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Geoffrey Funnell

State Manager – Corporate and Legal Services  
(Qld)

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **LM Investment Management Limited** (ACN 077 208 461):

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Director Signature

---

Print Name

Director/Secretary Signature

---

Print Name

# ASIC & Business Names

## ORGANISATIONAL SEARCH ON PINEVALE VILLAS MORAYFIELD PTY LTD

### Historical Extract

This information was extracted from ASIC database on 09 October 2013 at 09:50AM

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

	PINEVALE VILLAS MORAYFIELD PTY LTD	DOCUMENT NO.
116 192 780		
ABN	116 192 780 Not available	
Registered in	QLD	
Date Registered	12-Sep-2005	
Review Date	08-Jan-2014	

### Current Organisation Details

Name	PINEVALE VILLAS MORAYFIELD PTY LTD
Name Start	24-Mar-2009
Status	DEREGISTERED
Type	AUSTRALIAN PROPRIETARY COMPANY
Class	LIMITED BY SHARES
Subclass	PROPRIETARY COMPANY
Disclosing Entity	NO
Date Deregistered	26-May-2013
Reason Deregistered	S601AB

### Ceased/Former Organisation Details

Details Start	20-Mar-2013	0D0275044
Details End	25-May-2013	
Name	PINEVALE VILLAS MORAYFIELD PTY LTD	
Name Start	24-Mar-2009	
Status	STRIKE-OFF ACTION IN PROGRESS	
Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	
Details Start	24-Mar-2009	7E2099942
Details End	19-Mar-2013	
Name	PINEVALE VILLAS MORAYFIELD PTY LTD	
Name Start	24-Mar-2009	
Status	REGISTERED	

Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	
Details Start	12-Sep-2005	1E1340964
Details End	23-Mar-2009	
Name	ADELAIDE ST PROPERTIES PTY LTD	
Name Start	12-Sep-2005	
Status	REGISTERED	
Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	

**Ceased/Former Registered Office**

Address	25 UPLANDS DRIVE, PARKWOOD, QLD, 4214	7E3088179
Start Date	12-Aug-2010	
End Date	26-May-2013	
Address	82-88 MEAKIN ROAD, MEADOWBROOK, QLD, 4131	7E1390652
Start Date	20-Dec-2007	
End Date	11-Aug-2010	
Address	LEVEL 37, 123 EAGLE STREET, BRISBANE, QLD, 4000	1E1340964
Start Date	12-Sep-2005	
End Date	19-Dec-2007	

**Ceased/Former Principal Place of Business**

Address	25 UPLANDS DRIVE, PARKWOOD, QLD, 4214	7E3088179
Start Date	05-Aug-2010	
End Date	26-May-2013	
Address	82-88 MEAKIN ROAD, MEADOWBROOK, QLD, 4131	7E1390652
Start Date	20-Dec-2007	
End Date	04-Aug-2010	
Address	LEVEL 37, 123 EAGLE STREET, BRISBANE, QLD, 4000	1E1340964
Start Date	12-Sep-2005	
End Date	19-Dec-2007	

**Ceased/Former Director**

Officer Name	DAVID GAVIN JOHNSON	7E2811288
ABN	Not available	
Birth Details	02-Feb-1962 MELBOURNE VIC	
Address	25 UPLANDS DRIVE, PARKWOOD, QLD, 4214	
Appointment Date	31-Mar-2010	



Cease Date	26-May-2013	
Officer Name	PETER FREDERICK O'MARA	1E1340964
ABN	Not available	
Birth Details	08-Mar-1953 WARRIGAL VIC	
Address	133 LAMBERT STREET, KANGAROO POINT, QLD, 4169	
Appointment Date	12-Sep-2005	
Cease Date	31-Mar-2010	

**Ceased/Former Secretary**

Officer Name	SHANE ANDREW O'MARA	7E2207061
ABN	Not available	
Birth Details	22-Dec-1970 CARLTON VIC	
Address	272-282 PALOMINO ROAD, TAMBORINE, QLD, 4270	
Appointment Date	31-Oct-2008	
Cease Date	24-Jul-2009	

Officer Name	LUKE AARON O'MARA	7E1390652
ABN	Not available	
Birth Details	24-Jan-1981 BOX HILL VIC	
Address	1 DURANBAH ROAD, DURANBAH, NSW, 2487	
Appointment Date	05-Dec-2007	
Cease Date	31-Oct-2008	

Officer Name	DAVID GAVIN JOHNSON	022307993
ABN	Not available	
Birth Details	02-Feb-1962 MELBOURNE VIC	
Address	25 UPLANDS DRIVE, PARKWOOD, QLD, 4214	
Appointment Date	12-Sep-2005	
Cease Date	05-Dec-2007	

**Ceased/Former Alternate Director**

Officer Name	DAVID GAVIN JOHNSON	7E1588436
ABN	Not available	
Birth Details	02-Feb-1962 MELBOURNE VIC	
Address	25 UPLANDS DRIVE, PARKWOOD, QLD, 4214	
Appointment Date	08-Apr-2008	
Cease Date	31-Mar-2010	

**Ceased/Former Issued Capital**

Type	Ceased/Former	1E1340964
Class	ORD	
	ORDINARY SHARES	
Number of Shares/Interests issued	2	
Total amount paid/taken to be paid	\$2.00	
Total amount due and payable	\$0.00	

Note: For each class of shares issued by a proprietary company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

**Ceased/Former Members**

Class ORD 7E3088179  
 No. Held 2  
 Beneficially Owned YES Fully paid YES

Name JOHNSON, DAVID GAVIN  
 ABN Not available  
 Address 25 UPLANDS DRIVE, PARKWOOD, QLD, 4214  
 Joint Holding NO

Class ORD 1E1340964  
 No. Held 2  
 Beneficially Owned YES Fully paid YES

Name O MARA, PETER FREDERICK  
 ABN Not available  
 Address 133 LAMBERT STREET, KANGAROO POINT, QLD, 4169  
 Joint Holding NO

**Charges**

ASIC Charge Number 1368101 Charge status Satisfied  
 Date registered 19-Oct-2006 Time registered 14:36:00  
 Charge type Both Fixed & Floating  
 Date Created 16-Oct-2006

**Chargee** LM INVESTMENT MANAGEMENT LIMITED  
 077 208 461

Lodged	Form Type	Processed	No. Pages	
19-Mar-2009	312	20-Mar-2009	1	025040257
312	NOTIFICATION OF			
312A	DISCHARGE			

**Document Details**

Received	Form Type	Processed	No. Pages	Effective	
10-Oct-2011	519	11-Oct-2011	2	10-Oct-2011	027820122
519C	Notification of Dismissal of Application For Winding Up Order				
07-Sep-2011	519	09-Sep-2011	1	06-Sep-2011	027655883
519G	Notification of Application to Wind Up Company Under S. 459p, 462 or 464				

05-Aug-2010	484	05-Aug-2010	3	05-Aug-2010	7E3088179
484	Change to Company Details				
484B	Change of Registered Address				
484C	Change of Principal Place of Business (Address)				
484N	Changes to (Members) Share Holdings				
30-Apr-2010	309	03-May-2010	39	06-Apr-2010	026514067
309A	Notification of Details of a Charge				
06-Apr-2010	484	06-Apr-2010	2	06-Apr-2010	7E2811555
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
06-Apr-2010	484	06-Apr-2010	2	06-Apr-2010	7E2811288
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
30-Jul-2009	484	30-Jul-2009	2	30-Jul-2009	7E2341141
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
26-May-2009	484	26-May-2009	2	26-May-2009	7E2207061
484A1	Change to Company Details Change Officeholder Name Or Address				
24-Mar-2009	205	24-Mar-2009	2	18-Mar-2009	7E2099942
205A	Notification of Resolution Changing Company Name				
19-Mar-2009	312	20-Mar-2009	1	19-Mar-2009	025040257
312A	Notification of Discharge				
17-Nov-2008	484	17-Nov-2008	2	17-Nov-2008	7E1906069
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
29-Apr-2008	484	29-Apr-2008	2	29-Apr-2008	7E1588436
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
05-Dec-2007	484	05-Dec-2007	3	05-Dec-2007	7E1390652
484	Change to Company Details				
484B	Change of Registered Address				
484C	Change of Principal Place of Business (Address)				
484E	Appointment or Cessation of a Company Officeholder				
07-Nov-2007	311	08-Nov-2007	3	29-Oct-2007	024337196
311B	Notification of Change to Details of Charge				
19-Oct-2007	488	24-Oct-2007	4	19-Oct-2007	024293201
488B	Application to Change Review Date of a Company or Scheme Synchronise Review Date By Office Holder - Fee Applies				
15-Oct-2007	312	24-Oct-2007	2	15-Oct-2007	024279480
312C	Notification of Release of Property				

05-Jan-2007	350	05-Jan-2007	1	05-Jan-2007	023101808
350	Certification of Compliance With Stamp Duties Law By Provisional Charge Alters 023 074 442				
19-Oct-2006	309	19-Oct-2006	29	16-Oct-2006	023074442
309A	Notification of Details of a Charge Altered by 023 101 808				
17-May-2006	350	17-May-2006	1	17-May-2006	022811610
350	Certification of Compliance With Stamp Duties Law By Provisional Charge Alters 022 810 977				
15-May-2006	309	15-May-2006	29	12-May-2006	022810977
309A	Notification of Details of a Charge Altered by 022 811 610				
07-Oct-2005	484	07-Oct-2005	4	07-Oct-2005	022307993
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
12-Sep-2005	201	12-Sep-2005	3	12-Sep-2005	1E1340964
201C	Application For Registration as a Proprietary Company				

\*\*\* End of Extract \*\*\*

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: BS3383 of 2013

Applicants: RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED  
(IN LIQUIDATION) ACN 077 208 461 IN ITS CAPACITY  
AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE  
INCOME FUND

AND

Second Respondent: THE MEMBERS OF THE LM FIRST MORTGAGE  
INCOME FUND ARSN 089 343 288

AND


Third Respondent: ROGER SHOTTON

AND

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

CERTIFICATE OF EXHIBIT

Volume 2 of exhibit "DW-1" to the Affidavit of DAVID WHYTE sworn this 9<sup>th</sup> day of September 2014,  
comprising items 17 to 33 and pages 278 to 623 of the exhibit

  
Deponent

  
Solicitor/A Justice of the Peace

70956

CERTIFICATE OF EXHIBIT:  
Form 47, R.435

Filed on behalf of the Applicant, Mr David Whyte

TUCKER & COWEN  
Solicitors  
Level 15  
15 Adelaide Street  
Brisbane, Qld, 4000  
Tele: (07) 300 300 00  
Fax: (07) 300 300 33

SUPREME COURT OF QUEENSLAND

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INDEX TO EXHIBIT "DW-1"

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DEACONS ATTN: TOM SYMONS  
GPO BOX 407  
BRISBANE QLD 4001

## Certificate of Entry of a Charge

Corporations Act 2001 Sub-section 272 (3)

This is to certify that a notice in respect of a charge on the property of

**ADELAIDE ST PROPERTIES PTY LTD**

**Australian Company Number 116 192 780**

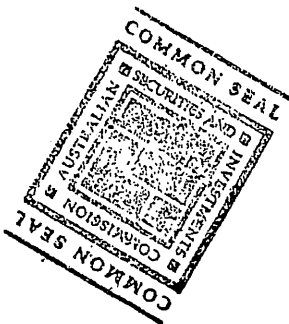
was lodged at 14:35 (E.S.T.) on the fifteenth day of May 2006  
and particulars of the charge were entered in the Australian Register  
of Company Charges in accordance with Chapter 2K.2 of  
the Corporations Act 2001.

The charge was allotted number 1299737.

The name of the chargee is

**PERMANENT TRUSTEE AUSTRALIA LIMITED**

Given under the seal of the  
Australian Securities and Investments Commission  
on this seventeenth day of May, 2006.



A delegate of the Australian Securities and Investments Commission



ASIC registered agent number  
lodging party or agent name  
office, level, building name or PO Box no  
street number & name  
suburb/city  
telephone  
facsimile  
DX number

ASS. REQ-A  
CASH. REQ-P  
PROC.

Australian Securities & Investments Commission

form 309

Notification of  
details of a charge

Corporations Act 2001  
263,264

This form must be lodged where any Australian company or registered body creates a charge or acquires property subject to a charge (lodge within 45 days after the charge was created or the property was acquired)  
or  
any foreign company or registrable Australian body has an existing charge on its property and is applying for registration (lodge with appropriate registration form)

corporation name (chargor) **Adelaide St Properties Pty Ltd A.C.N. 116 192 780**  
A.C.N. or A.R.B.N.

**Details of charge**

date charge was created 2/5/06 or date property was acquired (d/m/y)  / /  
How was the charge created?  by resolution  by instrument  by deposit  by other conduct, specify below

type of charge  fixed  floating  fixed and floating

If the charge is a floating charge, is the creation of subsequent charges restricted or prohibited? Yes  No

Briefly describe the liability (whether present or prospective) secured by the charge :

All moneys now or hereafter owing or payable by the Chargor to the Chargee  
Maximum prospective liability (if applicable, see section 282): Forty-Three Million Dollars (\$43,000,000.00)

Briefly describe the property charged All the Company's property, assets and undertaking, real and personal, whatsoever and wheresoever situate (including all the book and other debts of the Company from time to time) both present and future, vested and contingent.

Details of the Chargee  Details of the trustee for the debenture holders

Name (family & given names or corporation name, if a corporation give ACN. or A.R.B.N. if applicable)  
**PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913**  
office, floor, building name Level 4 QLD POSTCODE  
street number & name 9 Beach Road  
suburb/city SURFERS PARADISE state QLD postcode 4217  
country (if not Australia)  
financial benefit Nil

Nominate any financial benefit (such as an amount or rate percent of commission, allowance or discount) given to someone who, absolutely or conditionally, subscribes to or agrees to subscribe to, or procures or agrees to procure, subscriptions for any debentures included in this notice.

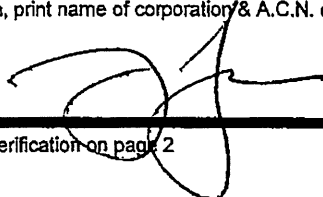
**Signature**

This form must be signed by, or on behalf of, the Australian company, the registrable Australian body or the foreign company or by an interested person

Print name of person signing DAVID GAVIN JOHNSON  
Capacity or nature of interest of person signing (including details of the authority you have, if signing on behalf of a corporation **DIRECTOR/ SECRETARY**)

If signing on behalf of a corporation, print name of corporation & A.C.N. or ARBN Adelaide St Properties Pty Ltd A.C.N. 116 192 780

sign here



date 2/5/2006

\* Complete and sign the verification on page 2

page 1

**Documents**

I declare that the statements ticked below are correct (tick boxes which apply)

**charge created by issue of debentures**

I verify  the annexure marked ( ) of ( ) pages is a true copy of the resolution(s) passed by the corporation authorizing the issue of a series of debentures constituting the charge.

and  I witnessed the execution of the first debenture in the series.  
and  The annexure marked ( ) is a true copy of the first debenture in the series.

**charge created by an instrument**

The original of the instrument(s) creating or evidencing the charge is attached  
OR

I verify  the annexure marked ( A ) of ( 25 ) pages is a true copy of the instrument(s) creating or evidencing the charge and I witnessed the execution by the chargor of the instrument(s)

**charge existing on the property acquired**

I verify  the annexure marked ( ) of ( ) pages is a true copy of the instrument(s) creating or evidencing the charge.

■ Annexures must conform to the requirements shown at the end of this form

**Signature**

This form must be signed by, or on behalf of, the Australian company, the registrable Australian body or the foreign company or by an interested person

**DAVID GAVIN JOHNSON**

print name of person signing .....

capacity or nature of interest of person signing ~~DIRECTOR~~ SECRETARY  
(including details of the authority you have, if signing on behalf of a corporation)

If signing on behalf of a corporation, print name of corporation & A.C.N. & ARBN Adelaide St Properties Pty Ltd A.C.N. 116 192 780

sign here

date 12 / 5 / 2006

**Compliance with stamp duty law**

A duly completed certification of compliance with stamp duties law (form 350)  
 accompanies this form  
 does not accompany this form

If all the documents accompanying this form required by section 263(1) have been stamped in accordance with the law relating to stamp duty, complete and attach the form 350 'Certification of compliance with stamp duties law'.

**Provisional registration**  
If any document accompanying this form has not been stamped as required by any law relating to stamp duty, or if this form contains the company name and the name of the trustee or chargee but not all other details, the Commission

will mark the entry in the Register as 'provisional' and ask you to complete the requirements. If the requirements have not been completed by a specified time, the Commission will delete all particulars of the charge from the register.

**Send to**  
Australian Securities & Investments Commission  
PO Box 4000  
Gippsland Mail Centre VIC 3841

**Annexures**  
To make any annexure conform to the regulations, you must  
1 use A4 size paper of white or light pastel colour with a margin of at least 10mm on all sides  
2 show the corporation name and A.C.N. or A.R.B.N.  
3 number the pages consecutively  
4 print or type in dark blue or black ink, so that the document is clearly legible when photocopied

5 identify the annexure with a mark such as A, B, C, etc.  
6 endorse the annexure with the words:  
*This is annexure (mark) of (number) pages referred to in form (form number and title)*  
7 sign and date the annexure. The annexure must be signed by the same person(s) who signed the form.

ASIC registered agent number  
lodging party or agent name  
office, level, building name  
street number and name  
suburb/city  
telephone  
facsimile  
DX number

A BARCODE IS NOT  
REQUIRED ON THIS  
DOCUMENT



ASS. REQ-A  
CASH. REQ-P  
PROC.

Australian Securities & Investments Commission form **350**

Certification of  
**compliance with stamp duties law** Corporations Act 2001  
265(4)(b)

corporation name **Adelaide St Properties Pty Ltd A.C.N. 116 192 780**  
A.C.N. or A.R.B.N.

**Details of the charge**

date charge was created (d/m/y) **12/5/2006**  
name of chargee(s) or trustee(s) **PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913**

**Certification**

*I certify that all the documents accompanying the notification of details of this charge, in accordance with section 263(1), have been duly stamped if so required and as required by any law of the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia relating to the stamp duty on any such document.*

print name of person signing **DAVID GAVIN JOHNSON**

capacity or nature of interest of person signing (including details of the authority you have, if signing on behalf of a corporation) **DIRECTOR/ SECRETARY**

if signing on behalf of a corporation, print name of corporation & A.C.N. & A.R.B.N Adelaide St Properties Pty Ltd  
A.C.N. 116 192 780

sign here

date **12 / 5 / 2006**

Small business (less than 20 employees) please provide an estimate of the time taken to complete this form  
Include

- The time actually spend reading the instructions, working on the question and obtaining the information
- The time spent by all employees in collecting and providing this information

hrs mins

ASIC registered agent number  
lodging party or agent name  
office, level, building name  
street number and name  
suburb/city  
telephone  
facsimile  
DX number

5401.  
Deacons.

AUSTRALIAN SECURITIES  
& INVESTMENTS COMMISSION



022811610

ASS. REQ-A  
CASH. REQ-P  
PROC.

Australian Securities & Investments Commission form **350**

Certification of  
**compliance with stamp duties law** Corporations Act 2001  
265(4)(b)

corporation name **Adelaide St Properties Pty Ltd A.C.N. 116 192 780**  
A.C.N. or A.R.B.N.

**Details of the charge** 1299737

date charge was created (d/m/y) 12/05/2006

name of chargee(s) or trustee(s) **PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913**

**Certification**

*I certify that all the documents accompanying the notification of details of this charge, in accordance with section 263(1), have been duly stamped if so required and as required by any law of the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia relating to the stamp duty on any such document.*

**DAVID GAVIN JOHNSON**

print name of person signing .....

capacity or nature of interest of person signing (including details of the authority you have, if signing on behalf of a corporation)

**DIRECTOR/ SECRETARY**

if signing on behalf of a corporation, print name of corporation & A.C.N. & A.R.B.N Adelaide St Properties Pty Ltd  
A.C.N. 116 192 780

sign here

date 12 / 5 / 2006

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Include

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- The time spent by all employees in collecting and providing this information

hrs mins

**RECEIVED**

17 MAY 2006

BRISBANE BUSINESS  
CENTRE

ASIC registered agent number  
lodging party or agent name  
office, level, building name or PO Box no  
street number & name  
suburb/city  
telephone  
facsimile  
DX number

5401

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION



022810977

ASS. REQ-A  
CASH. REQ-P  
PROC.

Prvs.  
1299737

Australian Securities & Investments Commission form 309

Notification of details of a charge Corporations Act 2001 263,264

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corporation name (chargor) Adelaide St Properties Pty Ltd A.C.N. 116 192 780  
A.C.N. or A.R.B.N.

15 MAY 2006  
BRISBANE SERVICE CENTRE

Details of charge

date charge was created 12/5/06 or date property was acquired (d/m/y) / /  
How was the charge created?  by resolution  by instrument  by deposit  by other conduct, specify below  
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Name (family & given names or corporation name, if a corporation give ACN. or A.R.B.N. if applicable)  
office, floor, building name street number & name suburb/city country (if not Australia) financial benefit  
PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913  
Level 4 QLD POSTCODE  
9 Beach Road SURFERS PARADISE state QLD postcode 4217  
Nil

Nominate any financial benefit (such as an amount or rate percent of commission, allowance or discount) given to someone who, absolutely or conditionally, subscribes to or agrees to subscribe to, or procures or agrees to procure, subscriptions for any debentures included in this notice.

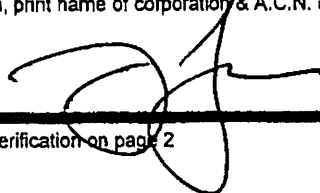
Signature

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Print name of person signing ..... DAVID GAVIN JOHNSON .....  
Capacity or nature of interest of person signing (including details of the authority you have, if signing on behalf of a corporation) DIRECTOR/ SECRETARY

If signing on behalf of a corporation, print name of corporation & A.C.N. or ARBN Adelaide St Properties Pty Ltd A.C.N. 116 192 780

sign here



date 12/5/2006

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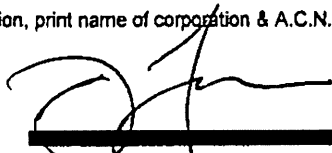
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(including details of the authority you have, if signing on behalf of a corporation)

If signing on behalf of a corporation, print name of corporation & A.C.N. & ARBN Adelaide St Properties Pty Ltd A.C.N. 116 192 780

sign here



date 12 / 5 / 2006

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- does not accompany this form

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will mark the entry in the Register as 'provisional' and ask you to complete the requirements. If the requirements have not been completed by a specified time, the Commission will delete all particulars of the charge from the register.

**Send to**  
Australian Securities & Investments Commission  
PO Box 4000  
Gippsland Mail Centre VIC 3841

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3 number the pages consecutively  
4 print or type in dark blue or black ink, so that the document is clearly legible when photocopied

- 5 identify the annexure with a mark such as A, B, C, etc.
- 6 endorse the annexure with the words:  
*This is annexure (mark) of (number) pages referred to in form (form number and title)*
- 7 sign and date the annexure. The annexure must be signed by the same person(s) who signed the form.

"A"

Adelaide St Properties Pty Ltd A.C.N. 116 192 780 in its own right and as trustee for the  
Adelaide St Properties Discretionary Trust  
("the Mortgagor")

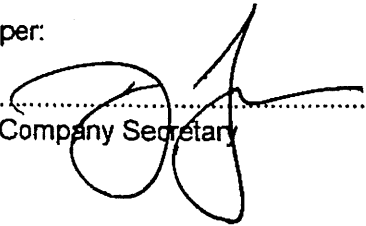
and

PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913  
("the Mortgagee")

### Fixed and Floating Charge

This is the Annexure marked "A" of 26 pages referred to in the Form 309 Details of Charge  
signed by me and dated the 12<sup>th</sup> day of MAY 2006

per:

  
.....  
Company Secretary

LM INVESTMENT MANAGEMENT LTD  
LEVEL 4, 9 BEACH ROAD  
SURFERS PARADISE QLD 4217

PHONE: 07 5584 4500  
FAX: 07 5592 2505

1

**Adelaide St Properties Pty Ltd A.C.N. 116 192 780 in its own right and as trustee for the  
Adelaide St Properties Discretionary Trust  
("the Mortgagor")**

and

**PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913  
("the Mortgagee")**

## **Fixed and Floating Charge**

**LM INVESTMENT MANAGEMENT LTD  
LEVEL 4, 9 BEACH ROAD  
SURFERS PARADISE QLD 4217**

**PHONE: 07 5584 4500  
FAX: 07 5592 2505**



**FIXED AND FLOATING CHARGE**

THIS CHARGE is made on the date specified in Item 1

BY: The company described in Item 2 ("the Mortgagor")

IN FAVOUR OF: The company described in Item 3 ("the Mortgagee")

**1. INTERPRETATION**

1.1 In this Charge, unless the contrary intention appears:

"Authorised Officer" means:

- (a) in relation to the Mortgagee:
  - (i) a director or a secretary, or an officer of the Mortgagee whose title contains the word "manager" or a person performing the functions of any of them; and
  - (ii) a lawyer acting for the Mortgagee; and
- (b) in relation to the Mortgagor:
  - (i) a person appointed by the Mortgagor to act as an Authorised Officer for the purpose of this Charge; and
  - (ii) if the Mortgagor is a corporation, a director or secretary of the Mortgagor.

"Borrower" means the person described in Item 4.

"Business Day" means a day other than Saturday, Sunday or other day on which the Mortgagee or trading banks generally are closed or obliged to close in Brisbane.

"Charge" means any charge constituted by this document.

"Encumbrance" means:

- (a) any interest in or right over property;
- (b) any matter or thing which prevents, restricts or delays registration of any interest of the Mortgagee over any property; and
- (c) any matter or thing which detracts from an unfettered exercise of an owners rights powers and interest in any property,

including, without limitation, any title retention arrangement, trust, profit a prendre, restrictive covenant, right of set-off, assignment of income or monetary claim and any agreement to create any of them, and any notice issued by a government or statutory body seeking recovery of moneys against property.

"Event of Default" means any of the events referred to in clause 10 and any other event agreed by the Mortgagee and the Mortgagor to be an event of default for the purposes of this Charge.

"Financial Records" includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain;
  - a. the methods by which financial statements are made up; and
  - b. adjustments to be made in preparing financial statements.

"Guarantor" means the person, if any, described in Item 5 and any other person who may from time to time guarantee the payment of the Money Secured.

"Insolvency Event" means the happening of any of these events:

- (a) a court order that body corporate be wound up or an application for same is made; or
- (b) a liquidator or provisional liquidator is appointed in respect of a body corporate, or an order seeking appointment of such is sought; or
- (c) a meeting is convened or a resolution is passed to appoint an administrator in respect of a body corporate; or
- (d) except to reconstruct or amalgamate while solvent on terms approved by the Mortgagee, a body corporate enters into, or resolves to enter into, a deed of company arrangement, a scheme of 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; or
- (e) a body corporate 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 Mortgagee or is otherwise wound up or dissolved; or
- (f) a person is or states that such person is unable to pay its debts when they fall due; or
- (g) any of the events described in sections 459C(2)(a) to (f) or 585 of the Corporations Act 2001 occurs in relation to a body corporate; or
- (h) a person takes any step to obtain protection or is granted protection from such person's creditors, under any applicable legislation; or
- (i) a person becomes an insolvent under administration as defined in section 9 of the Corporations Act 2001 or action is taken which could result in that event; or
- (j) a receiver, controller, managing controller or administrator is appointed to a body corporate; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

"Material Adverse Effect" means a material adverse effect upon any of:

- (a) the Mortgagor's ability to comply with its obligations under this Charge;
- (b) the effectiveness; priority or enforceability of any Security; or
- (c) the financial position; management or business operations of the Mortgagor.

"Money Secured" includes:

- (a) all money now or hereafter owing or payable to the Mortgagee by the Security Provider and/or Mortgagor either alone or jointly with another person now or in the future, whether directly or indirectly or contingently under this Charge or on any other account whatsoever, and including all such money arising from:
  - (i) any guarantee, deed, indemnity, bond, account, document or other agreement in writing including the Security;
  - (ii) interest payable on the Money Secured including interest which has been capitalised;
  - (iii) interest on any judgment entered by the Mortgagee against the Security Provider and/or the Mortgagor in respect of the Money Secured;
  - (iv) all costs, expenses or losses incurred or sustained by the Mortgagee in relation to any failure by the Security Provider or the Mortgagor to comply with the terms of the Security; and
  - (v) all advances, further advances, loans, credits or financial accommodation whether made created or given on or before the signing hereof or that may hereafter be made created or given by the Mortgagee in its absolute discretion to for or on account of or at the expressed or implied request of the Mortgagor or the Security Provider;
- (b) postage, commissions, valuation fees, fees, charges and expenses relating to the Security, according to the usage and course of business of the Mortgagee;
- (c) stamp duty, financial institutions duty or any other levy, final impost or tax payable or arising out of or in connection with this Charge or the Security;
- (d) all costs charges and expenses incurred by the Mortgagee in enforcing the Security (including legal expenses on a full indemnity basis or solicitor and own client basis whichever is the greater) which in the Mortgagee's opinion are required or desirable for or in connection with:
  - (i) the drawing accepting or discounting of any bill of exchange at the request of, or for the accommodation of, any Security Provider or the Mortgagor under the Security;

- (ii) the Mortgagee protecting its interest under the Security including all moneys which the mortgagee or any receiver or any attorney appointed under any Security may have paid or may pay in the exercise or enforcement or attempted exercise or enforcement of any right power or remedy conferred on the Mortgagee by the Security;
- (iii) the preparation, execution, stamping or registration of the Security;
- (iv) full or partial release or discharge from, transfer or variation of the Security;
- (v) any advice in respect of the Security;
- (vi) any breach of or default of any covenant contained or implied in the Security; or
- (vii) the Mortgagee making good any default by any party (other than the Mortgagee) under the Security,

or any rights which the Mortgagee may have under any Law,

**AND SHALL** where the context so admits mean and include any part thereof.

**"Other Securities"** means any security over the Secured Property other than this Charge or a Security.

**"Receiver"** means a person or persons appointed under or by virtue of this Charge as receiver or receiver and manager.

**"Secured Property"** means all of the property, rights, assets and undertaking of the Mortgagor whether owned as at the date of this Charge or acquired in the future, including without limitation the goodwill of any business carried on by the Mortgagor (alone or jointly with another person), its uncalled and called but unpaid capital and share premiums and all the present and future rights, property and undertaking comprising the trust fund of the Trust (if any).

**"Secured Agreement"** means the document or documents described in Item 6 and all agreed variations thereto from time to time.

**"Security"** means each and every document, agreement or other security including any Encumbrance provided or entered into from time to time which secures or provides for the payment of the Money Secured or the performance of obligations of the Security Provider in favour of the Mortgagee, which may be executed or provided by the Security Provider or any other person (including this Charge, the Secured Agreement and those documents described in Item 7).

**"Security Provider"** means each and every party to, or provider of, the Security including the Borrower, the Mortgagor and the Guarantor, other than the Mortgagee.

**"Trust"** means each trust (if any) of which the Mortgagor is now or becomes the trustee and all assets of such trust.

**"Trust Deed"** means the deed establishing the Trust as varied in accordance with that deed from time to time.

1.2 In this Charge, unless the contrary intention appears:

- (a) a reference to this Charge or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes an individual, a firm, a body corporate, a partnership, an unincorporated association or an authority and references to any person include the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (e) an agreement, representation or warranty on the part of two or more parties binds them jointly and severally;
- (f) a reference to any thing (including, without limitation, the Money Secured, any other amount and the Secured Property) is a reference to the whole and each part of it and a reference to a group of persons (including without limitation the Mortgagor) is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (g) a reference to an Item is a reference to an Item contained in the Schedule hereto; and
- (h) time shall be of the essence.

1.3 Headings are inserted for convenience and do not affect the interpretation of this Charge.

## 2. CONSIDERATION AND CAPACITY AS MORTGAGOR

2..1 The Mortgagor acknowledges, by the Mortgagor's execution of this Charge, that it gives this Charge and incurs obligations and gives rights under this Charge for valuable consideration received from the Mortgagee.

### 2..2 Capacity of Mortgagor

2..2.1 If the Secured Property or any part of it is held by or becomes held by the Mortgagor on trust then this clause 2.2 shall apply.

2..2.2 In this clause "Trustee" means the Mortgagor in its capacity as trustee.

2..2.3 The Trustee must disclose in writing to the Mortgagee every trust of which it is or of which it becomes trustee and the assets which are the subject of the Trust. Failure to disclose any trust does not detract from the application of the remainder of this clause 2.2 in relation to that Trust.

2..2.4 The Trustee declares and acknowledges in respect of each Trust of which it is trustee that:

- (a) it has entered into this Charge in both its personal capacity and its capacity as trustee and shall be liable under this Charge in both its own right and in its capacity as trustee;
- (b) its successors as trustee will be bound by the terms of this Charge; and
- (c) the assets of the Trust are available to meet the liabilities of the Trustee under this Charge.

2..2.5 The Trustee represents and warrants that:

- (a) all of the powers and discretions conferred by the Trust Deed have not been varied or revoked except as otherwise advised by the Mortgagor to the Mortgagee in writing and are capable of being validly exercised by the Trustee as trustee of the Trust;
- (b) the Trust is a valid and subsisting trust;
- (c) the Trustee is the sole trustee of the Trust;
- (d) the Trustee has full and unfettered power under the Trust Deed to charge the assets and undertaking of the Trust, to enter into the obligations assumed by it in this Charge and to execute this Charge;
- (e) all necessary resolutions and procedures (if any) have been passed or followed;
- (f) the execution of this Charge is part of the due and proper administration of the Trust and for the benefit of the beneficiaries of the Trust; and
- (g) there is not limitation of any type on the right of indemnity of the Trustee out of and lien of the Trustee over the assets of the Trust.

2..2.6 Until the Money Secured has been repaid in full, the Trustee will not without first obtaining the Mortgagee's consent procure or consent to any of the following:

- (a) any resettlement, appointment, or distribution of uncalled and called but unpaid capital and share premiums of the Trust;
- (b) the retirement or replacement of the Trustee or appointment of a new trustee of the Trust;
- (c) any amendment to the Trust Deed;
- (d) the giving of an Encumbrance over any of the assets of the Trust;
- (e) any breach of the provisions of the Trust Deed;
- (f) termination of the Trust or variation of the vesting date;
- (g) the creation of any restriction whatever on the Trustee's right of indemnity out of and lien over the assets of the Trust; or
- (h) if the Trust is a unit trust the Trustee will not permit or agree to any transfer or issue of units in the Trust.

2..2.7 The Trustee charges the Trustee's right of indemnity out of the assets held on trust by the Trustee with payment of all money payable, owing but not currently payable, contingently owing or remaining unpaid by the Trustee to the Mortgagee for any reason or circumstances. The Charge will be a floating charge until the occurrence of an Event of Default, whereupon it will automatically become a fixed charge.

## 3. CHARGE

The Mortgagor charges, as beneficial owner, all of the Secured Property held by it beneficially and if the Mortgagor is a trustee, as trustee, charges all of the Secured Property comprising the trust fund of the trust, to the Mortgagee as security for payment of the Money Secured.

## 4. NATURE OF CHARGE

4..1 This Charge is:

- (a) a fixed charge over any interest of the Mortgagor in any present and future:
- (i) uncalled and called but unpaid capital and share premiums; and
  - (ii) goodwill; and
  - (iii) interests in real property (other than those which the Mortgagor is prohibited by law from charging or is incompetent to charge by a fixed charge); and
  - (iv) interests in fixtures, buildings, plant and machinery; and
  - (v) securities, instruments (negotiable or otherwise) and documents of title at any time deposited with the Mortgagee by the Mortgagor for any purpose; and
  - (vi) books of account, invoices, statements, ledger cards, computer software and records and other media relating to the business transactions of the Mortgagor; and
  - (vii) licences; and
  - (viii) interests in personal property not referred to above that are not acquired for disposal in the ordinary course of the Mortgagor's business; and
- (b) a fixed charge on the assets (if any) described in Item 11; and
- (c) a floating charge on the rest of the Secured Property.

4.2 The Mortgagee may convert the floating Charge created by this Charge to a fixed Charge over any property by giving notice of such conversion, specifying the property converted.

4.3 The floating Charge shall automatically and immediately crystallise and operate as a fixed Charge over the Secured Property (without the necessity for any act or notice by the Mortgagee) upon the happening of any of the following events:

- (a) the Mortgagee entering into possession of the Secured Property or any part thereof;
- (b) the appointment by the Mortgagee of a Receiver to any part of the Secured Property;
- (c) the happening of an Insolvency Event in relation to the Mortgagor; or
- (d) if the Mortgagor shall deal with, dispose of or purport to dispose of all or any part of the Secured Property other than in the ordinary course of its ordinary business. The Mortgagor agrees that on this event happening the floating Charge shall automatically become fixed to all of the Secured Property at the moment immediately prior to such dealing or disposal or the purported dealing or disposal.

4.4 The Mortgagee may convert a fixed Charge over any of the Secured Property into a floating Charge by notice in writing to the Mortgagor specifying this and describing that part of the Secured Property to which it relates.

## 5. PAYMENTS

5.1 The Mortgagor will pay to the Mortgagee the Money Secured (without set-off or counterclaim and without deductions for any tax or other governmental charge) at the times and place and in the manner or the amount specified in the Security or as otherwise agreed in writing by and between the Mortgagor, the Borrower and/or the Guarantor and the Mortgagee. In the absence of such agreement then the Money Secured shall be payable upon demand or as otherwise advised in writing by the Mortgagee to the Mortgagor from time to time.

5.2 Each payment to the Mortgagee under this Charge must be made:

- (a) in the currency in which the Money Secured is payable under the Secured Agreement or as otherwise agreed in writing; and
- (b) by and in immediately available funds to the account and in the manner directed by the Mortgagee.

## 6. OTHER UNDERTAKINGS BY THE MORTGAGOR

### 6.1 Other Securities over Secured Property

- (a) The Mortgagor shall not without the prior written consent of the Mortgagee:
- (i) dispose of, deal with or part with possession of any interest in the Secured Property over which this Charge is fixed; or
  - (ii) dispose of, deal with or part with possession of any interest in the Secured Property over which this Charge is floating except in the ordinary course of its business or as permitted by a specific provision of this Charge; or

- (iii) create or allow to come into existence an Encumbrance which affects the Secured Property except an Encumbrance which arises by operation of statute to secure an amount payable to any authority which amount has been due for payment for no more than 14 days; or
  - (iv) dispose of any interest in or permit a set-off or combination of Financial Records in respect of a book debt.
- (b) If the Mortgagor creates or allows to exist an Encumbrance over the Secured Property without the consent of the Mortgagee, then, despite anything contained in any Security:
- (i) the Mortgagor must ensure that a priority agreement is entered into between the persons receiving the benefit of the Encumbrance and the Mortgagee; and
  - (ii) such priority agreement must be in a form acceptable to the Mortgagee.

The Mortgagee's other rights which arise if the Mortgagor so creates or allows an Encumbrance to exist are not affected by this clause.

## 6..2

**Insurance**

The Mortgagor agrees to:

- (a) insure and keep insured the Secured Property:
- (i) to the full insurable value thereof (and whenever required by the Mortgagee on such reinstatement and replacement value and/or other conditions as the Mortgagee may reasonably require);
  - (ii) and to the extent that they are capable of being so insured against loss or damage by fire, storm and tempest and such other risks as the Mortgagee may from time to time reasonably require;
  - (iii) with an insurer approved by the Mortgagee; and
  - (iv) in the joint names of the Mortgagor and the Mortgagee for their respective rights and interests; and
- (b) upon the Mortgagee's demand produce any insurance policy over the Secured Property and any evidence of renewal of same, which policy or policies may be retained by the Mortgagee;
- (c) promptly notify the Mortgagee in writing of any act, omission, accident, damage, loss, occurrence or matter which gives or may give rise to a right to claim under such insurance and the Mortgagor shall not do, omit or suffer to be done any act or matter that may contravene any term of such policy;
- (d) to pay each premium in respect of such insurance at least three days before the due date, and upon demand deposit the receipt for that premium with the Mortgagee; and
- (e) not to do or permit to be done anything which may prejudicially affect such insurance.

## 6..3

The Mortgagor hereby irrevocably authorises and agrees that the Mortgagee alone shall have power to make, enforce, settle and compromise and receive all claims and the benefits thereof in respect of insurance and to sue for, recover, receive and give discharges for all insurance moneys without any responsibility for any loss occasioned thereby. Any such insurance moneys received shall be applied at the option of the Mortgagee either in or towards repayment of the Money Secured or in or towards reinstating or rebuilding the Secured Property damaged or destroyed. If at any time the Mortgagor is entitled to the benefit of any insurance in respect of the Secured Property which has been effected in addition to the Mortgagor's obligations under this Charge then all moneys received by virtue of such insurance shall if the Mortgagee so requires be applied as if such insurance had been effected in accordance with this Charge.

## 6..4

**Other undertakings**

The Mortgagor must:

- (a) perform within the time allowed for performance all statutory, contractual and other obligations affecting its property, and cause its subsidiaries (if any) to do likewise; and
- (b) maintain and protect the Secured Property, keep it in good condition, and on being required to do so by written notice from the Mortgagee promptly rectify any defect in its condition; and
- (c) not without the prior written consent of the Mortgagee:
  - (i) call up or receive in advance of calls any of its uncalled capital; or
  - (ii) pass a resolution under section 254N of the Corporations Act 2001 or
  - (iii) appoint an administrator of the Mortgagor; and
- (d) carry on its business in a proper and efficient manner without changing its general character, and cause its subsidiaries (if any) to do likewise; and

- (e) give notice to the Mortgagee within twenty-four hours after the happening of any event which renders any lease or licence under which any part of the Secured Property is held liable to be terminated; and
- (f) deliver to the Mortgagee on demand receipts for all payments referred to in this clause; and
- (g) deposit with the Mortgagee immediately or as soon as the Mortgagor receives them:
  - (i) anything evidencing an Encumbrance and any document of title given to the Mortgagor to secure the payment of a monetary obligation to the Mortgagor; and
  - (ii) any documents of title relating to property over which this Charge operates as a fixed charge; and
- (h) comply on time with terms attaching to any approval or consent given by the Mortgagee in connection with this Charge; and
- (i) do everything necessary to ensure that no Event of Default occurs; and
- (j) whenever requested by the Mortgagee, promptly provide the Mortgagee with a certificate which states whether an Event of Default or event which with the giving of notice, lapse of time or fulfilment of any condition would be likely to become an Event of Default continues unremedied; and
- (k) notify the Mortgagee promptly after it occurs of full details of an Event of Default or an event which with the giving of notice, lapse of time or fulfilment of any condition, would be likely to become an Event of Default, and the steps taken to remedy it; and
- (l) notify promptly the Mortgagee of the particulars of any real property acquired by the Mortgagor; and
- (m) give the Mortgagee as soon as the Mortgagor receives it any notice or order received from an authority about the use or condition of the Secured Property; and
- (n) prosecute with reasonable diligence applications which the Mortgagee requires the Mortgagor to make to any person for permission to use the Secured Property for any purpose which the Mortgagee reasonably specifies; and
- (o) not increase or allow to be increased the amount secured by an Encumbrance over the Secured Property other than this Charge; and
- (p) not alter, pull down or remove from its position at the date of this Charge immovable property, buildings, plant, fixtures, fittings or machinery forming part of or used in connection with the Secured Property without the consent of the Mortgagee. But the Mortgagee may not withhold that consent unreasonably if the alteration, pulling down or removal is:
  - (i) necessary because the immovable property, building, plant or machinery is worn out or damaged (when it must be replaced by the Mortgagor with property of a similar nature and of no lesser value); or
  - (ii) required by law or in connection with its refurbishment or improvement.

## 6..5

**Environmental laws**

The Mortgagor hereby agrees to:

- (a) comply in all respects with all statutes and other laws relating to the protection, preservation and safety of the environment and the proper containment and release of any contaminant at any time from the Secured Property or any part thereof;
- (b) monitor such compliance;
- (c) minimise the effect of and rectify any non-compliance;
- (d) report to the Mortgagee at such times as the Mortgagee requires on its compliance with this provision and the steps taken by it to rectify any breaches;
- (e) indemnify and keep indemnified the Mortgagee against any costs, expenses, demands, damages and liability incurred by the Mortgagee because of a failure by the Mortgagor to comply with this provision or because of any requirement imposed on the Mortgagee to comply with any statute or law of the kind mentioned in this provision in relation to the Secured Property or any part thereof; and
- (f) on the Mortgagee's request, the Mortgagor will promptly and at its own cost provide to the Mortgagee a certificate (in such form and with such terms of reference as the Mortgagee may approve) from an appropriately qualified and experienced person approved by the Mortgagee as to whether or not the Mortgagor has complied with its obligations under sub-clauses 6.4(b), 6.5(a) and 6.5(b).

For the purposes of this clause the following words have the following meanings:

"contaminant" means any substance, odour, heat, sound or radiation which:

- (i) has been declared by an authority as being something which requires particular control, usage or storage procedures for reasons related to its potential hazard to

- (ii) any person, animal or plant or its likely potential to degrade the environment; and is not safely contained so as to prevent harm or likely harm to the Secured Property or the environment or any person.

"environment" is deemed to include the meaning given to that term in any legislation in force in the jurisdiction of the Secured Property.

#### 6..6 Supply of Information

The Mortgagor undertakes to give to the Mortgagee on demand by the Mortgagee:

- (a) copies of its audited Financial Records and the audited consolidated Financial Records of the Mortgagor and the entities it controls from time to time, during each financial year commencing with the financial year ending immediately before the date of this Charge, as soon as they are available and in any event within 120 days from the end of that year; or

at the Mortgagee's absolute discretion:

- (b) copies of its unaudited Financial Records and the unaudited consolidated Financial Records of the Mortgagor and its entities it controls from time to time prepared by the Mortgagor's accountant during, each financial year commencing with the financial year ending immediately before the date of this Charge, as soon as they are available and in any event within 120 days from the end of that year; and
- (c) unaudited Financial Records of the Mortgagor and unaudited consolidated Financial Records of the Mortgagor and the entities it controls from time to time during, the first 6 months of each financial year within 90 days of the end of that 6 months; and
- (d) any other information and supporting evidence as the Mortgagee may request at any time.

#### 6..7 No Derogation from Security

The Mortgagor shall not do anything which prejudicially affects the security created by this Charge.

#### 6..8 Further Assurances

- (a) The Mortgagor agrees to

- (i) execute in favour of the Mortgagee, or as the Mortgagee directs, and in form stipulated by the Mortgagee, further documents, including, without limitation, Encumbrances; and
- (ii) do the things the Mortgagee stipulates,

to provide more effective security to the Mortgagee over the Secured Property for the payment of the Money Secured and to enable the Mortgagee to exercise its rights in connection with the Secured Property.

- (b) The Mortgagee or an Authorised Officer of the Mortgagee may fill in any blanks in this Charge and complete in favour of the Mortgagee or anyone purchasing under the powers given by this Charge any instrument executed by or on behalf of the Mortgagor in blank and deposited with the Mortgagee in connection with this Charge.
- (c) The Mortgagee may register this Charge at the Mortgagor's expense as a charge on any appropriate register and the Mortgagor agrees to obtain all requisite consents under any Encumbrance over the property of the Mortgagor created prior to this Charge. The Mortgagor agrees to procure the execution of all documents required by the Mortgagee which are necessary to register this Charge.

#### 6..9 Independent Experts

The Mortgagor:

- (a) acknowledges that, upon the occurrence of an event or series of events which in the Mortgagee's reasonable opinion may have a Material Adverse Effect, the Mortgagee may appoint independent experts including, without limitation, investigating accountants, auditors, solicitors and valuers to review any matter relating to the Mortgagor or any Security Provider and its property including, without limitation, to review its financial position, value its property, conduct stocktakes and perform any other tasks considered by the Mortgagee to be relevant to the assessment of its current position and compliance with its obligations under the enforceability of the Security;
- (b) will provide or cause to be provided all necessary assistance and access to records, information, personnel and property of the Mortgagor any Security Provider as may be reasonably required by the Mortgagee, or any officer, employee, contractor or agent of the Mortgagee and any independent expert appointed by the Mortgagee; and



- (c) will indemnify and keep indemnified the Mortgagee against all costs and expenses incurred as a result of any action taken by the Mortgagee under this clause 6.

**7. RESUMPTION OR COMPULSORY TRANSFER OF SECURED PROPERTY**

7..1 If the Mortgagor receives notice of any intended resumption or transfer of the Secured Property or any part thereof the Mortgagor will:

- (a) immediately notify the Mortgagee of the notice;  
 (b) without delay forward to the Mortgagee a copy of the notice and related material which the Mortgagor may have received or obtained;  
 (c) upon the request of the Mortgagee lodge a claim for compensation with the proper authority of an amount and with particulars first approved by the Mortgagee, without delay; and  
 (d) if such a claim is lodged proceed to obtain a prompt decision on such claim, provided that the Mortgagor will not reduce or compromise any such claim without the prior written consent of the Mortgagee.

7..2 The Mortgagor hereby agrees that the Mortgagor will not lodge a claim for compensation without first obtaining the written approval of the Mortgagee to the amount and particulars of such claim which approval will not be unreasonably or capriciously withheld. Any compensation moneys shall at the option of the Mortgagee be paid in or towards satisfaction of the Money Secured whether or not the time for payment thereof shall have arrived.

**8. MORTGAGEE'S RIGHTS TO ENTER AND TO RECTIFY DEFAULTS; VALUATIONS**

8..1 Any person authorised by the Mortgagee may enter upon any land or buildings owned or occupied whether as licensee, lessee or otherwise by the Mortgagor or any of its subsidiaries at all reasonable times, without notice to the Mortgagor, to:

- (a) inspect the condition of the Secured Property;  
 (b) determine whether the terms of this Charge are being complied with;  
 (c) inspect and take copies of any Financial Records or any other documents relating to the Mortgagor's business;  
 (d) exercise the rights of the Mortgagee under this Charge; or  
 (e) investigate the affairs and financial position of the Mortgagor.

8..2 The Mortgagee may do any thing which should have been done by the Mortgagor under the terms of this Charge but has not been done or done properly, but without any obligation to do so and without prejudice to its other rights, powers and remedies under this Charge.

8..3 The Mortgagee may at any time on the Mortgagor's behalf and at the Mortgagor's expense arrange for valuations or revaluations of the Mortgagor's property and assets to be carried out either by the Mortgagee or by outside consultants nominated by it. Where the Mortgagee itself effects a valuation or revaluation, it shall be entitled to levy a fee therefor which shall be payable by the Mortgagor on demand, but shall not be obliged to provide a copy of any document or correspondence to the Mortgagor or to discuss the results of the valuation or revaluation with the Mortgagor.

8..4 The Mortgagor shall do everything on its part and cause and permit its Related Bodies Corporate (as defined in the Corporations Act) to do everything on their part which is necessary or desirable to enable the Mortgagee to exercise its rights under this clause 8 and, without limitation, the Mortgagor shall enable the Mortgagee to use the facilities and have the services of the personnel of the Mortgagor and those Related Bodies Corporate to the extent reasonably required by the Mortgagee for that purpose.

**9. WARRANTIES BY MORTGAGOR**

9..1 The Mortgagor warrants that:

- (a) it has good title to the Secured Property, free of Encumbrances other than those disclosed in writing to the Mortgagee before this Charge was executed;  
 (b) it has been duly incorporated in accordance with the laws of its place of incorporation, is validly existing under those laws, duly owns its rights, property, undertaking and assets and has power and authority to carry on its business as it is now being conducted; and  
 (c) it has power to enter into and observe its obligations under this Charge; and  
 (d) it has in full force and effect the authorizations necessary to enter into this Charge, observe obligations under it, and allow it to be enforced; and  
 (e) its obligations under this Charge are valid and binding and are not void, voidable or unenforceable; and  
 (f) this Charge and the transactions under it do not contravene its constituent documents or any law, regulation or official directive or any obligation of or undertaking by the Mortgagor or cause a limitation on its powers or the powers of its directors, to be exceeded; and

- (g) the most recent unaudited Financial Records of the Mortgagor and unaudited consolidated Financial Records of the entities it controls are a true, fair and accurate statement of its financial position and their consolidated financial position as at the date to which they are prepared and disclose or reflect all actual and contingent liabilities; and
- (h) there has been no material adverse change in the financial position of the Mortgagor or (where appropriate) in the consolidated financial position of the Mortgagor and the entities it controls since the date as at which the Financial Records of the Mortgagor and (where appropriate) the entities it controls, current as at the date of this Charge, were prepared; and
- (i) it has fully disclosed in writing to the Mortgagee all facts relating to the Mortgagor, the entities it controls, this Charge, the Secured Property and anything in connection with them which are material to the assessment of the nature and amount of the risk undertaken by the Mortgagee in entering into this Charge and doing anything in connection with it; and
- (j) no Event of Default or event which with the giving of notice, lapse of time or fulfilment of any condition would be likely to become an Event of Default continues unremedied; and
- (k) save where agreed to in writing by the Mortgagee, it does not hold any interest in the Secured Property or enter into this Charge in the capacity of a trustee of any trust or settlement; and
- (l) it is the beneficial owner of and has good title to all property held by it or on its behalf and all undertakings carried on by it are free of any security, third party interest or Encumbrances other than those agreed to in writing by the Mortgagee; and
- (m) the Mortgagor benefits by executing this Charge and any collateral security to which it is a party.

9.2 These warranties are taken also to be made:

- (a) on each date on which the Mortgagee provides accommodation to or at the request of the Mortgagor; and
- (b) every 3 months after the date of this Charge.

#### 10. EVENTS OF DEFAULT

10.1 The Mortgagor shall at the option of the Mortgagee be immediately in default without the necessity for any notice or demand upon the occurrence of any of the following Events of Default:

- (a) the Mortgagor and/or any Security Provider fails or neglects to pay on the due date for payment any part of the Money Secured at the time or times and in the manner provided by the Secured Agreement or under any Security; or;
- (b) the Mortgagor and/or any Security Provider fails or neglects to observe or perform any of the covenants conditions or agreements contained in the Secured Agreement or any Security; or
- (c) the Mortgagor and/or any Security Provider does not fully and punctually observe or comply with its agreements, undertakings or obligations in respect of the Money Secured or any Security or any other agreement or instrument between the Mortgagor or the Security Provider and the Mortgagee; or
- (d) an Insolvency Event occurs in respect of the Mortgagor or any of its subsidiaries or any Security Provider; or
- (e) a receiver administrator or controller of any of the real or personal property of the Mortgagor or the Security Provider shall be appointed; or
- (f) any judgement which is obtained against the Mortgagor or the Security Provider remains unsatisfied for more than 14 days; or
- (g) any execution, distress or Encumbrance is enforced or levied against any of the property or the assets of the Mortgagor or the Security Provider, or can be rendered enforceable by the giving of notice, lapse of time or fulfilment of any condition; or
- (h) the Mortgagor or any of its subsidiaries or any Security Provider stops payment, ceases to carry on business or a material part of it, or threatens to do either of those things, except to reconstruct or amalgamate while solvent on terms approved by the Mortgagee; or
- (i) default is made under any agreements other than the Security which are given by the Mortgagor or the Security Provider (whether in the Mortgagor's or the Security Provider's personal capacity or in its capacity as a trustee, or a partner of any partnership) with or without any other person in favour of the Mortgagee; or
- (j) the Mortgagor or any of its subsidiaries or the Security Provider takes action to reduce its capital or buy back any of its ordinary shares or passes a resolution referred to in section S254N of the Corporations Act 2001, in any case without the consent of the Mortgagee; or
- (k) if the Mortgagor or the Security Provider breach any undertaking at any time given to the Mortgagee or its legal advisers from time to time or if any condition imposed by the Mortgagee in agreeing to any matter (including any waiver) is not complied with or fulfilled or if any warranty or representation by the Mortgagor or the Security Provider to the Mortgagee prior to or subsequent to the date hereof is untrue or false; or
- (l) a person is appointed under legislation to investigate or manage any part of the affairs of the Mortgagor or any of its subsidiaries or any Security Provider; or

- (m) any Security is or becomes wholly or partly void, voidable or unenforceable, or is claimed to be so or loses the priority which it has at or after the date of this Charge (other than by an act or omission of the Mortgagee) or a claim to that effect is made by the Mortgagor or the Security Provider, by anyone on either of their respective behalf or by anyone who claims to have an interest in the property the subject of such Security Document; or
- (n) a change occurs in a circumstance which is warranted or taken to be warranted under any terms and conditions applicable to the Secured Property, Money Secured or any Security to exist or in the business assets or financial condition of the Mortgagor, or of the Mortgagor and its subsidiaries taken as a whole or of any Security Provider, which in any case in the reasonable opinion of the Mortgagee may have a material adverse effect on the ability of the Mortgagor or the Security Provider to observe its obligations, or on the rights of the Mortgagee, in respect of the Money Secured or under any Security; or
- (o) the Mortgagor or the Security Provider shall mortgage or otherwise encumber (except as expressly permitted by Section 80 of the Queensland Property Law Act 1974 or equivalent legislation in the State set out in Item 10) or sell or dispose of or attempt or contract to sell or dispose of any land mortgaged or charged in favour of the Mortgagee without the previous consent in writing of the Mortgagee; or
- (p) the Mortgagor or the Security Provider ceases to be a subsidiary of any company which is its holding company at the date of this Charge; or
- (q) in the reasonable opinion of the Mortgagee the value to the Mortgagee of any Security is materially and adversely affected or any of the property secured by any Security is in jeopardy, other than as a result of any act or omission of the Mortgagee; or
- (r) if any other event occurs or circumstances arise which in the reasonable opinion of the Mortgagee, is likely to materially or adversely effect the liability of the Mortgagor or any Security Provider to observe and perform all or any of its obligations under this Charge or otherwise to comply with the terms of this Charge or any Security; or
- (s) if the Mortgagor or any Security Provider is a trustee, whether or not the fact is notified to the Mortgagee, the Mortgagor or Security Provider carry out or permit to occur any of those events described in clause 2.2.6 hereof without the Mortgagee's prior written consent; or
- (t) any Security Provider or any other person liable for the payment of any part of the Money Secured to the Mortgagee shall do or suffer any of the above;

AND a determination by the Mortgagee that any of these events has occurred shall be final and binding on the Mortgagor. The Mortgagor shall promptly inform the Mortgagee in writing upon the happening of any of the events described in this clause.

10..2 If this Charge has not otherwise taken effect as a fixed charge under this Charge or by operation of law, it takes effect as a fixed charge automatically and immediately:

- (a) if an Event of Default described in sub-clause 10.1(d) or sub-clause 10.1(h) occurs; or
- (b) over the Secured Property affected if an Event of Default described in clause 10.1(g) occurs; or
- (c) if an Event of Default occurs and this Charge has not already become a fixed charge, on receipt by the Mortgagor of a notice from the Mortgagee to that effect; or
- (d) if the Mortgagor does not pay taxes on time, over the Secured Property that constitutes money or rights to money:
  - (i) due, accruing or which may become due to the Mortgagor; or
  - (ii) which is held on account of the Mortgagor, or by a person for payment to the Mortgagor, or on account of a person for payment to the Mortgagor.

10..3 At any time after this Charge has taken effect as a fixed charge over any or all of the assets of the Mortgagor, the Mortgagee may by notice in writing to the Mortgagor from time to time declare that this Charge shall resume the status of a floating charge over those assets or any of them.

## 11. APPOINTMENT OF RECEIVER

11..1 At any time after an Event of Default has occurred the Mortgagee may appoint a Receiver of the whole or any part of the Secured Property. This power may be exercised whether or not a Receiver of part of the Secured Property has previously been appointed under clause 11.2.

11..2 At any time after an Event of Default has occurred, the Mortgagee may appoint a Receiver of all or any of the assets over which this Charge then operates as a fixed charge ("the relevant assets"). The Receiver may exercise powers only in relation to the relevant assets, and not in relation to any other asset forming part of the Secured Property. The appointment of a Receiver under this clause shall have no effect on the rights of the Mortgagor to deal with any of the Secured Property other than the relevant assets in the manner

permitted by this Charge.

- 11..3 The Mortgagee may also remove any Receiver appointed under sub-clause 11.1 or 11.2, and in the case of removal, retirement or death may appoint a new Receiver.
- 11..4 Delay by the Mortgagee in appointing a Receiver shall not prejudice the Mortgagee's right to make the appointment.
- 11..5 A Receiver appointed by the Mortgagee shall be the agent of the Mortgagor and the Mortgagor shall be solely responsible for anything done or not done by the Receiver, and for the Receiver's remuneration. This clause shall cease to apply if the Mortgagee notifies the Mortgagor in writing that the Receiver is to act as the agent of the Mortgagee.
- 11..6 The Mortgagee may fix the remuneration of any Receiver at an amount or rate of commission agreed between the Mortgagee and the Receiver or in the absence of agreement at an amount or rate determined by the Mortgagee. The Receiver's remuneration shall form part of the Money Secured.
- 11..7 Where more than one person is appointed as Receiver in respect of the Secured Property or the same part or parts of it, the Mortgagee may provide in the terms of the appointment that the rights, powers and authorities of the Receiver vest in them jointly and severally or jointly.
- 11..8 The power to appoint a receiver or receiver and manager over all of the Secured Property may be exercised whether or not a Receiver has already been appointed over part of it.

## 12. OTHER POWERS OF MORTGAGEE

- 12..1 All of the powers which howsoever may be conferred on a Receiver appointed under this Charge shall also be exercisable by the Mortgagee at any time after an Event of Default has occurred and whether or not a Receiver has been or could be appointed under this Charge.
- 12..2 The Mortgagee or a Receiver need not give notice or a demand to the Mortgagor or allow time to elapse before exercising a right, power or remedy under this Charge or conferred by law, unless notice or demand or a lapse of time is required by a law which cannot be excluded or the Mortgagee or any Receiver appointed hereunder wishes to exercise any power referred to in clause 13.1(a) hereof in respect of freehold or leasehold property. If the law requires that a period of notice must be given or a lapse of time must occur or be permitted before a right, power or remedy under this Charge or conferred by law may be exercised, then:
- (a) when a period of notice or lapse of time is mandatory, that period of notice must be given or that lapse of time must occur or be permitted by the Mortgagee; or
  - (b) when the law provides that a period of notice or lapse of time may be stipulated or fixed by this Charge, one day is stipulated and fixed as that period of notice or lapse of time and, without limitation, where applicable, one day is stipulated and fixed as the period of notice or lapse of time during which:
    - (i) default must continue before a notice is given or requirement otherwise made for payment of the Money Secured or the observance of obligations under this Charge; and
    - (ii) a notice or requirement for payment of the Money Secured or the observance of obligations under this Charge must remain not complied with before the Mortgagee's rights, powers or remedies may be exercised.
- 12..3 The Mortgagee may at any time give up possession of any part of the Secured Property.

## 13. POWERS OF RECEIVER

- 13..1 In addition to all other powers which howsoever may be conferred on him, the Receiver may exercise any or all of the following powers, unless they are specifically excluded by the terms of his appointment, at the time, in the manner and on terms (in addition to any terms expressly specified below) which the Receiver thinks fit (and the Mortgagee may vary these powers at any time by notice given to the Mortgagor and the Receiver):
- (a) enter, take possession of, have access to and make use of the Secured Property as often as the Receiver deems expedient;
  - (b) receive rents and profits derived from the Secured Property;
  - (c) exercise the rights, powers and remedies of the Mortgagor over, in connection with or

- comprising part of the Secured Property;
- (d) manage the Secured Property;
  - (e) carry on any business or pursuit within the powers of the Mortgagor;
  - (f) subject to obligations imposed by law, sell or agree to sell the Secured Property on any terms, including, without limitation, the following:
    - (i) the sale may take place whether or not the Receiver has taken possession of the Secured Property;
    - (ii) the sale may be by public auction, private treaty or by tender;
    - (iii) the sale may be in one lot or in parcels, and with or without special provisions about title, or time, or mode of payment of purchase money, or otherwise;
    - (iv) fixtures may be severed and sold apart from any real property;
    - (v) allow the purchase money to remain secured by a mortgage or charge of the property sold, or secured by other security, or without security, and on any other terms, without being responsible for any resultant loss;
    - (vi) enter into, rescind or vary a contract for sale, and resell without being responsible for loss, and execute assurances of the Secured Property in the name and on behalf of the Mortgagor or otherwise;
    - (vii) do anything to complete any sale which the Receiver considers desirable, and set aside from the proceeds of sale the amount which the Receiver considers desirable to meet future claims until the possibility of claims being made is ended;
  - (g) obtain the benefit of any agreement entered into by the Mortgagor (including, without limitation, by specific performance), whether or not the agreement is entered into in the exercise of the rights, powers and remedies conferred by this Charge;
  - (h) institute, conduct, defend, submit to arbitration, settle, compromise or defer in the name of the Mortgagor or otherwise on any terms, any proceeding, claim, question or dispute in connection with the Secured Property or this Charge and execute releases or other discharges in connection with them;
  - (i) call and get in capital;
  - (j) delegate the Receiver's powers including this power of delegation to any person for any period;
  - (k) pull down, rebuild, erect, alter, improve, subdivide, provide services to, insure, and maintain the Secured Property;
  - (l) lease or license, end, renew, surrender, or accept the surrender of a lease or licence of, the Secured Property, and compromise with or make concessions to tenants, lessees or licensees, or agree to do any of these things, for any period and on any terms;
  - (m) give a person an option to purchase, lease or license the Secured Property on any terms, and give, create, release or vary easements, profits a prendre or restrictions relating to the Secured Property;
  - (n) surrender or transfer the Secured Property to any person;
  - (o) exchange the Secured Property with a person for an interest in other property of any tenure (with or without giving or receiving other consideration). The property so acquired may be dealt with by the Receiver as if it were part of the Secured Property and the Receiver may grant an Encumbrance over that property for the payment of the Money Secured;
  - (p) remove personal property from the Secured Property and store that property in the name of the Mortgagor without liability for loss or damage suffered by the Mortgagor;
  - (q) do anything which should have been done by the Mortgagor under this Charge but which has not been done or which the Receiver considers has not been done properly;
  - (r) borrow or raise from the Mortgagee or from another person in the name and on behalf of the Mortgagor or otherwise money required from time to time for any of the purposes mentioned in this clause 13 and do any ancillary act (including, without limitation, draw, accept or endorse bills of exchange). (Neither the Mortgagee nor any other person providing accommodation to the Receiver need enquire about the necessity or propriety of a borrowing or raising or is to be responsible for the misapplication or non-application of money borrowed or raised);
  - (s) exercise all powers (including, without limitation, the powers of the directors of the Mortgagor) in connection with the transfer of shares held by any person in the Mortgagor;
  - (t) secure money borrowed or raised by Encumbrance over the Secured Property so that the Encumbrance ranks in priority to, equally with, or after this Charge;
  - (u) employ or engage persons (including, without limitation, employees of the Receiver and consultants and professional advisers) in connection with the powers conferred on the Receiver by this clause 13;
  - (v) do or cause to be done anything to protect the priority of this Charge, to protect the Mortgagor's or the Mortgagee's estate or interest in the Secured Property, to enforce this Charge, to recover

- (w) the Money Secured or to protect or enhance the Secured Property; and  
 expend money or incur liabilities in exercising the powers conferred on the Receiver by this clause 13.

**14. APPLICATION OF MONEY**

14..1 The Mortgagee shall have an absolute discretion (without the need to communicate its election to anyone) to apply at any time any payment received by it in reduction of such part of the Money Secured as it shall elect. Any surplus money received by the Mortgagee shall not bear interest, and the Mortgagee's liability to account for the surplus money may be discharged in full by:

- (a) the Mortgagee depositing it to the credit of an account in the name of the Mortgagor in any bank the Mortgagee thinks fit;  
 (b) the Mortgagee crediting it to an account in its books in the name of the person to whom it is payable; or  
 (c) by the Mortgagee paying it into court.

14..2 In applying any moneys toward satisfaction of the Money Secured, the Mortgagor shall be credited only with so much of those moneys as are actually received by the Mortgagee or the Receiver and such credit is to date from the time of such receipt. This provision shall apply notwithstanding that in exercising any power of sale the Mortgagee or the Receiver may have transferred the Secured Property (in whole or in part) and taken an Encumbrance to secure the unpaid balance of purchase money. If the Mortgagee takes any mortgage, promissory note, bill of exchange or other security in payment of or to secure the payment of any purchase moneys on sale of the Secured Property by the Mortgagee, no amount representative of such security shall be credited in or towards payment of the Money Secured until all moneys payable under or the proceeds from such security is received by the Mortgagee in cash.

14..3 If the Mortgagee receives money in connection with this Charge when part of the Money Secured is contingently owing or falls within paragraph (d) of the definition of "Money Secured", then the Mortgagee may deposit in any financial institution thought fit by the Mortgagee an amount not exceeding that part in an interest-bearing deposit account on terms which the Mortgagee thinks fit with any person until that part becomes actually payable or no longer falls within the definition of "Money Secured". At that time the Mortgagee may retain for its own account the amount which is then actually payable to it. The balance is to be paid in accordance with clause 14.1.

**15. NO WAIVER**

15..1 The Mortgagee is not to be taken to have waived its rights in respect of any Event of Default except to the extent that those rights have been expressly waived in writing by an Authorised Officer of the Mortgagee.

15..2 In particular and without limiting the generality of clause 15.1, the power of sale under this Charge may be exercised notwithstanding that the Mortgagee or the Receiver may have previously waived or refrained from exercising that power; and no demand or notice of sale made or given under this Charge shall be waived by the acceptance of any payment on account of the Money Secured, or by any negotiations between the Mortgagee and the Mortgagor.

**16. NO MERGER**

16..1 This Charge does not merge with, postpone, lessen or otherwise prejudicially affect any other right to which the Mortgagee is entitled.

16..2 This Charge does not affect a collateral security or any other right, power or remedy of the Mortgagee at law or in equity.

16..3 The Mortgagee need not resort to any other collateral security it holds for payment of the Money Secured, nor commence proceedings or enforce any other right against the Mortgagor, before it resorts to this Charge.

**17. NO SUSPENSION OF LIABILITY TO PAY**

17..1 The Mortgagee may:

- (a) demand payment of the Money Secured and exercise its rights and powers under this Charge even if any negotiable instrument, security, contract or other obligation relating to the Money Secured is still current or has not matured or fallen due; and  
 (b) vary, exchange, renew, modify, release, assign, refuse to complete or to enforce any judgment, specialty, indemnity, guarantee or other security or instrument negotiable or otherwise held by

the Mortgagee and whether satisfied by payment or not without affecting or discharging the Mortgagor's liability under this Charge.

**18. CONTINUING SECURITY**

18..1 This Charge shall be a continuing and running security notwithstanding any settlement of account or any other matter or thing whatsoever and shall remain in full force and effect until the Charge shall be under no further obligation whatsoever to advance moneys under this Mortgage and all moneys payable by the Mortgagor and/or the Security Provider under the Security have been paid or recovered in full and the Mortgagee has executed a full release hereof.

**19. OTHER SECURITIES HELD BY THE MORTGAGEE**

19..1 Nothing in this Charge affects any other Encumbrance of any kind which the Mortgagee now holds or may take at any time in the future:

- (a) in the property of the Mortgagor; or
- (b) in the property of any other person as security for payment of the Money Secured or any of them,

and nothing in this Charge shall affect any other right or remedy of the Mortgagee at law or in equity.

**20. DISCHARGE OF PRIOR-RANKING DEBTS**

20..1 The Mortgagor shall comply with the provisions of Other Securities and shall not vary or agree to vary any of the provisions of the Other Securities without the Mortgagee's prior written consent. If the Mortgagor and/or any other person makes default or is deemed to have made default under the Security the Mortgagee can pay all moneys secured under the Other Securities and seek a transfer or release of the Other Securities.

20..2 The Mortgagor authorises and directs the Mortgagee to do all acts and sign all instruments necessary to give effect to the provisions of this Part.

20..3 The Mortgagee is not required to lend or advance or otherwise provide the Money Secured if there are Other Securities, except where the holders of the Other Securities have executed a priority agreement on terms and conditions acceptable to the Mortgagee.

20..4 The Mortgagor authorises the Mortgagee to provide details concerning this Charge and the Money Secured to the holders of the Other Securities.

**21. DOCUMENTS OF TITLE**

21..1 While this Charge remains current the Mortgagee is entitled to custody of all documents of title (including any indicia of title or leases to leasehold premises) to the Secured Property, except for those held by the holder of a prior-ranking Encumbrance.

**22. SET-OFF**

22..1 At its sole discretion the Mortgagee may at any time apply (without notice) any credit balance in any currency in any account of the Mortgagor with the Mortgagee towards satisfaction of any amount then payable by the Mortgagor to the Mortgagee. The Mortgagor authorises the Mortgagee in the name of the Mortgagor to do anything (including, without limitation, to execute any document or effect the conversion of any currency) that is required for such purpose.

**23. NO MARSHALLING**

23..1 The Mortgagee shall be under no obligation to marshal in favour of the Mortgagor any security held by it or any fund or asset on which it has a claim.

**24. SUSPENSION OF MORTGAGOR'S RIGHTS**

24..1 As long as any of the Money Secured is owed by the Mortgagor to the Mortgagee (whether or not the Mortgagor has become liable for those moneys), the Mortgagor shall not:

- (a) in reduction of its liability under this Charge, raise a defence, set-off or counterclaim available to itself or a co-surety or co-indemnifier or any customer or debtor of the Mortgagee for whom the Mortgagor is acting as surety, in each such case against the Mortgagee;
- (b) make any claim or enforce any right against such co-surety (if the Mortgagee has then made or is entitled to make any demand for payment of the Money Secured) or prove in competition with the Mortgagee if such co-surety, co-indemnifier or customer or debtor becomes insolvent or (where such co-surety, co-indemnifier or customer or debtor is an individual) dies, whether in

respect of any amount paid by the Mortgagor under this Charge, in respect of any other amount (including the proceeds of any Encumbrance) applied by the Mortgagee in reduction of the Mortgagor's liability under this Charge, or otherwise; or

- (c) be entitled to, or to any share in, the benefit of any security or guarantee now or subsequently held by the Mortgagee for the Money Secured; or
- (d) claim or enforce any right of contribution against any such co-surety, co-indemnifier or customer or debtor.

24..2 The Mortgagor irrevocably appoints the Mortgagee, any Receiver appointed by the Mortgagee and each Authorised Officer of the Mortgagee severally its attorneys.

24..3 Each attorney may:

- (a) in the name of the Mortgagor or the attorney do anything which the Mortgagor may lawfully do or exercise a right of proof of the Mortgagor following an Insolvency Event occurring in respect of such co-surety, co-indemnifier or customer or debtor in connection with any matter whether or not connected with the Mortgagor's rights as a surety (including, without limitation, executing any Security over the Secured Property or any other property of the Mortgagor, deeds and instituting, conducting and defending legal proceedings and receiving any dividend arising out of that right); and
- (b) delegate its powers (including, without limitation, this power of delegation) to any person for any period and may revoke a delegation; and
- (c) exercise or concur in exercising its powers even if the attorney has a conflict of duty in exercising its powers or has a direct or personal interest in the means or result of that exercise of powers.

24..4 The Mortgagor agrees to ratify anything done by an attorney or its delegate in accordance with clause 24.3.

24..5 The Mortgagor may not exercise the right of proof referred to in clause 24.3 independently of the attorney.

24..6 The attorney need not account to the Mortgagor for any dividend received in the exercise of that right of proof until the Mortgagee has received all of the Money Secured.

## 25. PRESERVATION OF THE MORTGAGEE'S RIGHTS

25..1 The liabilities under this Charge of the Mortgagor and the rights under this Charge of the Mortgagee, a Receiver or an attorney appointed under this Charge are not affected by anything which might otherwise affect them at law or in equity including, without limitation, one or more of the following (whether occurring with or without the consent of a person):

- (a) the Mortgagee or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with, or wholly or partially releasing the Mortgagor or another person in any way;
- (b) laches, acquiescence, delay, acts, omissions or mistakes on the part of the Mortgagee or another person or both the Mortgagee and another person;
- (c) any variation or novation of a right of the Mortgagee or another person, or material alteration of a document, in respect of the Mortgagor or another person including, without limitation, an increase in the limit of or other variation in connection with the Money Secured;
- (d) the transaction of business, expressly or impliedly, with, for or at the request of the Mortgagor or another person;
- (e) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise whether or not the Mortgagor or another person was a member;
- (f) the loss or impairment of any collateral security or a negotiable instrument;
- (g) a person dealing in any way with an Encumbrance, guarantee, judgment or negotiable instrument;
- (h) the death of any person or an Insolvency Event occurring in respect of any person;
- (i) a change in the legal capacity, rights or obligations of a person;
- (j) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- (k) a judgment against the Mortgagor or another person;



- (l) the receipt of a dividend after an Insolvency Event or the payment of a sum or sums into the account of the Mortgagor or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
- (m) the Money Secured being irrecoverable;
- (n) an assignment of rights in connection with the Money Secured;
- (o) the acceptance of repudiation or other termination in connection with the Money Secured;
- (p) the invalidity or unenforceability of an obligation or liability of a person other than the Mortgagor under this Charge;
- (q) invalidity or irregularity in the execution of this Charge by the Mortgagor or any deficiency in the powers of the Mortgagor to enter into or observe its obligations under this Charge;
- (r) the opening of a new account by the Mortgagor with the Mortgagee or another person or the operation of a new account;
- (s) any obligation of the Mortgagor or any other person being discharged by operation of law or otherwise;
- (t) property secured under an Encumbrance being forfeited, extinguished, surrendered, resumed or determined; or
- (u) any fact matter act or thing.

25..2 The liability of the Mortgagor under this Charge is not affected because:

- (a) any other person who was intended to become a co-surety or co-indemnifier for payment of the Money Secured has not done so or has not done so effectively; or
- (b) a person who is a co-surety or co-indemnifier for payment of the Money Secured is discharged under an agreement or under statute or a principle of law or equity.

25..3 If a claim is made that all or part of any payment, obligation, settlement, transaction, conveyance or transfer in connection with the Money Secured is void or voidable under any law relating to Insolvency Events and the claim is upheld, conceded or compromised, then:

- (a) the Mortgagee is entitled immediately as against the Mortgagor to the rights in respect of the Money Secured to which it would have been entitled if all or that part of such payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and
- (b) the Mortgagor agrees to do any act and sign any document promptly on request from the Mortgagee to restore to the Mortgagee any security interest, guarantee or other rights held by it from the Mortgagor immediately before that payment, obligation, settlement, transaction, conveyance or transfer.

## 26. COSTS, CHARGES, EXPENSES AND INDEMNITIES

26..1 The Mortgagor will upon the Mortgagee's demand pay to the Mortgagee or as directed by the Mortgagee all costs expenses and other amounts payable incurred or paid by the Mortgagee in respect of this Charge. These costs shall include:

- (a) legal costs on a full indemnity or on a solicitor and own client basis, whichever is the greater;
- (b) costs resulting from or on account of any default by the Mortgagor or any Event of Default;
- (c) the cost of obtaining any advice reasonably required by the Mortgagee from time to time;
- (d) the costs of the Mortgagee in connection with the negotiation, preparation, execution, stamping and registering or causing to be registered this Charge and any Security (or a copy thereof) with such government body or registrar as the Mortgagee reasonably requires;
- (e) costs resulting from the exercise or purported or attempted exercise or of any of the Mortgagee's rights or powers under this Charge;
- (f) all costs associated with the appointment, remuneration, actions and undertakings of an attorney or a Receiver under this Charge; and
- (g) any stamp duty loan duty or other duty or financial impost including duties and taxes on receipts or payments and any fines or penalties arising directly or indirectly,

in respect of this Charge and/or the Security or any transaction contemplated thereby.

26..2 The Mortgagor indemnifies the Mortgagee against any liability or loss arising from, and any costs, charges and expenses incurred in connection with:

- (a) the payment, omission to make payment or delay in making payment of an amount referred to in clause 26.1 ; or
- (b) an Event of Default; or

- (c) actions, proceedings, costs, claims and demands in connection with the Secured Property (including, without limitation, those arising from the use or occupation of or presence of any person on the Secured Property),

including in each case, without limitation, legal costs and expenses on a full indemnity basis or a solicitor and own client basis, whichever is the greater .

26..3 The Mortgagor agrees to pay the Mortgagee an amount equal to any liability, loss, costs, charges or expenses of the kind referred to in clause 26.2 suffered or incurred by:

- (a) any Receiver or other controller (as defined in the Corporations Act) appointed under or by virtue of this Charge or any attorney appointed under this Charge; or  
 (b) any employee, officer, agent or contractor of the Mortgagee or an entity referred to in sub-clause 26.3(a).

26..4 If a judgment, order or proof of debt in connection with the Money Secured is expressed in a currency other than the currency in which the Money Secured is due, then the Mortgagor indemnifies the Mortgagee against:

- (a) any difference arising from converting the other currency if the spot rate of exchange for converting the other currency into the due currency available to the Mortgagee when the Mortgagee receives a payment in the other currency is less favourable to the Mortgagee than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and  
 (b) the costs of conversion.

The Mortgagor acknowledges that it may be necessary to convert the other currency through more than one currency to ascertain the spot rate of exchange available to the Mortgagee.

26..5 Anything which the Mortgagor is required to do under this Charge must be done at the Mortgagor's cost.

## 27. NO DUTY OF ENQUIRY

27..1 It shall not be necessary for any purchaser or any other person dealing with the Mortgagee, or any Receiver, or any attorney appointed under this Charge or a person to whom is tendered for registration any instrument duly executed by any of them to inquire whether any money is in fact owing under this Charge, whether any default has been made, whether the power of sale or any other power which the Mortgagee may have exercised or attempted to exercise has properly arisen or been properly or regularly exercised or as to any other matter or thing in relation to the due execution of any power or otherwise. No such person shall be affected by express or constructive notice that the Money Secured has actually been paid or that default has not been made or that any such power has not arisen or been properly or regularly exercised.

## 28. INVESTIGATING ACCOUNTANTS

28..1 In addition to its other rights and powers under this Charge, the Mortgagee may in its discretion appoint accountants ("investigating accountants") to investigate the affairs and financial position of the Mortgagor and any subsidiary companies. In addition to being authorised by the Mortgagee under clause 8.1, the investigating accountants are authorised by the Mortgagor to take all actions which may be reasonably necessary for the purpose of their investigation, and the Mortgagor shall give them all reasonable assistance for that purpose.

28..2 The Mortgagor shall be liable for the costs and expenses of any investigation under this clause, and shall pay those costs and expenses on demand by the Mortgagee. The Mortgagee may advance to the Mortgagor an amount sufficient to pay those costs and expenses, and the Mortgagor authorises the Mortgagee:

- (a) to make such an advance;  
 (b) to debit the amount of the advance to an account in its name at the Mortgagee; and  
 (c) to pay that amount to the investigating accountants in payment of their costs and expenses.

Any amount so advanced shall form part of the Money Secured.

## 29. MORTGAGEE'S AND RECEIVER'S LIABILITY ON TAKING POSSESSION

If the Mortgagee or a Receiver exercises a right under this Charge, exercises its rights conferred by law or takes possession of all or any part of the Secured Property, then neither of them is liable to account as

mortgagee in possession or for any loss upon realisation or for any default or omission for which a mortgagee in possession might be liable.

**30. POWER OF ATTORNEY**

30..1 In addition to clause 24, the Mortgagor irrevocably appoints the Mortgagee, each Authorised Officer of the Mortgagee and any Receiver appointed by the Mortgagee, severally, as attorney of the Mortgagor, with power to in either the name of the Mortgagor or the attorney:

- (a) do all acts which ought to have been done by the Mortgagor under this Charge;
- (b) issue any demand, institute proceedings, defend proceedings or take any action in relation to the Secured Property;
- (c) take such actions and execute any documents necessary to more satisfactorily secure the Secured Property or which the Mortgagee considers necessary or expedient to exercising its rights hereunder; to more readily execute deeds including transfers of any estate or interest in land and instituting, conducting and defending legal proceedings);
- (d) do anything which the Mortgagor may lawfully authorise an attorney to do in connection with this Charge or the Secured Property or which in the attorney's opinion is necessary or expedient to give effect to any right, power or remedy conferred on the Mortgagee by this Charge, by law or otherwise;
- (e) delegate its powers (including, without limitation, this power of delegation) to any person for any period and may revoke a delegation; and
- (f) exercise or concur in exercising its powers even if the attorney has a conflict of duty in exercising its powers or has a direct or personal interest in the means or result of that exercise of powers.

30..2 The Mortgagor agrees to ratify anything done by an attorney or its delegate in accordance with this clause.

30..3 This power of attorney is granted for valuable consideration (the receipt of which is hereby acknowledged by the Mortgagor) as and by way of security for the payment of the Money Secured and is deemed irrevocable.

**31. NOTICES**

31..1 Any notice, consent or demand given in relation to this Charge shall be in writing in order to be valid and shall be deemed to have been duly served if it is:

- (a) posted by pre-paid post to:
  - (i) in the case of the Mortgagor to such address as the Mortgagor may from time to time notify to the Mortgagee or the last known place of abode or business of the Mortgagor known to the Mortgagee; and
  - (ii) in the case of the Mortgagee, such address as the Mortgagee may notify to the Mortgagor from time to time, and failing such notification to the registered office of the Mortgagee; or
- (b) sent by facsimile to the facsimile number specified in the Schedule hereto for the relevant party,

and shall be deemed to have been served:

- (c) in the case of posting, on the third day after posting, or
- (d) in the case of the facsimile on receipt of a transmission report confirming the successful transmission.

31..2 Any notice, consent or demand given by the Mortgagee may be given or made in writing signed by an officer of or solicitor for the Mortgagee and such writing may in addition to the methods of service contained in paragraph 31.1 be delivered personally to the Mortgagor or left at or upon the usual or last known place of abode or business of the Mortgagor.

31..3 The Mortgagor or the Mortgagee may from time to time by notice in writing given in accordance with this Mortgage nominate a new address and/or facsimile number for this purposes of clause 31.1, and such new address or facsimile notice shall apply from the date of service of such notice.

**32. PROSPECTIVE LIABILITY**

32..1 For the purposes only of section 282(3) of the Corporations Act 2001 the specified maximum amount of the prospective liability secured by this Charge is the amount referred to in Item 9. The nature of the prospective liability is as shown on the notice lodged with this Charge with the Australian Securities Commission, but nothing in this clause will:-

- (a) create any obligation on the Mortgagee to do any act or thing so as to increase or limit the amount of the Money Secured; or
- (b) limit or affect the provisions of section 279(2) of the Corporations Act 2001.

**33. ASSIGNMENT**

33..1 The Mortgagee may assign or otherwise dispose of or deal with its rights under this Charge. The Mortgagee may disclose to a potential assignee or any other person who is considering entering into contractual relations with the Mortgagee in connection with this Charge all information about the Mortgagor, any related document and any party to any Security and the transactions contemplated thereby as the Mortgagee considers appropriate.

33..2 The Mortgagor may not, without the Mortgagee's prior consent, create or allow to exist any Encumbrance over or an interest in this Charge or assign or otherwise dispose of or deal with its rights under this Charge.

**34. MISCELLANEOUS**

34..1 A certificate signed by the Mortgagee or its solicitors about a matter or about a sum payable to the Mortgagee in connection with this Charge is sufficient evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be false.

34..2 The Mortgagee or an attorney appointed under this Charge may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by the person does not prevent a further exercise of that or an exercise of any other right, power or remedy. Failure by the person to exercise or delay in exercising a right, power or remedy does not prevent its exercise. The person with the right, power or remedy is not liable for any loss caused by its exercise, attempted exercise, failure to exercise or delay in exercising it whether by reason of its negligence or otherwise.

34..3 Any present or future legislation which operates to vary the obligations of the Mortgagor in connection with this Charge, the Money Secured or the Secured Property with the result that the Mortgagee's right, powers or remedies are adversely affected (including, without limitation, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

34..4 The Mortgagee or any attorney appointed under this Charge may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion, unless this Charge expressly provides otherwise.

34..5 The rights, powers and remedies provided in this Charge are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Charge.

34..6 Each indemnity in this Charge is a continuing obligation, separate and independent from the other obligations of the Mortgagor and survives termination of this Charge. It is not necessary for the Mortgagee to incur expense or make payment before enforcing a right of indemnity conferred by this Charge.

34..7 Time is of the essence of this Charge in respect of an obligation of the Mortgagor to pay money.

34..8 The receipt of a Receiver or an Authorised Officer of the Mortgagee releases the person paying money to the Receiver or the Mortgagee in connection with this Charge from:

- (a) liability to enquire whether the Money Secured has become payable;
- (b) liability for the money paid or expressed to be received; and
- (c) being concerned to see to its application or being answerable or accountable for its loss or misapplication.

34..9 This Charge may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

**35. GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS**

35..1 This Charge shall be governed and construed in accordance with the laws of the State referred to in Item 10 (herein called "the State").

35..2 The Mortgagee irrevocably submits to and accepts to generally and unconditionally the non-exclusive jurisdiction of the Courts of the capital city of the State and the Appellant Courts of the State with respect to any legal action or proceedings which may be brought in any way relating to this Charge.

**36. PARTNERSHIP**

36..1 Where this Charge is given in respect of the indebtedness of a partnership:

- (a) this Charge shall be deemed to constitute a Charge entered by the various persons which may be included in the definition of the words "the Mortgagor" over their joint and several assets and to constitute separate charges by all of such persons and every one or more of them over all assets and property of such persons which are Secured Property and whether such assets and property are owned by such persons singularly or jointly and where two or more of such persons are now or may hereafter be trading in partnership over the assets of each and every such partnership;
- (b) this Charge shall continue to be binding notwithstanding any changes which may from time to time take place in the constitution of the partnership and notwithstanding that the partnership ceases to carry on business, and shall continue to bind the Mortgagor notwithstanding that the Mortgagor or one of the persons included in the definition of "the Mortgagor" is not a member of the partnership or having once been a member of the partnership the Mortgagor or one of the persons included in the definition of "the Mortgagor" is no longer a member thereof; and
- (c) the definition of "Money Secured" shall include all moneys, obligations and liabilities which are now or may hereafter become owing or payable to the Mortgagee by the Mortgagor singularly jointly or as a partner with any other person, or where the definition of "the Mortgagor" includes more than one person, by each person singularly jointly or as partners.

**37. COLLATERAL AGREEMENT**

37..1 The parties hereto agree:

- (a) this Charge is collateral to the Security for stamp duty purposes;
- (b) the Money Secured owing under this Charge is secured by the Security;
- (c) the Security shall be read and construed and be enforceable as if the covenants, conditions and provisions of this Charge, with necessary changes are read into and form part of the Security; and
- (d) a default under any of the Security will constitute a default of this Charge;

and vice versa.

37..2 Notwithstanding any provision contained in this Charge or any rule of law or equity to the contrary, the granting of any time or other indulgence by the Mortgagee to the Mortgagor or any Security Provider in relation to any existing or future default under any Security or this Charge shall not effect or diminish the Mortgagee's right to exercise its rights under the Security or this Charge at any subsequent time.

23  
THE SCHEDULE

**Item 1**

**Date of Execution:** 12<sup>th</sup> MAY 2006...

**Item 2**

**The Mortgagor:**

**Adelaide St Properties Pty Ltd A.C.N. 116 192 780 in its own right and as trustee for the Adelaide St Properties Discretionary Trust**  
Suite 3701, Level 37, 123 Eagle Street, Brisbane Q 4000

**Item 3**

**The Mortgagee:**

**PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913**  
C/- Level 4, 9 Beach Road, Surfers Paradise QLD 4217

**Item 4**

**The Borrower:**

**Carrington Management Pty Ltd A.C.N. 068 513 048 in its own and as trustee for the Carrington Discretionary Trust**  
Suite 3701, Level 37, 123 Eagle Street, Brisbane Q 4000

**Item 5**

**The Guarantor:**

**Peter Frederick O'Mara**  
Lot 1 Duranbah Road, Duranbah NSW 2487

**Adelaide St Properties Pty Ltd A.C.N. 116 192 780 in its own right and as trustee for the Adelaide St Properties Discretionary Trust**  
Suite 3701, Level 37, 123 Eagle Street, Brisbane Q 4000

**Lismore Seniors Accommodation Pty Ltd A.C.N. 114 962 159**  
Manion McCosker, Level 10, 15-19 Bent Street, Sydney NSW 2000

**Item 6**

**Secured Agreement**

Loan Agreement intended to be executed and dated on the same date hereof between the Borrower and the Mortgagee.

**Item 7**

**Security**

- (a) Deed of Guarantee and Indemnity intended to be executed on the same date as this Agreement and delivered by the Guarantor in favour of the Lender.

- (b) Mortgage intended to be executed on the same date as this Agreement by **Adelaide St Properties Pty Ltd A.C.N. 116 192 780** as trustee for the **Adelaide St Properties Discretionary Trust** as the mortgagor and the Lender as the Mortgagee over land situated at 15 Adelaide Drive, Caboolture South Q 4510 being all that land described as Lot 2 on SP 140132 Title Reference 50364126 to be registered as a first mortgage;
- (c) Registered Deed of Charge intended to be executed on the same date as this Agreement by **Carrington Management Pty Ltd A.C.N. 068 513 048** in its own right and as trustee for the Carrington Discretionary Trust as mortgagor in favour of the Lender as mortgagee over all the property, assets and undertaking of **Carrington Management Pty Ltd A.C.N. 068 513 048** in its own right and as trustee of the Carrington Discretionary Trust of whatsoever nature and kind and wheresoever situated, present and future.
- (d) First registered Deed of Charge intended to be executed on the same date as this Agreement by **Adelaide St Properties Pty Ltd A.C.N. 116 192 780** in its own right and as trustee of the Adelaide St Properties Discretionary Trust as mortgagor in favour of the Lender as mortgagee over all the property, assets and undertaking of **Adelaide St Properties Pty Ltd A.C.N. 116 192 780** in its own right and as trustee for the Adelaide St Properties Discretionary Trust of whatsoever nature and kind and wheresoever situated, present and future.

**Item 8****Address for Notices (Clause 31)**

(a) Mortgagor: **Adelaide St Properties Pty Ltd A.C.N. 116 192 780**  
 Address: Suite 3701, Level 37, 123 Eagle Street, Brisbane Q 4000  
 Facsimile No.: (07) 3236 0444

(b) Mortgagee: **PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913**  
 Address: C/- Level 4, 9 Beach Road Surfers Paradise 4217  
 Facsimile No.: 07 5592 2505

**Item 9**

**Maximum Prospective Liability (clause 32)** Forty-Three Million Dollars (\$43,000,000.00)

**Item 10**

**Governing law (clause 35)** Queensland

**Item 11****Fixed Assets (clause 4.1(b))**

- (a) All plans and specifications, development approvals, building approvals and other approvals or consents relating in whole or in part to 15 Adelaide Drive, Caboolture South Q 4510 being all that land described as Lot 2 on SP 140132 Title Reference 50364126 (the "Development").
- (b) Any building contract as amended varied or supplemented from time to time and any other contract or arrangement whether verbal written or created in any way for the doing of any work on the Development.
- (c) All agreements for sale or options in respect of the whole or any part of the Development and any other contract for sale or dealing with that Development including any amendment or variation to any agreement for sale or option.

- (d) All deposits paid in respect of any agreement for sale referred to in sub-paragraph (c) including any deposit bonds and bank guarantees.







024337196

Form 311B

Corporations Act 2001  
268(2) & (3)

# Notification of change of details of a charge

If there is insufficient space in any section of the form, you may attach an annexure. (See annexure requirements in guide)

## Company details (chargor)

Company name

ADELAIDE ST PROPERTIES PTY LTD

ACN/ARBN/ABN

ACN 116 192 780

## Lodgement details

Who should ASIC contact if there is a query about this form?

Firm/organisation

Deacons

Contact name/position description

2640494

ASIC registered agent number (if applicable)

5401 (Brisbane)

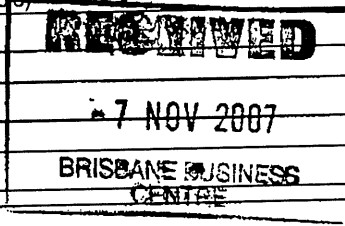
Telephone number

(07) 3309 0888

Postal address or DX address

GPO Box 407, Brisbane, QLD 4001

Brisbane



## 1 Charge details

ASIC charge number (or State or Territory charge number and State or Territory of registration)

1299737

Charge type

Fixed

Floating

Fixed and Floating

Name of current chargee

PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913

Former name(s) if any

Date of change

29/10/07  
[D] [D] [M] [M] [Y] [Y]

## 2 Liability

Have the terms of the charge been varied with the effect of increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge?

Yes

No If no, go to 3 Subsequent charges.

Briefly describe the new liability secured by the charge

The Mortgagor and the Lender agree to vary the fixed and floating company charge by the Mortgagor dated 15 May 2006 (ASIC registered number 1299737) by deleting "\$43,000,000.00" in item 9 of the Schedule and replacing it with "\$60,000,000.00".

### 3 Subsequent charges

Have the terms of the charge been varied with the effect of prohibiting or restricting the creation of subsequent charges on the property?

- Yes  
 No

Fully describe the changes

### 4 Documents

If the variation(s) included on this form have been effected by an instrument, you must attach the signed original instrument or a copy of that instrument.

### Signature

Name of person signing

**PETER FREDERICK O'MARA**

Capacity

- The chargor  
 A service provider/agent to the chargor

Authority under which this change of details of a charge is lodged (for chargor, e.g. director; for service provider, e.g. solicitor)

Director

Tick one box


- The original of the instrument(s) effecting the variation is attached

OR

- I certify the annexure marked ( ) of ( ) pages is a true copy of the instrument(s) effecting the variation

I certify that the information in this form is true and complete and that I am lodging this notification of change of details of a charge as, or on behalf of, the chargor and have the authority to do so.

Signature



Date signed

29/10/07  
[D] [D] [M] [M] [Y] [Y]

### Lodgement

Send completed and signed forms to:  
Australian Securities and Investments Commission,  
PO Box 4000, Gippsland Mail Centre VIC 3841

Or lodge the form electronically by visiting the ASIC website [www.asic.gov.au](http://www.asic.gov.au)

For help or more information

Telephone 1300 300 630  
Email [info.enquiries@asic.gov.au](mailto:info.enquiries@asic.gov.au)  
Web [www.asic.gov.au](http://www.asic.gov.au)

DEED OF VARIATION OF CHARGE

**BETWEEN:** Adelaide St Properties Pty Ltd ACN 116 192 780 in its own right and as trustee for the Adelaide St Properties Discretionary Trust (the "Mortgagor")

**AND:** Permanent Trustee Australia Limited ACN 008 412 913 as Custodian for the LM First Mortgage Income Fund ARSN 089 343 288 (the "Lender")

The Mortgagor and the Lender agree to vary the fixed and floating company charge by the Mortgagor dated 15 May, 2006 (ASIC registered number 1299737) by deleting "\$43,000,000.00" in item 9 of the Schedule and replacing it with "\$60,000,000.00".

Executed as a Deed on 29<sup>th</sup> day of October 2007.

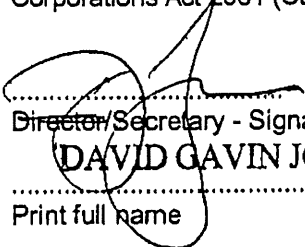
EXECUTED by Adelaide St Properties Pty Ltd ACN 116 192 780 in its own right and as trustee for the Adelaide St Properties Discretionary Trust in accordance with section 127 of the Corporations Act 2001 (Cth):



.....  
Director - Signature

**PETER FREDERICK O'MARA**

.....  
Print full name



.....  
Director/Secretary - Signature  
**DAVID GAVIN JOHNSON**  
.....  
Print full name

|| This document was lodged by DEACONS in  
the Department of Natural Resources  
on 16 / 5 / 2006  
under Dealing No 709597331

*Duty Imprint*  
**QUEENSLAND DUTY PAID**  
Collateral to \$ 6,950,000.00 —  
(DUPL)  
13A-9054  
Signed: *[Signature]* 15/05/06

<b>1. Interest being mortgaged</b> (if share show fraction) Fee Simple	<b>Lodger</b> (Name, address & phone number) Deacons Level 17, 175 Eagle Street Brisbane QLD 4000 3309 0888 FLA:2594392	<b>Lodger Code</b> 055
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<b>2. Lot on Plan Description</b> Lot 2 on SP 140132	<b>County</b> Stanley	<b>Parish</b> Caboolture	<b>Title Reference</b> 50364126
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**3. Mortgagor**  
ADELAIDE ST PROPERTIES PTY LTD ACN 116 192 780 as trustee under instrument number 709597321.

<b>4. Mortgagee</b>	Given names	Surname/Company name and Number PERMANENT TRUSTEE AUSTRALIA LTD ACN 008 412 913	(include tenancy if more than one)
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**5. Description of debt or liability secured**  
The Money Secured as defined by Document No. 704075487

**6. Covenant/Execution** The Mortgagor covenants with the Mortgagee in terms of the attached schedule and standard terms document no. 704075487 and charges the estate or interest described in item 1 with the repayment/payment to the Mortgagee of all sums of money referred to in item 5.

**NOTE: Separate executions are required for each mortgagor and mortgagee.**  
**Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994**

**Witnessing Officer** (signature, full name & qualification)

**Execution Date**

**Mortgagor's Signature**

10 / 5 / 06

Adelaide St Properties Pty Ltd ACN 116 192 780

*[Signature]*  
Peter Frederick O' Mara (Director)

*[Signature]*  
David Gavin Johnson (Company Secretary)

**Witnessing Officer** (signature, full name & qualification)

**Execution Date**

**\*Mortgagee's Solicitor's Signature**

/ /

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

\*Note: A Solicitor is required to print full name if signing on behalf of the Mortgagee and no witness is required in this instance

**QUEENSLAND DUTY PAID**  
Collateral to \$ 18,724,271.00  
13A-9054  
Signed: *[Signature]* 8 / 11 / 07

Title Reference 50364126

This is the schedule referred to in items 5 and 6 of Mortgage dated 10 / 5 / 06

**1. Definitions**

- 1.1 The Mortgagor acknowledges that in this Mortgage, a reference to "**Loan Amount**" has the meaning given to it in the Transaction Documents and **Borrower** means Carrington Management Pty Ltd ACN 068 513 048 in its own right and as trustee for the Carrington Discretionary Trust.

**2. General Covenants**

- 2.1 The provisions of the Document are incorporated in and form part of this Mortgage as if fully set out in this Mortgage.
- 2.2 The Mortgagor must comply with every provision of this Mortgage (including the provisions of the Document).
- 2.3 Before executing this Mortgage, the Mortgagor received a copy of this Mortgage and the Document and read and understood them.

**3. Consumer Credit Legislation**

- 3.1 The Mortgagor declares that the Money Secured has been provided by the Mortgagee wholly or predominantly for business or investment purposes and the Mortgagor warrants that the *Consumer Credit Code* has no application to the Money Secured or this Mortgage.

**4. Mortgagee's Limitation of Liability**

- 4.1 The Mortgagee enters into this agreement and each other Security, and the Mortgagor acknowledges it is aware that the Mortgagee enters into this Mortgage and each other Security, only in its capacity as Custodian of the LM Mortgage Income Fund ARSN 089 343 288 ("Trust"), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited ACN 077 208 461 dated 4 February 1999 ("Custody Agreement") and in no other capacity and the Mortgagor is aware of the limited scope of the Mortgagee's obligations and powers under that Custody Agreement;
- 4.2 A liability arising under or in connection with this Mortgage is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Mortgage and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Mortgage.
- 4.3 The parties other than the Mortgagee may not sue Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- 4.4 The provisions of this clause 4 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.

Title Reference 50364126

- 4.5 Despite any other provision in this Mortgage, if any obligation otherwise imposed upon the Mortgagee under this Mortgage is, in Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by LM Investment Management Limited ACN 077 208 461 in its capacity as Responsible Entity of the Trust.
- 4.6 Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Mortgage.
- 4.7 The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Mortgage is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- 4.8 No attorney, agent, receiver or receiver and manager appointed in accordance with this Mortgage or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 4.4.
- 4.9 The Mortgagee is not obliged to do or refrain from doing anything under this Mortgage (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
- 4.10 A failure by the Mortgagee to comply with or a breach by the Mortgagee of any of its obligations under this Mortgage will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
- (1) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
  - (2) was in accordance with a lawful court order or direction or otherwise required by law.
- 4.11 All of the terms, clauses and conditions of this Mortgage are subject to this clause 4.



Deacons

# Permanent Trustee Australia Limited

ACN 008 412 913 as custodian of the LM Mortgage Income Fund

## Memorandum of Common Provisions 704075487

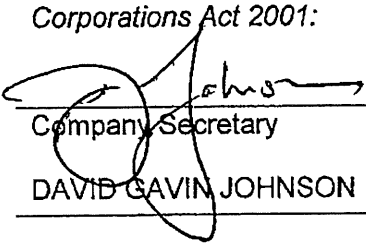
This is a copy of the standard terms document filed in the Department of Natural Resources, Brisbane, Queensland under dealing no. 704075487

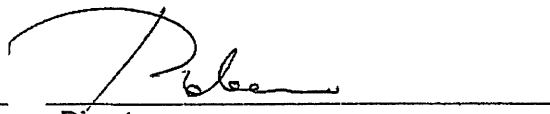
### Acknowledgment

The undersigned acknowledges having read the provisions contained in Document 704075487 and agrees to be bound by the provisions contained in this Document which forms part of the Mortgage from **Adelaide St Properties Pty Ltd** ACN 116 192 780 in its own right and as trustee for the Adelaide St Properties Discretionary Trust to Permanent Trustee Australia Limited over the property described as Lot 2 on SP 140132, County of Stanley, Parish of Caboolture, contained in Title Reference 50364126 and located at 15 Adelaide Drive, Caboolture South.

Dated 10<sup>th</sup> MAY 2006.

Executed by **Adelaide St Properties Pty Ltd** A.C.N 116 192 in its own right and as trustee for the Adelaide St Properties Discretionary Trust in accordance with section 127 of the *Corporations Act 2001*:

  
\_\_\_\_\_  
Company Secretary  
DAVID GAVIN JOHNSON

  
\_\_\_\_\_  
Director  
PETER FREDERICK O'MARA



**1. INTERPRETATION****1.1 Definitions**

In this document, unless the context otherwise requires:

"Accounts" in relation to:

- (a) a corporation, has the same meaning as in section 9 of the Corporations Law but, where this document requires Accounts to be delivered to the Mortgagee, includes:
  - (i) trading profit and loss accounts, balance sheet, depreciation schedule and annual return of the corporation for the Accounting Period;
  - (ii) directors' reports required under the Corporations Law; and
  - (iii) any auditor's report required under the Corporations Law;
- (b) an individual, means signed asset and liability statements (in a form approved by the Mortgagee), income tax returns and other accounting records maintained by or on behalf of that person for the Accounting Period;

"Accounting Period" means each period of twelve months ending on the 30th day of June of each year or such other accounting period as may be required by the Mortgagee from time to time;

"Administrator" has the same meaning as in the Corporations Law;

"Agreement" means and includes any contract, agreement, arrangement or understanding (as amended, varied or replaced from time to time) at any time (before or after the date hereof) made between the Mortgagor or any Security Provider (either alone or jointly with any other person) and the Mortgagee under which the Mortgagee has provided or agreed to provide to or for the benefit or at the request or by the direction or under the authority of the Mortgagor or any Security Provider (either alone or jointly with any other person) a cash, credit or other finance facility or financial accommodation;

"Attorney" means any attorney appointed pursuant to this document and any person who derives by delegation a right directly or indirectly from an Attorney;

"Australian Dollars" and "AUD" means the lawful currency of Australia;

"Authorised Representative" means:

- (a) in relation to the Mortgagee:
  - (i) an employee of the Mortgagee whose title contains the words "director" or "manager";
  - (ii) a person performing the functions of any of them; and
  - (iii) a lawyer acting for the Mortgagee; and
- (b) in relation to any party to this document:
  - (i) if that party is a corporation, a director or secretary of that party; and
  - (ii) a person appointed by that party to act as an Authorised Representative for the purpose of this document whose appointment is notified in writing by the appointor to the other party and a specimen of whose signature is given to the other party;

"Bankrupt" means in relation to:

- (a) a corporation, being under administration, official management or in provisional liquidation or liquidation on the grounds of its insolvency or the subject of anything analogous to or having similar effect under the law of any relevant jurisdiction; and

(b) an individual, being an insolvent under administration;

"**Borrower**" means the person described as such in a Transaction Documents, or in any Agreement and any person for whom the Mortgagor gives a Collateral Security;

"**Business Day**" means a day which is not a Saturday, Sunday or other day on which the Mortgagee or trading banks generally are closed or obliged to close in Brisbane;

"**Collateral Security**" means:

(a) any Guarantee by which any person guarantees:

- (i) payment by the Mortgagor of the Money Secured;
- (ii) payment by any person of money the payment of which is guaranteed by the Mortgagor;

(b) any Security, other than this document, from the Mortgagor or the Borrower which secures the payment of the Money Secured;

(c) any Security from any other person which secures the payment of moneys owing (actually or contingently) from time to time under a Guarantee contemplated by paragraph (a) of this definition;

"**Compensation Event**" means:

- (a) the occurrence of a Resumption; or
- (b) the imposition or variation of a planning instrument or an order affecting the Secured Property; or
- (c) the restriction of a right to use or develop the Secured Property,

in relation to which the Mortgagor has a right to compensation or any other payment;

"**Contract**" means a contract or other document in connection with Works including, without limitation, the plans and specifications;

"**Control**" of a corporation includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation;

"**Controller**" has the same meaning as in the Corporations Law;

"**Corporations Law**" means the Corporations Law in each Australian jurisdiction;

"**Cover Sheet**" means any instrument however described which incorporates this memorandum by reference and shall include Form 2 of this Mortgage;

"**Encumbrance**" in relation to any property means:

- (a) any interest in or right over the property; and
- (b) anything which prevents, restricts or delays the registration of any interest in or dealing with the property,

and includes a Security Interest;

"**Environmental Legislation**" means any law, regulation, statute, code, treaty, licence, condition or ordinance relating to environmental matters including, without limitation, land use and development, planning, pollution, waste disposal, toxic and hazardous substances, conservation of natural or cultural resources, resource allocation, rehabilitation, contamination, health, safety and occupational health and safety;

**"Environmental Liability"** means any obligation, expense, penalty, fine, costs, damages and expense which could be imposed on the Mortgagor or the Mortgagee directly or indirectly arising from a breach of any Environmental Legislation by any person or as a result of the retrospective effect of any Environmental Legislation in relation to the Secured Property;

**"Event of Default"** means any event defined as such in a Transaction Document or in **clause 14.1 of this document, clause 12 of schedule 1, clause 3 of schedule 2, clause 3 of schedule 4 or clause 8 of schedule 5** of this document or otherwise is or has the effect of being an event of default under any Transaction Document;

**"Finance Hiring"** means:

- (a) a finance lease within the meaning of the applicable accounting standards;
- (b) a hire purchase of property, created by one or more agreements, under which:
  - (i) property is leased and the lessee may buy that property or the ownership of it may or will pass to the lessee; or
  - (ii) property is sold by instalments but ownership of the property does not pass to the purchaser at the time of the agreement or, in the case of goods, delivery; and
- (c) an agreement to enter into a transaction of the type referred to in this definition;

**"Financial Indebtedness"** of a person means any indebtedness or other liability (whether present or future, actual or contingent) relating to any financial accommodation granted to it, or relating to any Guarantee given by it, including without limitation, indebtedness or other liability:

- (a) for moneys borrowed or raised by that person;
- (b) relating to the sale or negotiation of any negotiable instrument;
- (c) as lessee or purchaser under any Finance Hiring;
- (d) relating to any redeemable preference share issued by that person;
- (e) under any currency or interest rate swap agreement, forward exchange rate agreement or futures contract (as defined in the Corporations Law) to which that person is a party; and
- (f) under any put or call option granted by that person over any property;

**"Financial Year"** means a period of 12 calendar months ending on 30 June;

**"FOLR Act"** means the Foreign Ownership of Land Register Act 1988;

**"Government Body"** means:

- (a) any person, body politic or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted under a law of any country or political subdivision of any country; and
- (c) any person deriving by delegation a right directly or indirectly from any other Government Body;

**"Guarantee"** means:

- (a) any guarantee, indemnity, undertaking, letter of credit, Security, acceptance or endorsement of a negotiable instrument or other obligation given by any person to secure compliance with an obligation by another person;

- (b) any obligation (actual or contingent) to ensure the solvency of or the ability of another person to comply with an obligation, including, without limitation, by the advance of money or the acquisition for valuable consideration of property or services; and
- (c) any option under which a person is obliged upon the exercise of the option to buy:
  - (i) any debt or liability owed by another person; or
  - (ii) any property which is subject to a Security Interest;

**"Improvements"** means any improvements, fixtures, plant or machinery affixed to or used with any property;

**"Indicator Rate"** means the indicator lending rate for corporate and commercial loans of AUD100,000.00 or more, as determined by the Mortgagee from time to time;

**"Insurance"** means the insurance which the Mortgagor is obliged to take out and maintain pursuant to this document;

**"Licence"** means a licence issued under Liquor Legislation;

**"Liquor Legislation"** means legislation governing the sale, disposal or consumption of liquor or the licensing of premises on which liquor is sold, disposed of or consumed;

**"Material Adverse Effect"** means a material adverse effect upon either:

- (a) the ability of the Mortgagor to comply with its obligations under this document;
- (b) the effectiveness, priority or enforceability of any Collateral Security; or
- (c) the financial position, management or business operations of the Mortgagor;

**"Money Secured"** includes:

- (a) the Loan Amount;
- (b) all moneys hereby deemed to be principal in arrears;
- (c) all money now or hereafter owing or payable to the Lender by the Borrower, and/or the Security Provider either alone or jointly with another person now or in the future, whether directly or indirectly or contingently under this Agreement or on any other account whatsoever, and including all such money arising from:
  - (ii) any guarantee, deed, indemnity, bond, account, document or other agreement in writing including the Security;
  - (iii) interest payable on the Money Secured including interest which has been capitalised;
  - (iv) interest on any judgment entered by the Lender against the Borrower, and/or the Security Provider in respect of the Money Secured;
  - (v) all costs, expenses or losses incurred or sustained by the Lender in relation to any failure by the Borrower or the Security Provider to comply with the terms of the Security; and
  - (vi) all advances, further advances, loans, credits or financial accommodation whether made created or given on or before the signing hereof or that may hereafter be made created or given by the Lender in its absolute discretion to for or on account of or at the expressed or implied request of the Borrower and/or the Security Provider;

- (d) postage, commissions, valuation fees, fees, charges and expenses relating to the advance hereunder and the Security, according to the usage and course of business of the Lender (inclusive of the Loan Monitoring Fee and the Fidelity Insurance Contribution Fee);
- (e) stamp duty, financial institutions duty or any other levy, financial impost or tax payable according to law or arising out of or in connection with the Security;
- (f) all costs charges and expenses incurred by the Lender in enforcing the terms of the Security (including legal expenses on a full indemnity basis or a solicitor and own client basis, whichever is the greater) which in the Lender's opinion are required or desirable for or in connection with:
- (i) the drawing accepting or discounting of any bill of exchange at the request of, or for the accommodation of, the Borrower and/or the Security Provider under the Security;
  - (ii) the Lender protecting its interest under the Security including all moneys which the Lender or any receiver or any attorney appointed under any security may have paid or may pay in the exercise or enforcement or attempted exercise or enforcement of any right power or remedy conferred on the Lender by the Security;
  - (iii) the preparation, execution, stamping or registration of the Security;
  - (iv) full or partial release or discharge from, transfer or variation of the Security;
  - (v) any advice in respect of the Security;
  - (vi) any breach of or default of any covenant contained or implied in the Security; or
  - (vii) the Lender making good any default by any party (other than a default by the Lender) under the Security,

or any rights which the Lender may have under any law,

**AND SHALL** where the context so admits mean and include any part of the Money Secured.

**"this Mortgage"** or **"this document"** means the Form 2 Mortgage, and schedules, annexures or enlarged panels attached to the Form 2 Mortgage or this memorandum and this memorandum;

**"Mortgagee"** means the person described as such in the Cover Sheet;

**"Mortgagor"** means the person described as such in the Cover Sheet;

**"Permitted Encumbrance"** means an Encumbrance which:

- (a) has been approved by the Mortgagee; or
- (b) which is a Security Interest arising by operation of law or statute to secure the payment of Taxes or moneys for services performed in relation to property while those Taxes or moneys are not due for payment;

**"Potential Event of Default"** means any thing which with the giving of notice, lapse of time or determination of materiality will constitute an Event of Default;

**"Receiver"** means a receiver or receiver and manager appointed by the Mortgagee under this document and any person who derives a right directly or indirectly from any Receiver;

**"Registrar"** means the Registrar under the FOLR Act or relevant registering authority under the FOLR Act, as applicable;

"**Related Body Corporate**" has the same meaning as in the Corporations Law;

"**Remedy Proceeds**" means any moneys received from the exercise of any right against the Secured Property other than foreclosure;

"**Rent Proceeds**" means the proceeds of any Rents;

"**Rents**" means the rents and profits of the Secured Property;

"**Representative**" of a person means an officer, employee, contractor and agent of that person;

"**Resumption**" means a resumption, appropriation or compulsory acquisition of the Secured Property under a statute or otherwise including, without limitation, a restriction or order under which compensation is payable in connection with the Secured Property;

"**Secured Property**" means the right title and interest of the Mortgagor in the land described in the Cover Sheet together with any Improvements;

"**Security**" means any document or transaction which reserves or creates a Security Interest;

"**Security Interest**" means any interest in or right over property, including without limitation:

- (a) any retention of title to property; or
- (b) any right to set-off or withhold payment of any deposit or other moneys,

which secures the payment of a debt or other monetary obligation or the compliance with any other obligation;

"**Security Provider**" means a person who gives a Collateral Security;

"**Subsidiary**" has the same meaning as in the Corporations Law;

"**Taxes**" means any present or future taxes, rates, levies, imposts, deductions, withholdings, financial institutions duty, charges and duties (other than a tax on the net overall income of the Mortgagee) which may be incurred in any jurisdiction and any interest, penalty, fine or expense relating to any of them;

"**Title Documents**" means all documents for the time being or from time to time evidencing title or relating to the Secured Property or to the Money Secured including, without limitation, Certificates of Title, Crown Grants, leases, licences, surveys, insurance policies and certificates issued by any Government Body;

"**Transaction Documents**" means this document, any secured agreement, any security, loan agreement or guarantee.

"**Transaction Party**" means a party to the Transaction Documents other than the Mortgagee; and

"**Works**" means any development, subdivision, construction or demolition work or earthworks on the Secured Property.

## 1.2 Construction

In this document, unless the context otherwise requires:

- (a) words importing:
  - (i) the singular include the plural and vice versa; and
  - (ii) any gender includes the other genders;

## SCHEDULE

- (b) an agreement, representation, warranty, undertaking or covenant on the part of or in favour of two or more persons binds or is for the benefit of them, jointly and severally;
- (c) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (d) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation and Government Body;
  - (ii) a person includes the legal personal representatives, successors and assigns and substitutes (including, without limitation, persons taking by novation) of that person;
  - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (iv) this or any other document referred to in this document includes the document as varied or replaced, and notwithstanding any change in the identity of the parties;
  - (v) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
  - (vi) time is to local time in Brisbane;
  - (vii) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
  - (viii) a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next calendar month but if a corresponding day does not occur in the next calendar month the period shall end on the last day of that next calendar month;
  - (ix) a right includes a benefit remedy, authority, discretion and power;
  - (x) an obligation includes any warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (xi) the provisions of this document or any other document, agreement, understanding or arrangement includes a reference to both express and implied provisions; and
  - (xii) clauses and schedules is a reference to clauses and schedules in this memorandum.

**1.3 Headings**

Headings shall be ignored in construing this document.

**1.4 Inconsistency**

If there is an inconsistency between:

- (a) the wording of this memorandum and the Cover Sheet; or
- (b) the wording of this document and the provisions of any instrument described in the Schedule to the Cover Sheet;

then the wording in the Cover Sheet or the instrument described in the Schedule to the Cover Sheet, as the case may be, prevails.

**2. DISCHARGE**

The Mortgagee shall at the request of the Mortgagor execute a discharge of this document if the Mortgagor's obligation to pay the Money Secured is satisfied and in the Mortgagee's reasonable opinion:

- 2.1 there is no prospect that moneys or damages will become owing (whether actually or contingently) by the Mortgagor to the Mortgagee; and
- 2.2 no payment towards the satisfaction of the Mortgagor's obligation to pay the Money Secured is likely to be void or voidable as a preference under any law relating to bankruptcy.

**3. RESTRICTIONS ON DEALING WITH SECURED PROPERTY****3.1 Dealings**

The Mortgagor may not, without the consent of the Mortgagee:

- (a) dispose of, deal with or part with possession of any estate or interest in;
  - (i) the Secured Property;
  - (ii) the Rents or Rent Proceeds; or
  - (iii) any rights or benefits in connection with the Secured Property (including, without limitation, rights to air space, plot ratio, floor space ratio or other similar ratio);
- (b) create or allow to come into existence an Encumbrance which affects the Secured Property, the Rents or the Rent Proceeds except a Permitted Encumbrance;
- (c) dedicate for any public purpose, subdivide, consolidate or amalgamate the Secured Property;
- (d) grant or accept the surrender of any lease of the Secured Property including, without limitation, under the powers of leasing and accepting surrenders of leases conferred by statute or general law;
- (e) consent to the subletting of, give a licence to use or occupy or part with possession of the Secured Property; or
- (f) release, grant or vary an easement or covenant which affects or benefits the Secured Property.

**3.2 Further Security**

The Mortgagor agrees to mortgage any estate or interest in other land or other property it acquires:

- (a) under **clause 8.5(a)**;
- (b) as a consequence of ownership of the Secured Property; or
- (c) as a consequence of a surrender, Resumption or exchange of any estate or interest in the Secured Property,

as further security for payment of the Money Secured on the same terms as this document. The Mortgagor agrees to execute in favour of the Mortgagee a mortgage of the acquired estate or interest on the same terms as this document or on similar terms acceptable to the Mortgagee.

**3.3 Priority Agreement**

If the Mortgagor creates or allows to exist a Security Interest other than a Permitted Encumbrance over the Secured Property without the consent of the Mortgagee, then:



- (g) the Mortgagor must procure a priority agreement between the person holding that Security Interest and the Mortgagee in a form and on terms acceptable to the Mortgagee; and
- (h) despite anything contained in this document or any Transaction Documents, the Mortgagee need not provide any further accommodation which would form part of the Money Secured until the Mortgagor procures a priority agreement to be entered into between the person holding that Security Interest and the Mortgagee in a form and on terms acceptable to the Mortgagee. The Mortgagee's other rights which arise if the Mortgagor so creates or allows to exist a Security Interest are not affected by this clause.

### 3.4 Rents

- (a) The Mortgagor may, subject to this **clause 3.4** and to any obligation of the Mortgagor under any Transaction Documents, collect and apply the Rent Proceeds in the ordinary course of its ordinary business.
- (b) If:
  - (i) an Event of Default occurs;
  - (ii) any action is taken by any person, other than the Mortgagor or the Mortgagee, to claim, execute or attach the Rents or Rent Proceeds or to obtain an interest in them ranking in priority before the Mortgagee's interest in them under this document;
  - (iii) any action is taken to issue to any person to whom the Rent is due for payment or accruing or may become due for payment to the Mortgagor, a notice under section 218 of the Income Tax Assessment Act or section 74 of the Sales Tax Assessment Act in relation to Taxes owed by the Mortgagor;the Mortgagor shall immediately:
  - (iv) pay any Rent Proceeds then held or paid in the future into an account nominated by the Mortgagee and of which the Mortgagee is the sole or joint signatory;
  - (v) assign in writing the Rents to the Mortgagee to secure payment of the Money Secured; and
  - (vi) give written notice of that assignment to the person liable to pay the Rents.

## 4. PAYMENT OF MONEY SECURED

### 4.1 Place, Manner and Time of Payment

The Mortgagor, subject to **clause 14.3**, shall pay the Money Secured to the Mortgagee in accordance with any agreement which obliges the Mortgagor to pay it and in the absence of agreement:

- (a) upon demand at a place and in a manner reasonably required by the Mortgagee;
- (b) by 2.00 p.m. local time in the place where payment is to be made; and
- (c) in immediately available funds and without set-off, counter claims, conditions or, unless required by law, deductions or withholdings.

### 4.2 Currency of Payment

- (a) The Mortgagor shall pay the Money Secured in the currency in which it is payable under any agreement which obliges the Mortgagor to pay it and in the absence of agreement in the currency reasonably required by the Mortgagee.

## SCHEDULE

- (b) If the Mortgagee accepts a payment under this document in a currency other than that required by **clause 4.2(a)** that payment will not satisfy the amount due for payment except to the extent that the Mortgagee could in the ordinary course of its business buy with the payment received the required currency at the time of or within a reasonable time of receipt after the deduction of all costs relating to the purchase.

**4.3 Appropriation**

The Mortgagee may, subject to any express provision in this document to the contrary, appropriate any payment towards the satisfaction of any moneys due for payment by the Mortgagor in relation to this document in any way that the Mortgagee thinks fit and notwithstanding any purported appropriation by the Mortgagor.

**4.4 Payments in Gross**

The Mortgagee in applying towards satisfaction of the Money Secured any moneys received by it shall credit the Mortgagor only with that part of those moneys which is actually received by the Mortgagee in immediately available funds.

**4.5 Gross Up**

If the Mortgagor is required by law to deduct or withhold Taxes from any payment to the Mortgagee it shall:

- (a) make the required deductions and withholdings;
- (b) pay in accordance with the relevant law the full amount deducted or withheld;
- (c) deliver to the Mortgagee the receipt for each payment; and
- (d) increase the amount of the payment to the Mortgagee to an amount which will result in the receipt by the Mortgagee of the full amount which would have been payable to the Mortgagee if no deduction or withholding had been required.

The Mortgagor is not obliged to make a payment under this **clause 4.5**, if the obligation would be a covenant or stipulation which is void under Section 261 of the Income Tax Assessment Act.

**5. INTEREST****5.1 Interest**

The Mortgagor shall pay interest on that part of the Money Secured which is from time to time owing by the Mortgagor to the Mortgagee.

**5.2 Rate and Calculation**

- (a) Interest shall be paid in accordance with any agreement requiring interest to be paid on the Money Secured.
- (b) In the absence of any agreement, the applicable interest rate will be the aggregate of the Indicator Rate and 5% per annum and interest will:
  - (i) accrue from day to day;
  - (ii) be computed from and including the day when the Money Secured become owing to the Mortgagee by the Mortgagor until but excluding the day of payment; and
  - (iii) be calculated on the actual number of days elapsed on the basis of a 365 day year.

**5.3 Capitalisation**

The Mortgagee may:

- (a) capitalise any part of any interest which becomes due for payment or due for payment on demand at the times determined by the Mortgagee and if no determination is made, monthly, and interest shall be payable in accordance with this document upon capitalised interest; and
- (b) continue to capitalise interest notwithstanding that as between the Mortgagee and the Mortgagor the relationship of Mortgagor and Mortgagee may have ceased, any composition may have been entered into or agreed to by the Mortgagee, any judgment or order may have been made against the Mortgagor or any other thing.

#### 5.4 Merger

If the liability of the Mortgagor to pay to the Mortgagee any moneys payable under this document becomes merged in any deed, judgment, order or other thing the Mortgagor shall pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under this document and that fixed by or payable under that deed, judgment, order or other thing.

### 6. REPRESENTATIONS AND WARRANTIES

#### 6.1 Nature

The Mortgagor represents and warrants that:

- (a) each corporate Transaction Party is duly incorporated in accordance with the laws of its place of incorporation as stated in the Transaction Documents, validly exists under those laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted;
- (b) each Transaction Documents is enforceable by the Mortgagee in accordance with its terms and is not void or voidable;
- (c) the Insurance is enforceable against the insurer in accordance with its terms and is not void or voidable;
- (d) each Transaction Party has capacity unconditionally to execute and deliver and comply with its obligations under the Transaction Documents;
- (e) each Transaction Party has taken all necessary action to authorise the unconditional execution and delivery of and the compliance with its obligations under the Transaction Documents;
- (f) each authorisation from and filing and registration with a Government Body necessary to enable:
  - (i) each Transaction Party unconditionally to execute and deliver and comply with its obligations under the Transaction Documents and carry on its principal business or activity; or
  - (ii) the Mortgagee to exercise its rights under the Transaction Documents,has been obtained, effected and complied with;
- (g) the unconditional execution and delivery of and compliance with its obligations by each Transaction Party under the Transaction Documents does not contravene:
  - (i) a law or directive from a Government Body;
  - (ii) the memorandum and articles of association or other constitutional documents of any corporate Transaction Party;

- (iii) an agreement or instrument to which a Transaction Party is a party; or
- (iv) an obligation of a Transaction Party to any other person;
- (h) the Accounts of each Transaction Party and the consolidated Accounts of the Transaction Parties given to the Mortgagee are a true, fair and accurate statement of their respective financial positions and their respective consolidated financial positions at the date to which they are prepared and disclose all their actual and contingent liabilities;
- (i) there has been no change to the financial position of any Transaction Party or in the consolidated financial position of the Transaction Parties since the date to which the last Accounts of each Transaction Party and the consolidated Accounts of the Transaction Parties, given to the Mortgagee were prepared which has a Material Adverse Effect;
- (j) the accounting records of each corporate Transaction Party have been kept and maintained in accordance with the Corporations Law and the Accounts of each Transaction Party have been prepared in accordance with applicable accounting standards consistently applied except to the extent of departures from those standards disclosed in those Accounts;
- (k) all information given to and each statement made to the Mortgagee by or at the direction of any Transaction Party in relation to this document is correct, complete and not misleading;
- (l) it has disclosed to the Mortgagee all information which it has or to which it has access and which is relevant to the assessment by the Mortgagee of the nature and amount of the risk undertaken by the Mortgagee becoming a creditor of any Transaction Party or taking a Security from a Transaction Party over any property;
- (m) except as notified to the Mortgagee in writing prior to the date of this document:
  - (i) no litigation, arbitration or administrative proceeding is now current, pending or, to its knowledge, threatened against any Transaction Party which has or is likely to have a Material Adverse Effect;
  - (ii) there are no Encumbrances other than Permitted Encumbrances over the property of any Transaction Party other than those constituted or permitted by the Transaction Documents;
  - (iii) it is not a partner in any general or limited partnership, a participant in any incorporated or unincorporated joint venture or otherwise liable for the obligations of any such partnership or joint venture; and
  - (iv) it is not the child entity (as defined in the Corporations Law) of a public company (as defined in the Corporations Law);
- (n) each Transaction Party is the owner of the property it purports to own;
- (o) no unremedied or unwaived Event of Default or Potential Event of Default has occurred;
- (p) each Security Interest which each Transaction Documents purports to create, exists and has the priority which the Mortgagee has agreed to;
- (q) the obligations of each Transaction Party under the Transaction Documents rank at least pari passu with all other unsecured and unsubordinated obligations of the Transaction Parties except obligations mandatorily preferred by law;
- (r) each Transaction Party and its property are free of any right of immunity from set-off, proceedings or execution in respect of its obligations under the Transaction Documents;

- (s) the representations and warranties given by each Transaction Party in any Transaction Documents are correct and not misleading or will be when given;
- (t) it and its Subsidiaries are and have been for the preceding 12 months solvent (as defined in the Corporations Law) and no event or circumstance has occurred or arisen which would deem it or them to be insolvent;
- (u) no Administrator has been or is proposed or threatened to be appointed over it or any of its Subsidiaries;
- (v) it has obtained and relied on such independent legal, accounting and other advice and information as is necessary or desirable to understand the Transaction Documents to which it is a party and to assess the nature and extent of its obligations under those documents and it has not relied on any representation from or information supplied by the Mortgagee in assessing the nature and extent of those obligations;
- (w) it is in its and its creditors best interests for it to enter into and comply with its obligations under the Transaction Documents to which it is a party and that those transactions are not uncommercial and that it has or will obtain a real corporate benefit from entering into and performing its obligations under the Transaction Documents to which it is a party;
- (x) except as disclosed in this document, it is not a trustee of any trust;
- (y) there are no Environmental Liabilities affecting it or its assets or arising from the conduct of its business and that it has complied with all Environmental Legislation which affects it, its assets or the conduct of its business;
- (z) it is or is entitled to be registered as proprietor of the Secured Property free from Encumbrances other than Permitted Encumbrances;
- (aa) the Secured Property is not affected by:
  - (i) an encroachment on to adjoining land by an Improvement on the Secured Property;
  - (ii) an encroachment on to the Secured Property by an Improvement on adjoining land;
  - (iii) a person being in adverse possession;
  - (iv) a mining licence, permit, authority or lease; or
  - (v) a public right of way;
 other than those approved by the Mortgagee;
- (bb) there are no restrictions on or proposals by any Government Body to restrict the use of the Secured Property or to resume, appropriate or otherwise compulsorily acquire the Secured Property;
- (cc) it has not caused or permitted any person to acquire any rights or benefits relating to the Secured Property or the Rents; and
- (dd) no Compensation Event has occurred.

## 6.2 General

- (a) The interpretation of any statement contained in any representation or warranty shall not be restricted by reference to or inference from any other statement contained in any other representation or warranty.
- (b) The Mortgagor acknowledges that the Mortgagee has entered into this document in reliance upon these representations and warranties.

- (c) Each representation and warranty will survive the execution of this document and be deemed to be repeated with reference to the facts and circumstances then existing on each day that moneys are owing (actually or contingently) by the Mortgagor to the Mortgagee under this document.

## 7. INSURANCE COVENANTS

### 7.1 Maintain Insurance

The Mortgagor shall:

- (a) take out and maintain insurance over and in relation to the Secured Property with insurers approved by the Mortgagee, for amounts, against fire, theft, damage and destruction and upon terms and conditions that the Mortgagee reasonably requires or, if the Mortgagee does not notify the Mortgagor of its requirements, that a prudent and reasonable owner of the Secured Property would effect and maintain;
- (b) if required by the Mortgagee, cause or permit any Insurance to be taken out in the names of the Mortgagor and the Mortgagee and insure their respective insurable interests in the Secured Property;
- (c) take out and maintain, with insurers approved by the Mortgagee, workers compensation, public risk and other insurances that a prudent and reasonable person conducting a similar business to the Mortgagor would effect;
- (d) upon demand give to the Mortgagee all policies and documents relating to the Insurances, including, without limitation, all renewal certificates, certificates of currency and endorsement slips; and
- (e) pay each insurance premium at least 3 days before the due date and, upon request from the Mortgagee, produce receipts for the payment.

### 7.2 Claims

The Mortgagee may, but the Mortgagor shall not without the prior written consent of the Mortgagee, enforce, conduct, settle or compromise claims under any Insurances in relation to the Secured Property irrespective of whether the Insurance also relates to other property.

### 7.3 Prejudice Insurance

The Mortgagor must:

- (a) not do or permit anything which may prejudice the Insurance;
- (b) immediately rectify anything which might prejudice the Insurance and reinstate the Insurance if it lapses; and
- (c) notify the Mortgagee immediately when an event occurs which gives rise or might give rise to a claim under or which could prejudice any Insurance.

### 7.4 Disclosure

The Mortgagor shall before effecting the Insurance disclose to the proposed insurer all facts which are material to the insurer's assessment of the risk in issuing the Insurance.

### 7.5 Application of Insurance Proceeds

Any moneys paid by an insurer under any Insurance shall, subject to the provisions of the Insurance, be applied as follows:

- (a) first, as the Mortgagee requires:

- (i) towards replacement or reinstatement of the Secured Property in respect of which the money is paid; or
  - (ii) (A) in payment of any part of the Money Secured which is then actually owing whether or not it is due for payment; and
    - (B) as to an amount equal to the Money Secured which is then contingently owing and any money or damages which in the reasonable opinion of the Mortgagee there is a prospect may become owing by the Mortgagor to the Mortgagee, in the manner described in **clause 17.5**; and
- (b) secondly, the balance (if any) shall be paid to any person entitled to it or authorised to give receipts for it.

### 7.6 Building Units and Group Title

Except as provided in **schedule 2, clauses 7.1(a) and (e)** do not apply to any part of the Secured Property which is a unit under the Building Units and Group Titles Act, 1980.

## 8. OTHER POSITIVE COVENANTS

### 8.1 Secured Property

The Mortgagor must:

- (a) promptly pay when they become due for payment all Taxes and other amounts levied or assessed on the Mortgagor and the Secured Property;
- (b) keep the Secured Property in good repair and in good working order and promptly carry out any direction of the Mortgagee to remedy any defect in the condition of the Secured Property;
- (c) duly comply with its obligations in relation to the Secured Property including, without limitation, under any Encumbrance over the Secured Property, any law applicable to the Secured Property and any lawful direction from any Government Body;
- (d) at the Mortgagee's request, deliver receipts for any payments referred to in this **clause 8.1**;
- (e) give the Mortgagee as soon as the Mortgagor receives it, any notice or order received from a Government Body in relation to the use or condition of the Secured Property;
- (f) promptly give to the Mortgagee the information and documents which the Mortgagee requests from time to time in connection with:
  - (i) the Secured Property, this document or any Works; and
  - (ii) the business, property or financial condition of the Mortgagor;
- (g) promptly do everything necessary to remove any caveat lodged in respect of the Secured Property which does not relate to an estate or interest permitted by this document or which would not be automatically removed on exercise of the Mortgagee's power of sale under this document;
- (h) protect the Secured Property from loss or damage;
- (i) comply on time with terms attaching to any approval or consent given by the Mortgagee in connection with this document;

- (j) prosecute with reasonable diligence applications which the Mortgagee requires the Mortgagor to make to any person for permission to use the Secured Property for any purpose which the Mortgagee reasonably specifies; and
- (k) comply on time with all applicable Environmental Legislation and maintain or renew all permits, licences and authorities necessary under any Environmental Legislation to enable it to own and use the Secured Property.

## 8.2 Transaction Documents

The Mortgagor shall comply with each of its obligations under the Transaction Documents.

## 8.3 Title Documents

- (a) The Mortgagor shall cause and permit the Title Documents to the Secured Property to be delivered to the Mortgagee.
- (b) The Mortgagee may have possession and control of those Title Documents until the Mortgagor is obliged to discharge this document.
- (c) The rights of the Mortgagee under this **clause 8.3** are subject to the rights of the holder of any Permitted Encumbrance over the Secured Property which ranks in priority before this document to have possession of those things.

## 8.4 Resumption

- (a) If there is a proposal by any person to do anything which may constitute a Compensation Event then the Mortgagor shall do everything which the Mortgagee reasonably requires in relation to the proposal.
- (b) If in relation to any Compensation Event the Mortgagor becomes entitled to compensation or a payment the Mortgagor shall:
  - (i) give the Mortgagee full particulars of it and any documents relating to it; and
  - (ii) subject to **clause 8.4(c)**, use its best endeavours to cause the prompt payment of that compensation or money.
- (c) The Mortgagee may, but the Mortgagor shall not without the consent of the Mortgagee, enforce, conduct, settle or compromise claims in relation to any Compensation Event.
- (d) Any moneys paid by a person in respect of any Compensation Event shall be applied as follows:
  - (i) first, as the Mortgagee requires:
    - (A) in payment of any part of the Money Secured which is then actually owing whether or not it is due for payment; and
    - (B) as to an amount equal to the Money Secured which is then contingently owing and any money or damages which in the reasonable opinion of the Mortgagee there is a prospect may become owing by the Mortgagor to the Mortgagee, in the manner described in **clause 17.5**; and
  - (ii) secondly, the balance (if any) shall be paid to any person entitled to it or authorised to give receipts for it.

## 8.5 Encroachments



- (a) If any Improvement encroaches on adjoining property, then, at the Mortgagee's request, the Mortgagor agrees to rectify the encroachment, obtain an easement to authorise its continued existence or obtain title to the land the subject of the encroachment.
- (b) If any Improvement on adjoining land at any time encroaches on the Secured Property, then, at the Mortgagee's request, the Mortgagor agrees to remove the encroachment and the Mortgagor may not grant an easement to authorise its continued existence without the Mortgagee's consent.

#### 8.6 Financial Information to be Given

The Mortgagor shall give or cause to be given to the Mortgagee:

- (a) as soon as practicable and in any event within 120 days after the close of each Financial Year such Accounts and other financial information relating to the Transaction Parties (which are corporations) requested by the Mortgagee for that Financial Year; and
- (b) as soon as practicable and in any event within 90 days of the end of the first six months of each Financial Year such Accounts and other financial information relating to the Transaction Parties (which are corporations) requested by the Mortgagee for that period; and
- (c) within 60 days after the close of each Financial Year and within 30 days of the end of the first 6 months of each Financial Year the Accounts of each Transaction Party (which is not a corporation) for that period.

#### 8.7 Information to be Given

The Mortgagor shall give or cause to be given to the Mortgagee:

- (a) upon demand a certificate signed by it or on its behalf by 2 directors or a director and secretary certifying whether or not an Event of Default or a Potential Event of Default has occurred and, if one has occurred, giving full written particulars of it and of the action taken or proposed to be taken to remedy it;
- (b) upon the happening of an Event of Default or a Potential Event of Default a certificate in accordance with **clause 8.7(a)**;
- (c) full particulars of any litigation, arbitration or administrative proceeding which affects a Transaction Party as soon as it is commenced or to its knowledge threatened where the amount claimed is in excess of AUD1,000.00 or, irrespective of the amount claimed, which has or is likely to have a Material Adverse Effect;
- (d) at the time that it is sent or given any notice or other document sent or given by any corporate Transaction Party to its members or any class of members or its creditors or any class of creditors, the Australian Securities Commission or the Australian Stock Exchange Limited or any of its Subsidiaries;
- (e) written notice of the disposal, winding up, dissolution, reconstruction, amalgamation or any change in the shareholding of any corporate Transaction Party and of the acquisition or incorporation of any Subsidiary or Related Body Corporate;
- (f) written notice of the intention of any Transaction Party to enter into, dissolve, retire from or change the structure or composition of any joint venture or partnership in which it is involved;
- (g) written notice of the occurrence of any event which may have a Material Adverse Effect;
- (h) upon demand any other information in the possession or under the control of any Transaction Party which in the Mortgagee's reasonable opinion is relevant to the Transaction Documents including, without limitation, complete details of all property subject to any Finance Hiring or other lease or acquired subject to any retention of title arrangements;

- (i) as soon as practicable and in any event no later than 30 days after receipt of a written request from the Mortgagee a statement signed by it or on its behalf by two directors that:
- (i) the covenants and obligations in **clauses 8 and 10** have been complied with during the 6 months preceding that date;
  - (ii) the representations and warranties in **clause 6** are true and correct; and
  - (iii) there are no circumstances existing or anticipated which are likely to cause a breach of the covenants and obligations in **clauses 8 and 10** within the 3 months following that date;
- (j) as soon as practicable and in any event no later than 14 days after receipt of a written request from the Mortgagee, a declaration of solvency in a form satisfactory to the Mortgagee from each of the corporate Transaction Parties and their Subsidiaries named in that request signed by two directors of that corporation or if required by the Mortgagee signed by the external accountants or auditors of that corporation;
- (k) particulars of any interest in real property acquired by any Transaction Party immediately upon acquisition of that interest;
- (l) within 30 days of a request in writing from the Mortgagee, at its own cost and expense either an update of any existing valuation held by the Mortgagee or a new valuation of the Secured Property addressed to the Mortgagee and prepared (in either case) by a licensed valuer approved in writing by the Mortgagee provided that, unless an Event of Default has occurred or the Mortgagee is exercising its rights under **clause 8.10**, the Mortgagee may only make a request once in any 12 month period;
- (m) verbal and written notice of the appointment or proposed appointment of an Administrator over any corporate Transaction Party or any Subsidiary of a corporate Transaction Party immediately upon such appointment or such proposal (as the case may be);
- (n) immediately upon receipt a copy of any notice or order received from any Government Body relating to any proposal of the Government Body in relation to the Secured Property which if implemented may have or be likely to have a Material Adverse Effect; and
- (o) immediately upon becoming aware of it, full particulars of:
- (i) any event which entitles the Mortgagor or the Mortgagee to claim under the Insurances; or
  - (ii) any Compensation Event which entitles the Mortgagor or the Mortgagee to claim.

### 8.8 Related Bodies Corporate

The Mortgagor shall:

- (a) within 30 days of the Mortgagee's request; or
- (b) if an application has been made under section 205(12) of the Corporations Law, within 60 days of the Mortgagee's request;

cause any present or future Related Body Corporate of the Mortgagor to execute and deliver to the Mortgagee such Collateral Security as may be required by the Mortgagee.

### 8.9 Advisors

The Mortgagor:

- (a) authorises the Mortgagee and its Representatives to discuss with the Mortgagor's auditors (if any) and the Mortgagor's external accountants all matters relating to the Mortgagor's financial condition;

- (b) authorises the Mortgagee and its Representatives to discuss with and obtain from the Mortgagor and/or its Representatives any information, reports or copies of documents relating to the Mortgagor and/or the Secured Property;
- (c) will provide all necessary assistance and access to records and personnel as may be required by the Mortgagee and its Representatives to assess and investigate the Mortgagor's financial condition; and
- (d) will indemnify and keep indemnified the Mortgagee against all costs and expenses incurred as a result of any action taken by the Mortgagee under this **clause 8.9**.

#### 8.10 Independent Experts

The Mortgagor:

- (a) acknowledges that upon the occurrence of an event or series of events which in the Mortgagee's reasonable opinion may have a Material Adverse Effect, the Mortgagee may appoint independent experts including, without limitation, investigating accountants, auditors, solicitors and valuers, to review any matter relating to any Transaction Party and its property including, without limitation, to review its financial position, value its property, conduct stocktakes and perform any other tasks considered by the Mortgagee to be relevant to the assessment of its current position and compliance with its obligations under and the enforceability of the Transaction Documents;
- (b) will provide or cause to be provided all necessary assistance and access to records, information, personnel and property of any Transaction Party as may reasonably be required by the Mortgagee, its Representatives and any independent expert appointed by the Mortgagee; and
- (c) will indemnify and keep indemnified the Mortgagee against all costs and expenses incurred as a result of any action taken by the Mortgagee under this **clause 8.10**.

#### 8.11 Records

The Mortgagor shall:

- (a) prepare and keep books, Accounts and accounting and other records in accordance with applicable accounting standards consistently applied and, if a corporation, in accordance with the Corporations Law; and
- (b) on demand to make available for inspection and copying by the Mortgagee or any person authorised by the Mortgagee its books, accounts and accounting and other records.

### 9. FURTHER ASSURANCES

#### 9.1 Further Assurances

The Mortgagor shall promptly execute all documents and do all things that the Mortgagee from time to time reasonably requires for further or more perfectly:

- (a) mortgaging the Secured Property to the Mortgagee;
- (b) mortgaging any estate or interest acquired under **clause 8.5(a)** to the Mortgagee;
- (c) establishing the priority of this document and stamping and registering it and any document contemplated by it in any jurisdiction that the Mortgagee requires; and
- (d) giving to the Mortgagee the rights that this document purports to give or which are contemplated by it.

**9.2 Completion of Blanks**

The Mortgagee or an Authorised Representative of the Mortgagee may fill in any blanks in this document and complete in favour of the Mortgagee or anyone purchasing under the powers given by this document any instrument executed by or on behalf of the Mortgagor in blank and deposited with the Mortgagee in connection with this document.

**9.3 Registration**

The Mortgagee may register this document at the Mortgagor's expense as a mortgage on any appropriate register and the Mortgagor agrees to obtain all requisite consents under any Security over property of the Mortgagor created prior to this document. The Mortgagor agrees to procure execution of all documents required by the Mortgagee which are necessary to register this document.

**10. NEGATIVE OBLIGATIONS****10.1 Caveats**

- (a) The Mortgagor shall not cause to be lodged any caveat in respect of the Secured Property which may hinder the exercise of any right of the Mortgagee under this document; and
- (b) The Mortgagor will not permit and will take any steps necessary to prevent, any party lodging a caveat in respect of the Secured Property other than with the consent of the Mortgagee. If any such caveat should be lodged, the Mortgagor will take whatever steps are necessary to have such caveat removed.

**10.2 Default**

The Mortgagor shall comply with each of its obligations under each Transaction Documents and shall not cause or permit any Event of Default to occur.

**10.3 Replacement of the Secured Property**

The Mortgagor shall not demolish, alter or remove any Improvements on the Secured Property except if the demolition, alteration or removal is:

- (a) pursuant to the refurbishment or refitting in the ordinary course of the Mortgagor's business of any Improvements;
- (b) because the Improvements are worn out, damaged, destroyed, or otherwise no longer suitable for the purposes for which they were acquired;
- (c) required by law;
- (d) necessary for their modification for the purposes of the Mortgagor's business or their maintenance or repair (in which case they shall be replaced as soon as practicable and with due care and skill);
- (e) necessary to prevent their damage or destruction (in which case they shall be replaced as soon as practicable and with due care and skill); or
- (f) in accordance with the written consent of the Mortgagee.

**10.4 Other Negative Obligations**

The Mortgagor may not:

- (a) without the Mortgagee's consent, discontinue or change the general character of any business carried on by the Mortgagor on the Secured Property or any use of the Secured Property by the Mortgagor which discontinuance or change has or is likely to have an adverse effect on the value or saleability of the Secured Property;
- (b) increase or allow to be increased the amount secured by a Security Interest in the Secured Property other than this document;
- (c) do or omit to do anything or knowingly permit or cause anything to be done or omitted which could mean in the reasonable opinion of the Mortgagee that the Secured Property, this document or a Collateral Security is or is likely to become materially lessened in value or prejudicially affected;
- (d) do or allow anything to be done on the Secured Property which causes a nuisance or disturbance to the owners, occupiers or users of any nearby land;
- (e) without the Mortgagee's consent, take any steps under any law which could adversely affect the rights of the Mortgagee in relation to the Secured Property;
- (f) vary a lease or licence to use or occupy the Secured Property without the Mortgagee's consent; or
- (g) if the Mortgagor leases the Secured Property together with the use of chattels, remove or permit to be removed any of the chattels (except for their repair or replacement in the ordinary course of business).

**10.5 Prohibited Financial Transactions**

Unless otherwise permitted under the Transaction Documents the Mortgagor shall not cause or permit any Transaction Party to:

- (a) dispose of any debts owed to a Transaction Party;
- (b) incur any Financial Indebtedness (other than to the Mortgagee); or
- (c) cause or permit the terms of any Financial Indebtedness (other than to the Mortgagee);
  - (i) subsisting at the date of this document;
  - (ii) entered into after the date of this document with the Mortgagee's written consent;to be extended or otherwise varied.

**10.6 Mergers**

The Mortgagor shall not cause or permit any Transaction Party to:

- (a) enter into any merger, reconstruction or amalgamation; or
- (b) acquire any property or business or make any investment if the property, business or investment is substantial in relation to the Mortgagor;

without the prior written consent of the Mortgagee which consent will not be unreasonably withheld where the Mortgagee determines it is not likely to have a Material Adverse Effect.

**10.7 Dealings with Related Bodies Corporate**

The Mortgagor shall not acquire assets from any of its Related Bodies Corporate without the prior written consent of the Mortgagee.

**10.8 Shares**

The Mortgagor shall not without the Mortgagee's prior written consent:

- (a) issue convertible notes, options for shares or new shares in its capital; or
- (b) sell shares in any Subsidiary or permit any Subsidiary to issue or allot shares.

**10.9 Not to acquire Interest**

The Mortgagor shall not, without the Mortgagee's prior written consent, acquire any legal or beneficial interest in any:

- (a) joint venture;
- (b) partnership; or
- (c) marketable securities (as defined in the Corporations Law) other than shares in any of its Subsidiaries.

**10.10 Advances and other Accommodation**

The Mortgagor shall not without the prior written consent of the Mortgagee:

- (a) advance any money or grant any other accommodation to any person other than a Transaction Party;
- (b) permit money to remain owing to it by any person other than in the ordinary course of its ordinary business; or
- (c) repay money now or in the future owing by it to any person other than in the ordinary course of its ordinary business.

**10.11 Security Deposit**

The Mortgagor shall not:

- (a) deposit money with a person if the money is not repayable unless it pays or discharges any other indebtedness or complies with another obligation owed to that person or another person;
- (b) permit a set-off or combination of accounts in respect of any right to the payment of money.

**11. WORKS, BUILDING UNITS AND GROUP TITLE, RURAL LAND, LICENSED PREMISES, TRUST PROVISIONS, MORTGAGE OF LEASEHOLD AND CROWN LEASEHOLD, FOLR ACT****11.1 Works**

If, at any time, the Mortgagor proposes to carry out, carries out or continues any Works on the Secured Property then, schedule 1 applies.

**11.2 Community Title**

If the Secured Property is now or at any future time comes under the Body Corporate and Community Management Act 1997 then, **schedule 2** applies as and when the Secured Property comes under, and for as long as it remains under, the Body Corporate and Community Management Act 1997.

### 11.3 Rural Land

If the Secured Property is or includes agricultural, horticultural or pastoral land, then **schedule 3** applies in respect of the agricultural, horticultural or pastoral land.

### 11.4 Licensed Premises

If the Secured Property is licensed premises under Liquor Legislation then, **schedule 4** applies.

### 11.5 Trust Provisions

Where the Mortgagor holds the Secured Property as a trustee (whether or not that fact is disclosed to or known to the Mortgagee) then, **schedule 5** applies.

### 11.6 Leasehold or Crown Leasehold

If the Secured Property is leasehold land held pursuant to the Land Title Act 1994 or Crown leasehold land held pursuant to the Land Act 1994 then, **schedule 6** applies.

### 11.7 FOLR Act

If the Mortgagor is or becomes a foreign person or a foreign trust within the meaning of the FOLR Act then, **Schedule 7** applies.

## 12. MATERIAL CHANGE TO SECURED PROPERTY

### 12.1 Occurrence

If at any time the Secured Property is:-

- (a) subject to any planning scheme or proclamation or any interim development proposal or scheme or restriction proposed, prepared, proclaimed or prescribed by any Government Body;
- (b) affected by any proposal for re-alignment, widening or siting of a road by any Government Body;
- (c) subject to any charge imposed pursuant to statute ranking in priority to this document;

then the Mortgagor will immediately upon the happening of any such event give notice of the relevant event to the Mortgagee and upon receipt of such notice the Mortgagee may require the Mortgagor to obtain an independent valuation of the Secured Property such valuation to be conducted by any one or more independent valuers appointed by the Mortgagor from a panel of valuers nominated or to be nominated by the Mortgagor and approved by the Mortgagee.

### 12.2 Diminution of Value

If following a valuation under **clause 12.1** the Mortgagee reasonably considers that the realisable value of the Secured Property upon the exercise at any time during the term of this document of any power of sale would as a result of any of the events specified in **clause 12.1** be diminished then:-

- (a) provided that the Mortgagor is not otherwise in breach of this document the Mortgagee shall notify the Mortgagor of anything which the Mortgagee reasonably considers necessary to be done by the Mortgagor in relation to the Secured Property; and

- (b) the Mortgagor shall within the time specified in any notice from the Mortgagee under **clause 12.2(a)** do everything it is required to do under such notice.

### 13. MORTGAGEE'S RIGHT TO ENTER AND RECTIFY

#### 13.1 Right of Entry

The Mortgagee and its Representative may at any reasonable time enter on any property owned, used or occupied by the Mortgagor for any purpose related to this document, including, without limitation to:

- (a) inspect the condition of the Secured Property;
- (b) inspect and take copies of records relating to the Secured Property;
- (c) investigate the affairs and financial position of the Mortgagor;
- (d) exercise its rights under this document;
- (e) ascertain whether the Mortgagor is observing each of its obligations under this document; and
- (f) exercise any other rights conferred on the Mortgagee by the common law, equity, the Transaction Documents or any statute.

#### 13.2 Assistance

The Mortgagor shall do everything on its part which is necessary or desirable to enable the Mortgagee to exercise its rights under **clause 13** and, without limitation, the Mortgagor shall enable the Mortgagee to use the facilities and have the services of the personnel of the Mortgagor to the extent reasonably required by the Mortgagee for that purpose.

#### 13.3 Right to Rectify

The Mortgagee may do anything which should have been done by the Mortgagor under this document but which has not been done or which the Mortgagee considers has not been done properly.

### 14. EVENTS OF DEFAULT AND DEFAULT POWERS

#### 14.1 Nature

Each of the following is an Event of Default (whether or not caused by anything outside the control of any Transaction Party):

- (a) any Transaction Party does not pay on the due date any money due for payment by it under any Transaction Documents in accordance with the relevant Transaction Documents;
- (b) any Transaction Party does not comply with any of its other obligations under any Transaction Documents or any undertaking given by it to the Mortgagee under or in relation to any Transaction Documents and if that default is capable of rectification:
  - (i) it is not rectified within 5 Business Days (or any other longer period agreed by the Mortgagee) of its occurrence; and
  - (ii) the Transaction Party does not during that period take all action which in the opinion of the Mortgagee is necessary or desirable to promptly remedy that default;
- (c) a representation, warranty or statement made or deemed to be made by any Transaction Party in any Transaction Documents is untrue or misleading in any material respect;



- (d) a Transaction Documents is void, voidable or otherwise unenforceable by the Mortgagee or is claimed to be so by any Transaction Party;
- (e) a Security Interest created by or purportedly created by any Collateral Security ceases to have the priority which it purports to have under the relevant Transaction Documents or becomes ineffective as security for the payment of the moneys or compliance with the obligations which it purports to secure, otherwise than by any act of the Mortgagee;
- (f) a distress, attachment or execution is levied or becomes enforceable against any property of any Transaction Party for an amount exceeding AUD1,000 or any other amount agreed in writing with the Mortgagee;
- (g) an authorisation from a Government Body necessary to enable:
- (i) a Transaction Party to comply with its obligations under a Transaction Documents or carry on its principal business or activity; or
  - (ii) the Mortgagee to exercise its rights under a Transaction Documents,
- ceases to be in full force and effect;
- (h) it is unlawful for a Transaction Party to comply with any of its obligations under any Transaction Documents or it is claimed to be so by any Transaction Party;
- (i) the person who controls or group of persons who acting in concert control any corporate Transaction Party at the date of this document cease to have that control unless the Mortgagee has consented in writing to such change;
- (j) a Transaction Party ceases or threatens to cease to carry on its business or a substantial part of its business except as permitted under a Transaction Document;
- (k) (i) the Bankruptcy of a Transaction Party or any action being taken to make a Transaction Party Bankrupt;
- (ii) a Transaction Party enters into or takes any action to enter into an arrangement or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (iii) an event described in section 461 of the Corporations Law occurs in relation to any corporate Transaction Party;
- (iv) a Transaction Party being or stating that it is unable to pay from its own money its debts when they fall due for payment;
- (v) the appointment of a receiver or receiver and manager or Controller in respect of a corporate Transaction Party or its property or any action being taken to make such appointment;
- (vi) the appointment of an Administrator over a corporate Transaction Party or any of its Subsidiaries or any action being taken to make such appointment; or
- (vii) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in relation to any Transaction Party;
- (l) an event of default as defined in any Transaction Document or under any other agreement between a Transaction Party and the Mortgagee by or in relation to any Transaction Party;

## SCHEDULE

- (m) a person who holds a Security over property of a Transaction Party becomes entitled to exercise a right under that Security against the property to recover any moneys the payment of which is secured by that Security or enforce any other obligation the compliance with which is secured by it;
- (n) (i) Financial Indebtedness of any Transaction Party in excess of AUD1,000 or any other amount agreed in writing with the Mortgagee becomes due for payment or capable of being declared due for payment before its stated maturity other than by the exercise of an option of the Transaction Party to pay it before its maturity;
- (ii) an obligation by a person to a Transaction Party to provide financial accommodation or to acquire or underwrite Financial Indebtedness ceases before its stated maturity other than by the exercise of an option of the Transaction Party to cancel that obligation;
- (iii) a Transaction Party fails to pay when due for payment any Financial Indebtedness in excess of AUD1,000 or any other amount agreed in writing with the Mortgagee; or
- (iv) a Marketable Security issued by a corporate Transaction Party is required to be redeemed or repurchased before its stated maturity other than by the exercise of an option of the issuer to redeem or repurchase;
- (o) if a Transaction Party is a corporation:-
- (i) it reduces or attempts to reduce its capital;
- (ii) it passes or attempts to pass a resolution under section 188(2) or section 205(10) of the Corporations Law or any similar statutory provision;
- (iii) it buys or takes any action to buy shares in itself, other than the insertion in its articles of association of a provision to the effect that it may buy ordinary shares in itself;
- (iv) it amends its memorandum or articles of association without the prior written consent of the Mortgagee;
- (v) it appoints, removes or otherwise suffers any change to the identity of its directors; or
- (vi) an investigation is instituted under the Corporations Law or other legislation into, or an inspector is appointed to investigate the affairs of, any Transaction Party;
- (p) an event or series of events whether related or not, including, without limitation, any change in the property or financial condition of any Transaction Party, occurs which has or is likely to have a Material Adverse Effect;
- (q) in the reasonable opinion of the Mortgagee:
- (i) the value to the Mortgagee of the mortgage created pursuant to this document is materially and adversely affected; or
- (ii) any of the Secured Property is in jeopardy,
- other than as a result of any act or omission of the Mortgagee;
- (r) the Mortgagor attempts to create or allows to exist an Encumbrance other than a Permitted Encumbrance over the Secured Property;
- (s) a Resumption occurs or a planning instrument affecting the Secured Property is imposed or varied which has or is likely to have the effect that the use to which the Secured Property is being put must cease or a building, structure or improvement on it must be removed or materially altered;

- (t) an authority raises a requisition:
- (i) relating to a transfer of the Secured Property to the Mortgagor;
  - (ii) relating to an Encumbrance ranking in priority to this document;
  - (iii) relating to the manner or validity of the execution by the Mortgagor of this document; or
  - (iv) requiring the discharge, modification or withdrawal of any other dealing as a prerequisite to the registration of that transfer or Encumbrance or this document,
- and the requisition has not been complied with to the satisfaction of the authority within 14 days of the date of the requisition;
- (u) a title deed or instrument which has to be produced to an authority as a prerequisite to lodgement or registration of this document is not produced within 7 days of the Mortgagee requesting the production (which need not be in writing); or
- (v) registration of this document depends on this document being connected with documents lodged with a prior unregistered dealing and the Mortgagor does not notify the Mortgagee's solicitors of the dealing number within 7 days of the Mortgagee requesting that number.

#### 14.2 General

Subject to any limitations imposed by law:

- (a) The Mortgagee may at any time after an Event of Default has occurred exercise any or all of the rights set out in this **clause 14** in any manner and at any time that it thinks fit and notwithstanding that a Receiver has been appointed.
- (b) The interpretation of any right set out in this **clause 14** shall not be restricted by reference to or inference from any other right.

#### 14.3 Acceleration

If an Event of Default occurs, the Mortgagee may at any time by notice to the Mortgagor make:

- (a) the Money Secured which is owing, either due for payment on demand or immediately due for payment; or
- (b) an amount equal to that contingently owing by the Mortgagor to the Mortgagee either payable on demand or immediately due for payment.

#### 14.4 Statutory and Implied Powers

The Mortgagee may exercise all rights capable of being conferred by the statutes and other laws of any relevant jurisdiction upon mortgagees under mortgage deeds or otherwise.

#### 14.5 Sale

The Mortgagee may sell the Secured Property and, without limitation, any sale may be:

- (a) by private treaty, public auction, tender or otherwise;
- (b) together with the sale of any other property by any other person;
- (c) upon terms and conditions that the Mortgagee thinks fit, including, without limitation, any terms and conditions:

- (i) whereby:
- (A) the purchaser is allowed time to pay the whole or any part of the purchase price either with or without interest and either with or without security;
  - (B) any rights over the Secured Property are reserved or granted;
  - (C) the consideration is expressed in any currency or consists of something other than money;
  - (D) the purchase price or other consideration is payable by instalments; and
  - (E) if the sale is by auction or tender, a reserve price determined by the Mortgagee is set;
- (ii) relating to the title of the property;

and the Mortgagee may:

- (d) buy in at any auction;
- (e) disclose or not disclose any reserve price;
- (f) rescind any contract of sale and resell the property without being liable for any loss;
- (g) advertise or not advertise the sale of the Secured Property;
- (h) obtain valuations of the Secured Property;
- (i) make any agreements or arrangements relating to the sale;
- (j) make all applications under the Land Act 1994 which the Mortgagor is entitled to make, employ legal advisers for this purpose and appear before all Courts and Tribunals in the name of the Mortgagor or the Mortgagee for this purpose; and
- (k) subject to the Mortgagee first receiving any necessary approvals or consents under the Land Act 1994, sell by private treaty without first submitting the Secured Property for sale by public auction.

#### 14.6 General Dealings

The Mortgagee may:

- (a) enter, take possession of, take control of and get in the Secured Property;
- (b) carry on any business or activity of the Mortgagor;
- (c) manage, develop, quietly enjoy and otherwise deal with the Secured Property;
- (d)
  - (i) exercise the rights of the Mortgagor and comply with its obligations in respect of the Secured Property and cause and permit any other person to comply with their obligations in respect of the Secured Property;
  - (ii) vary, replace or release any right or interest of the Mortgagor or any other person including, without limitation, relinquish possession of any leased property;
- (e) carry out or complete, in any form, the construction of any Works;

- (f) lease or licence (for any period), end, renew, disclaim, surrender or accept the surrender or lease or licence of, the Secured Property, and compromise with or make concessions to tenants, lessees or licensees, or agree to do any of these things, for any period and on any terms;
- (g) exchange any part of the Secured Property for any other property and, if there is a difference in value between the property exchanged, give or receive, as the case may be, any moneys or other consideration equal to the difference in value in order to give or receive equal value for the exchange;
- (h) acquire or grant easements, profits a prendre, covenants or other rights which benefit, burden or relate to the Secured Property and dedicate for any public purpose any part of the Secured Property;
- (i) subdivide or consolidate any land forming part of the Secured Property;
- (j) grant options and rights of first refusal to acquire the Secured Property;
- (k) insure, maintain, improve and protect the Secured Property;
- (l) sever trees and Improvements from the Secured Property and deal with them separately from the balance of the Secured Property;
- (m) take on lease or on hire or otherwise acquire any property necessary or convenient in relation to the carrying on of a business or activity of the Mortgagor;
- (n) use the property and services of the Mortgagor and the services of its personnel in the exercise of any rights under this **clause 14**;
- (o) vary, replace, rescind, repudiate or terminate any agreement to which it or the Mortgagor is a party;
- (p) exchange the Secured Property with a person for any estate or interest in other property of any tenure (with or without giving or receiving consideration). The property acquired may be dealt with by the Receiver as if it were part of the Secured Property and the Receiver may grant a Security Interest over that property for the payment of the Money Secured;
- (q) obtain the benefit of any agreement entered into by the Mortgagor (including, without limitation, by specific performance) whether or not the agreement is entered into in the exercise of the rights, powers and remedies conferred by this document;
- (r) remove personal property from the Secured Property and store that property in the name of the Mortgagor without being liable to the Mortgagor or sell or otherwise dispose of any chattels owned by the Mortgagor as agent for the Mortgagor on such terms and conditions as the Mortgagee may consider appropriate if, within seven (7) days of notice by the Mortgagee to the Mortgagor requiring the Mortgagor to remove the chattels from the Mortgaged Property, the Mortgagor fails to so remove the chattels, **PROVIDED** that the Mortgagee shall be entitled to apply the net proceeds of any sale or disposal (less any expenses relating thereto) in payment of the Secured Moneys and **FURTHER PROVIDED** that to the extent that the rights of the Mortgagee under this paragraph would (but for this proviso) be held to create a charge registrable under the Corporations Law, the rights of the Mortgagee shall be read down so as not to create such a charge and the net proceeds of any sale or disposal shall not be applied in payment of the Secured Moneys but shall be a debt due by the Mortgagee to the Mortgagor;
- (s) if there are chattels of the Mortgagor on the Secured Property, then the Mortgagee may lease or license the Secured Property together with the use of the chattels and may repair or replace any of them which are destroyed, lost, stolen or unfit for use;
- (t) if the Secured Property is leased by the Mortgagee together with the use of any chattels of the Mortgagor and any of the chattels are the subject of a leasing or Finance Hiring agreement, then the Mortgagee may pay the rent and interest charges under those agreements and any instalments required by the terms of any agreement before crediting the balance to the Mortgagor's account;

- (u) do everything necessary to prepare and register a building unit plan or group title in respect of the Secured Property; and
- (v) use any materials of the Mortgagor on the Secured Property and seize and take possession of any tools, plant, machinery and other chattels and things of the Mortgagor which are in, on or about the Secured Property and use them in Works.

#### 14.7 Raise and Lend Money

The Mortgagee may upon any terms and conditions that the Mortgagee thinks fit:

- (a)
  - (i) borrow or otherwise raise moneys or obtain financial accommodation on the security of the Secured Property; and
  - (ii) lend or otherwise grant financial accommodation to a Receiver or an Attorney on the security of the Secured Property,  
including, without limitation, any moneys required in relation to the exercise of any right by the Mortgagee or a Receiver or an Attorney; and
- (b) deal with any Security granted by it over the Secured Property and enter into any agreement relating to the priority of that Security and discharge it.

#### 14.8 Investment of Moneys

Any moneys received by the Mortgagee which are not required to be immediately applied in the exercise of any right or pursuant to **clause 17** may be invested in any way authorised by the laws of any relevant jurisdiction for the investment of trust moneys and the Mortgagee may vary or dispose of the investment.

#### 14.9 Ancillary Powers

The Mortgagee may:

- (a) on behalf of the Mortgagor draw, accept, make or endorse any bill of exchange or promissory note;
- (b) affix and countersign any seal of the Mortgagor;
- (c) employ or engage any person for the purpose of exercising any of the Mortgagee's rights in respect of the Secured Property and dismiss any employee or contractor of the Mortgagor;
- (d) commence, defend, prosecute, settle, discontinue and compromise litigation, administrative or arbitral proceedings;
- (e) give receipts and release, discharge or compromise any debt or other obligation owed to or by the Mortgagor;
- (f) enter into and execute and deliver documents and agreements in respect of the exercise of its other rights under this **clause 14**;
- (g) delegate to any person any other right (including this right of delegation) under this **clause 14**; and
- (h) do anything incidental or conducive to the exercise of any of its other rights under this **clause 14**.

#### 14.10 Receivers

Subject to any limitations imposed by law the Mortgagee may:

- (a) (i) either before or after it has taken possession of the Secured Property appoint in writing any one or more persons to be a Receiver of the Secured Property or a part of it; and
- (ii) appoint a different Receiver for different parts of the Secured Property;
- (b) if more than one person is appointed as Receiver of any property, the Mortgagee may empower them to act jointly or jointly and severally;
- (c) remove the Receiver and appoint another in his or her place if the Receiver is removed, retires or dies;
- (d) fix the remuneration of the Receiver; and
- (e) give such indemnities to the Receiver, with respect to the performance by the Receiver of his duties, as are permitted by law.

## 15. RECEIVERS

### 15.1 Agent

- (a) A Receiver, subject to **clause 15.1(b)** will be the agent of the Mortgagor who alone shall be responsible for the Receiver's acts and omissions and remuneration.
- (b) The Mortgagee may appoint a Receiver as the agent of the Mortgagee and delegate to a Receiver any of the Mortgagee's rights under this document.

### 15.2 Powers

- (a) A Receiver shall have the right in relation to any property of which the Receiver is appointed to do everything that the Mortgagor may lawfully authorise an agent to do on behalf of the Mortgagor in relation to that property and, without limitation, a Receiver may in relation to that property exercise:
  - (i) the rights capable of being conferred upon receivers and receivers and managers by the Corporations Law and statutes and laws of any relevant jurisdiction;
  - (ii) the rights set out in **clauses 14.4 to 14.9** inclusive;
  - (iii) the rights of the Mortgagor and the directors of the Mortgagor; and
  - (iv) any other rights the Mortgagee may by written notice to a Receiver give to a Receiver.
- (b) The Mortgagee may by written notice to a Receiver at the time of a Receiver's appointment or any subsequent times give any rights to a Receiver that the Mortgagee thinks fit.

## 16. EXERCISE OF DEFAULT RIGHTS

### 16.1 No Hindrance

The Mortgagor shall not cause or permit the Mortgagee, a Receiver or an Attorney to be prevented or hindered from exercising its rights under this document.

### 16.2 Mortgagee in Possession

- (a) If the Mortgagee, a Receiver or an Attorney exercises its rights under this document or takes possession of the Secured Property, it will not be liable to account as mortgagee in possession.
- (b) If the Mortgagee has taken possession of the Secured Property it may give up possession of the Secured Property at any time.

- (c) The obligations of the Mortgagor under this document relating to the Secured Property shall not be affected by the Mortgagee, any Receiver or any Attorney taking possession of the Secured Property.

### 16.3 Legislation

- (a) The rights conferred on the Mortgagee by law shall be in addition to the rights conferred on the Mortgagee by this document or any Security which is a Collateral Security.
- (b) The provisions implied in mortgages and charges by any statute shall for the purpose of this document be negated or varied only so far as they are inconsistent with the provisions of this document and are otherwise varied so as to become consistent with this document.
- (c) Any statutory restrictions (other than mandatory restrictions) upon any right of the Mortgagee, Receiver or Attorney to lease or otherwise deal with the Secured Property shall not apply to the rights of those persons under this document.

### 16.4 Default Notice

- (a) The Mortgagee, any Receiver and any Attorney may to the extent that any applicable law permits exercise any right under this document in relation to an Event of Default without first giving any notice to the Mortgagor or allowing the lapse of any period of time and the Mortgagor and the Mortgagee dispense with any requirement under any statute that notice be given by the Mortgagee, Receiver or Attorney, as the case may be, or that it allow the lapse of any period of time before exercising a right.
- (b) If an applicable law requires that notice be given or a period of time lapse before any right can be exercised, then if no particular period of notice or period of time is required, the period shall be one day.

## 17. APPLICATION OF MONEY

- 17.1 If any part of the secured moneys is owing contingently or is unascertained the Mortgagee may withhold such amount as it considers appropriate and deposit same as security for the payment of the Secured Money.

### 17.2 Method

The Remedy Proceeds shall, subject to any mandatory statutory requirements, be applied by the Mortgagee, any Receiver or any Attorney as the Mortgagor thinks fit but subject to any specific appropriation then as follows:

- (a) first, in the exercise of any right of the Mortgagee, any Receiver or any Attorney, including, without limitation, the management of the Mortgagor's business or other activities;
- (b) secondly, towards:
- (i) the costs and expenses incurred by the Mortgagee, any Receiver or any Attorney;
  - (ii) the remuneration of the Mortgagee, any Receiver or any Attorney in relation to the exercise of the right giving rise to the Remedy Proceeds; and
  - (iii) any moneys owing by the Mortgagor to any Representative of the Mortgagee, any Receiver or any Attorney;
- (c) thirdly, towards any moneys owing by the Mortgagor to any person who is in the reasonable opinion of the Mortgagee the holder of any Security Interest (whether registered or unregistered) in the Secured Property ranking in priority before this document to the extent that the Security Interest secures the payment of those moneys in priority to the Money Secured;
- (d) fourthly:



- (i) towards the Money Secured which is then due for payment or in accordance with **clause 17.5** and shall be appropriated between them as the Mortgagee thinks fit; and
  - (ii) to any person who is in the reasonable opinion of the Mortgagee the holder of any Security Interest (whether registered or unregistered) in the Secured Property which ranks *pari passu* with this document to the extent that the Security Interest secures the payment of those moneys *pari passu* with the Money Secured;
- (e) fifthly, towards any moneys owing by the Mortgagor to any person who in the reasonable opinion of the Mortgagee is the holder of any Security Interest (whether registered or unregistered) in the Secured Property which ranks in priority after this document to the extent that the Security Interest secures the payment of those moneys in priority after the Money Secured; and
- (f) sixthly, to any person entitled to the Secured Property or authorised to give receipts for those moneys.

### 17.3 Creditor's Certificate and Disputes

- (a) The Mortgagee may rely upon a certificate issued by any person who claims to be entitled to receive any of the Remedy Proceeds to the effect that moneys are owing by the Mortgagor to it and stating the amount owing, without being obliged to make any further inquiry.
- (b) If there is any dispute between any persons (other than the Mortgagee) as to who is entitled to receive the Remedy Proceeds, the Mortgagee may pay those moneys into court and when that is done the Mortgagee will have no further obligations in relation to those moneys.

### 17.4 No Interest on Remedy Proceeds

The Mortgagee is not obliged to pay interest to any person upon the Remedy Proceeds.

### 17.5 Payment into Bank Account

If the Mortgagee pays any moneys into a bank account in the name of any person to whom the Mortgagee is obliged to pay moneys under **clause 17.1** and notifies that person of the particulars of the account the Mortgagee will have no further obligations in relation to those moneys.

### 17.6 Contingent and Prospective Debts

If:

- (a) part of the Money Secured is contingently owing or owing but not due for payment; or
- (b) in the reasonable opinion of the Mortgagee there is a prospect that the moneys may become owing (whether actually or contingently) by the Mortgagor to the Mortgagee,

and the Mortgagee receives any moneys pursuant to this document, the Mortgagee may;

- (c) pay those moneys into a suspense account and hold them as security for the payment of the Money Secured; and
- (d) at any time appropriate any moneys in the suspense account towards the satisfaction of any moneys due for payment by the Mortgagor to the Mortgagee in any way that the Mortgagee thinks fit,

and when the Money Secured is satisfied in full or the Mortgagee no longer holds that opinion, the Mortgagee shall pay the balance to any person entitled to the Secured Property or authorised to give receipts for those moneys without any obligation to account to the Mortgagor for interest on those moneys.

#### 17.7 Payments During Default Notice Period

If during the period from the service of a notice requiring the rectification of a default by the Mortgagor under this document in the payment of moneys until the expiration of that notice the Mortgagor pays any moneys to the Mortgagee towards satisfaction of the Money Secured the Mortgagee may apply those moneys first, towards satisfaction of any moneys due for payment by the Mortgagor to the Mortgagee other than those which are the subject of the notice and secondly, towards satisfaction of the moneys which are the subject of the notice.

#### 17.8 Accounting for Remedy Proceeds

The Mortgagee, any Receiver or any Attorney is not obliged to account to the Mortgagor for any moneys relating to the exercise by any of them of any right until moneys are actually received in immediately available funds and, without limitation, if any of them sell the Secured Property on terms whereby:

- (a) any part of the purchase price remains unpaid (whether secured or unsecured) after transfer of the Secured Property to the purchaser; or
- (b) the purchase price is payable in instalments on or before the transfer of the Secured Property to the purchaser,

they are not obliged to account for the purchase price before it is actually received in immediately available funds.

### 18. THIRD PARTY DEALINGS

#### 18.1 Mortgagee's Receipts and Discharges

The Mortgagee may give valid discharges and receipts for any moneys payable by any third party in respect of any exercise of a right by the Mortgagee, any Receiver or any Attorney.

#### 18.2 No Duty to Inquire

- (a) Any person dealing with the Mortgagee, any Receiver or any Attorney in relation to the exercise by any of them of a right under this document shall not be concerned to inquire whether:
  - (i) any Event of Default has occurred;
  - (ii) the Receiver or Attorney is properly appointed;
  - (iii) the right is otherwise properly exercised by that person; or
  - (iv) any moneys paid by it to the Mortgagee, Receiver or Attorney are properly applied;

and the title of that person to any property acquired by it from the Mortgagee, Receiver or Attorney, shall not be adversely affected by any improper exercise of the right or application of moneys by the Mortgagee, any Receiver or any Attorney.

- (b) The benefit of **clause 18.2(a)** is held on trust for the benefit of the Mortgagee and each person dealing with the Mortgagee, any Receiver or any Attorney.

### 19. PRESERVATION OF MORTGAGEE'S RIGHTS

#### 19.1 Continuity

This document is a continuing security for the whole of the Money Secured and is not limited to any transaction or other thing.

### 19.2 Primary Obligations

The Mortgagor's obligation to pay the Money Secured is a primary obligation and the Mortgagee is not obliged to proceed against or enforce any other right against any person or property or demand payment from any other person before making a demand for payment by the Mortgagor of the Money Secured.

### 19.3 Preservation of the Mortgagor's Obligations

The Mortgagor's obligations and the Mortgagee's rights will not be affected in whole or in part by anything which might abrogate, prejudice or limit them or the effectiveness of this document, including, without limitation, any of the following:

- (a) any release, termination, variation, novation, renewal or assignment of any Transaction Document or agreement or transaction under which any Money Secured are or purport to be payable including any variation of interest rates, the due dates for payment or the amount of any financial accommodation provided or available or the refusal of the Mortgagee to provide further financial accommodation;
- (b) any Transaction Documents or any other transaction or agreement between the Mortgagor or any Security Provider and the Mortgagee or any obligation owed by the Mortgagor or any Security Provider to the Mortgagee in relation to the Money Secured being void, voidable or otherwise unenforceable by the Mortgagee in accordance with its terms or the Mortgagee being otherwise estopped from receiving the Money Secured from the Mortgagor or any Security Provider;
- (c) the granting of any forbearance, time or other indulgence to or the making of any composition, compromise or arrangement with or the discharge or release of the Mortgagor or any Security Provider or any other person;
- (d) the death, Bankruptcy or mental illness of the Mortgagor or any Security Provider;
- (e) the fact that no demand for the payment of the Money Secured has been made on the Mortgagor and each Security Provider;
- (f) any failure by the Mortgagee to disclose any information to the Mortgagor or any Security Provider or any representation made or information given by the Mortgagee to the Mortgagor or any Security Provider;
- (g) the failure to give the Mortgagor notice of default by the Mortgagor or any Security Provider or to obtain consent from the Mortgagor to any arrangement or agreement made with the Mortgagor or any Security Provider;
- (h) any breach of trust by the Mortgagor or any Security Provider;
- (i) the doing of any thing which has or may have a Material Adverse Effect on the value of any Collateral Security or the value placed on it by the Mortgagee in the bankruptcy of the Mortgagor or any Security Provider;
- (j) any negotiable or other instrument being in circulation or outstanding;
- (k) the obtaining, release, variation or renewal by the Mortgagee of any Transaction Documents or any agreement or arrangement affecting the priority of any Transaction Documents;
- (l) the release or discharge of the Mortgagor or any Security Provider under any agreement, statute, principle of law or equity;
- (m) any refusal or failure by the Mortgagee to obtain, perfect, register, stamp, enforce, or assign any Collateral Security or any negotiable instrument, judgment, order or award relating to the Money Secured;

- (n) any act or omission of the Mortgagee which prejudices the Mortgagor; or
- (o) any other thing which but for this clause 19.3 might abrogate, prejudice or limit them or the effectiveness or priority of this document.

#### 19.4 Suspension of Mortgagor's Rights

The Mortgagor:

- (a) waives any right to be subrogated to or otherwise have the benefit of this document until the Money Secured has been satisfied in full and in the reasonable opinion of the Mortgagee any payment towards the satisfaction of the Money Secured is not void, voidable or otherwise unenforceable or refundable; and
- (b) shall not exercise a right of set-off or counterclaim available to it or any other person liable to the Mortgagee in relation to the Money Secured which reduces or extinguishes the obligation of the Mortgagor to pay the Money Secured,

and the Mortgagee is not obliged to marshal in favour of the Mortgagor any security or any property that the Mortgagee has an interest in or may be entitled to receive.

#### 19.5 Reinstatement of Rights of the Mortgagee

If any transaction or payment relating to the Money Secured is void, voidable or otherwise unenforceable or refundable:

- (a) the Mortgagee shall be entitled against the Mortgagor to all rights under this document that it would have had if the transaction or payment was not void, voidable or unenforceable or refundable; and
- (b) the Mortgagor shall do all things and sign such documents necessary or convenient to restore to the Mortgagee the mortgage constituted by and its rights under this document immediately before that transaction.

#### 19.6 No Merger

This document is in addition to and is not in any way prejudiced by any judgment, order or other thing and the Mortgagee's rights under this document shall not be merged with any judgment, order or other thing.

#### 19.7 Bankruptcy of Borrower

The Mortgagor shall not in the Bankruptcy of any person whose obligations to the Mortgagee the Mortgagor has guaranteed:

- (a) directly or indirectly claim or receive the benefit of any distribution, dividend or payment; or
- (b) prove or claim for any distribution, dividend or payment in competition with the Mortgagee,

so as to diminish any distribution, dividend or payment which but for that claim or proof the Mortgagee would be entitled to receive, until the Money Secured has been paid in full and the Mortgagee is of the opinion that no payment of those moneys is or is likely to become void, voidable or otherwise unenforceable or refundable.

### 20. INDEMNITIES

#### 20.1 General

The Mortgagor indemnifies the Mortgagee against any liability, loss, cost or expense, including, without limitation, any Environmental Liability and any relating to funds raised, contracted for or used by the Mortgagee to fund any amount payable under a Transaction Documents caused or contributed to by:

- (a) any failure by a Transaction Party to comply with an obligation under a Transaction Documents;
- (b) any Event of Default;
- (c) the exercise or attempted exercise of any right by the Mortgagee, its Representatives, any Receiver or any Attorney under the Transaction Documents;
- (d) any act by the Mortgagee in reliance on any communication purporting to be from the Mortgagor or to be given on behalf of the Mortgagor; and
- (e) any claim or interest of any person who has an Encumbrance over any property of any Transaction Party which is not a Permitted Encumbrance.

## 20.2 Representatives

The Mortgagor shall indemnify each Receiver and Attorney and their respective Representatives and the Representatives of the Mortgagee against any liability, loss, cost and expense caused or contributed to by anything the Mortgagee is indemnified against under **clause 20** and the Mortgagee holds the benefit of this **clause 20.2** upon trust for those persons.

## 20.3 Currency Deficiency

If there is any deficiency between:

- (a) an amount payable by the Mortgagor under this document which is received by the Mortgagee in a currency other than the currency payable under this document because of a judgment, order, Bankruptcy or otherwise; and
- (b) the amount produced by converting the payment received from the currency in which it was paid into the currency in which it was agreed to be paid,

the Mortgagor shall pay to the Mortgagee the deficiency and any loss, costs or expenses resulting from it.

## 20.4 Independence and Survival

Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the Mortgagee and survives the termination of this document.

## 21. NO ASSIGNMENT

### 21.1 By Mortgagor

The Mortgagor shall not dispose of or encumber any interest in the Mortgagor's rights under this document.

### 21.2 By Mortgagee

- (a) The Mortgagee may at any time encumber, dispose of, participate, sub-participate or otherwise deal with its rights under this document.
- (b) The Mortgagee may disclose to any person who proposes to enter into a contract with the Mortgagee in relation to this document all information about the Mortgagor which in the reasonable opinion of the Mortgagee is appropriate.

## 22. MISCELLANEOUS

**22.1 Set-Off**

The Mortgagee may without notice to the Mortgagor:

- (a) set-off against any debt due for payment by the Mortgagor to the Mortgagee, including, without limitation, debts under the Transaction Documents, any debt due for payment by the Mortgagee to the Mortgagor, including, without limitation, any moneys in any currency held by the Mortgagee for the account of the Mortgagor in any place; and
- (b) if the debt due for payment by the Mortgagee to the Mortgagor is payable in a currency other than that in which the debt due for payment by the Mortgagor to the Mortgagee is payable, convert the Mortgagee's debt into the currency in which the Mortgagor's debt is payable.

**22.2 Mortgagee's Determination and Certificates**

- (a) A certificate by the Mortgagee or its Authorised Representative relating to this document is, in the absence of manifest error, prima facie evidence against the Mortgagor of the matters certified.
- (b) If under this document any matter is to be resolved by the determination or opinion of the Mortgagee:
  - (i) the determination or opinion of the Mortgagee will be binding upon the Mortgagor:
    - (A) if it is expressly required to be reasonable, if it is reasonable; or
    - (B) if it is not expressly required to be reasonable, if it is not made or formed in bad faith; and
  - (ii) the Mortgagee is not obliged to give the reasons for a determination or opinion.
- (c) A determination or an opinion of an Authorised Representative of the Mortgagee which is given to the Mortgagor or otherwise expressed or acted upon by the Mortgagee as being a determination or an opinion of the Mortgagee will be deemed to be a determination or opinion of the Mortgagee.

**22.3 Rights Cumulative**

The rights of the Mortgagee under this document are cumulative and are in addition to any other rights of the Mortgagee.

**22.4 Approvals and Consent**

The Mortgagee may, subject to any express provision in this document to the contrary, conditionally or unconditionally give or withhold any consent contemplated by this document and is not obliged to give its reasons for doing so.

**22.5 Waiver**

- (a) A right in favour of the Mortgagee under this document, subject to any express provision of this document to the contrary, may be waived prospectively or retrospectively by notice in writing signed by the Mortgagee.
- (b) No other act, omission or delay by the Mortgagee will constitute a waiver of a right.

**22.6 Exercise of Rights**

- (a) A single or partial exercise or waiver by the Mortgagee of any right relating to this document will not prevent any other exercise of that right or the exercise of any other right.

- (b) The Mortgagee and its Representatives will not be liable for any loss, cost or expense of the Mortgagor caused or contributed to by the waiver of, exercise of, attempted exercise of, failure to exercise or delay in exercising a right and the Mortgagee holds the benefit of this clause 22.6 upon trust for itself and its Representatives.

#### 22.7 Time of the Essence

Time is of the essence of any obligation of the Mortgagor under this document.

#### 22.8 Business Days

If:

- (a) the day on which any thing is to be done under this document is not a Business Day, that thing shall be done on the Business Day immediately following such day;
- (b) any payments made to the Mortgagee by any party to a Transaction Documents shall at the Mortgagee's discretion be deemed not to have been made until the moneys are actually received by the Mortgagee as cleared funds.

#### 22.9 Exchange Rate

Subject to any express provision to the contrary, if for the purposes of this document it is necessary to convert one currency into another currency the conversion shall be effected using an exchange rate determined by the Mortgagee.

#### 22.10 Records as Evidence

The Mortgagee may maintain records specifying:

- (a) payments made by the Mortgagee for the account of the Mortgagor;
- (b) payments by the Mortgagor for the account of the Mortgagee under this document; and
- (c) interest, fees, charges, costs and expenses payable in relation to this document;

and those records will against the Mortgagor constitute conclusive evidence, in the absence of manifest error, of the matters set out in them.

#### 22.11 Disclosure

The Mortgagee may subject to law, disclose to any person any information in its possession relating to the Mortgagor and this document if:

- (a) it is legally required to do so;
- (b) it is in accordance with any directive or request (whether or not having the force of law) of a Government Body; or
- (c) it is otherwise permitted under this document.

#### 22.12 Supervening Legislation

Any present or future legislation which operates to vary an obligation or right of a person in connection with this document is excluded to the extent that its exclusion is not prohibited or rendered ineffective by law.

**22.13 Credit Act**

- (a) Notwithstanding any other provision or covenant herein contained or implied, nothing in this Mortgage shall be construed as securing or purporting to secure in favour of the Mortgagee the payment of any moneys or the performance of obligations by the Mortgagor under or in respect of any contract or mortgage to which the Consumer Credit Legislation applies.
- (b) For the purpose of this clause "*Consumer Credit Legislation*" means the Consumer Credit Code or earlier Credit Acts.

**22.14 Counterparts**

This document may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

**22.15 Costs and Expenses - Nature**

The Mortgagor will upon the Mortgagee's demand pay to the Mortgagee or as directed by the Mortgagee all costs expenses and other amounts payable incurred or paid by the Mortgagee in respect of the Transaction Documents. These costs shall include:

- (a) legal costs on a full indemnity or on a solicitor and client basis (whichever is the greater);
- (b) costs resulting from or on account of any default by the Mortgagor or any Event of Default;
- (c) the cost of obtaining any advice reasonably required by the Mortgagee from time to time;
- (d) the costs of the Mortgagee registering or causing to be registered any Security (or a copy thereof) with such government body or registrar as the Mortgagee reasonably requires;
- (e) costs resulting from the exercise or purported or attempted exercise or of any of the Mortgagee rights or powers under the Transaction Documents; and
- (f) any stamp duty loan duty or other duty or financial impost including financial institutions duty, duties and taxes on receipts or payments and any fines or penalties arising directly or indirectly,

in respect of the Transaction Documents or any transaction contemplated thereby.

**22.16 Cost and Expenses - General**

The Mortgagor will pay to the Mortgagee upon demand all other fees, charges, costs and expenses (whether novel or not) charged or chargeable by the Mortgagee according to its usual practice from time to time in respect of its financial products and administration of its loan portfolios and as advised from time to time by the Mortgagee to the Mortgagor in writing.

**22.17 Notices**

- (a) Any notice, demand, certification or other communication under any Transaction Documents shall be given in writing and may be given by an Authorised Representative of the sender.
- (b) Any communication may be given by:
- (i) being personally served on a party;
- (ii) being left at the party's address specified in the Transaction Documents the party's current address for service, or at the usual place of abode or business of the party last known to the party giving the communication;



- (iii) being sent by pre-paid ordinary mail to the party's address specified in the Transaction Documents or the party's current address for service or at the usual place of abode or business of the party last known to the party giving the communication;
  - (iv) being sent by facsimile to the party's current number for service or last known number to the party giving the communication;
  - (v) (in the case of service on the Mortgagor), being left at or affixed to some part of the Secured Property or to some building thereon; or
- (c) If a communication is received by any Transaction Party all the Transaction Parties are deemed to have received the communication.
- (d) The initial addresses and numbers for service are as specified in the Transaction Documents. A party may from time to time change its address or numbers for service by notice to the other party.
- (e) A communication:
- (i) given by post shall be deemed received on the next business day after posting;
  - (ii) sent by facsimile shall be deemed received when the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number.

#### 22.18 Collateral Securities

The Transaction Documents secure the same moneys, liabilities and obligations as are secured by this document and are deemed to be collateral with and supplemental to this document.

### 23. GOVERNING LAW AND JURISDICTION

#### 23.1 Governing Law

This document is governed by and shall be construed in accordance with the laws of Queensland.

#### 23.3 Jurisdiction

The parties irrevocably and unconditionally submit to the nonexclusive jurisdiction of the courts of Queensland sitting in Brisbane and any courts which have jurisdiction to hear appeals from any of those courts and the parties waive any right to object to any proceedings being brought in those courts because the venue is inconvenient, the courts lack jurisdiction or any other reason.

### 24. ATTORNEY

#### 24.1 Appointment and Powers

As security for the payment of the Money Secured, the Mortgagor irrevocably appoints the Mortgagee or any Receiver jointly and severally its attorney with the right:

- (a) at any time to:
- (i) comply with the obligations of the Mortgagor under this document;
  - (ii) do anything in the name of the Mortgagor or the Mortgagee (including, without limitation, executing any document) that is required for the purposes of **clause 22.1.(a)**;
  - (iii) do everything which in the attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of the Mortgagee or any Receiver in relation to this document;

- (iv) if the Secured Property is or is proposed to be the subject of any dealing or other thing which may have or is likely to have a Material Adverse Effect, do anything in relation to the Secured Property that it thinks fit to prevent or delay that Material Adverse Effect;
  - (v) complete and date this document and any blank instrument executed by the Mortgagor and deposited with the Mortgagee; and
  - (vi) appoint substitutes and otherwise delegate its rights (including this right of delegation); and
- (b) after any Event of Default has occurred to do everything that the Mortgagor may lawfully authorise an agent to do in respect of this document and the Secured Property including, without limitation, anything described in **clauses 14.4 to 14.9** of this document.

#### 24.2 General

- (a) Any Attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty.
- (b) The Mortgagor will from time to time and at all times ratify any exercise of a right by an attorney.
- (c) The power of attorney is granted:
  - (i) to secure compliance by the Mortgagor with its obligations to the Mortgagee under this document and any proprietary interests of the Mortgagee under this document; and
  - (ii) for valuable consideration (receipt of which is acknowledged).
- (d) The Mortgagor indemnifies and will keep indemnified any Attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the Attorney under this power of attorney.

#### 25. SEVERANCE

Should any provision of this document prove to be prohibited or unenforceable in any jurisdiction then, as to that jurisdiction it shall be ineffective to the extent only of such prohibition or unenforceability without invalidating the remaining provisions of this document or affecting the validity or enforceability of such provisions in any other jurisdiction.

#### 26. COLLATERAL AGREEMENT

26.1 The parties hereto agree:

- (a) this Mortgage is collateral to the Collateral Security for stamp duty purposes;
- (b) the Money Secured owing under this Mortgage is secured by the Collateral Security;
- (c) the Collateral Security shall be read and construed and be enforceable as if the covenants, conditions and provisions of this Mortgage, with necessary changes, are read into and form part of the Collateral Security; and
- (d) a default under any of the Collateral Security will constitute a default of this Mortgage;

and vice versa.

26.2 Notwithstanding any provision contained in this Mortgage or any rule of law or equity to the contrary, the granting of any time or any other indulgence by the Mortgagee to the Mortgagor or any Security Provider in relation to any existing or future default under the Transaction Documents shall not effect or diminish the Mortgagee's right to exercise its rights under the Transaction Documents at any subsequent time.

**SCHEDULE 1  
(Clause 11.1)  
WORKS**

1. The Mortgagor may not enter into a Contract or carry on or continue any Works without the Mortgagee's consent. The Mortgagor may not carry on or continue any Works before obtaining all necessary approvals from all relevant Government Bodies.
2. The Mortgagor agrees to:
  - (a) proceed with the Works actively and continuously in a workmanlike manner in accordance with the plans and specifications approved by the relevant Government Bodies and the Mortgagee and within the time approved by the Mortgagee;
  - (b) comply on time with laws, official directives, easements and restrictive covenants which affect the Works;
  - (c) not allow the Works to encroach on property adjoining the Secured Property; and
  - (d) cause the Works to be completed in a proper and workmanlike manner and of a standard which may reasonably be expected from a professional builder for Works of that type.
3. While the Works continue, the Mortgagor agrees to:
  - (a) keep the Works insured for their full insurable value as the Works progress with insurers approved by the Mortgagee (which approval may not be unreasonably withheld) against the usual risks against which a prudent owner would insure if it were carrying out the Works and any other risks reasonably specified by the Mortgagee; and
  - (b) do everything specified in **clauses 7.1(c) to (e) inclusive to 7.2, 7.3, 7.4 and 7.5** of this memorandum as if a reference in those clauses to "Secured Property" were a reference to "Works".
4. A person authorised by the Mortgagee may enter at all times on the Secured Property to inspect the Works but must endeavour to liaise with the architect, site foreman or other representative of the Mortgagor or its builder in charge of the site in order to minimise disruption to the Works and to comply with site safety requirements.
5. On completion of the Works, the Mortgagor agrees to:
  - (a) obtain immediately any certificates required by the Mortgagee or under any other relevant legislation from the applicable Government Body evidencing satisfactory completion; and
  - (b) immediately deliver a copy of the certificates to the Mortgagee.
6. The Mortgagee is not responsible for anything in connection with:
  - (a) the Works or the construction of the Works; or
  - (b) any error or omission in or from the Works.
7. The Mortgagee is not responsible for anything in the plans and specifications in connection with the Works and even if the Mortgagee approved the plans and specifications or any variation of them or inspects and approves or accepts any aspect of the construction of the Works, the approval or acceptance:
  - (a) does not imply the exercise by or for the Mortgagee of any care or skill; and

- (b) does not relieve the Mortgagor from its warranties, covenants and obligations to ensure good design and workmanship and proper construction of the Works.
8. The Mortgagor indemnifies the Mortgagee, any Receiver or any Attorney and their employees, officers, agents and contractors against any liability or loss arising from and any costs, charges and expenses incurred in connection with any inspection, approval or acceptance of the plans and specifications, construction of the Works or exercise of any rights, powers or remedies under this document in connection with the Works.
9. The Mortgagor agrees to:
- (a) keep separate and proper books of account and make correct entries in them of all transactions in connection with the Works; and
- (b) keep the books of account open for inspection at all reasonable times by the Mortgagee, any Authorised Representative of the Mortgagee or any other person which the Mortgagee appoints for that purpose.
10. The Mortgagee may complete the Works as it sees fit (including, without limitation, by demolishing or altering the Works) if the Mortgagee considers that the Works have not been completed. In doing so, the Mortgagee may vary the plans and specifications as it sees fit. The Mortgagee may discontinue the Works as it sees fit and is not liable to the Mortgagor for any resulting loss.
11. The Mortgagor agrees to:
- (a) comply on time with its obligations under each Contract and promptly inform the Mortgagee of anything which occurs which might adversely affect its ability to perform those obligations; and
- (b) obtain, renew on time and comply with the terms of each authorisation necessary to enter into each Contract, observe obligations under it and allow it to be enforced; and
- (c) notify the Mortgagee promptly after it occurs of full details of an event of default under a Contract or event which with the giving of notice, lapse of time or fulfilment of any condition would be likely to become an event of default under a Contract, and the steps taken to remedy it; and
- (d) enforce each Contract against any other person in the manner directed by the Mortgagee; and
- (e) not agree to vary a Contract without the Mortgagee's consent (which consent is not to be unreasonably withheld); and
- (f) pay on time all amounts payable now or in the future in connection with each Contract; and
- (g) give the Mortgagee immediately any notice received from any other parties to a Contract.
12. It is an Event of Default if the Works are not completed for any reason within the time period stipulated in the Contract which relates to those Works as extended by any applicable force majeure provision in a Contract or any other period agreed by the Mortgagor and the Mortgagee.

**SCHEDULE 2**  
**(Clause 11.2)**  
**COMMUNITY TITLE SCHEMES**

**1. Definitions**

In this schedule "Act" means the Body Corporate and Community Management Act, 1997 and any words or phrases defined in the Act have the same meaning as in the Act.

**2. Mortgagor's obligations under the Act**

The Mortgagor must:

- (a) comply on time with the Act and all the Mortgagor's obligations as owner of the lot and preserve the rights of the Mortgagor as owner of the lot; and
- (b) if the Mortgagor is or becomes the original owner of the lot in a community management scheme, the Mortgagor must comply on time with its obligations as original owner of the lot.

### 3. Body Corporate Levies and Contributions

The Mortgagor will strictly observe all by-laws of the relevant body corporate and promptly pay all levies, contributions and other moneys payable in connection with the Mortgaged Property or the body corporate. The Mortgagor will, if required by the Mortgagee, deliver to the Mortgagee receipts relating to such payments.

### 4. Voting

The Mortgagor must preserve its entitlement to vote in respect of the lot at meetings of the body corporate and the business to be transacted at the meetings, unless the Mortgagee agrees otherwise. The Mortgagor will not, without the prior consent in writing of the Mortgagee, agree to or vote in favour of:

- (a) any dealing with any common property;
- (b) any resolution of the body corporate in respect of any matter which under the Act is required to be passed by a resolution without dissent;
- (c) any amendment to by-laws;
- (d) any application to the Registrar of Titles, the Commissioner for Body Corporate and Community Management or the Court.

The Mortgagor will, if required by the Mortgagee, vote in respect of any matter concerning the body corporate or the committee of the body corporate in such manner as the Mortgagee directs.

The Mortgagor must notify the Mortgagee promptly of any proposal to distribute surplus funds of the body corporate or wind up the body corporate or alter the lots or the common property.

### 5. Insurance

The Mortgagor will:

- (a) **(Provide copies insurance):** provide the Mortgagee with a copy of all policies of insurance effected by the body corporate and a certificate of currency from the relevant insurer;
- (b) **(Body Corporate to insure):** throughout the duration of this Mortgage use best endeavours to cause the body corporate to fully insure the Mortgaged Property; and
- (c) **(General insurance):** effect and throughout the duration of this Mortgage maintain such a policy of insurance in respect of the Mortgaged Property as required by the Mortgagee.

### 6. By-laws

The Mortgagor will, on request from time to time, and at its own expense provide to the Mortgagee an accurate copy of the by-laws of the relevant body corporate.

### 7. Notices

- (a) The Mortgagor will on receipt of every notice, other document or information from the body corporate, the Commissioner or an Adjudicator, deliver a copy of it to the Mortgagee. The Mortgagor will give to the Mortgagee written notice of each meeting of the body corporate and the agenda for every such meeting immediately upon being notified of such meeting.
- (b) The Mortgagor will notify the Mortgagee promptly of:
- (i) an application (or, if it comes to the Mortgagor's attention, a proposed application) to or a notice or order received from a statutory official, a tribunal or a court, a Government Body or any other authority in connection with the Secured Property, the common property or the parcel; and
  - (ii) any failure by the body corporate to comply with the Act.

#### 8. Attorney

The Mortgagor, by way of security, irrevocably throughout the duration of this Mortgage appoints the Mortgagee, any Receiver and every officer of the Mortgagee severally to be the attorney of the Mortgagor:

- (a) **(Body Corporate meetings):** to attend if the Mortgagee elects to do so, and to speak and vote on the Mortgagor's behalf to the exclusion of the Mortgagor if the attorney votes, at any meeting of the relevant body corporate or the committee of the relevant body corporate.
- (b) **(Commissioner and/or Adjudicator):** to make any application to the Commissioner for Body Corporate and Community Management;
- (c) **(Sign notices):** to sign on behalf of the Mortgagor all notices of mortgage, transfer, release of mortgage or otherwise as provided for in the Act; and
- (d) **(Representative):** to be the Representative of the Mortgagor, if required by the Mortgagee, under the Act for the purpose of any meetings of the Body Corporate.

#### 9. Proxy

If the Mortgagee requests the Mortgagor, the Mortgagor will promptly execute and deliver to the Mortgagee a proxy in favour of a person nominated by the Mortgagee. The proxy must:

- (a) be in a proper form for use in connection with all meetings of the body corporate; and
- (b) authorise the proxy to exercise the Mortgagor's rights in the proxy's absolute discretion.

#### 10. Construction of unit building

- (a) If any Works on the Mortgaged Property consist of or include the erection of a unit building or the conversion (with or without structural alterations or additions) of an existing building to that unit building, the Mortgagor will forthwith on completion of the Works pay all money and take all steps necessary to procure the registration of an appropriate plan under and in accordance with the Act and the Land Title Act 1994 in respect of the whole or that part of the Mortgaged Property the subject of the Works, dividing it into Lots corresponding with the home units comprised in the Works.
- (b) In any interval between expiry of the policy referred to in clause 6.1 (a) of this Mortgage and the commencement of the policy referred to in clause 5 of this Part, the Mortgagor will insure the unit building and keep it insured in the names of the Mortgagor and the Mortgagee against loss or damage by fire, explosion, storm and tempest to its full insurable value and otherwise in accordance with the provisions of clause 6 of this Mortgage.

#### 11. Further Events of Default

The following events are Events of Default for the purposes of this Mortgagee:

- (a) **(Failure to maintain insurances)**: the body corporate fails to keep in full force and effect adequate insurance in respect of any property or risk;
- (b) **(Adequate reserves or insurance)**: if the body corporate, in the opinion of the Mortgagee, incurs or is likely to incur a liability in respect of which it does not hold adequate reserves or insurance;
- (c) **(Body corporate exercising any right)**: if the body corporate exercises or purports to exercise any right, whether legal, equitable, contractual, statutory or otherwise, in relation to the Mortgaged Property, the common property, or otherwise, including amendment of any by-law, or leasing, transfer, granting an easement or restrictive covenant over, alteration, consolidation, subdivision or conversion of any lot or common property, with the effect that, in the opinion of the Mortgagee, there is a Material Adverse Effect on the Secured Property;
- (d) **(Building altered)**: if any building is altered in a manner in which, in the opinion of the Mortgagee, materially diminishes the value of the Mortgaged Property;
- (e) **(Building destroyed or damaged)**: if a building in which any part of the Mortgaged Property is included is destroyed or damaged or deteriorates so that, in the opinion of the Mortgagee, the value of the Mortgaged Property is materially diminished;
- (f) **(Application to Court)**: if an application is made to a Court for an order varying or extinguishing a plan or extinguish a Community Management Statement which affects any part of the Mortgaged Property;
- (g) **(Proceedings against Mortgagee)**: if the body corporate institutes proceedings against the Mortgagee; or
- (h) **(Variation or extinguishment of plan)**: if a resolution is carried or a declaration or order of the Court is made for the variation or extinguishment of a relevant plan or extinguishment of a Community Management Statement or any amendments or extinguishment of a Building Management Statement (if applicable).
- (i) **(Material Adverse Effect)**: if the Mortgagee considers that there has been or will be a Material Adverse Effect on the Secured Property because:
  - (i) a notice is reviewed or an order is made by a statutory official, a tribunal or a court or any other authority in connection with the Secured Property, the common property or the parcel;
  - (ii) the body corporate does not comply with the Act, the Community Management Statement or the regulation module; or
  - (iii) the body corporate carries out work which the Mortgagee or occupier of the lot ought to have done.

**SCHEDULE 3  
(Clause 11.3)  
RURAL LAND**

1. The Mortgagee agrees to:

- (a) cultivate, manage, preserve and maintain the Secured Property in a proper manner and in an efficient state of improvement and cultivation suitable for the use being carried on;
- (b) use all reasonable measures to erect and keep in repair all fences and adopt other measures necessary for keeping the Secured Property free from pests (including, without limitation, rabbits and other noxious animals), insects, infestations, noxious weeds and diseases;

- (c) take all reasonable steps for exterminating all growths which might interfere with or lower the value or utility of the Secured Property for grazing, farming, horticultural or agricultural purposes;
  - (d) comply with laws, regulations and official directives in force relating to the matters referred to in **clauses 1(b) and (c)** of this schedule and pay all accounts, taxes and charges in respect of those matters;
  - (e) execute in favour of the Mortgagee, at the Mortgagee's request and at the Mortgagor's own cost, a lien as security for the payment of the Money Secured in a form which the Mortgagee requires on every wool clip or crop of agricultural or horticultural produce on the Secured Property or a wool lien or a stock mortgage;
  - (f) comply with the conditions of any statutory authority and with other licences or quotas affecting or regulating production at or from the Secured Property or sale of produce from it; and
  - (g) pay all rates, charges, contributions or fees to any authority in respect of any licence, right or other privilege issued by that authority.
2. The Mortgagor may not:
- (a) give any other lien or charge on or over any clip or crop referred to in **clause 1(e)** of this schedule except with the Mortgagee's consent;
  - (b) dispose of, deal with or part with possession of a quota for the production or sale of any crop or other produce capable of being produced on the Secured Property without the Mortgagee's consent; or
  - (c) do or permit to be done anything which might cause the quota referred to in **clause 2(b)** of this schedule to be forfeited, surrendered or reduced.
3. In addition to the Mortgage hereby created over the interest of the Mortgagor in the Secured Property, the Mortgagor hereby charges to the Mortgagee all of its right, title and interest in all water, irrigation and other rights attaching, appurtenant or incidental to the Secured Property and the Mortgagor's use of the Secured Property.

**SCHEDULE 4**  
**(Clause 11.4)**  
**LICENSED PREMISES**

1. The Mortgagor or its nominee will hold a Licence in respect of the business operated on the Secured Property and the Mortgagor agrees to, or if a person other than the Mortgagor holds the licence, then the Mortgagor agrees to procure that person to:
- (a) personally, or by means of the person who holds the Licence, carry on the business conducted on the Secured Property for which the Licence is held in a proper and orderly manner;
  - (b) keep the licensed premises open for the sale of liquor;
  - (c) comply with its obligations under:
    - (i) Liquor Legislation;
    - (ii) requirements and orders of authorities in respect of the Licence;
  - (d) obtain and renew on time the Licence and each authorisation necessary to carry on the business conducted on the Secured Property for which the Licence is held and oppose any application to restrict or cancel the Licence;
  - (e) not without the Mortgagee's consent:



- (i) change the use of the Secured Property;
  - (ii) remove or apply to remove the Licence or allow the Licence to be removed from the Secured Property to other premises;
  - (iii) surrender or attempt to surrender the Licence;
  - (iv) dispose of, deal with or part with possession of any interest in the Licence; or
  - (v) create or allow to come into existence an Encumbrance which affects the Licence; and
- (f) give the Mortgagee as soon as the Mortgagor or other person receives it a copy of any summons, conviction or notification under the Liquor Legislation in connection with the Licence.
2. After an Event of Default:
- (a) the Mortgagor agrees at the Mortgagee's request, to use its best endeavours to obtain a transfer of the Licence to the Mortgagee or its nominee; and
  - (b) the Mortgagee or the Receiver may, if it has entered into possession of the licensed premises, serve liquor to customers for the Mortgagor and in the Mortgagor's name. This authority is irrevocable.
3. An Event of Default occurs if:
- (a) the Licence is removed or if the conditions attached to it are varied and the Mortgagee determines the variation will have a Material Adverse Effect; or
  - (b) the Mortgagee reasonably suspects that the Mortgagor or the person who holds the Licence or any of their servants or agents has done or is about to do something which is prohibited by this document, which may put the Licence in jeopardy or have a Material Adverse Effect on the Security (including, without limitation, being convicted of an offence).
4. The Mortgagor irrevocably appoints the Mortgagee, each Authorised Representative of the Mortgagee and each Receiver severally its attorneys.
5. Each attorney appointed pursuant to **clause 4** of this schedule may:
- (a) in the name of the Mortgagor or the attorney do anything which the Mortgagor may lawfully authorise an attorney to do in connection with the Licence or which in the attorney's opinion is necessary or expedient to give effect to any right, power or remedy conferred on the Mortgagee or a Receiver by this document, by law or otherwise in connection with the Licence (including, without limitation, executing deeds, instituting, conducting and defending legal proceedings, applying for or obtaining the continuation, transfer, renewal or removal of the Licence and signing all notices, transfers, applications and documents for that purpose in the Mortgagor's name);
  - (b) delegate its powers (including, without limitation, this power of delegation) to any person for any period and may revoke a delegation; and
  - (c) exercise or concur in exercising its powers even if the attorney has a conflict of duty in exercising its powers or has a direct or personal interest in the means or result of that exercise of powers.
6. The Mortgagor agrees to ratify anything done by the attorney or its delegate in accordance with **clause 5** of this schedule.
- B
7. If the Mortgagor does not hold the Licence, then, at the Mortgagee's request, the Mortgagor agrees to promptly procure the person who holds the Licence to give a power of attorney in favour of the Mortgagee, each Authorised Representative of the Mortgagee and each Receiver in the same terms as set out in **clauses 4 to 6**

(inclusive) of this schedule but on the basis that each reference to the Mortgagor is replaced with a reference to the person who holds the Licence.

**SCHEDULE 5  
(Clause 11.5)  
TRUST PROVISIONS**

**1. General**

Unless the context otherwise requires, the following definitions apply to this **Schedule 5**:

- (a) **"Beneficiaries"** means the beneficiaries of the Trust including, where the Trust is a unit trust, the unitholders;
- (b) **"Trust"** means the trust or trusts of which the Mortgagor is Trustee;
- (c) **"Trust Deed"** means the document or documents evidencing or constituting the Trust; and
- (d) **"Trust Property"** means the Secured Property and/or all other property held on trust by the Mortgagor under the Trust Deed.

**2. Mortgagor's Obligations**

The Mortgagor shall not:

- (a) cause or permit any Trust Property to be mixed with any other property; or
- (b) default in the performance or observance of its obligations as trustee of the Trust.

**3. Mortgagor's Indemnity**

The Mortgagor shall:

- (a) not release, dispose of or otherwise prejudice:
  - (i) its right of indemnity in relation to the Money Secured against the Trust Property or the Beneficiaries; or
  - (ii) its equitable lien over the Trust Property;
- (b) at the Mortgagee's request:
  - (i) exercise its indemnity against any equitable lien over the Trust Property and its indemnity against the Beneficiaries (if any), in relation to the Money Secured; and
  - (ii) assign to the Mortgagee those indemnities and that equitable lien and otherwise facilitate the subrogation of the Mortgagee to those indemnities and that equitable lien in relation to the Money Secured.

**4. Unit Trusts**

If the Trust is a unit trust, the Trustee shall not without the prior written consent of the Mortgagor consent to or register the transfer of any units in the Trust or cancel, repurchase, redeem or issue any units in the Trust.

**5. Mortgagor Acknowledgments**

The Mortgagor acknowledges that:

- (a) it is liable under any Transaction Documents to which it is a party in its own right and as trustee of the Trust;
- (b) any reference in any Transaction Documents to the Mortgagor's property includes property owned by it as trustee of the Trust and property owned by it in its own right; and
- (c) a reference to the Mortgagor in this document includes the Mortgagor as trustee of the Trust and the Mortgagor in its own right.

#### 6. Representations and Warranties

The Mortgagor warrants and represents to the Mortgagee that:

- (a) it has power as trustee of the Trust to execute each Transaction Documents to which it is a party and enter into every transaction under which the Money Secured are payable;
- (b) in executing each Transaction Documents to which it is a party and entering into those transactions the Mortgagor has properly performed its obligations to the Beneficiaries of the Trust;
- (c) all necessary action required by the Trust Deed to authorise its unconditional execution and delivery of and performance and observance of its obligations under this document has been taken;
- (d) the Mortgagor is the only trustee of the Trust;
- (e) no action has been taken to remove the Mortgagor as trustee of the Trust or to appoint an additional trustee of the Trust;
- (f) it has a right to be fully indemnified out of all the Trust Property in relation to the Money Secured;
- (g) it has not released or disposed of its equitable lien over the Trust Property which secures that indemnity;
- (h) the Trust Property is sufficient to satisfy that indemnity;
- (i) the Mortgagor has not defaulted in the performance and observance of its obligations as trustee of the Trust;
- (j) no action has been taken to terminate the Trust;
- (k) the Mortgagor has disclosed to the Mortgagee full particulars of;
  - (i) the Trust and any other trust or fiduciary relationship affecting the Trust Property and, without limitation, has given to the Mortgagee true and complete copies of the Trust Deed; and
  - (ii) its other trusteehips (if any);
- (l) the Trust is duly constituted and is not void, voidable or otherwise unenforceable; and
- (m) the rights of the Beneficiaries in relation to and their interest in Trust Property are subject to:
  - (i) the rights of the Mortgagee in relation to and its interest in the Trust Property; and
  - (ii) any rights or interests in the Trust Property to which the Mortgagee may from time to time be subrogated.

**7. Mortgagor's Undertakings**

The Mortgagor shall not without first obtaining the Mortgagee's written consent cause or permit:

- (a) any other trustee of the Trust to be appointed;
- (b) the Trust to be terminated or its terms to be varied;
- (c) itself to retire as trustee of the Trust;
- (d) the Trust Property to be resettled; or
- (e) the capital of the Trust Property to be distributed at any time or the income of the Trust Property to be distributed after an Event of Default has occurred.

**8. Events of Default**

Each of the following is an Event of Default (whether or not caused by anything outside the control of the Mortgagor) under this document:

- (a) the Mortgagor ceasing to be the trustee or the only trustee of the Trust or any action is taken for the removal of the Mortgagor as trustee of the Trust or for the appointment of another person as trustee in addition to the Mortgagor;
- (b) an application or order is sought or made in any court, for:
  - (i) the removal of the Mortgagor as trustee of the Trust;
  - (ii) the Trust Property to be administered by the court; or
  - (iii) an account to be taken in relation to the Trust; and
- (c) the Mortgagor defaults in the performance or observance of its obligations as trustee of the trust and that default causes or contributes to a Material Adverse Effect.

**SCHEDULE 6****(Clause 11.6)****MORTGAGE OF LEASEHOLD AND CROWN LEASEHOLD****1. The Mortgagor must:**

- (a) observe and perform all of the covenants and obligations which are imposed upon the Mortgagor under any lease (including all superior leases) of the Secured Property and will not do or allow to be done or omit to do any act which will or may give any person with a superior estate or interest the right to re-enter the Secured Property; and
- (b) give to the Mortgagee notice within 24 hours of the happening of any event whereby the Secured Property may be or become liable to be surrendered, forfeited, cancelled or prejudiced in any manner whatsoever.

**2. The Mortgagor will duly and punctually comply with and observe strictly the terms of any lease or license from the Crown relating to the Secured Property and will comply with the provisions of the Land Act 1994 and observe all Statutes now or hereafter in force and all Ordinances, Regulations and By-Laws thereunder and all notices, requirements, requisitions, demands and orders in all cases in which the non-compliance therewith or non-**

## SCHEDULE

observance thereof would or might impose some charge, liability or disability upon the Secured Property or prejudicially affect this Mortgage and in any event shall immediately it is received or comes to the notice or knowledge of the Mortgagor give to the Mortgagee a copy of any notice requirement, requisition, demand or order of the Crown or any Government Body or other authority and the Mortgagor will not commit or suffer to be committed any act, matter or thing whatsoever upon the Secured Property or any part thereof which does or may cause unreasonable annoyance, nuisance or grievance, damage or disturbance to occupiers, owners or adjoining or neighbouring lands and hereditaments.

3. The Mortgagor agrees all rights, powers and privileges granted to or exercisable by the Mortgagor as a lessee or sub-lessee relating to the Secured Property may be exercised by the Mortgagee without notice as though the Mortgagee was named in the Mortgagor's lease or sub-lease as lessee or sub-lessee as the case may be.

**SCHEDULE 7  
(Clause 11.7)  
FOLR ACT**

1. The Mortgagor warrants to the Mortgagee that prior to the execution of this Mortgage, the Mortgagor has:-
  - (a) duly and punctually complied with all of the relevant provisions of the FOLR Act; and
  - (b) made full disclosure to the Mortgagee of any notices, orders, declarations or other proceedings issued or delivered or intended to be served or delivered under the FOLR Act as are known to the Mortgagor and/or all facts and circumstances which may give rise to any such notice, order, declaration or proceeding being issued or delivered pursuant to the provisions of the FOLR Act.
2. That without limiting the foregoing the Mortgagor covenants and agrees with the Mortgagee:-
  - (a) when requested by the Mortgagee, to produce to the Mortgagee an original executed and correct notice in the appropriate form under the FOLR Act;
  - (b) at all times to duly comply with the provisions of the FOLR Act and to lodge with the Mortgagee a copy of any further form required under the FOLR Act from time to time within 24 hours of lodging same with the Registrar;
  - (c) to serve upon the Mortgagee a copy of any proceedings, notice, order or declaration received by the Mortgagor or delivered by the Mortgagor pursuant to the FOLR Act within 24 hours of receipt by the Mortgagor or within 24 hours of the Mortgagor delivering same.
3. The Mortgagor covenants that if the Mortgagor does not, within the relevant time limits prescribed by the FOLR Act, lodge with the Registrar all relevant forms or notices, the Mortgagee, any Receiver or any Attorney may sign, seal, deliver and execute all writings, documents, notices and instruments necessary for the observance and performance of the covenants of the Mortgagor contained in this clause without placing any obligation upon the Mortgagee to do so or to secure same to be done.
4. The Mortgagor will indemnify and keep indemnified the Mortgagee against any loss, damage, cost, claim, proceeding and expense suffered by the Mortgagee as a result of any breach of the covenants and all warranties contained herein or as a result of any determination, order forfeiture, offence or any action, matter or thing done by the Registrar, the Minister, the Land Appeal Court, the Supreme Court and/or any other court, person, body or corporation pursuant to the FOLR Act and/or at law or by reason or as a result of any failure by the Mortgagor to comply with the FOLR Act.

**MEMORANDUM  
OF  
COMMON  
PROVISIONS**

**NO. 704075487**



15/01/2014

## Registration Number Search Certificate

This is a registration number search certificate for a search conducted for registration number 201112141091366

This Search certificate is provided under section 174 of the *Personal Property Securities Act 2009*

Search certificate number: 0135908622350001  
 Search number: 013590862235

This search certificate reflects the data contained in the PPS Register at 15/01/2014 16:49:15 (Canberra Time).

### Search Criteria Details

Registration Number: 201112141091366

### Registration Details

Registration number:	201112141091366	Change number:	11437867
Registration kind:	Security interest		
Giving of notice identifier:	001299737		
Registration start time:	30/01/2012 00:00:00 (Canberra Time)		
Registration end time:	No stated end time		
Registration last changed:	08/02/2012 18:57:39 (Canberra Time)		
Subordinate registration:	Not stated	Transitional:	Yes
Registration State:	Current		

This registration is migrated from Register of Company Charges with the registration start date 12/05/2006.

### Grantor Details

Organisation identifier:	116192780	Organisation identifier type:	ACN
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### Collateral Details

Collateral type:	Commercial property
Collateral class:	All present and after-acquired property - No exceptions
Attachment file name:	001299737_022810977.pdf
Attachment description:	Document lodged at time of registration
Attachment file name:	001299737_022811610.pdf
Attachment description:	Document lodged at time of registration
Attachment file name:	001299737_024337196.pdf
Attachment description:	Document lodged at time of registration
Attachment file name:	4625.pdf
Attachment description:	Additional data supplied by the source register at the time of migration

Attachment is a migrated attachment.

Number of attachments: 4

### Secured Party Details

Organisation identifier: 008412913 Organisation identifier type: ACN  
Organisation name: THE TRUST COMPANY (PTAL) LIMITED (Verified)

### Address for Service

Contact name: Head of Property & Infrastructure Custody  
Email: ppsr@thetrustcompany.com.au  
Mailing address: GPO Box 4270  
Sydney  
NSW 2001  
AUSTRALIA  
Physical address: L15, 20 Bond Street  
Sydney  
NSW 2000  
AUSTRALIA

### History Summary

Change Number: 11437867 Type: Transfer Time: 08/02/2012 18:57:39 (Canberra Time)  
Change Number: 4369959 Type: Create Time: 30/01/2012 00:00:00 (Canberra Time)

### Privacy and Terms and Conditions

The Australian Financial Security Authority is subject to the *Privacy Act 1988* which requires that we comply with the *Information Privacy Principles* (IPPs) set out in the Act. The IPPs set out how Australian Government agencies should collect, use, store and disclose personal information and how individuals can access records containing their personal information.

Access to and use of the PPS Register is subject to the General Conditions of Use, as well as other relevant terms and conditions. All relevant terms and conditions can be found at [www.ppsr.gov.au](http://www.ppsr.gov.au)

End of search certificate

EMAIL: [enquiries@ppsr.gov.au](mailto:enquiries@ppsr.gov.au) WEBSITE: [www.ppsr.gov.au](http://www.ppsr.gov.au)

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GPO Box 1944 Adelaide SA 5001

1300 00 77 77





15/01/2014

### Attachment certificate

Attachment certificate for registration number 201112141091366

This Attachment certificate is provided under section 174 of the *Personal Property Securities Act 2009*

Search certificate number: 0135908622350001

Search number: 013590862235

This search was conducted on 15/01/2014 16:49:15 (Canberra Time). This attachment certificate reflects information contained in the PPS Register at 15/01/2014 16:49:15 (Canberra Time).

#### Attachment Details

Attachment file name: 001299737\_022810977.pdf

Attachment description: Document lodged at time of registration



Replace this page with the actual attachment



15/01/2014

### Attachment certificate

Attachment certificate for registration number 201112141091366

This Attachment certificate is provided under section 174 of the *Personal Property Securities Act 2009*

Search certificate number: 0135908622350001  
Search number: 013590862235

This search was conducted on 15/01/2014 16:49:15 (Canberra Time). This attachment certificate reflects information contained in the PPS Register at 15/01/2014 16:49:15 (Canberra Time).

#### Attachment Details

Attachment file name: 001299737\_022811610.pdf  
Attachment description: Document lodged at time of registration



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15/01/2014

## Attachment certificate

Attachment certificate for registration number 201112141091366

This Attachment certificate is provided under section 174 of the *Personal Property Securities Act 2009*

Search certificate number: 0135908622350001  
Search number: 013590862235

This search was conducted on 15/01/2014 16:49:15 (Canberra Time). This attachment certificate reflects information contained in the PPS Register at 15/01/2014 16:49:15 (Canberra Time).

### Attachment Details

Attachment file name: 001299737\_024337196.pdf  
Attachment description: Document lodged at time of registration



Australian Government  
Australian Financial Security Authority



Personal Property  
Securities Register

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15/01/2014

## Attachment certificate

Attachment certificate for registration number 201112141091366

This Attachment certificate is provided under section 174 of the *Personal Property Securities Act 2009*

Search certificate number: 0135908622350001

Search number: 013590862235

This search was conducted on 15/01/2014 16:49:15 (Canberra Time). This attachment certificate reflects information contained in the PPS Register at 15/01/2014 16:49:15 (Canberra Time).

### Attachment Details

Attachment file name: 4625.pdf

Attachment description: Additional data supplied by the source register at the time of migration

Attachment is a migrated attachment.



Replace this page with the actual attachment



## Appointment of Agent

Pinevale Villas Morayfield Pty Ltd  
ACN 116 192 780

**The Trust Company (PTAL) Limited ACN 008 412 913**

**LM Investment Management Pty Ltd ACN 077 208 461 (in Liquidation)  
(Receivers and Managers Appointed)**

# Appointment of Agent

Date

21

JANUARY

2012

**By this Deed Poll** The Trust Company (PTAL) Limited ACN 008 412 913 of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the "Mortgagee")

**Witnesses as follows:**

Recitals

- A Pinevale Villas Morayfield Pty Ltd ACN 116 192 780 (previously known as Adelaide St Properties Pty Ltd) (the "Company") of 25 Uplands Drive Parkwood QLD 4212 is indebted to the Mortgagee.
- B The Mortgagee holds:
1. Mortgage given by the Company as trustee under instrument number 709597321 and registered with the Queensland Land Titles Registry as registered dealing number 709597331 ("Mortgage").
  2. Fixed and Floating Charge dated 12 May 2006 and registered with the Australian Securities and Investments Commission as registered charge number 1299737 (PPSR Registration number 201112141091366) ("Charge").
- C The Mortgage and the Charge have become enforceable.
- D By virtue of the powers in the Mortgage and the Charge, the Mortgagee is entitled to appoint any person or persons to be the agent of the Mortgagee to exercise any of the rights, powers and remedies exercisable by the Mortgagee pursuant to the Mortgage and the Charge, and the Mortgagee wishes to exercise this power.

## Accordingly:

1. The Mortgagee appoints LM Investment Management Limited ACN 077 208 461 (in Liquidation) (Receivers and Managers Appointed) to be the agent (the "Agent") of the Mortgagee, to exercise all rights, powers, privileges, benefits, discretions and authorities conferred on the Mortgagee under and pursuant to the Charge, the Mortgage and by law.
2. The Mortgagee reserves the right at any time to:
  - (a) revoke the Agent's appointment;
  - (b) impose conditions or restrictions on the terms of appointment of the Agent; or
  - (c) appoint an additional or a replacement agent in place of the Agent.
3. This appointment of the Agent shall take effect from the actual time it is accepted by the Agent signing below.

# Appointment of Agent

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## 4. Limit of Liability

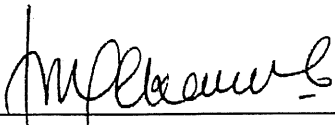
- 4.1 The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund ARSN 089 343 288 (the "Trust"), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited ACN 077 208 461 (Receivers and Managers Appointed)(in Liquidation) (the "Responsible Entity") dated 4 February 1999 ("Custody Agreement") and in no other capacity.
- 4.2 A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
- 4.3 A person other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- 4.4 The provisions of this clause 4 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- 4.5 Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
- 4.6 Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
- 4.7 The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
- 4.8 No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 4.4.
- 4.9 The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.

# Appointment of Agent

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- 4.10 A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
- (a) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
  - (b) was in accordance with a lawful court order or direction or otherwise required by law.
- 4.11 All of the terms, clauses and conditions of this Deed are subject to this clause 4.
5. This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

Signed by **THE TRUST COMPANY (PTAL) LIMITED ACN 008 412 913** as Lender,  
by its attorney who states that it has had  
no notice of revocation of the Power of  
Attorney dated 12 July 2010 registered in  
Queensland as number 7133510296  
in the presence of:

  
\_\_\_\_\_  
Signature of Witness

**INGE KARTIKA**  
\_\_\_\_\_  
Name of Witness

  
\_\_\_\_\_  
Signature of Attorney

**Trent Franklin**  
**Manager Property and Infrastructure Custody Services**  
\_\_\_\_\_  
Name of Attorney

# Appointment of Agent

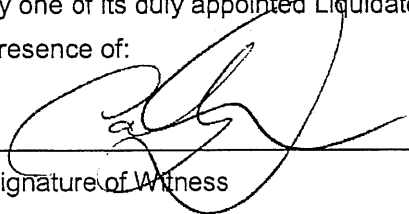
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**The Agent accepts** the above appointment at the time and on the date written below:


Date Accepted: *21 JANUARY 2014*

Time Accepted:

Executed by **LM Investment Management Limited ACN 077 208 461 (in Liquidation) (Receivers and Managers Appointed)**  
in its capacity as the Responsible Entity for  
LM First Mortgage Income Fund ARSN 089 343 288  
by one of its duly appointed Liquidators in the  
presence of:

  
\_\_\_\_\_  
Signature of Witness

Carly Deanne Drew  
\_\_\_\_\_  
Name of Witness

  
\_\_\_\_\_  
Signature of Liquidator

John Park  
\_\_\_\_\_  
Name of Liquidator

## Agent's Indemnity

Pinevale Villas Morayfield Pty Ltd

ACN 116 192 780

**The Trust Company (PTAL) Pty Ltd ACN 008 412 913**

**LM Investment Management Ltd ACN 077 208 461 (in Liquidation)  
(Receivers and Managers Appointed)**

# Agent's Indemnity

<b>Date</b>	21 JANUARY 2012 <del>4</del>
<b>Parties</b>	
1.	THE TRUST COMPANY (PTAL) LTD ACN 008 412 913 of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (the "Mortgagee"); and
2.	LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 (in Liquidation) (Receivers and Managers Appointed) of C/O FTI Consulting, Corporate Centre One, Level 9, 2 Corporate Court, Bundall QLD 4217 (in this Deed referred to as the "Agent").
<b>Recitals</b>	
A	Pinevale Villas Morayfield Pty Ltd ACN 116 192 780 (previously known as Adelaide St Properties Pty Ltd) (the "Company") of 25 Uplands Drive Parkwood QLD 4212 is indebted to the Mortgagee.
B	The Mortgagee holds:  1. Mortgage given by the Company as trustee under instrument number 709597321 and registered with the Queensland Land Titles Registry as registered dealing number 709597331 ("Mortgage").  2. a Fixed and Floating Charge dated 12 May 2006 and registered with the Australian Securities and Investments Commission as registered charge number 1299737 (PPSR Registration number 201112141091366 ("Charge").
C	The Mortgage and the Charge have become enforceable.
D	By a Deed of Appointment of Agent dated 21 JANUARY 2012 <del>4</del> (the "Deed of Appointment"), the Mortgagee has appointed LM Investment Management Limited ACN 077 208 461 (in Liquidation) (Receivers and Managers Appointed) to be the agent of the Mortgagee.
E	The Agent agreed to accept such appointment (the "Agency") on condition that the Mortgagee indemnify the Agent (so far as the Mortgagee is legally able to do so) in the manner provided in this Deed.

## IT IS AGREED as follows:

### 1. Indemnity

The Mortgagee shall, subject to the provisions of clause 2 of this Deed, indemnify the Agent against liabilities for or arising out of all actions, proceedings, claims, suits and demands, and all payments, costs and expenses (all included in the word "Liabilities")

# Agent's Indemnity

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incurred by the Agent in or arising out of the due exercise or purported exercise of any of the rights, powers, discretions or authorities vested or purported to be vested in the Agent by virtue of the Deed of Appointment, or otherwise incurred or to be incurred in the due course of the conduct of the Agency, including specifically:

- (a) all Liabilities arising out of any defect in the Charge or the Mortgage or any invalidity or unenforceability of the Charge or the Mortgage or the appointment pursuant to the Deed of Appointment;
- (b) all Liabilities consequent upon any bona fide mistake, omission, oversight, error of judgment or want of prudence on the part of the Agent;
- (c) all Liabilities incurred or threatened in respect of any matter or thing done or omitted to be done by the Agent in exercise or purported exercise of the Agent's rights, powers, discretions or authorities in the Agency; and
- (d) all Liabilities and obligations of any nature incurred by the Agent in the course of or directly or indirectly resulting from the Agency.

## **2. Exclusions from Indemnity**

---

The indemnity in the preceding clause shall not extend to:

- (a) any liability arising out of the wilful default, dishonesty or gross negligence of the Agent or any of the Agent's agents or employees in the performance or exercise or purported performance or exercise of the Agent's rights, powers, discretions or authorities or as a result of the Agent or the Agent's agent or employees knowingly exceeding the scope of the Agent's rights, powers, discretions and authorities.

## **3. Expenses and Fees**

---

The Mortgagee shall pay to the Agent all reasonable charges, costs, fees and expenses payable to or incurred by the Agent in relation to the Agency, to the extent to which the Agent does not apply moneys available to it as such Agent for that purpose, and the Agent is entitled to claim a lien over the Charged Property and the Mortgaged Property in respect of all amounts referred to in this clause.

## **4. Emergency Preference Payments**

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Notwithstanding the provisions of the Charge and the Mortgage, the Mortgagee (so far as it is competent to do so but not otherwise) authorises the Agent to apply the whole or any part of any moneys coming into the Agent's control in the Agency in payment of claims of creditors of the Company (whether those claims have priority over the claims of the Mortgagee or not) if, in the reasonable opinion of the Agent, it is necessary to make such payment to protect the goodwill or other assets of the Company.



# Agent's Indemnity

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## 5. Warranties

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The Agent warrants to the Mortgagee that at the time of execution of this Deed, the Agent had not received any claim in respect of the liability to which the indemnity contained in clause 1 extends or notice of any such claim, and the Agent is not aware of any circumstances in respect of which any such claim is threatened or apprehended.

## 6. Agent's Obligations

---

The Agent undertakes and agrees with the Mortgagee that:

- (a) in the event of any claim being threatened or received in respect of any liability to which the indemnity in this Deed extends, the Agent shall immediately notify the Mortgagee in writing, and shall furnish the Mortgagee with all information available to the Agent in relation to such claim;
- (b) if so requested by the Mortgagee, the Agent shall (at the expense of the Mortgagee) defend any such claim, and for that purpose shall, if required by the Mortgagee, employ solicitors nominated by the Mortgagee and co-operate fully with the Mortgagee and the nominated solicitors in the conduct of such defence;
- (c) other than as specified in clause 4, the Agent shall not, without the prior written consent of the Mortgagee, compromise or settle or make any admission in regard to any claim or liability to which such indemnity extends; and
- (d) the Agent shall give full details to the Mortgagee of all liabilities admitted or debts paid pursuant to the discretion conferred by clause 4 within one month of the same being admitted incurred or paid (as the case may be).

## 7. Limit of Liability

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- (a) The Mortgagee enters into this Deed only in its capacity as custodian of the LM First Mortgage Income Fund ARSN 089 343 288 (the "Trust"), pursuant to a custody agreement between the Mortgagee and LM Investment Management Limited ACN 077 208 461 (in Liquidation) (Receivers and Managers Appointed) (the "Responsible Entity") dated 4 February 1999 (the "Custody Agreement") and in no other capacity.
- (b) A liability arising under or in connection with this Deed is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of property of the Trust out of which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
- (c) A party to this Deed other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar

## Agent's Indemnity

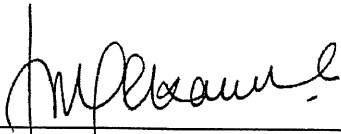
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- person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- (d) The provisions of this clause 7 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
  - (e) Despite any other provision in this Deed, if any obligation otherwise imposed upon the Mortgagee under this Deed is, in the Mortgagee's opinion, inconsistent with, or beyond the scope of the Mortgagee's obligation or powers under the Custody Agreement, that obligation, to the extent of that inconsistency or to the extent that it is beyond the scope of the Mortgagee's obligations or powers under the Custody Agreement, must be performed by the Trust and not by the Mortgagee.
  - (f) Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Custody Agreement will not amount to a breach of or default under this Deed.
  - (g) The Mortgagee's determination as to whether an obligation otherwise imposed upon it under this Deed is inconsistent with or beyond the scope of its obligations and powers under the Custody Agreement is final and binding on all parties.
  - (h) No attorney or agent appointed in accordance with this Deed or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Mortgagee for the purpose of clause 7(d).
  - (i) The Mortgagee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Mortgagee's liability is limited in the manner satisfactory to the Mortgagee in its absolute discretion.
  - (j) A failure by the Mortgagee to comply with, or a breach by the Mortgagee of any of, its obligations under this Deed will not be considered to be fraud, negligence or wilful default by the Mortgagee if the relevant failure or breach:
    - (i) arose as a result of a breach by a person other than the Mortgagee where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation; or
    - (ii) was in accordance with a lawful court order or direction or otherwise required by law.
  - (k) All of the terms, clauses and conditions of this Deed are subject to this clause 7.

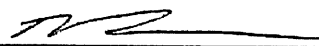
# Agent's Indemnity

---

Signed by **THE TRUST COMPANY (PTAL) LIMITED ACN 008 412 913** as Lender,  
by its attorney who states that it has had  
no notice of revocation of the Power of  
Attorney dated 12 July 2010 registered in  
Queensland as number 7133510296 in the  
presence of:

  
\_\_\_\_\_  
Signature of Witness  
**INGE KARTIKA**

\_\_\_\_\_  
Name of Witness

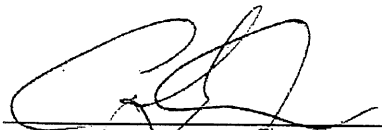
  
\_\_\_\_\_  
Signature of Attorney  
**Trent Franklin**  
**Manager Property and Infrastructure Custody Services**

\_\_\_\_\_  
Name of Attorney


Executed by:

**LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461**  
**(in Liquidation) (Receivers and Managers Appointed)**

in its capacity as the Responsible Entity for  
LM First Mortgage Income Fund ARSN 089 343 288  
by one of its duly appointed Liquidators in the  
presence of:

  
\_\_\_\_\_  
Signature of Witness

**Carly Deanne Drew**  
\_\_\_\_\_  
Name of Witness

  
\_\_\_\_\_  
Signature of Liquidator

**John Park**  
\_\_\_\_\_  
Name of Liquidator

**ASIC & Business Names**  
**ORGANISATIONAL SEARCH ON OVST PTY LTD**

**Historical Extract**

This information was extracted from ASIC database on 01 October 2013 at 10:59AM

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

103 216 771	OVST PTY LTD	DOCUMENT NO.
ABN	103 216 771 81 103 216 771	
Registered in	QLD	
Date Registered	19-Dec-2002	
Review Date	30-Jan-2014	

**Current Organisation Details**

Name	OVST PTY LTD	7E3109270
Name Start	19-Dec-2002	
Status	EXTERNALLY ADMINISTERED	
	For information about this status refer to the documents listed under the heading "External Administration and/or Appointment of Controller", below.	
Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	

**Ceased/Former Organisation Details**

Details Start	19-Dec-2002	018191735
Details End	12-Aug-2010	
Name	OVST PTY LTD	
Name Start	19-Dec-2002	
Status	REGISTERED	
Type	AUSTRALIAN PROPRIETARY COMPANY	
Class	LIMITED BY SHARES	
Subclass	PROPRIETARY COMPANY	
Disclosing Entity	NO	

**Current Registered Office**

Address	VAMBELS PTY LTD, UNIT 14, 67 O'CONNELL TERRACE, BOWEN HILLS, QLD, 4006	7E2961424
Start Date	22-Jun-2010	

**Ceased/Former Registered Office**

Address	PETRAC PROJECTS PTY LTD, SUITE 15, 67 O'CONNELL TERRACE, BOWEN HILLS, QLD, 4006	1F0146773
Start Date	14-Jul-2009	
End Date	21-Jun-2010	
Address	JOHNSTON RORKE, 'CENTRAL PLAZA ONE' LEVEL 30, 345 QUEEN STREET, BRISBANE, QLD, 4000	7E1124098
Start Date	13-Jun-2007	
End Date	13-Jul-2009	
Address	LEVEL 7, 39 SHERWOOD ROAD, TOOWONG, QLD, 4066	0E9656386
Start Date	15-Mar-2004	
End Date	12-Jun-2007	
Address	LEVEL 7, 39 SHERWOOD ROAD, TOOWONG, QLD, 4066	0E9656354
Start Date	15-Mar-2004	
End Date	15-Mar-2004	
Address	99 ANNERLEY ROAD, WOOLLOONGABBA, QLD, 4102	018191735
Start Date	19-Dec-2002	
End Date	14-Mar-2004	

**Current Principal Place of Business**

Address	99 ANNERLEY ROAD, WOOLLOONGABBA, QLD, 4102	018191735
Start Date	19-Dec-2002	
Address	VAMBELS PTY LTD, UNIT 14, 67 O'CONNELL TERRACE, BOWEN HILLS, QLD, 4006	7E2961424
Start Date	15-Jun-2010	

**Ceased/Former Principal Place of Business**

Address	PETRAC PROJECTS PTY LTD, SUITE 15, 67 O'CONNELL TERRACE, BOWEN HILLS, QLD, 4006	1F0146773
Start Date	10-Jun-2009	
End Date	14-Jun-2010	
Address	RIVERSIDE CORPORATE PARK, 'LVL 2 LOGAN HOUSE NORTH', 25 DONKIN STREET, SOUTH BRISBANE, QLD, 4101	020892588
Start Date	06-Jan-2005	
End Date	06-Jan-2005	
Address	LEVEL 1, 417 LOGAN ROAD, GREENSLOPES, QLD, 4120	0E9656354
Start Date	01-Mar-2004	
End Date	01-Mar-2004	
Address	LEVEL 1, 417 LOGAN ROAD, GREENSLOPES, QLD, 4120	0E9656386
Start Date	01-Mar-2004	
End Date	01-Mar-2004	

**Current Director**

Officer Name	PETER VOLLERT	019557816
ABN	Not available	
Birth Details	04-Jan-1960 LAE PAPUA NEW GUINEA	
Address	46 WENTWORTH PARADE, BALMORAL, QLD, 4171	
Appointment Date	27-Jan-2004	

**Ceased/Former Director**

Officer Name	TRACY NUGENT	7E4345612
ABN	Not available	
Birth Details	07-Aug-1958 TOOWOOMBA QLD	
Address	26 REES AVENUE, CLAYFIELD, QLD, 4011	
Appointment Date	19-Dec-2002	
Cease Date	25-Jun-2012	

Officer Name	PETER GERARD MCAVOY	1F0283311
ABN	Not available	
Birth Details	24-Apr-1960 BRISBANE QLD	
Address	129 SIRIUS STREET, COORPAROO, QLD, 4151	
Appointment Date	16-Nov-2009	
Cease Date	15-Jun-2010	

Officer Name	PETER GERARD MCAVOY	7E1490145
ABN	Not available	
Birth Details	24-Apr-1960 BRISBANE QLD	
Address	129 SIRIUS STREET, COORPAROO, QLD, 4151	
Appointment Date	19-Dec-2002	
Cease Date	29-Sep-2009	

Officer Name	MARK ANDREW SPEDDING	1E1591009
ABN	Not available	
Birth Details	21-Feb-1962 CARINGBAH NSW	
Address	34 WENDELL STREET, NORMAN PARK, QLD, 4170	
Appointment Date	25-Nov-2005	
Cease Date	13-May-2009	

**Current Secretary**

Officer Name	ROLF VOLLERT	7E2961424
ABN	Not available	
Birth Details	17-Apr-1963 LAE PAPUA NEW GUINEA	
Address	96 EDMONDSTONE STREET, NEWMARKET, QLD, 4051	
Appointment Date	15-Jun-2010	

**Current Petitioner Court Action**

Officer Name	KRISJADE PTY LTD	026678121
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ACN 070 051 893  
 ABN Not available  
 Address GRANT THORNTON, G, 102 ADELAIDE STREET, BRISBANE,  
 QLD, 4000  
 Appointment Date 14-Jul-2010

Court details affecting role

Court Type	Supreme	Court State	Queensland
Court application No	S 7322	Court application year	2010

**Current Appointed Liquidator (Court Winding Up)**

Officer Name TERRENCE ERNEST JAMES SMITH 7E3109270  
 ABN Not available  
 Address ALLENS AUSTRALIA PTY LTD, LEVEL 1, 1925 LOGAN ROAD,  
 UPPER MOUNT GRAVATT, QLD, 4122  
 Appointment Date 13-Aug-2010

Court details affecting role

Court Type	Supreme	Court State	Queensland
Court application No	S7322/10	Court application year	2010

**Current Managing Controller**

Officer Name THE TRUST COMPANY (PTAL) LIMITED 027048447  
 ACN 008 412 913  
 ABN Not available  
 Address TREVOR FENWICK, 'MONAGHAN LAWYERS' LEVEL 4, 9  
 BEACH ROAD, SURFERS PARADISE, QLD, 4217  
 Appointment Date 13-Aug-2010

Officer Name LM INVESTMENT MANAGEMENT LIMITED 027424389  
 ACN 077 208 461  
 ABN Not available  
 Address LEVEL 4 RSL CENTRE, 9 BEACH ROAD, SURFERS PARADISE,  
 QLD, 4217  
 Appointment Date 01-Nov-2010

**Current Issued Capital**

Type	Current	1E0615913
Class	ORD	
	ORDINARY SHARES	
Number of Shares/Interests issued	2	
Total amount paid/taken to be paid	\$2.00	
Total amount due and payable	\$0.00	

Note: For each class of shares issued by a proprietary company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

**Current Members**

Class ORD 7E4345612  
 No. Held 1  
 Beneficially Owned NO Fully paid YES  
 Name MILLWORTH PTY. LTD.  
 ACN 074 649 111  
 ABN Not available  
 Address 127 SIRIUS STREET, COORPAROO, QLD, 4151  
 Joint Holding NO

Class ORD 7E4345697  
 No. Held 1  
 Beneficially Owned NO Fully paid YES  
 Name NUGENT CAPITAL PTY LTD  
 ACN 095 712 217  
 ABN 95 095 712 217  
 Address 26 REES AVENUE, CLAYFIELD, QLD, 4011  
 Joint Holding NO

**Documents Relating to External Administration and/or Appointment**

This extract may not list all documents relating to this status. State and territory records should be searched.

Received	Form Type	Processed	No. Pages	Effective	
04-Jul-2013 524Q	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)	02-Aug-2013	12	12-Feb-2013	028694569
02-Apr-2013 524Q	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)	20-Apr-2013	13	12-Aug-2012	028417997
18-Apr-2012 524Q	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)	19-Apr-2012	17	12-Feb-2012	028146828
30-Mar-2012 524Q	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)	12-Apr-2012	37	12-Feb-2011	028146702
30-Mar-2012 524Q	PRESENTATION OF ACCOUNTS & STATEMENT ACCOUNTS OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)	12-Apr-2012	18	12-Aug-2011	028146474
15-Dec-2010 507C	REPORT AS TO AFFAIRS REGARDING COURT WINDING UP	13-Jan-2011	17	06-Dec-2010	027389574
18-Nov-2010		25-Nov-2010	5	01-Nov-2010	027424389



505Q	NOTIFICATION OF APPT OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)				
18-Nov-2010	504	25-Nov-2010	5	01-Nov-2010	027424390
504E	NOTIFICATION OF APPOINTMENT OF A BY APPOINTMENT OF MANAGING CONTROLLER				
03-Nov-2010	507	07-Dec-2010	18	06-Oct-2010	027373119
507F	REPORT AS TO AFFAIRS FROM CONTROLLER UNDER S.429(2)(C)				
12-Oct-2010	507	27-Oct-2010	19	13-Aug-2010	027133024
507G	REPORT AS TO AFFAIRS FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/MANAGER				
17-Aug-2010	505	20-Aug-2010	5	13-Aug-2010	027048612
505Q	NOTIFICATION OF APPT OF MANAGING CONTROLLER (OTHER THAN RECEIVER & MANAGER)				
16-Aug-2010	505	16-Aug-2010	2	13-Aug-2010	7E3109270
505G	NOTIFICATION OF APPOINTMENT OF LIQUIDATOR BY THE COURT				
16-Aug-2010	519	19-Aug-2010	3	13-Aug-2010	027038644
519D	NOTIFICATION OF MAKING OF WINDING UP ORDER				
13-Aug-2010	504	18-Aug-2010	4	13-Aug-2010	027048447
504E	NOTIFICATION OF APPOINTMENT OF A BY APPOINTMENT OF MANAGING CONTROLLER				

**Charges**

ASIC Charge Number	942128	Charge status	Satisfied
Date registered	13-May-2003	Time registered	09:13:00
Charge type	Both Fixed & Floating		
Date Created	01-May-2003		

**Chargee**                      **NATIONAL AUSTRALIA BANK LIMITED**  
004 044 937

<b>Lodged</b>	<b>Form Type</b>	<b>Processed</b>	<b>No. Pages</b>
06-Feb-2004	312	06-Feb-2004	1
312	NOTIFICATION OF		
312A	DISCHARGE		

ASIC Charge Number	980064	Charge status	Satisfied
Date registered	25-Sep-2003	Time registered	09:48:00
Charge type	Fixed		
Date Created	19-Sep-2003		

**Chargee**                      **NATIONAL AUSTRALIA BANK LIMITED**  
004 044 937

<b>Lodged</b>	<b>Form Type</b>	<b>Processed</b>	<b>No. Pages</b>
06-Feb-2004	312	06-Feb-2004	1
312	NOTIFICATION OF		
312A	DISCHARGE		

**Document Details**

<b>Received</b>	<b>Form Type</b>	<b>Processed</b>	<b>No. Pages</b>	<b>Effective</b>	
25-Jun-2012 484E	484 Change to Company Details Appointment or Cessation of A Company Officeholder	25-Jun-2012	2	25-Jun-2012	7E4539613
20-Mar-2012 484A2	484 Change to Company Details Change Member Name or Address	20-Mar-2012	2	20-Mar-2012	7E4345697
20-Mar-2012 484 484A1 484A2	484 Change to Company Details Change Officeholder Name or Address Change Member Name or Address	20-Mar-2012	2	20-Mar-2012	7E4345612
16-Jul-2010 519G	519 Notification of Application to Wind Up Company Under S. 459p, 462 or 464	20-Jul-2010	3	14-Jul-2010	026678121
15-Jun-2010 484 484B 484C 484E	484 Change to Company Details Change of Registered Address Change of Principal Place of Business (Address) Appointment or Cessation of a Company Officeholder	15-Jun-2010	3	15-Jun-2010	7E2961424
08-Dec-2009 484E	484 Change to Company Details Appointment or Cessation of A Company Officeholder	08-Dec-2009	3	08-Dec-2009	1F0283311
07-Jul-2009 484 484B 484C 484A1 484A2	484 Change to Company Details Change of Registered Address CHANGE OF PRINCIPAL PLACE OF BUSINESS (ADDRESS) CHANGE OFFICEHOLDER NAME OR ADDRESS CHANGE MEMBER NAME OR ADDRESS	08-Jul-2009	4	08-Jul-2009	1F0146773
18-May-2009 484E	484 CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER	18-May-2009	3	18-May-2009	1F0198332
21-Feb-2008 484 484A1 484A2	484 CHANGE TO COMPANY DETAILS CHANGE OFFICEHOLDER NAME OR ADDRESS CHANGE MEMBER NAME OR ADDRESS	21-Feb-2008	2	21-Feb-2008	7E1490145
08-Feb-2008 488B	488 APPLICATION TO CHANGE REVIEW DATE OF A COMPANY OR SCHEME SYNCHRONISE REVIEW DATE BY OFFICE HOLDER - FEE APPLIES	13-Feb-2008	4	08-Feb-2008	024340848
10-Jul-2007 311B	311 NOTIFICATION OF CHANGE TO DETAILS OF CHARGE	10-Jul-2007	4	07-Jun-2007	023362817
26-Jun-2007	311	28-Jun-2007	4	07-Jun-2007	023968021

311B NOTIFICATION OF CHANGE TO DETAILS OF CHARGE

06-Jun-2007 484B	484	06-Jun-2007	2	06-Jun-2007	7E1124098
CHANGE TO COMPANY DETAILS CHANGE OF REGISTERED ADDRESS					
28-Nov-2005 484E	484	28-Nov-2005	2	25-Nov-2005	1E1591009
CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER					
01-Feb-2005 484C	484	02-Feb-2005	3	02-Feb-2005	020892588
CHANGE TO COMPANY DETAILS CHANGE OF PRINCIPAL PLACE OF BUSINESS (ADDRESS)					
28-Jan-2005 484 484O 484G 484N	484	28-Jan-2005	3	06-Jan-2005	1E0615913
CHANGE TO COMPANY DETAILS					
CHANGES TO SHARE STRUCTURE					
NOTIFICATION OF SHARE ISSUE					
CHANGES TO (MEMBERS) SHARE HOLDINGS					
29-Nov-2004 902	902	06-Dec-2004	18	01-Nov-2004	020891128
SUPPLEMENTARY DOCUMENT					
Alters 019 667 414					
04-Nov-2004 311A	311	06-Dec-2004	2	01-Nov-2004	019667414
NOTIFICATION OF ASSIGNMENT OF CHARGE					
Altered by 020 891 128					
26-Jul-2004 309A	309	26-Jul-2004	24	28-Jun-2004	019655955
NOTIFICATION OF DETAILS OF A CHARGE					
23-Mar-2004 311A	311	23-Mar-2004	2	26-Feb-2004	019249393
NOTIFICATION OF ASSIGNMENT OF CHARGE					
08-Mar-2004 484 484B 484C	484	08-Mar-2004	2	01-Mar-2004	0E9656386
CHANGE TO COMPANY DETAILS					
CHANGE OF REGISTERED ADDRESS					
CHANGE OF PRINCIPAL PLACE OF BUSINESS (ADDRESS)					
08-Mar-2004 484 484B 484C	484	08-Mar-2004	2	01-Mar-2004	0E9656354
CHANGE TO COMPANY DETAILS					
CHANGE OF REGISTERED ADDRESS					
CHANGE OF PRINCIPAL PLACE OF BUSINESS (ADDRESS)					
13-Feb-2004 484E	484	17-Feb-2004	6	27-Jan-2004	019557816
CHANGE TO COMPANY DETAILS APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER					
06-Feb-2004 309A	309	06-Feb-2004	30	30-Jan-2004	018986506
NOTIFICATION OF DETAILS OF A CHARGE					
25-Sep-2003 309A	309	25-Sep-2003	23	19-Sep-2003	019677406
NOTIFICATION OF DETAILS OF A CHARGE					
16-May-2003 309A	309	19-May-2003	35	09-May-2003	019018314
NOTIFICATION OF DETAILS OF A CHARGE					

13-May-2003	309	13-May-2003	42	01-May-2003	019018132
309A	NOTIFICATION OF DETAILS OF A CHARGE				
19-Dec-2002	201	19-Dec-2002	4	19-Dec-2002	018191735
201C	APPLICATION FOR REGISTRATION AS A PROPRIETARY COMPANY				

**Annual Returns**

Year	Return Due Date	Extended Due Date	AGM Due Date	Extended AGM Due Date	AGM Held Date	Outstanding
2002	31-Jan-2003	30-Apr-2003				Y

Section 146A of the *Corporations Act 2001* states 'A contact address is the address to which communications and notices are sent from ASIC to the company.'

Address	GPO BOX 1144, BRISBANE, QLD, 4001
Start Date	24-May-2007
End Date	28-Sep-2009

\*\*\* End of Extract \*\*\*