

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

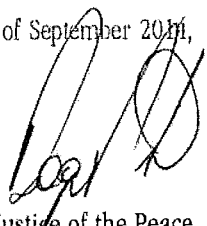
AND

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

CERTIFICATE OF EXHIBIT

Volume 3 of exhibit "DW-1" to the Affidavit of DAVID WHYTE sworn this 9th day of September 2011,
comprising items 21 to 33 and pages 404 to 623 of the exhibit


Deponent


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

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Form: .05M
Release: 2.1
www.lpi.nsw.gov.au

MORTGAGE
New South Wales
Real Property Act 1900

AA391969J

PRIVACY NOTE: this information is legally required and will become part of the public record

STAMP DUTY

Office of State Revenue use only	NEW SOUTH WALES DUTY 06-02-2004 0001825096-001 INITIAL ACCOUNT \$ 2447323.000 04 DUTY 1 837233027.661.0
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(A) TORRENS TITLE

SEE ANNEXURE "A"

(B) LODGED BY

Delivery Box 406T	Name, Address or DX and Telephone Holman Webb DX 233 Sydney (02) 9390 8000 Reference (optional): LJJ.LMI907/84	CODE M
-----------------------------	---	------------------

(C) MORTGAGOR

OVST PTY LTD ACN 103 216 771 of 99 Annerley Road, Woolloongabba, Queensland 4102
--

mortgages to the mortgagee all the mortgagor's estate and interest in the above land, and covenants with the mortgagee that the provisions set out in the annexure and/or memorandum specified below are incorporated in this mortgage:

- (D) • annexure "B" hereto;
- memorandum No. 2447323 filed at Land and Property Information New South Wales.
- (E) Encumbrances (if applicable):

(F) MORTGAGEE

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 of Level 4, RSL Centre, 44A Cavill Avenue, Surfers Paradise, Queensland 4217	NEW SOUTH WALES DUTY 13-07-2007 0004412200-001
TENANCY:	

DATE 30 JANUARY 2004

- (H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below, pursuant to the authority specified.
Corporation: OVST Pty Ltd ACN 103 216 771
Authority: section 127 of the Corporations Law



Signature of authorised person: *[Signature]*
Name of authorised person: PETER J McAVOY
Office held: DIRECTOR/SECRET

Signature of authorised person: *[Signature]*
Name of authorised person: PETER VOLLERT
Office held: DIRECTOR

REGISTERED
- 1 OCT 2010
BOOK 4599 No. 152

Certified for the purposes of the Real Property Act 1900 by the person whose signature appears below.
Signature: *[Signature]*

RE: POWER OF ATTORNEY CONTAINED IN CLAUSE 16 IN MEMORANDUM
2447323

Signatory's name: Lee John Jackson
Signatory's capacity: mortgagee's solicitor

THIS IS ANNEXURE "A" TO THE MORTGAGE MADE THE 30TH DAY OF
JANUARY 2004 BETWEEN OVST PTY LTD ACN 103 216 771
("MORTGAGOR) AND LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
(MORTGAGEE)

TORRENS TITLE

Folio Identifiers:

1/SP62608, 2/SP62608, 3/SP62608, 4/SP62608, 5/SP62608, 6/SP62608, 7/SP62608,
8/SP62608, 9/SP62608, 10/SP62608, 11/SP62608, 12/SP62608, 13/SP62608, 14/SP62608,
15/SP62608, 16/SP62608, 17/SP62608, 18/SP62608, 19/SP62608, 20/SP62608,
21/SP62608, 22/SP62608,

Executed on behalf of the corporation named)
below by the authorised person(s) whose)
signature(s) appear(s) below pursuant to the:)
authority specified)



OVST Pty Ltd
ACN 103 216 771
Authority: Section 127 of the Corporations Law

Signature of authorised person:

Name of authorised person:

PETER S McAVOY

Office held:

DIRECTOR/SECRETARY

Signature of authorised person:

Name of authorised person:

PETER VOHERT

Office held:

DIRECTOR

.....

Lee John Jackson - Solicitor for Mortgagee

THIS IS ANNEXURE "B" TO THE MORTGAGE MADE THE ^{30TH} DAY OF
^{JANUARY} 2004 BETWEEN OVST PTY LTD ACN 103 216 771
("MORTGAGOR) AND LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
(MORTGAGEE)

IT IS HEREBY AGREED AND DECLARED THAT:

1. This Mortgage is collateral to and secures the same moneys as are secured by the Loan Agreement bearing even date or intended to bear even date herewith executed and delivered by the Mortgagor as Borrower in favour of the Mortgagee as Lender and any amendment or variation thereto.
2. The definition of "principal sum" in Clause 1.1 of Memorandum 2447323 is amended by:
 - (a) re-numbering paragraph "(e)" as paragraph "(f)"; and
 - (b) inserting new paragraph "(e)" as follows:

"and all moneys now owing or payable or hereafter to become owing or payable by the Mortgagor to the Mortgagee pursuant to Loan Agreement bearing even date or intended to bear even date herewith and delivered by the Mortgagor as Borrower in favour of the Mortgagee as Lender and any amendment or variation thereto."

Executed on behalf of the corporation named)
below by the authorised person(s) whose)
signature(s) appear(s) below pursuant to the:)
authority specified)



OVST Pty Ltd
ACN 103 216 771
Authority: Section 127 of the Corporations Law

Signature of authorised person:

Name of authorised person:

Office held:

Lee John Jackson
Lee John Jackson - Solicitor for Mortgagee

Signature of authorised person:

Name of authorised person:

Office held:

X *Peter Vollert*
PETER VOLBERT
DIRECTOR

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B

MEMORANDUM
Section 80A Real Property Act 1900

2447323 D

(A) **LODGED BY**

L.T.O. Box	Name, Address or DX and Telephone	
406T	HOLMAN WEBB, DX 233, SYDNEY 9390-8000 REFERENCE (max. 15 characters): LJJ <i>DJE</i>	LM MM

(B) The Applicant HOLMAN WEBB
requests the Registrar General to record this memorandum, comprising ..31... pages (excluding this page), which contains provisions deemed to be incorporated in any instrument which refers to it.

(C) *Lee*
Signature of Applicant or Applicant's Representative LEE JOHN JACKSON - PARTNER
Name and Qualification

INSTRUCTIONS FOR COMPLETION

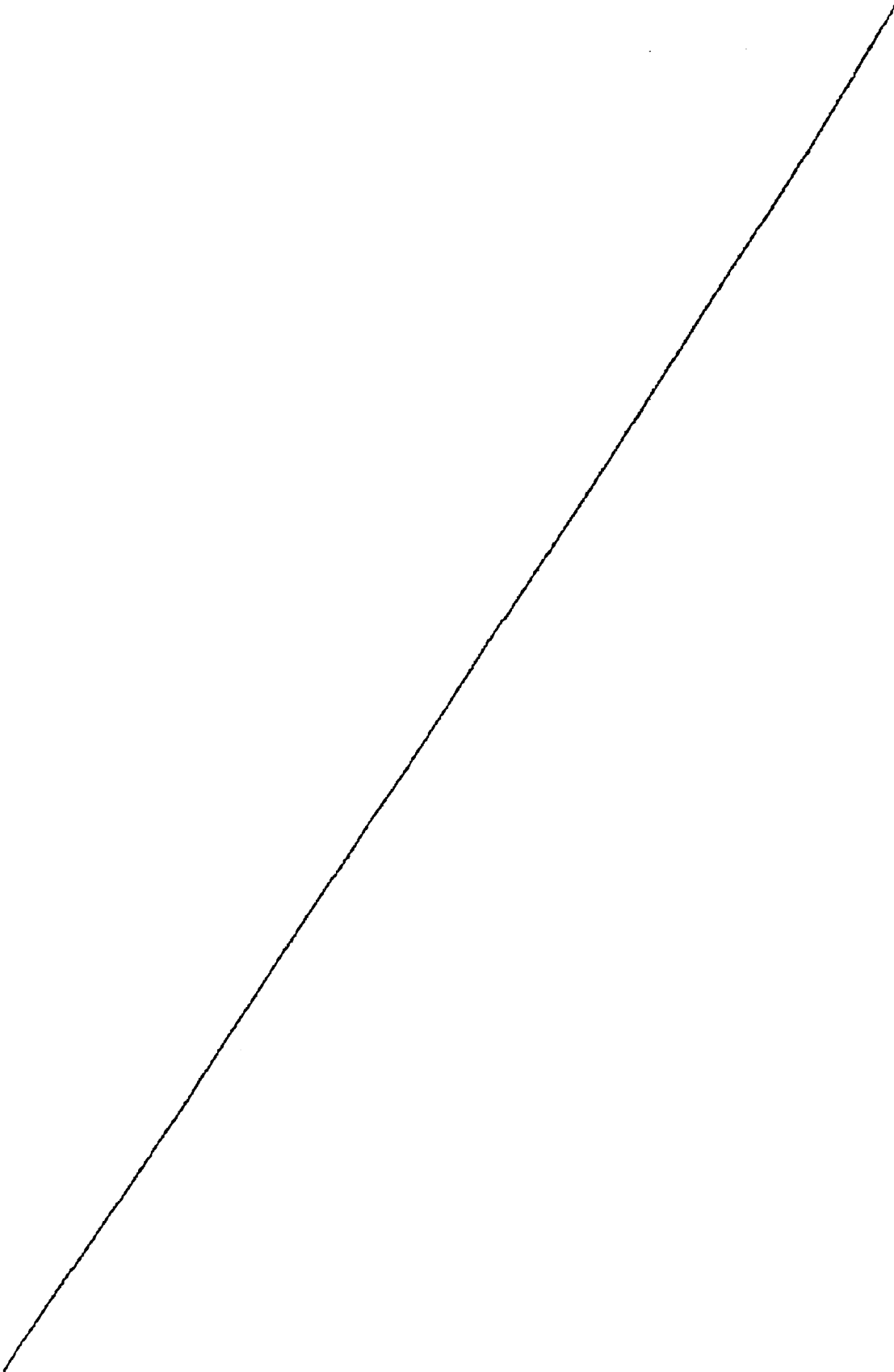
1. This form and any annexures to it must be completed clearly and legibly in permanent, dense, black or dark blue print. If using a dot-matrix printer the print must be letter-quality.
2. Do not use an eraser or correction fluid to make alterations: rule through rejected material. Initial each alteration in the lefthand margin.
3. The following instructions relate to the marginal letters on the form.
 - (A) This section is to be completed by the person or firm lodging the memorandum at the Land Titles Office.
 - (B) Insert the name of the relevant lending institution, lessor, etc, and the number of pages in the memorandum.
 - (C) To be signed by the Applicant or the Applicant's representative.
 - (D) The text of the provisions may commence this page, or all the provisions may be included on an annexure. The pages containing the provisions must be numbered consecutively, the first such page being numbered 1. Do not number blank pages. The clauses must be numbered consecutively from number 1. The margins on this page and on any annexure must be those specified in the Real Property Act Regulations. The paper used for any annexure must be of not less substance than 105 grams per square metre; however if one side only is used it should be not less than 80 grams per square metre. All pages containing the text of the provisions must be signed by the Applicant or the Applicant's representative. Rule through and initial all blank pages.

Filed in the Land Titles Office on ...11/19/96

(D)

PROVISIONS REFERRED TO

SEE ANNEXURE OF 31 PAGES



MEMORANDUM

1. DEFINITIONS AND INTERPRETATION

1.1 "Act" means the Strata Titles Act, 1973 of the State.

"Agreement" includes every contract, agreement, arrangement or understanding (and any amendment or variation thereof) at any time (whether before or after the date hereof) made between the Mortgagor and the Mortgagee (either with or without any other person) under which the Mortgagee has provided or agreed to provide to or for the benefit of the Mortgagor (either alone or with any other person) a cash, credit or other finance facility or financial accommodation.

"Attorney" means any person appointed pursuant to this Mortgage to be the attorney of the Mortgagor and includes any additional or substitute person so appointed.

"authorised officer" means any servant, agent, employee, representative or other person authorised by the Mortgagee to act on its behalf in respect of any matter or thing arising out of or incidental to this Mortgage.

"Collateral Security" means every security other than this Mortgage of whatsoever nature as amended, varied or replaced from time to time which has been given or may be given by the Mortgagor and/or any other person to secure the observance and performance of the Mortgagor's Covenants.

"corporation" has the meaning ascribed to that expression in the Corporations Law.

"Corporations Law" means:

- (a) in the case where the Mortgagor is incorporated or taken to be incorporated in Australia, the Corporations Law of the State or Territory in which the Mortgagor is incorporated or is taken to be incorporated; or
- (b) otherwise, the Corporations Law of the State of New South Wales and the expression "Corporations Law" shall have the extended meaning given by Section 8A of the Corporations Law in the relevant jurisdiction.

"the Debtor" means the Debtor (and in the case of an individual) his executors, administrators and permitted assigns or (in the case of a corporation) its successor and permitted assigns and when two or more Debtors are parties hereto shall mean every individual or corporation who or which is the Debtor and each or any of them and their, his or its executors, administrators and successors (as the case may be) and permitted assigns.

"Environment" means the physical factors of the surroundings of human beings, including without limitation the land, waters, atmosphere, climate, sand, odours, taste, the biological factors of creatures and plants and the social factors of aesthetics.

"Environmental Law" means any Statute regulating or otherwise relating to the Environment including but not limited to any statute relating to land use, planning, water catchments, pollution of air or water, noise, smell, soil or ground water

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contamination, chemicals, waste, use of dangerous goods or hazardous substances or any other aspect of the protection of the Environment or the enforcement or administration of those statutes.

"Event of Default" means an event specified in Clause 11.

"Licence" means every licence, permit, consent, approval or authority which the provisions of any statute or the requirements of any Relevant Authority shall oblige the Mortgagor or any other person to hold and maintain current in respect of the mortgaged land or any trade, business or undertaking now carried on or at any time after the date of this Mortgage to be carried on by the Mortgagor or any other person in or from the mortgaged land.

"the mortgaged land" means the mortgaged land and any buildings, erections, structures and improvements affixed to or placed or erected on the mortgaged land and where the context requires means the whole or any part thereof and includes any other expression in this Mortgage which refers to the mortgaged land.

"the Mortgagee" means the Mortgagee, its successors and assigns and when two or more Mortgagees are parties hereto shall mean every individual or corporation who or which is a Mortgagee and each or any of them and their, his or its executors, administrators and successors (as the case may be) and assigns.

"the Mortgagor" means the Mortgagor and (in the case of an individual) his executors, administrators and permitted assigns or (in the case of a corporation) its successor and permitted assigns and when two or more Mortgagors are parties hereto or to any Agreement or Collateral Security shall mean every individual or corporation who or which is the Mortgagor and each or any of them and their, his or its executors, administrators and successors (as the case may be) and permitted assigns.

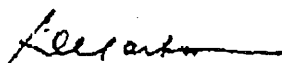
"the Mortgagor's Covenants" means any and every covenant, agreement, liability, obligation, representation, warranty or other provision contained or implied in this Mortgage or any Agreement or Collateral Security to be observed and performed by the Mortgagor.

"person" includes individuals, corporations, partnerships, joint ventures, unincorporated associations, statutory, public, local or other authorities and government bodies and agencies.

"Pollutant" means any substance which is capable of causing a state of pollution or harm to the Environment or any substance the use of which is regulated by any Environmental Law.

"principal sum" means ALL MONEYS now owing or payable or hereafter to become owing or payable to the Mortgagee by the Mortgagor in any manner or on any account whatsoever including (but without restricting the generality of the foregoing):

- (a) ALL MONEYS which the Mortgagee may lend, pay, make available or advance or become in any way liable to lend, pay, make available or advance



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and whether by reason of the Mortgagee accepting, paying, purchasing, discounting, endorsing or negotiating any order, draft, cheque, promissory note, bill of exchange or other negotiable or commercial instrument or by entering into any bond, indemnity or guarantee or otherwise incurring liability for or on behalf or at the request or by the direction or under the authority of the Mortgagor;

(b) AND ALL MONEYS which upon any account or in any manner whatsoever:

- (i) are at any time and from time to time presently owing and payable;
- (ii) are at any time and from time to time owing but not then presently payable;
- (iii) are at any time and from time to time owing or which might become owing upon a contingency; or
- (iv) at any time and from time to time may reasonably foreseeably become owing (whether by operation of law or equity or otherwise or by reason of anything done or omitted to be done by the Mortgagee with the consent or at the request of the Mortgagor);

to the Mortgagee by the Mortgagor either alone or jointly with any other person;

(c) AND ALL MONEYS (including costs, charges, legal fees, expenses, salaries and wages) which the Mortgagee shall pay or become liable to pay to any person in connection with:

- (i) the preparation of this Mortgage or any Agreement or Collateral Security;
- (ii) the investigation or perfection of title to the mortgaged land;
- (iii) the valuation or inspection of or reports concerning the mortgaged land;
- (iv) the completion, stamping, registration and/or whole or partial discharge of this Mortgage or any Collateral Security;
- (v) the exercise or attempted exercise of any right, power, remedy, discretion or authority of the Mortgagee under any Collateral Security or in consequence of the Mortgagor committing an Event of Default (including legal fees on a solicitor and client basis as specified in any memorandum of costs rendered by the Mortgagee's solicitor to the Mortgagee);
- (vi) the appointment of any Receiver or Attorney, or any receiver, manager or attorney under any Collateral Security;

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- (d) AND ALL MONEYS which any Receiver or Attorney or any receiver, manager or attorney appointed by the Mortgagee under any Collateral Security shall pay or become liable to pay to any person in connection with the exercise or attempted exercise of any right, power, remedy, discretion or authority conferred on the Receiver or Attorney or such receiver, manager or attorney;
- (e) AND interest on any of the preceding moneys at such rate or rates as may be fixed from time to time in accordance with this Mortgage;

AND SHALL where the context permits include any part of such moneys.

"Receiver" means each person appointed whether jointly or alone pursuant to this Mortgage to be receiver or manager or receiver and manager of the mortgaged land and includes any additional or substitute person so appointed.

"Relevant Authority" means any and every person having jurisdiction under any statute or by law over the mortgaged land.

"the State" means the State of New South Wales.

"surety" means any person who has agreed to guarantee to the Mortgagee or be liable to the Mortgagee for the observance and performance of the Mortgagor's Covenants and includes any person who has agreed to indemnify the Mortgagee in respect of any breach of the Mortgagor's Covenants.

"Trust" means every trust, deed, agreement, arrangement or fund of which the Mortgagor is the trustee either alone or with any other person and whether made or created before, on or after the date of this Mortgage and whether the Mortgagee has or does not have notice thereof.

References to a "day" shall be a reference to a day on which corporations licensed under the Commonwealth Banking Act, 1959 to carry on banking business are open for business in the State.

Words importing the singular or plural number shall include the plural and singular number respectively.

Words importing any gender shall include the other genders.

When two or more persons are parties hereto as Mortgagor the Mortgagor's Covenants shall bind such persons jointly and each of them severally unless otherwise specifically provided.

When two or more persons are parties hereto as Mortgagee the Mortgagor's Covenants shall be enforceable by such persons jointly and each of them severally unless otherwise specifically provided.

This Mortgage shall bind each of the signatories hereto notwithstanding that any party hereto may never execute this Mortgage or that the execution hereof by any party



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hereto (other than the person sought to be made liable hereunder) is or may become void or voidable.

In the event of and only to the extent of any inconsistency between the provisions of this Mortgage and the provisions of any Agreement, the provisions of the Agreement shall prevail.

References to any specific enactment or to enactments generally shall include references to the same (whether Federal, State or of a Territory and whether in force on or at any time after the date of this Mortgage) as re-enacted, extended, consolidated, replaced or amended from time to time and all ordinances, orders, regulations, by-laws or rules made under or pursuant thereto.

Headings have been inserted for guidance only and shall not be deemed to form any part of the context.

2. **PRINCIPAL SUM**

2.1 The Mortgagor will pay to the Mortgagee the principal sum:

- (a) in accordance with the provisions contained or implied in any Agreement governing the manner of payment of the principal sum; or
- (b) to the extent that there is not in force any Agreement, upon demand by the Mortgagee and in cash at the address of the Mortgagee specified in this Mortgage or at such other address as may be notified by the Mortgagee to the Mortgagor PROVIDED that demand shall not be made by the Mortgagee unless and until an Event of Default shall have occurred.

3. **INTEREST**

3.1 The Mortgagor will pay to the Mortgagee interest on the principal sum or upon any judgment or order in which the covenants and agreements in this clause or in Clause 2 shall become merged at:

- (a) the rate or rates from time to time provided in any Agreement for the payment of interest; or
- (b) the rate fixed by or payable under any such judgment or order, whichever is the higher;

or

- (c) to the extent that there is not in force any Agreement or any such judgment or order, at the rate calculated on daily rests being two percentum (2%) above the maximum rate of interest per annum from time to time charged by the Commonwealth Bank of Australia (or its successor) on overdraft accommodation in excess of \$100,000.00.

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4. THE MORTGAGOR'S COVENANTS

- 4.1 This Mortgage is being entered into by the Mortgagor to secure to the Mortgagee the due and punctual observance and performance of the Mortgagor's Covenants.
- 4.2 The Mortgagor will at all times during the continuance of this Mortgage duly and punctually perform and observe the Mortgagor's Covenants.
- 4.3 Other than as expressly provided herein nothing contained in this Mortgage shall:
- (a) oblige the Mortgagee to advance or provide any moneys otherwise than in accordance with any Agreement;
 - (b) prevent the Mortgagee from demanding payment or repayment of the principal sum except as provided for in this Mortgage or in any Agreement; or
 - (c) oblige the Mortgagee to make any payment to any person or at the direction of any person except in accordance with any Agreement.
- 4.4 The Mortgagor shall not permit or allow an Event of Default to occur or suffer an Event of Default.

5. THE MORTGAGED LAND

- 5.1 The Mortgagor will at the expense of the Mortgagor during the continuance of this Mortgage and whether the Mortgagee shall or shall not have entered upon or taken possession of the mortgaged land:
- (a) duly and punctually pay all rents, rates, taxes, duties, charges, outgoings and assessments at any time charged or payable upon or in respect of the mortgaged land and will forthwith on demand deliver to the Mortgagee all notices received in respect thereof and the receipt for every such payment and will indemnify and keep indemnified the Mortgagee against all liability of the Mortgagee in respect thereof;
 - (b) forthwith upon receipt thereof, deliver to the Mortgagee any notice, order or other document received by it from any Relevant Authority;
 - (c) make and diligently prosecute applications to any Relevant Authority for consent or permission to use or to continue to use the mortgaged land for any lawful purpose;
 - (d) maintain, prevent from deterioration and protect the mortgaged land and keep the mortgaged land in good order and condition, in good and substantial repair, and free from rodents and noxious animals and plants;
 - (e) not without the prior written consent of the Mortgagee demolish, alter, extend or remove any part of the mortgaged land or erect any further improvements thereon;

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- (f) permit the Mortgagee and any authorised officer or any Receiver from time to time to enter upon the mortgaged land at all reasonable times, to inspect the state and condition thereof;
- (g) forthwith on demand by the Mortgagee repair every defect in the condition of the mortgaged land and paint and/or paper the mortgaged land in accordance with any demand by the Mortgagee;
- (h) duly and punctually comply with and observe:
 - (i) all statutes affecting the mortgaged land;
 - (ii) all requirements, notices and orders of any Relevant Authority affecting the mortgaged land; and
 - (iii) all covenants and agreements binding on the Mortgagor and contained or implied in any charge, encumbrance, easement, covenant or restriction on user at any time affecting the mortgaged land;
- (i) not do or permit any act, omission or thing whereby the value of the mortgaged land or the rights, powers or remedies of the Mortgagee under this Mortgage may be diminished, prejudiced or otherwise affected prejudicially;
- (j) not without the previous written consent of the Mortgagee apply for or obtain from any Relevant Authority any money or material whereby any charge or liability would or could be imposed on the mortgaged land or this Mortgage would or could be affected prejudicially;
- (k) not without the prior written consent of the Mortgagee apply for or obtain from any Relevant Authority any money or materials or otherwise do or suffer to be done anything whereby any charge or liability shall or might be imposed on the mortgaged land in priority to or in derogation of this Mortgage;
- (l) upon demand by the Mortgagee rectify and remove any encroachment by the mortgaged land on adjoining property and cause to be rectified and removed any encroachment by adjoining property on the mortgaged land;
- (m) indemnify and keep the Mortgagee indemnified against any liability under any lease, tenancy or agreement affecting the mortgaged land and against all claims by any lessee, tenant, occupier, licensee, invitee or other person entering upon the mortgaged land whether arising out of any defect (whether structural or otherwise) or any want of repair to the mortgaged land;
- (n)
 - (i) cause any Licence to be kept and maintained current and will not at any time during the continuance of this Mortgage allow any Licence to be transferred or assigned without the previous consent in writing of the Mortgagee;
 - (ii) notwithstanding paragraph (h) of this clause cause to be performed and observed the provisions of every statute and the lawful requirements

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of every Relevant Authority directly or indirectly governing, regulating or relating to the conduct of any trade, business or undertaking in respect of which any Licence is issued or given (including but not limited to health, pure food and gaming and betting legislation) and any lawful order or notice served on or given to the Mortgagor or any other person under any statute including any notice requiring repairs, painting or structural alterations to the mortgaged land;

- (iii) cause to be conducted the trade, business or undertaking in respect of which any Licence is issued or given in a proper, efficient and orderly manner and will keep such trade, business or undertaking open for business during all lawful and usual hours and generally will not do, permit or cause to be done or omitted to be done or to exist on the mortgaged land anything whereby the mortgaged land may be disqualified permanently or temporarily from having the benefit of any Licence or whereby the mortgaged land or any such trade, business or undertaking may be closed or discontinued by law or whereby any Licence may be restricted or cancelled;
- (iv) duly and punctually give all notices, pay all fees and make all applications and appearances and do and perform all things necessary to ensure that any Licence is renewed and maintained throughout the continuance of this Mortgage;
- (v) not use the mortgaged land other than for the purposes in respect of which any Licence has been issued;
- (vi) not without the consent in writing of the Mortgagee (which consent shall not be unreasonably withheld) change any name of the mortgaged land;
- (vii) not be a party or privy to the doing of any act or the omission to do any act or thing whereby the trade, business or undertaking in respect of which any Licence is issued or given or the goodwill of such trade, business or undertaking may be prejudicially affected or the continuance or renewal of any Licence may be imperilled;
- (viii) forthwith notify the Mortgagee of any conviction under any statute for any offence against the Mortgagor or any other person who holds any Licence on behalf of the Mortgagor with full details thereof and will if so required by the Mortgagee but at the expense and cost of the Mortgagor appeal against any such conviction;
- (ix) whether any Event of Default has or has not occurred immediately at any time upon demand deliver any Licence to the Mortgagee or any authorised officer or to any Receiver;
- (x) upon the occurrence of an Event of Default and at the request of the Mortgagee or any authorised officer or any Receiver cause any Licence to be transferred to such person as the Mortgagee or any

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authorised officer or any Receiver may appoint and for the purpose of transferring any Licence appear if required at any Court or Tribunal and consent to and by all lawful means facilitate such transfer of any Licence;

- (xi) ensure that notwithstanding the name in which any Licence is held the beneficial ownership of any Licence remains at all times the property of the Mortgagor;
- (o) not without the prior written consent of the Mortgagee:
 - (i) exercise the powers of leasing and accepting surrenders of leases conferred by Sections 106 and 107 of the Conveyancing Act 1919, or any such powers however conferred; or
 - (ii) create any easement over the mortgaged land, sub-let or give a licence or profit a pendre or part with possession of the mortgaged land;
 - (iii) assign, transfer, demise or part with possession of the mortgaged land or the business being carried on therein or any part thereof or execute any further security thereover.

6. MORTGAGOR'S TITLE

6.1 The Mortgagor represents and warrants with and to the Mortgagee that:

- (a) the Mortgagor has an absolute and indefeasible title to the mortgaged land for an estate in fee simple; and
- (b) the mortgaged land and the title thereto of the Mortgagor are free from all mortgages, charges, encumbrances, claims, easements, covenants, interests and restrictions on user other than those to which this Mortgage is expressed to be subject or which have been notified to and accepted by the Mortgagee prior to the date of this Mortgage.

6.2 The Mortgagee shall as against the Mortgagor be entitled to have and retain possession of every certificate of title, deed, muniment, and other document from time to time evidencing title to the mortgaged land.

7. INSURANCE

7.1 The Mortgagor shall insure and keep insured such of the mortgaged land as is of an insurable nature against the risks of fire, storm, tempest, earthquake, riots, strikes, civil commotion, malicious damage, impact by vehicles and aircraft and other aerial devices and articles dropped therefrom and against such other risks (including without limitation loss of rent where applicable, workers compensation and public liability insurance) as the Mortgagee may from time to time reasonably stipulate with an insurance company approved in writing by the Mortgagee (which approval shall not be unreasonably withheld) either in the name of the Mortgagee or in the joint names of the Mortgagor and the Mortgagee in a sum equal to its full insurable value from

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time to time.

- 7.2 The Mortgagor will punctually pay all moneys necessary for effecting and renewing every policy of insurance in respect of such risks.
- 7.3 The Mortgagor shall deliver to the Mortgagee every such policy of insurance and all receipts for moneys paid and other usual evidence of such policy of insurance and renewals thereof and amendments or variations thereto immediately upon the issue thereof.
- 7.4 The Mortgagor will hold its rights under every such policy of insurance as trustee for the Mortgagee until the principal sum shall be fully paid or repaid to the Mortgagee.
- 7.5 The Mortgagor shall notify the Mortgagee immediately upon the Mortgagor becoming aware of any event or circumstance which gives or might give rise to a claim under any such policy of insurance.
- 7.6 In the event of loss the sum recoverable on account of such insurance shall be applicable at the option of the Mortgagee either in or towards repairing or rebuilding the mortgaged land or in or towards payment or repayment of the principal sum whether due or not.
- 7.7 For the purpose of receiving any money which may become payable by virtue of any such policy of insurance the Mortgagor hereby irrevocably appoints the Mortgagee attorney and/or agent of the Mortgagor with full and irrevocable power to demand, sue for, recover and receive from any insurer or any person liable to pay the same all moneys secured by or to become payable under any such policy of insurance and to give good and effectual discharges therefor which shall exonerate such insurer or person from all responsibility and liability whatsoever in connection with the payment to the Mortgagee of such moneys and to settle compound and compromise any proceedings, claims and demands with such insurer or person liable to pay the same in respect of such insurance or policy of insurance and to exercise all other powers of an absolute owner AND to sign and seal and execute and if necessary as the act and deed of the Mortgagor deliver any deed or other document which may be necessary for all or any of such purposes AND if necessary to appoint a substitute for any of such purposes.
- 7.8 The Mortgagor will not do or permit to be done any act including the carrying out of any alterations to the mortgaged land or permit or suffer any circumstances which would or might at any time vitiate or render ineffective or prejudice any such policy of insurance in respect of the mortgaged land or which could permit any insurer to decline any claim in respect of any loss or damage by virtue of any exclusion or condition contained in any such policy of insurance or otherwise.

8. REPRESENTATIONS AND WARRANTIES BY THE MORTGAGOR

The Mortgagor represents and warrants with and to the Mortgagee that:

- 8.1 The Mortgagor (being a corporation):

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- (a) is duly incorporated, validly existing and in good standing;
- (b) has the power to own real and personal property;
- (c) is duly qualified and authorised to do business in the State;
- (d) has power to enter into this Mortgage and to borrow and raise money and give security; and
- (e) has taken all necessary action to authorise the execution and delivery of this Mortgage and the observance and performance of the Mortgagor's Covenants.

8.2 Insofar as the laws of the Commonwealth of Australia and of the State (and insofar as may be relevant of any other state or territory of the Commonwealth of Australia) are concerned this Mortgage constitutes a legally binding obligation of the Mortgagor enforceable in accordance with its terms.

8.3 The execution, delivery and performance of this Mortgage by the Mortgagor will not violate any provision of any agreement to which the Mortgagor is a party or which is binding upon it or upon any of its assets, and the Mortgagor is not in default under any such agreement by entering into this Mortgage.

8.4 No litigation or administrative proceedings before or of any Court, Tribunal or governmental authority have been to the knowledge of the Mortgagor commenced or threatened against it or its assets which would have a materially adverse effect on its assets or financial position or its ability to observe and perform the Mortgagor's Covenants.

8.5 All necessary authorisations, consents and approvals of any Relevant Authority in respect of the Mortgagor or the mortgaged land have been duly obtained and will be valid and subsisting throughout the continuance of this Mortgage.

8.6 The representations and warranties in Clause 6.1 are true and accurate.

8.7 The Mortgagor will promptly notify the Mortgagee of the occurrence or pending or threatened occurrence of any event which may cause or constitute an Event of Default.

8.8 All statements made and documents provided in or in connection with any application to the Mortgagee for any loan facility and/or accommodation secured by this Mortgage and all representations which the Mortgagor or any reference the Mortgagor has made or may during the continuance of this Mortgage make to the Mortgagee as to its financial position and assets and commitments are true and accurate and there has been no material adverse change in such financial position, assets and commitments up to the date hereof nor is there any thing now known to the Mortgagor which may cause a material adverse change to such position, assets and commitments after the date hereof AND without limitation to the generality of the foregoing that, other than as disclosed to the Mortgagee in writing prior to or contemporaneously with the execution hereof, the mortgaged land is not subject to any trust.



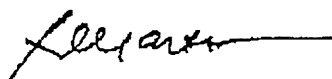
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8.9 The Mortgagor acknowledges that the Mortgagee has relied upon the correctness of the representations and warranties in this clause in entering into this Mortgage and in the absence of express knowledge to the contrary will continue to do so in dealing with the Mortgagor and/or with any other person to whom the Mortgagee may provide advances, facilities or accommodation on the security of this Mortgage or any Collateral Security.

9. INDEMNITIES

9.1 The Mortgagor indemnifies the Mortgagee and shall keep the Mortgagee indemnified against all actions, claims, demands, losses, damages, liabilities, costs and expenses of any nature incurred at any time actually or contingently by the Mortgagee arising directly or indirectly from:

- (a) a failure by the Mortgagor to pay any of the principal sum when payable or comply with any other obligation owed to the Mortgagee;
- (b) the Mortgagee, a Receiver or an Attorney exercising or attempting to exercise any power or right under this Mortgage or any other agreement between the Mortgagor and the Mortgagee or at general law;
- (c) the Mortgagee entering into any agreement or transaction in connection with this Mortgage;
- (d) the Mortgagee seeking to recover any of the principal sum from any other person liable to pay it;
- (e) an actual or assumed legal obligation of the Mortgagee to pay any money or do any thing in connection with the mortgaged land;
- (f) a warranty in this Mortgage being incorrect in any respect;
- (g) judgment being given for any of the principal sum in a currency other than that in which that principal sum is due;
- (h) the rate of interest applying to any judgment debt being less than that applying to the original obligation to pay the principal sum in respect of which judgment was obtained;
- (i) a claim that a payment, obligation, settlement, transaction, conveyance or transfer in connection with the principal sum (or money which would be principal sum if the claim was invalid) is void or voidable under any law relating to insolvency, bankruptcy or the protection of creditors or for any other reason being upheld, conceded or compromised;
- (j) the appointment of or any indemnity given to a Receiver;
- (k) the Mortgagee acting as the Mortgagor's attorney or providing any indemnity to any person so acting; or



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- (l) the Mortgagee paying (whether or not under a legal obligation) any loss, cost or expense incurred by any officer, employee, agent or consultant of the Mortgagee in connection with this Mortgage.

10. BREAK COSTS

10.1 The Mortgagor will indemnify the Mortgagee and keep the Mortgagee indemnified from and against any expense, loss, damage or liability that the Mortgagee may incur as a consequence of repayment of the principal sum whether such repayment is made as a voluntary repayment by or on behalf of the Mortgagor or as a consequence of an occurrence of any Event of Default under this Mortgage and/or any Collateral Security. Without limitation to its generality, this indemnity shall extend to any interest, fees or other amounts whether paid or payable on account of moneys borrowed in order to carry any unpaid amount and to any loss (including loss of profit), premium, penalty or expense which may be incurred in liquidating or employing deposits from third parties acquired to make, maintain or fund the principal sum or any part of the principal sum.

10.2 The Mortgagor acknowledges that the amount of loss and/or loss of profit may be determined by reference to a pool of funds or other matters as distinct from a specific borrowing by or a specific contract of the Mortgagee made to fund this Mortgage. If the rates of interest charged on any part of the principal sum are fixed and non-variable for any part of this Mortgage, the Mortgagor specifically acknowledges that the Mortgagor is aware that the loss and/or loss of profits on redeployment of money in the event of such prepayment of the principal sum however arising could be substantial.

11. EVENTS OF DEFAULT

11.1 Any one or more of the following events shall constitute and be an Event of Default:

- (a) The Mortgagor fails to make when due any payment or repayment required to be made under this Mortgage or any Agreement or Collateral Security.
- (b) The Mortgagor commits a breach of any of the Mortgagor's Covenants or any party to any Agreement or Collateral Security other than the Mortgagee commits a breach of any of its covenants, agreements, liabilities, obligations, representations or warranties thereunder.
- (c) If the Mortgagor (being an individual) has issued against him a bankruptcy petition or enters into any arrangement, assignment, reconstruction or composition with or for the benefit of his creditors or any of them or proposes to do so.
- (d) If a receiver or a receiver and manager of the mortgaged land is appointed.
- (e) If the Mortgagor shall have created or agreed to or attempted to create any right or interest of any nature whatsoever relating to the mortgaged land and not disclosed the same to the Mortgagee in writing prior to the date of this Mortgage.



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- (f) If any undertaking or promise at any time given to the Mortgagee or to the Mortgagee's solicitor by or on behalf of the Mortgagor or any other person relating in any way to the mortgaged land, the principal sum, this Mortgage, any Collateral Security or any requirement of the Mortgagee or the Mortgagee's solicitor, is not wholly performed or carried out to the reasonable satisfaction of the Mortgagee within any period specified by the Mortgagee, or if no period is specified, then within one (1) calendar month from the date of giving of the undertaking.
- (g) If the Mortgagor shall stop or threaten to stop payment or if the Mortgagor is in the reasonable opinion of the Mortgagee unable to pay its debts as they fall due.
- (h) If default shall be made under any other mortgage, security, charge or encumbrance at any time in existence over the mortgaged land.
- (i) If in the reasonable opinion of the Mortgagee any loan facility, accommodation or funding or any part thereof made by the Mortgagee to the Mortgagor is applied for any purpose other than that for which the same was made or any works for which such loan facility, accommodation or funding was made shall not be carried out and performed in a manner satisfactory to the Mortgagee or shall not be carried out with due expedition.
- (j) If in the reasonable opinion of the Mortgagee the realisable value of the mortgaged land is materially diminished for any reason.
- (k) If this Mortgage is prevented from being registered at the Land Titles Office or otherwise in accordance with or in the manner permitted by any statute by reason of the Mortgagor failing or refusing to:
 - (i) comply with any requisition raised and delivered to the Mortgagee or any other person by the Registrar General or the Land Titles Office or his or its successor within fourteen (14) days from the date of receipt by the Mortgagor of such requisition; or
 - (ii) take or cause to be taken any action or do any thing which in the reasonable opinion of the Mortgagee would or might facilitate such registration (including the production at the Land Titles Office of any title deed, dealing or instrument) within such period as is specified by the Mortgagee or the Mortgagee's solicitor.
- (l) If this Mortgage, the Agreement or any Collateral Security shall be or become void or voidable or ineffective or terminated.
- (m) If any execution or other process of any Court or Relevant Authority is issued against or levied upon the mortgaged land.
- (n) If the Mortgagor being a corporation:
 - (i) a petition is presented or an order is made or an effective resolution is

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passed for the winding up or dissolution of the Mortgagor;

- (ii) a receiver, receiver and manager, liquidator, provisional liquidator, official manager, or inspector is appointed or proposed to be appointed to the Mortgagor or a petition therefor is presented;
- (iii) the Mortgagor is struck off the register pursuant to Section 572 of the Corporations Law or a notice is published pursuant to Section 572(2) of the Corporations Law;
- (iv) the Mortgagor without the prior written consent of the Mortgagee reduces or attempts to reduce its issued capital;
- (v) the Mortgagor without the prior written consent of the Mortgagee makes any amendment or alteration to its Memorandum or Articles of Association which might in the reasonable opinion of the Mortgagee detrimentally affect the interests of the Mortgagee; or
- (vi) an administrator is appointed to the Mortgagor.

12. MORTGAGEE'S POWERS

12.1 Upon the occurrence of an Event of Default the Mortgagee may at any time and from time to time without giving any notice to the Mortgagor do all or any one or more of the following in the absolute discretion of the Mortgagee and in such manner as the Mortgagee shall think fit:

- (a) demand payment or repayment (as the case may be) of the principal sum;
- (b) enter upon and take possession of the mortgaged land;
- (c) enter into receipt of any rents and profits of the mortgaged land;
- (d) maintain current and renew any Licence;
- (e) pull down, rebuild, alter, add to or complete, paint, clean, provide services to or otherwise incur expenditure in relation to the mortgaged land;
- (f) erect, make or complete the erection or making of any building, erection, structure or improvement on the mortgaged land;
- (g) do all such things as the Mortgagee may in its absolute discretion think fit to manage the mortgaged land or to obtain income therefrom;
- (h) lease or licence the mortgaged land or enter into agreements for or renew leases or licences for such period and upon such terms (including the taking of a fine or premium and options to the lessee or licensee to renew such lease or licence) as the Mortgagee shall in its absolute discretion think fit and to compromise with or make concessions to tenants or licensees upon such terms as the Mortgagee shall think fit;

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- (i) grant to any person the option to purchase the mortgaged land upon such terms and conditions as the Mortgagee shall think fit;
- (j) grant to any lessee or licensee of any property being part of the mortgaged land the option to purchase that property upon such terms and conditions as the Mortgagee shall think fit;
- (k) carry on or concur in carrying on any trade, business or undertaking of the Mortgagor conducted on or from the mortgaged land or any trade, business or undertaking which the Mortgagee shall consider expedient and in relation thereto to borrow or raise money required from time to time for such purpose and secure such moneys whether by mortgage or charge or otherwise in the name of the Mortgagor over the mortgaged land;
- (l) sever fixtures belonging to the Mortgagor and sell them apart from any other part of the mortgaged land;
- (m) accept surrenders of and/or determine any lease or licence of the mortgaged land which then or thereafter exists;
- (n) compromise with or make concessions to tenants and licensees;
- (o) surrender or transfer the mortgaged land to any Relevant Authority or other person;
- (p) exchange with any person the mortgaged land for other estates or interests in land of any tenure (either with or without giving or receiving any money or other consideration for the purpose of giving or receiving equal value for the exchange) so that the property so acquired may thereupon be dealt with by the Mortgagee as if it were part of the mortgaged land and for that purpose the Mortgagee may mortgage or charge the property so acquired with the payment or repayment of the principal sum in favour of the Mortgagee;
- (q) where the mortgaged land is subject to a lease or leases whether granted by the Mortgagor or Mortgagee then without prejudice to the generality of the foregoing:
 - (i) in the event of the Mortgagee entering into possession of the mortgaged land the Mortgagee shall be entitled to charge against the Mortgagor and the mortgaged land a collection fee or commission equal to the fee or commission adopted, recommended or generally charged from time to time as a scale of charges by the Real Estate Institute of New South Wales (or other equivalent body) upon the amount of all moneys collected by way of rent or otherwise before crediting the balance to the mortgage account; and
 - (ii) where any portion of the mortgaged land is leased together with the use of any furniture or other chattels of the Mortgagor and any of such chattels are the subject of a leasing or hire purchase agreement the Mortgagee at its discretion may pay the rent and interest charges

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thereunder and any instalments required by the terms of any agreement;

- (r) do, sign and seal all things necessary to prepare or procure the preparation of and to register a strata plan or plans or deposited plan or plans or a plan or plans of subdivision in respect of the mortgaged land;
- (s) institute, prosecute and defend any proceedings in any Court or Tribunal in respect of any act or transaction referred to in this clause;
- (t) perform or complete any agreement between the Mortgagor and any other person relating to the mortgaged land;
- (u) exercise all other powers and authorities then vested in it by this Mortgage or statute, the common law or the rules of equity;
- (v) do or cause to be done all such other acts and things without limitation as the Mortgagee considers expedient for the protection or enforcement of this Mortgage or the recovery of the principal sum;
- (w) employ or engage any person (including without limitation any employee of the Mortgagee) for or in relation to the performance of any of the foregoing acts or to delegate any such acts to any person.

12.2 Upon any sale, lease or licence by the Mortgagee hereunder or pursuant to any statute, the mortgaged land may at the option of the Mortgagee be sold, leased or licensed together with any other property of the Mortgagor (whether real or personal and whether the estate or interest of the Mortgagor therein exists or arises pursuant to the general law or any statute) which is under mortgage or charge to the Mortgagee and in respect of which a power of sale, leasing or licensing has become exercisable, by one contract and at one price or at one rent or fee or in any other manner which the Mortgagee may in its absolute discretion think fit with full power to the Mortgagee to apportion all costs, expenses, purchase money, rent and fees between the properties so dealt with.

12.3 Upon any sale hereunder or pursuant to any statute the Mortgagee shall have power to allow a purchaser any time for payment of the whole or any part of the purchase money either with interest at any rate or without interest and either upon security of the property sold or any part thereof or upon any other security or without any security and subject to any conditions of sale which the Mortgagee may in its absolute discretion consider necessary or desirable.

12.4 The Mortgagee may employ and remunerate such persons (including without limitation any employee of the Mortgagee) and do all such other matters and things and enter into all necessary contracts, arrangements and documents for any and all of the purposes referred to in this clause.

12.5 If the Mortgagor in the opinion of the Mortgagee at any time commits an Event of Default it shall be lawful for but not obligatory upon the Mortgagee, without prejudice to any other right, power or remedy of the Mortgagee, to attempt to remedy

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any Event of Default and for that purpose to do all such acts and things and to expend all necessary moneys.

12.6 In the case of any part of the mortgaged land in respect of which the provisions of Section 57 of the Real Property Act 1900 apply the powers conferred on a mortgagee by the Real Property Act 1900 may be exercised by the Mortgagee:

- (a) in the event of a default in payment of any of the principal sum, at the time and in the circumstances provided by the Real Property Act;
- (b) in the event of a default by the Mortgagor hereunder not being a default in payment of any of the principal sum, upon or at any time after that default without any notice or expiration of time under the Real Property Act being necessary.

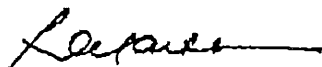
13. RECEIVER

13.1 Upon default by the Mortgagor at any time hereunder, the Mortgagee may appoint in writing a Receiver and:

- (a) the Mortgagee may remove any Receiver and appoint another in his place;
- (b) the Mortgagee may fix the remuneration of any Receiver (which remuneration may be in excess of that prescribed by any relevant statute, act or code);
- (c) the Receiver shall be and remain the agent of the Mortgagor who alone will be responsible for his acts and defaults, provided that in exercising any power of sale or exchange the Receiver shall have the authority of both Mortgagor and Mortgagee to sell and assure their respective estates and interests in the subject matter of the sale; and
- (d) where more than one person is appointed as a Receiver in respect of the mortgaged land or the same part or parts thereof the terms of their appointment may at the option of the Mortgagee provide that the rights, powers and authorities of each Receiver shall vest in them jointly and severally or jointly.

13.2 Subject to any specific limitations placed upon him by the terms of his appointment any Receiver may do all or any one or more of the following:

- (a) exercise all powers, remedies, rights, discretions and authorities vested in him or in the Mortgagee by this Mortgage, any statute, the common law or the rules of equity;
- (b) borrow from the Mortgagee or such other persons as the Mortgagee may from time to time in writing approve any money which may be required from time to time for any of the purposes mentioned in this clause and in the name of the Mortgagor or otherwise to secure any moneys so borrowed over the mortgaged land so that such mortgage or charge may rank in priority to or pari passu with or after this Mortgage provided however that neither the



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Mortgagee nor any other person lending any such money to the Receiver shall be bound to enquire as to the necessity or propriety of any such borrowing or be responsible for the misapplication or non-application of any moneys so borrowed; and

- (c) delegate to any person for such time as the Mortgagee shall approve any of the powers, remedies, rights, discretions or authorities conferred upon him by this clause.

14. RECEIPT AND APPLICATION OF MONEYS

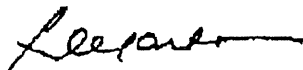
14.1 In applying towards satisfaction of the principal sum any moneys received upon or pursuant to the exercise of the powers, remedies, rights, discretions or authorities of the Mortgagee in relation to the mortgaged land, the Mortgagee shall credit the Mortgagor only with so much of such moneys as shall be actually received by the Mortgagee in cash and such credit will date from the time of such receipt.

14.2 All moneys received by the Mortgagee or any Receiver may be applied in the following order and manner:

- (a) in payment of all costs, charges and expenses incurred in or incidental to the exercise or attempted exercise of any of the powers, remedies, rights, discretions or authorities hereby or by statute or general law conferred in relation to this Mortgage;
- (b) in payment of mortgages, charges or encumbrances (of which the Mortgagee is aware) having priority to this Mortgage, in order of their priority;
- (c) in payment or repayment (as the case may be) of the principal sum;
- (d) in payment to any Receiver of any remuneration whether by way of commission or otherwise;
- (e) in payment of subsequent mortgages, charges or encumbrances (of which the Mortgagee is aware) in order of their priority;
- (f) in payment to the Mortgagor.

14.3 The Mortgagee shall have absolute liberty to apply any moneys to either principal or interest.

14.4 If at any time after satisfaction of the principal sum there shall be in the hands of the Mortgagee under or by virtue of this Mortgage any surplus moneys payable to the Mortgagor, such moneys shall not carry interest and may be placed to the credit of an account in the name of the Mortgagor in the books of a corporation carrying on the business of banking in the Commonwealth of Australia and the Mortgagee shall thereupon be under no further liability in respect of those moneys.



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15. PRESERVATION OF MORTGAGEE'S RIGHTS

15.1 This Mortgage and the liability of the Mortgagor hereunder shall not be affected or discharged by reason of:

- (a) the granting to the Mortgagor or any other person of any time or other indulgence or consideration;
- (b) any transaction or arrangement that may take place between the Mortgagee and any other person;
- (c) the Mortgagee becoming a party to or bound by any compromise, assignment of property or scheme of arrangement or composition of debts or scheme of reconstruction by or relating to the Mortgagor or any other person;
- (d) any act, neglect, omission or default of the Mortgagee whereby the whole or part of the liability of the Mortgagor to the Mortgagee would but for this provision have been affected or discharged;
- (e) the Mortgagee failing or neglecting to recover by the realisation of any security or otherwise any of the principal sum;
- (f) any other laches, acts, omissions or mistakes on the part of the Mortgagee; and
- (g) the release, discharge, abandonment or transfer either in whole or in part and either with or without consideration of any security now or hereafter held by the Mortgagee from any person.

15.2 The Mortgagee shall be under no obligation to marshal in favour of the Mortgagor any security held by the Mortgagee or any of the funds, assets or property that the Mortgagee may be entitled to receive or have a claim upon.

15.3 The Mortgagee may at its absolute discretion vary, exchange, modify, release, assign, refuse to complete or to enforce any judgments, specialties, indemnities, guarantees or other securities or instruments negotiable or otherwise held by the Mortgagee and whether satisfied by payment or not without affecting or discharging the liability of the Mortgagor under this Mortgage.

15.4 Until the Mortgagee shall have received the whole of the principal sum the Mortgagor shall not be entitled on any grounds whatsoever to:

- (a) claim the benefit of any security now or hereafter held by the Mortgagee for the payment of the principal sum or any part thereof; or
- (b) either directly or indirectly claim or receive the benefit of any distribution, dividend or payment arising out of or relating to the winding up or liquidation of any surety or of any person liable jointly or severally with the Mortgagor to the Mortgagee or liable under any security negotiable or otherwise now or hereafter held by the Mortgagee as security for any of the principal sum

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and in the event of the winding up or liquidation of any surety or any such other person the Mortgagor shall not be entitled to prove or claim in competition with the Mortgagee so as to diminish any distribution, dividend or payment which but for such proof or claim the Mortgagee would be entitled to receive arising out of or relating to such winding up or liquidation and the receipt of any distribution, dividend or other payment which the Mortgagee may receive arising out of or relating to such winding up or liquidation shall not prejudice the right of the Mortgagee to recover from the Mortgagor the principal sum.

- 15.5 (a) In the event of a claim that any payment or transaction during the currency of this Mortgage is void or voidable under any law relating to bankruptcy or the protection of creditors or otherwise being upheld, conceded or compromised the Mortgagee shall forthwith upon such claim being upheld, conceded or compromised become entitled against the Mortgagor to all such rights as the Mortgagee would have had if the transaction or so much thereof as is held or conceded to be void or voidable or as is compromised had not taken place.
- (b) The Mortgagor shall upon such claim being upheld, conceded or compromised take all such steps and sign all such documents as may be necessary or convenient to restore to the Mortgagee any securities held by the Mortgagee from the Mortgagor immediately prior to such payment or transaction.
- (c) Any moneys disgorged by the Mortgagee to any Relevant Authority or any other person in consequence of such payment or transaction being held or conceded to be void or voidable shall be deemed not to have been received by the Mortgagee from the Mortgagor or any other person on behalf of the Mortgagor.
- 15.6 The Mortgagor acknowledges and warrants with and to the Mortgagee that the Mortgagor does not execute this Mortgage as a result of or by reason of any promise, representation, statement, inducement or information of any nature or kind whatsoever given or offered to the Mortgagor by or on behalf of the Mortgagee whether in or not in answer to any enquiry by or on behalf of the Mortgagor and that the Mortgagee is not under any duty to disclose to the Mortgagor or to do or execute any matter or thing relating to the affairs of any surety or the transactions with the Mortgagee of any surety.
- 15.7 Notwithstanding anything contained herein and notwithstanding that the principal sum is or may be either irrecoverable from the Mortgagor by the Mortgagee or is at any time not presently recoverable (whether by reason of any legal limitation, disability or incapacity of or affecting the Mortgagor or by reason of any other fact or circumstance whatsoever) then and in such case the Mortgagor hereby as a separate and additional liability under this Mortgage indemnifies and shall keep indemnified the Mortgagee in respect of such moneys and as a principal debtor agrees with the Mortgagee to pay to the Mortgagee on demand a sum equal to the amount of such moneys and the terms of this Mortgage shall with all necessary changes being made apply as far as possible to this indemnity and the sum of money covered by this indemnity shall be deemed to be part of the principal sum.
- 15.8 To the extent permissible by law any statute shall not apply to this Mortgage or any

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Agreement or Collateral Security so as to suspend, postpone, abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any powers, remedies, rights, discretions or authorities of the Mortgagee hereunder or under any statute or Agreement or Collateral Security or vary, modify, extinguish or otherwise affect the Mortgagor's Covenants.

- 15.9 (a) The powers, remedies, rights, discretions or authorities conferred on the Mortgagee by any statute or the general law or otherwise shall be in augmentation of the powers, rights, discretions or authorities hereby expressly conferred and may be exercisable by the Mortgagee immediately upon or at any time after this Mortgage becomes enforceable without any notice or expiration of time under any statute being necessary unless the provisions of any statute shall prevent the Mortgagee from dispensing with any requirement relating to notice or expiration of time.
- (b) All provisions of any statute shall to the extent permissible by law be deemed to be negated or varied to the extent that they are inconsistent with the provisions of this Mortgage.

15.10 Notwithstanding:

- (a) any statement or representation by the Mortgagee or by any authorised officer as to the amount to be paid to the Mortgagee as a condition precedent to or in consideration for the redemption by the Mortgagor of the mortgaged land; or
- (b) the acceptance by the Mortgagee of any amount paid to the Mortgagee as a condition precedent to or in consideration for the redemption by the Mortgagor of the mortgaged land,

no grant of full or partial discharge hereof or release of the mortgaged land from this Mortgage shall operate to any extent as a discharge or release of any Collateral Security and any such discharge or release shall be without prejudice to all of the rights and remedies of the Mortgagee pursuant to this Mortgage or any Collateral Security in respect of the principal sum against the Mortgagor personally or any surety or other person notwithstanding that such statement, representation or payment may have been made or accepted by reason of the mistake, negligence, error of law or error of fact of the Mortgagee or any authorised officer.

- 15.11 Neither the taking of this Mortgage nor anything herein or in any Collateral Security contained, referred to or implied shall merge, extinguish, postpone or prejudice any other security now or hereafter held by the Mortgagee or any power, remedy, right, discretion or authority which the Mortgagee now has or may hereafter have against the Mortgagor or any other person whether as surety or otherwise nor shall any other security now or hereafter held by the Mortgagee in any way prejudicially affect the covenants and agreements contained or implied in this Mortgage and this Mortgage shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever until a full and final discharge hereof is given to the Mortgagor.

Laurence

15.12 Failure of the Mortgagee to insist upon strict performance of the Mortgagor's Covenants shall not unless confirmed in writing to the Mortgagor constitute a waiver of or estoppel against asserting the right to require such performance nor shall a waiver or estoppel in one case constitute a waiver or estoppel with respect to a later Event of Default whether of a similar nature or otherwise. The only waiver by the Mortgagee having any effect hereunder shall be waiver in writing by the Mortgagee.

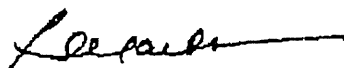
16. POWER OF ATTORNEY

16.1 The Mortgagor hereby irrevocably appoints the Mortgagee and any authorised officer and any Receiver and any duly constituted attorney for the time being of the Mortgagee jointly and each of them severally the true and lawful attorney and attorneys of the Mortgagor with full power in the name of the Mortgagor at any time after the occurrence of an Event of Default to do any act, matter or thing which the Mortgagor could or should do or could or should have done hereunder and to do all such acts, matters and things as such attorney or attorneys may consider necessary for carrying out or in connection with the exercise of all or any of the rights or powers herein contained or implied or for the protection of this Mortgage or for the enforcement hereof and with full power to any such attorney or attorneys for all or any of such purposes from time to time to appoint a substitute or substitutes and to revoke any such appointment and the Mortgagor hereby agrees to ratify and confirm every act, matter or thing which such attorney or attorneys shall do or cause to be done in pursuance of the authority hereby conferred.

17. STRATA TITLE

17.1 If the mortgaged land is or becomes a lot or lots under the Act the following provisions shall apply:

- (a) Words and expressions defined in the Act shall have the same meaning when used in this Mortgage unless the context otherwise requires.
- (b) The Mortgagor will duly observe and perform each duty and obligation imposed on the Mortgagor as proprietor under the provisions of the Act.
- (c) In the event of the body corporate failing or, in the reasonable opinion of the Mortgagee, failing to observe and perform the duties and obligations imposed on it under the Act with respect to the mortgaged land then the Mortgagor will, at the request of the Mortgagee and without prejudice to any other right, power or remedy of the Mortgagee observe and perform such duties and obligations so far as they are capable of being observed and performed by the Mortgagor.
- (d) The Mortgagee will be entitled in its absolute discretion to exercise the voting rights conferred upon it by the Act without responsibility for any act or omission or delay in that behalf or for any involuntary losses or irregularities which may arise or occur in or about the exercise or non-exercise of such rights PROVIDED THAT the Mortgagee will not exercise such voting rights whilst the Mortgagor is not in default hereunder.



24.

(e) The Mortgagor will upon request by the Mortgagee advise the Mortgagee as to any meetings of the body corporate by notice in writing within seven (7) days of the date of such meeting and the Mortgagor during the continuance of this security will forward to the Mortgagee upon request by the Mortgagee forthwith a copy of all notices received from the body corporate or council of the body corporate or other body statutory or otherwise relating in any way to the mortgaged land.

(f) Any Attorney shall have (without limiting the generality of any powers herein conferred) the following powers:

(i) to take any necessary action to call a meeting of the body corporate or the council thereof;

(ii) to move any motion on its behalf at any meeting of the body corporate or the council thereof;

(iii) to vote on any motion moved at any meeting of the body corporate or the council thereof;

(iv) to apply for any information it may desire from the body corporate;

(v) to perform any duties or powers of the body corporate,

AND the Mortgagor covenants that it will ratify and confirm any act or thing done by the Mortgagee in pursuance of the power hereby conferred and the Mortgagor covenants to pay to the Mortgagee on demand any amount expended by the Mortgagee in exercising any of the powers hereby conferred.

(g) The Mortgagor will not without the written consent of the Mortgagee make any application to the Strata Titles Commissioner or to a Strata Titles Board or to a Court in respect of the mortgaged land or any part thereof or any strata scheme which affects the mortgaged land.

(h) The Mortgagor will upon request made by the Mortgagee from time to time and in any event upon receipt of a notice of a proposed resolution of a meeting of the Body Corporate whereby surplus moneys in any funds or accounts of the Body Corporate are intended to be paid or distributed pursuant to the Act promptly execute and procure the execution by any enrolled mortgagee (other than the Mortgagee) of the mortgaged land of a consent in writing to the payment to the Mortgagee of such of those moneys as would otherwise be payable to the Mortgagor.

18. OTHER MORTGAGES

18.1 If this Mortgage is a second or subsequent security or if there are securities subsequent to this Mortgage (which have been created with the Mortgagee's prior consent) in respect of the mortgaged land the following provisions apply in addition to the other provisions of this Mortgage:

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- (a) the Mortgagor shall observe and perform duly and punctually every covenant, agreement, condition, stipulation and proviso contained or implied in each and every security executed, or created or registered in priority to or subsequent to this Mortgage ("the other securities");
- (b) the Mortgagee without being obliged to do so and at any time after the occurrence of an Event of Default under this Mortgage, may:
 - (i) pay to the holder of any other securities the whole or any part of the indebtedness secured under those other securities; and
 - (ii) seek and obtain a transfer or release by the holder of such other securities and the instruments of title of the securities held by him and the Mortgagor authorises and directs the Mortgagee to sign and if necessary to sign, seal and deliver any transfer or release on its behalf; and
- (c) the Mortgagor shall not vary or agree to vary any of the conditions, covenants or any other provision of the other securities (including increasing or permitting or agreeing to increase the amounts secured under those other securities) without the Mortgagee's prior written consent.


19. TRUSTEE MORTGAGOR

19.1 If:

- (a) the Mortgagor has entered into this Mortgage as trustee of a Trust;
- (b) the principal sum has been made available by the Mortgagee to the Mortgagor in the Mortgagor's capacity as trustee of a Trust; or
- (c) the mortgaged land is an asset of a Trust,

then in any such case:

- (i) the Mortgagor hereby mortgages its estate or interest in the mortgaged land as trustee of the Trust and enters into all the Mortgagor's Covenants in its capacity as trustee of the Trust AND the Mortgagor shall also be personally liable for the performance and observance of the Mortgagor's Covenants;
- (ii) the Mortgagor covenants that it has full, complete, valid and unfettered authority and power to enter into this Mortgage pursuant to the provisions of any agreement relating to the Trust including the power to mortgage the mortgaged land to secure the principal sum to the Mortgagee and to enter into all the Mortgagor's Covenants and that the entering into of this Mortgage by the Mortgagor is in the due and proper administration of the Trust and for the benefit of the beneficiaries of the Trust;
- (iii) notwithstanding any reference in this Mortgage to the Mortgagor mortgaging to the Mortgagee all its estate and interest in the mortgaged land, any



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mortgage, encumbrance, charge or other security hereby created shall not be limited to the estate or interest in the mortgaged land of the Mortgagor as trustee of the Trust but shall extend to the full beneficial interest in the mortgaged land;

- (iv) except as otherwise permitted or provided for in any Agreement or any Collateral Security until a final discharge of this Mortgage shall have been executed by the Mortgagee and delivered to the Mortgagor the Mortgagor shall not without the prior approval in writing of the Mortgagee:
 - (1) sell, assign or attempt to sell or assign any of the property held by the Mortgagor in which the Mortgagor has an interest as trustee of the Trust;
 - (2) place or create or suffer to be placed or created upon any of the property of the Trust any charge, mortgage, encumbrance or lien or allow the same to be taken in execution or satisfaction of any judgment;
 - (3) resign as trustee of the Trust nor permit any substitute or additional trustee to be appointed;
 - (4) vest or distribute any property of the Trust or advance or distribute any capital of the Trust to any beneficiary or resettle any of the property of the Trust;
- (v) amend, vary or revoke any of the terms of the Trust or exercise or permit to be exercised any of the powers contained therein of appointment or renewal or to add beneficiaries or any class of beneficiaries;
- (vi) acquire any property subject to the terms of the Trust other than in the name of the Mortgagor;
- (vii) pay any of the income of the Trust to any of the beneficiaries entitled thereto;
- (viii) permit any beneficiary to have the use, occupation, enjoyment or possession of any of the property of the Trust;
- (ix) do or suffer or omit to do any act or thing in breach of the Trust that would allow the Mortgagor to be removed as trustee of the Trust;
- (x) exercise or permit or allow to be exercised any power to change the vesting date of the Trust or any early determination of the Trust;
- (xi) incur or permit to be incurred any debt other than in the ordinary course of business of the Trust;
- (xii) lend or make available any money being part of the property of the Trust to any person;

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(xiii) give any guarantee or indemnity as trustee of the Trust,

PROVIDED HOWEVER that the approval of the Mortgagee shall not be withheld if in the reasonable opinion of the Mortgagee the value of the mortgaged land or the security position of the Mortgagee is not thereby materially prejudiced or diminished.

19.2 Any breach of the Trust by the Mortgagor shall constitute an Event of Default.

20. ENVIRONMENTAL MATTERS

20.1 The Mortgagor warrants to the Mortgagee that at the date of this Mortgage, in respect of the mortgaged land:

- (a) there are not any breaches of any Environmental Law;
- (b) there are not any notices issued under any Environmental Law;
- (c) no part of it is being used for the creation, containment, handling, storage, transfer, transportation, treatment, disposal or any other means of dealing whatsoever with any Pollutant; and
- (d) there have not been in the past any breaches, notices or dealings of the kind referred to in the preceding paragraphs (a) to (c) at any time after the Mortgagor acquired an interest in the mortgaged land nor to its knowledge at any time before the Mortgagor acquired an interest in the mortgaged land.

20.2 The Mortgagor hereby indemnifies, and agrees to keep indemnified the Mortgagee, any officer of the Mortgagee and any Receiver, attorney, manager, agent or other person appointed by or on behalf of the Mortgagee under this Mortgage, against any loss, damage, cost or expense arising out of the Mortgagee's interest in the mortgaged land, or the exercise, attempted exercise or non-exercise of any of the powers pursuant to this Mortgage and in respect of any circumstance (whether occurring on or outside the mortgaged land) which breaches, or which has the potential to breach any Environmental Law. The indemnity provided in this clause will be provided on an ongoing basis in accordance with any claim made under this clause by the Mortgagee from time to time.

20.3 Even though this Mortgage has not become enforceable, the Mortgagor will provide to the Mortgagee upon request at the Mortgagor's expense environmental audits and assessments and other reports in respect of the mortgaged land or the Mortgagor's business operations as may be required by the Mortgagee from time to time in a form acceptable to the Mortgagee.

20.4 The Mortgagor will carry out at the Mortgagor's expense any work considered necessary or desirable by the Mortgagee:

- (a) as a result of any environmental audit or assessment;
- (b) in order to mitigate any possible pollution or harm to the Environment; or

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(c) in order to comply with any notice issued under any relevant Environmental Law.

20.5 If any breach of an Environmental Law occurs in connection with the mortgaged land, the Mortgagor at its expense will rectify any such breach immediately.

21. THIRD PARTY MORTGAGE

21.1 If any person is described in the Schedule to this Mortgage or elsewhere in this Mortgage as Debtor then every reference in this Mortgage to the expression "the Mortgagor" shall include the Debtor and the Debtor by its execution hereof also covenants with and to the Mortgagee to observe and perform the Mortgagor's Covenants.

21.2 Nothing in this clause shall affect the continuing obligation of the Mortgagor to observe and perform the Mortgagor's Covenants.

21.3 Although as between the Debtor and the Mortgagor the Mortgagor is a surety only yet between the Mortgagor and the Mortgagee the Mortgagor is and shall be and be deemed to be a principal debtor and no neglect or forbearance of the Mortgagee to require or enforce payment of the moneys secured by this Mortgage or any other agreement or any part thereof and no time or other indulgence given by the Mortgagee to the Mortgagor or to any other party to any agreement or to any other person or corporation giving security to the Mortgagee to secure the obligations of the Mortgagor and the Debtor or either of them under any other agreement shall release, prejudice or affect the joint and several covenants of the Mortgagor and the Debtor or their or either of their continuing liability hereunder or under any other agreement any rule of law or equity to the contrary notwithstanding.

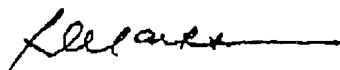
22. FURTHER ASSURANCE

22.1 At the cost of the Mortgagor the Mortgagor shall from time to time at the written request of the Mortgagee execute any deed, dealing, assurance or other document which the Mortgagee shall in its absolute discretion require the Mortgagor to execute, and do all such other acts, matters and things as the Mortgagee shall consider reasonable for the purpose of preserving, perfecting or protecting this Mortgage or more effectually securing the powers, remedies, rights, discretions or authorities of the Mortgagee under this Mortgage.

23. STAMP DUTY AND EXPENSES

23.1 (a) The Mortgagor shall pay to the Mortgagee (or to any Relevant Authority if the Mortgagee so directs) on demand made from time to time (and in addition to any other amount of whatsoever nature which the Mortgagor is obliged to pay to the Mortgagee under this Mortgage) any duty, charge, impost, fine, penalty or tax (excluding any tax levied on the gross income of the Mortgagee) levied, assessed, charged or imposed pursuant to any statute and due and payable at any time on or after the date hereof on or in respect of:

(i) this Mortgage or any Agreement or Collateral Security or any variation



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or amendment thereto or discharge thereof;

- (ii) the loan advance, credit or accommodation secured by this Mortgage or any Agreement or Collateral Security or any variation or amendment thereto or discharge thereof;
- (iii) the transaction or transactions in respect of which this Mortgage or any Agreement or Collateral Security or any variation or amendment thereto or discharge thereof has or have been given;
- (iv) the receipt by the Mortgagee from the Mortgagor or any other person of any money of whatsoever nature payable under or in respect of this Mortgage or any Agreement or Collateral Security or any variation or amendment thereto or discharge thereof; and
- (v) any credit or debit from time to time to any account kept by the Mortgagee with any financial institution in consequence of any of the matters referred to in the preceding paragraphs of this clause; and

(b) the Mortgagor hereby indemnifies the Mortgagee against any such duty, charge, impost, fine, penalty or tax in excess of any amount demanded under paragraph (a) of this clause.

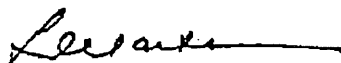
23.2 The Mortgagor shall pay to the Mortgagee on demand made from time to time (and in addition to any other amount of whatsoever nature which the Mortgagor is obliged to pay to the Mortgagee under this Mortgage) all legal fees and costs as between solicitor and client incurred by the Mortgagee being the amount of such fees and costs specified in any memorandum of costs rendered by the Mortgagee's solicitor to the Mortgagee or the Mortgagor or Debtor in consequence or on account of the preparation or completion of this Mortgage or the commission by the Mortgagor of an Event of Default or the preservation by the Mortgagee of this Mortgage or the mortgaged land or the exercise by the Mortgagee of any other power, right, remedy, discretion or authority under this Mortgage.

24. INVALIDITY AND SEVERABILITY

24.1 Any provision of this Mortgage prohibited, unenforceable, void or invalid in any jurisdiction shall for the purposes only of such jurisdiction be ineffective and severed herefrom to the extent of such prohibition or as so unenforceable, void or invalid without invalidating or affecting the validity or enforceability of the remaining provisions of this Mortgage.

25. NOTICES

25.1 Any notice, demand, consent or other communication required to be given or made under or pursuant to this Mortgage shall be deemed to have been duly given, made or served when delivered in writing or sent by post (if not returned through the post office undelivered) or telex or facsimile transmission to the party to whom such notice or demand or consent is required or permitted to be given, made or served under this Mortgage at the address of that party as specified in this Mortgage or at such other



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addresses as may from time to time be notified by any party to the others for the purpose of this clause.

- 25.2 Any notice, demand, consent or other communication sent by post shall be deemed to have been received on the second day after the date of posting (if not returned through the post office undelivered) or, if sent by telex, upon receipt by the sender of the answerback code of the recipient or if sent by facsimile transmission, upon the day of sending.
- 25.3 Any such notice, demand, consent or other communication if given, made or served by the Mortgagee may be signed by the Mortgagee or any authorised officer or any Receiver or Attorney or solicitor for the Mortgagee.
- 25.4 Any such notice, demand, consent or other communication given, made or served by the Mortgagee in accordance with this clause shall be deemed to have been validly and effectually given, made or served notwithstanding that at the date thereof the Mortgagor or intended recipient may (in the case of an individual) be mentally ill, bankrupt, dead or absent from the State or (in the case of a corporation) be under official management or in receivership or under administration or in the course of liquidation or wound up and notwithstanding that the Mortgagor or intended recipient shall not receive such notice, demand, consent or other communication.

26. MISCELLANEOUS

- 26.1 A statement in writing made up from the books of the Mortgagee and signed by the Mortgagee or any authorised officer as to the amount of the principal sum then or at any time due or payable or any other matter relating to this Mortgage shall in the absence of manifest error be prima facie evidence of the accuracy of the information contained in such statement.
- 26.2 (a) The Mortgagee may at any time during the continuance of this Mortgage and without any further consent or authority pay to any prior mortgagee the amount which the Mortgagee is informed by such Mortgagee to be the amount then due and payable under such prior mortgage and at the cost of the Mortgagor take a transfer or assignment of such prior mortgage in favour of the Mortgagee.
- (b) The Mortgagee shall not be bound to enquire whether the moneys claimed to be due and payable on such prior mortgage are actually due and payable.
- (c) The Mortgagor hereby authorises, directs and consents to any mortgagee under any prior mortgage furnishing the Mortgagee from time to time with all such information as it may require in relation to any prior mortgage.
- 26.3 (a) This Mortgage is not intended to constitute a registrable charge within the meaning of that expression as defined in the Corporations Law.
- (b) Notwithstanding any other provision of this Mortgage, to the extent that this Mortgage creates a charge over the property of the Mortgagor, such property shall:

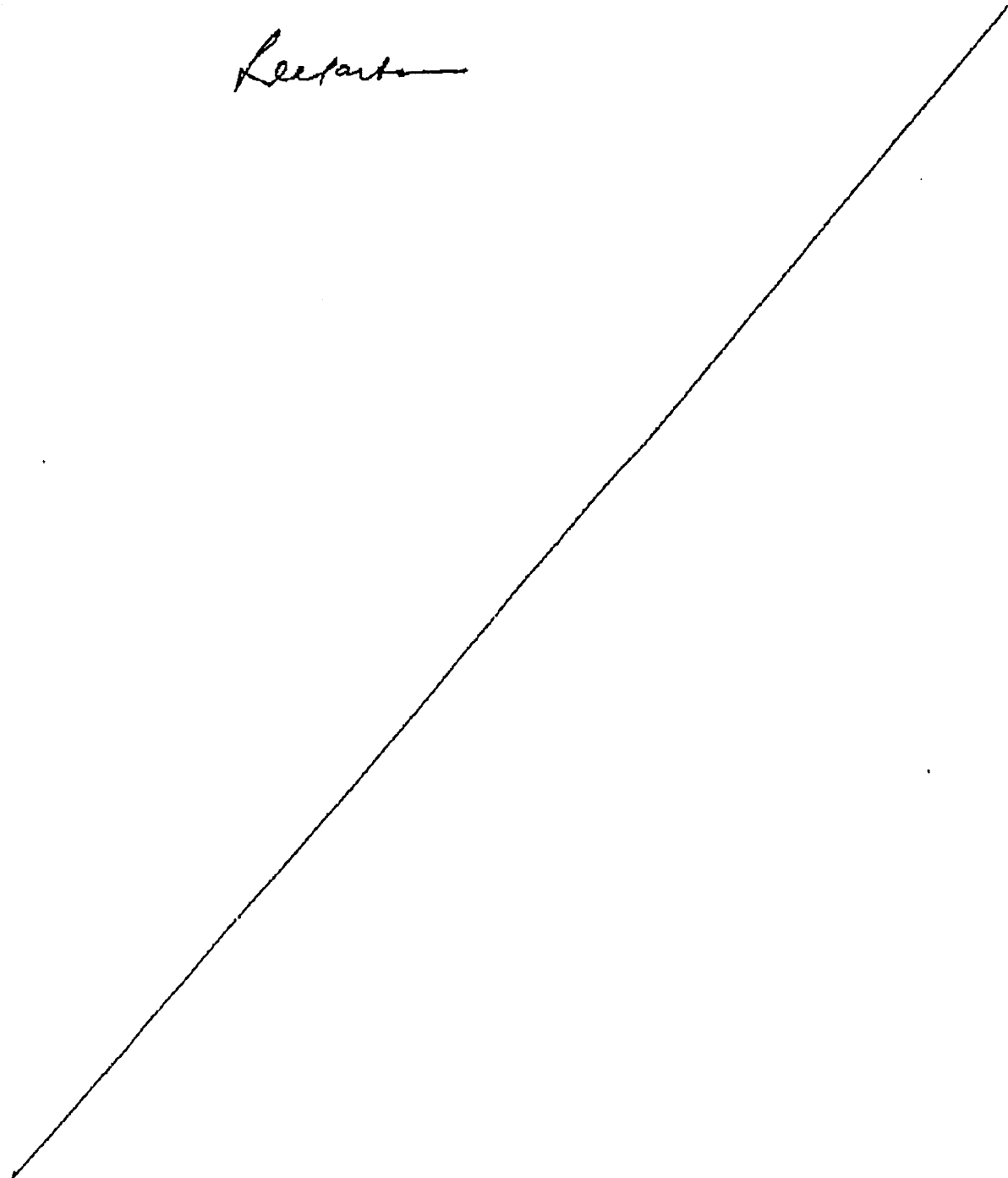
See ante

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- (i) exclude any property to which the provisions of Section 262 of the Corporations Law apply; and
- (ii) not form part of the mortgaged land.

26.4 The Mortgagee shall be at liberty from time to time without any further authority than this Mortgage to debit, set-off and charge any accounts of the Mortgagor with payment or repayment of the principal sum.

Reparts



Form: 01TL
Release: 1
www.lpi.nsw.gov.au

TRANSFER OF LEA MORTGAGE OR CHA



New South Wales
Real Property Act 1900

AA518433C

PRIVACY NOTE: this information is legally required and will become part of the public record

STAMP DUTY

Office of State Revenue use only

(A) LEASE/MORTGAGE/ CHARGE

AA391969

(B) TORRENS TITLE

See Annexure "A"

(C) LODGED BY

Delivery Box 406T	Name, Address or DX and Telephone HOLMAN WEBB DX 233 SYDNEY (62) 9390 8000	CODE TL TM TC
	Reference: LJJ.LM1907/84	

(D) TRANSFEROR

LM INVESTMENT MANAGEMENT LIMITED A.C.N. 077 208 461

(E) The transferor acknowledges receipt of the consideration of \$ 1.00

and transfers to the transferee all the transferor's estate and interest in the above mortgage

(F) Encumbrances (if applicable):

(G) TRANSFEREE

PERMANENT TRUSTEE AUSTRALIA LIMITED A.C.N. 008 412 913

(H) TENANCY:

DATE 23 MARCH 2004

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: LM INVESTMENT MANAGEMENT LTD
Authority: SECTION 127 OF THE CORPORATIONS LAW

Signature of authorised person:

[Handwritten Signature]
LISA MARIE DARCH
DIRECTOR

Signature of authorised person:

[Handwritten Signature]
PETER CHARLES DACE
DIRECTOR

Name of authorised person:
Office held:

Name of authorised person:
Office held:

Certified for the purposes of the Real Property Act 1900 by the person whose signature appears below.

Signature:

[Handwritten Signature]

Signatory's name: LEE JOHN JACKSON
Signatory's capacity: TRANSFEREE'S SOLICITOR

X fee \$64

THIS IS ANNEXURE "A" TO THE TRANSFER OF MORTGAGE MADE THE ^{23RD}
DAY OF ^{MARCH} 2004 BETWEEN LM INVESTMENT MANAGEMENT
LIMITED ACN 077 208 461 (TRANSFEROR) AND PERMANENT TRUSTEE AUSTRALIA
LIMITED ACN 008 412 913 (TRANSFeree)

TORRENS TITLE

Folio Identifiers:

1/SP62608, 2/SP62608, 3/SP62608, 4/SP62608, 5/SP62608, 6/SP62608, 7/SP62608,
8/SP62608, 9/SP62608, 10/SP62608, 11/SP62608, 12/SP62608, 13/SP62608, 14/SP62608,
15/SP62608, 16/SP62608, 17/SP62608, 18/SP62608, 19/SP62608, 20/SP62608,
21/SP62608, 22/SP62608,

Executed on behalf of the corporation named)
below by the authorised person(s) whose)
signature(s) appear(s) below pursuant to the:)
authority specified)

LM Investment Management Limited
ACN 077 208 461
Authority: Section 127 of the Corporations Law

PETER CHARLES DRACE
Signature of authorised person: *DIRECTOR*

[Handwritten Signature]
Signature of authorised person:

LISA MARCE DANCY
Name of authorised person: *DIRECTOR*

[Handwritten Name]
Name of authorised person:

Office held:

Office held:

[Handwritten Signature]
.....
Lee John Jackson - Solicitor for Transferee

MORTGAGE
New South Wales
Real Property Act 1900



AA893065H

PRIVACY NOTE: this information is legally required and will become part of the public record

STAMP DUTY

Office of State Revenue use only	NEW SOUTH WALES DUTY 20-08-2004 0002134036-001 COLLATERAL TOTAL SECURED \$ *****7,500,000.00 DUTY \$ *****10.00
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(A) **TORRENS TITLE**

1/543412

(B) **LODGED BY**

Delivery Box 406T	Name, Address or DX and Telephone Holman Webb DX 233 Sydney (02) 9390 8000 Reference (optional): LJJ.LMI907/99	CODE M
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(C) **MORTGAGOR**

OVST PTY LTD ACN 103 216 771 of 99 Annerley Road, Woolloongabba, Queensland 4102
--

mortgages to the mortgagee all the mortgagor's estate and interest in the above land, and covenants with the mortgagee that the provisions set out in the annexure and/or memorandum specified below are incorporated in this mortgage:

- (D) • annexure "A" hereto;
- memorandum No. AA776971 filed at Land and Property Information New South Wales.
- (E) Encumbrances (if applicable):

(F) **MORTGAGEE**

PERMANENT TRUSTEE AUSTRALIA LIMITED ACN 008 412 913 of Level 4, RSL Centre, 44a Cavill Avenue, Surfers Paradise, Queensland 4217
TENANCY:

DATE 17 AUGUST 2004

(H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.
 Corporation: OVST PTY LTD ACN 103 216 771
 Authority: section 127 of the Corporations Law

Signature of authorised person: *[Signature]*
 Name of authorised person: PETER GERARD MARCH
 Office held: MANAGING DIRECTOR

Signature of authorised person: *[Signature]*
 Name of authorised person: PETER VOLLERT
 Office held: DIRECTOR

Certified for the purposes of the Real Property Act 1900 by the person whose signature appears below.

Signature: *[Signature]*

Signatory's name: Lee John Jackson
 Signatory's capacity: mortgagee's solicitor

THIS IS ANNEXURE "A" TO THE MORTGAGE MADE THE 17TH DAY OF AUGUST 2004 BETWEEN OVST PTY LTD ACN 103 216 771 ("MORTGAGOR) AND PERMANENT TRUSTEE AUSTRALIA LIMITED ACN 008 412 913 (MORTGAGEE)

IT IS HEREBY AGREED AND DECLARED THAT:

1. This Mortgage is collateral to and secures the same moneys as are secured by the Loan Agreement dated 30 January 2004 executed and delivered by the Mortgagor as Borrower in favour of the Mortgagee as Lender and Custodian and LM Investment Management Limited ACN 077 208 461 as Responsible Entity and any amendment or variation thereto.
2. The definition of "principal sum" in Clause 1.1 of Memorandum AA776971 is amended by:
 - (a) re-numbering paragraph "(e)" as paragraph "(f)"; and
 - (b) inserting new paragraph "(e)" as follows:

"and all moneys now owing or payable or hereafter to become owing or payable by the Mortgagor to the Mortgagee pursuant to Loan Agreement dated 30 January 2004 and delivered by the Mortgagor as Borrower in favour of the Mortgagee as Lender and Custodian and LM Investment Management Limited ACN 077 208 461 as Responsible Entity and any amendment or variation thereto."

EXECUTED on behalf of OVST PTY LTD pursuant)
to the authority specified and in the presence of the)
authorised person(s) whose signature(s) appear(s))
below:)

Authority: Section 127 of the Corporations Law

Signature of authorised person: 


Signature of authorised person: 

Name of authorised person: PETER GERARD MAJOR

Name of authorised person: PETER VULLERT

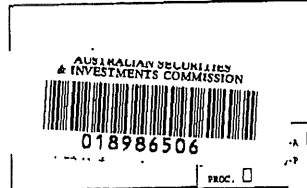
Office held: MANAGING DIRECTOR

Office held: DIRECTOR


.....
Lee John Jackson – Solicitor for Mortgagee

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

1911
 LM Investment Management Limited
 PO Box 485
 Surfers Paradise State/Territory Qld postcode 4217
 (07) 5584 4500
 (07) 5592 2505
 N/A



Australian Securities & Investments Commission form 309

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

1018734

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) **OVST Pty Ltd A.C.N. 103 216 771**
 A.C.N. or A.R.B.N.

Details of charge

date charge was created **30/1/2004** 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 :

Maximum prospective liability (if applicable, see section 282): Twenty-one Million Dollars (\$21,000,000.00)

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)
LM Investment Management Limited ACN 077 208 461

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) Nil
 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 **Peter Gerard McAvoy**
 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 **OVST Pty Ltd A.C.N. 103 216 771**

sign here

date **30/1/2004**

* Complete and sign the verification on page 2

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

I verify ^{OR} the annexure marked (A) of (27) 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 (A) of (27) 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

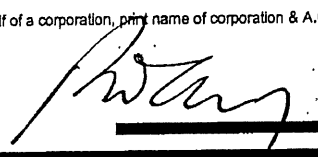
Signature

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

print name of person signing **Peter Gerard McAvoy**
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 **OVST Pty Ltd A.C.N. 103 216 771**

sign here



date 30/11/2004

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 283(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

1911

LM Investment Management Limited
PO Box 485
SURFERS PARADISE state/territory QLD postcode 4217
07 5584 4500
07 5592 2505
n/a

A BARCODE IS NOT
REQUIRED ON THIS
DOCUMENT

ASE. 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 **OVST Pty Ltd A.C.N. 103 216 771**
A.C.N. or A.R.B.N.

Details of the charge

date charge was created (d/m/y) **30-1-2004**

name of chargee(s) or trustee(s) **LM Investment Management Limited ACN 077 208 461**

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 **Peter Gerard McAvoy**

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

if signing on behalf of a corporation, print name of corporation & A.C.N. & A.R.B.N. **OVST Pty Ltd A.C.N. 103 216 771**

sign here

date **30/1/2004**

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

"A"

OVST Pty Ltd A.C.N. 103 216 771

("the Mortgagor")

and

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461

("the Mortgagee")

Fixed and Floating Charge

This is the Annexure marked "A" of ~~25~~ 27 pages referred to in the Form 309 Details of Charge signed by me and dated the 30TH day of JANUARY 2004

per:

.....
Director



LM INVESTMENT MANAGEMENT LTD
LEVEL 4 "RSL CENTRE"
9 BEACH ROAD
SURFERS PARADISE QLD 4217

PHONE: 07 5584 4500
FAX: 07 5592 2505

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OVST Pty Ltd A.C.N. 103 216 771

("the Mortgagor")

and

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461

("the Mortgagee")

Fixed and Floating Charge

LM INVESTMENT MANAGEMENT LTD
LEVEL 4 "RSL CENTRE"
9 BEACH ROAD
SURFERS PARADISE QLD 4217

PHONE: 07 5584 4500
FAX: 07 5592 2505

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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.

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

"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:

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- (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.

"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.

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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 no 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

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- (iii) 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 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

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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

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- (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

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- (k) S254N of the Corporations Act 2001, in any case without the consent of the Mortgagee; or 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

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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

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- (s) responsible for the misapplication or non-application of money borrowed or raised);
- (t) 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;
- (u) 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;
- (v) 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;
- (w) 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;
- (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 Mortgagee 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)

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- (e) with such government body or registrar as the Mortgagee reasonably requires; 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

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- (ii) Mortgagor known to the Mortgagee; and 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: 30 JANUARY 2004

Item 2

The Mortgagor:

OVST Pty Ltd A.C.N. 103 216 771
99 Annerley Road, Woolloongabba Q 4102

Item 3

The Mortgagee:

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
C/- Level 4, RSL Centre, 9 Beach Road, Surfers Paradise QLD 4217

Item 4

The Borrower:

OVST Pty Ltd A.C.N. 103 216 771 in its own right and as Trustee of the Ocean View South
Tweed Partnership
99 Annerley Road, Woolloongabba Q 4102

Item 5

The Guarantor:

Mark Andrew Spedding
34 Wendell Street, Norman Park Q 4170

Vicki Maree Browne
25 Darragh Street, Bracken Ridge Q 4017

Peter Vollert
545 Queen Street, Brisbane Q 4000

Rolf Vollert
96 Edmonstone Street, Newmarket Q 4051

Tracy Thomas Nugent
60 Burlida Street, Hendra Q 4011

Peter Gerard McAvoy
145 Buena Vista Avenue, Coorparoo Q 4151

Petrac Land Holdings Pty Ltd A.C.N. 066 644 264
Level 7, Sherwood House, 39 Sherwood Road, Toowong Q 4066

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 **OVST Pty Ltd A.C.N. 103 216 771** as the mortgagor and the Lender as the Mortgagee over land situated at 2-4 Terranora Drive, Banora Point NSW 2486 to be registered as a First mortgage described as follows:-

Lot No	Strata Plan No	Folio Identifier
1	SP 62608	1/SP62608
2	SP 62608	2/SP62608
3	SP 62608	3/SP62608
4	SP 62608	4/SP62608
5	SP 62608	5/SP62608
6	SP 62608	6/SP62608
7	SP 62608	7/SP62608
8	SP 62608	8/SP62608
9	SP 62608	9/SP62608
10	SP 62608	10/SP62608
11	SP 62608	11/SP62608
12	SP 62608	12/SP62608
13	SP 62608	13/SP62608
14	SP 62608	14/SP62608
15	SP 62608	15/SP62608
16	SP 62608	16/SP62608
17	SP 62608	17/SP62608
18	SP 62608	18/SP62608
19	SP 62608	19/SP62608
20	SP 62608	20/SP62608
21	SP 62608	21/SP62608
22	SP 62608	22/SP62608

- (c) Registered Deed of Charge intended to be executed on the same date as this Agreement by **OVST Pty Ltd A.C.N. 103 216 771** as mortgagor in favour of the Lender as mortgagee over all the property, assets and undertaking of **OVST Pty Ltd A.C.N. 103 216 771** of whatsoever nature and kind and wheresoever situated, present and future.
- (d) Registered Deed of Charge intended to be executed on the same date as this Agreement by **Petrac Land Holdings Pty Ltd A.C.N. 066 644 264** as mortgagor in favour of the Lender as mortgagee over all the property, assets and undertaking of **Petrac Land Holdings Pty Ltd A.C.N. 066 644 264** of whatsoever nature and kind and wheresoever situated, present and future.

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

(a)
Mortgagor: **OVST Pty Ltd A.C.N. 103 216 771**
Address: **99 Annerley Road, Woolloongabba Q 4102**
Facsimile No.: **(07) 5524 2143**

(b)
Mortgagee: **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461**
Address: **C/- Level 4, RSL Centre, 9 Beach Road Surfers Paradise 4217**
Facsimile No.: **07 5592 2505**

**Item 9
Maximum Prospective Liability (clause 32)**
Twenty-one Million Dollars (\$21,000,000.00)

**Item 10
Governing law (clause 35)**

New South Wales

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



EXECUTED as a Deed.

EXECUTED by OVST Pty Ltd A.C.N. 103 216)
771 in accordance with section 127 of the)
Corporations Act 2001 (Cth) in the presence of)

[Handwritten Signature]
.....
Signature of Director

[Handwritten Signature]
.....

Signature of Director

PETER S MEADY
.....
Full name of Director

PETER VOLBERT
.....
Full name of Director

APPOINTMENT OF AGENT

OVST Pty Ltd

ACN 103 216 771

(Controller Appointed)(in Liquidation)

The Trust Company (PTAL) Limited ACN 008 412 913

LM Investment Management Pty Ltd ACN 077 208 461

MONAGHAN LAWYERS

PO Box 315, Surfers Paradise Qld 4217

Level 4, 9 Beach Road, Surfers Paradise Qld 4217

P 5584 4550 F 5592 2505

E admin@monaghanlawyers.com.au

Appointment of Agent

DATE 29th October 2010

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 **OVST Pty Limited** ACN 103 216 771 (Controller Appointed) (in Liquidation) "the Mortgagor" C/- of Vambels Pty Ltd, Unit 14, 67 O'Connell Terrace, Bowen Hills, Queensland 4006 is indebted to the Mortgagee.
- B The Mortgagee holds:
- (a) a mortgage given by the Mortgagor in favour of LM Investment Management Limited ACN 077 208 461 registered with the New South Wales Land and Property Management Authority as dealing no. AA391969 and subsequently transferred to the Mortgagee by transfer of mortgage registered in the New South Wales Land and Property Management Authority as dealing no. AA518433 on 24 March 2004 "the First Mortgage", under which the Mortgagor mortgaged the estate and interest of the Mortgagor specified in the First Mortgage in the land described in the First Mortgage to secure the payment to the Mortgagee of the Money Secured as defined in the First Mortgage;
 - (b) a mortgage given by the Mortgagor in favour of the Mortgagee and registered in the New South Wales Land and Property Management Authority as dealing no. AA893065 "the Second Mortgage", under which the Mortgagor mortgaged the Secured Property as defined in the Second Mortgage to secure the payment to the Mortgagee of all monies and other amounts as set out in the Second Mortgage;
 - (c) a Fixed and Floating Charge given by the Mortgagor dated 6 February 2004 and registered with the Australian Securities and Investments Commission as charge no. 1018734 "the Charge", under which the Mortgagor charged the Secured Property as defined in the Charge to secure the payment to the Mortgagee of the Money Secured as defined in the Charge.
- C In the events which have happened the security constituted by the First Mortgage, the Second Mortgage and the Charge has become enforceable.
- D The Agent agreed to accept such appointment 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.

Appointment of Agent

- F By virtue of the powers in the First Mortgage, the Second 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 First Mortgage, the Second Mortgage and the Charge, and the Mortgagee wishes to exercise this power.

ACCORDINGLY:

1. The Mortgagee appoints LM Investment Management Pty Ltd ACN 077 208 461 (together with its executors, administrators and permitted assigns) 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 First Mortgage, the Second Mortgage and 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 Agent shall take effect from the actual time it is accepted by the Agent signing below.
4. The Mortgagee may, without prejudice to any or all other rights and remedies it may have under this deed or applicable law, terminate this deed by giving seven (7) days written notice to the Agent. The Agent must formally retire by executing an appropriate deed of retirement prior to the end of the notice period given by the Mortgagee.
5. **Limit of Liability**
 - 5.1 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.
 - 5.2 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.
 - 5.3 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.

Appointment of Agent

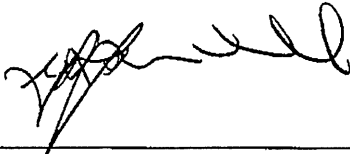
- 5.4 The provisions of this clause 5 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Trust's trust deed, the Custody Agreement, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of that Trust, as a result of the Mortgagee's fraud, negligence or wilful default.
- 5.5 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.
- 5.6 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.
- 5.7 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.
- 5.8 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 5.4.
- 5.9 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.
- 5.10 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.
- 5.11 All of the terms, clauses and conditions of this Deed are subject to this clause 5.
6. 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 as Lender, by its Attorney who state that it)
has had no notice of revocation of the Power of)
Attorney dated 12 July 2010 registration)
number 713351029)

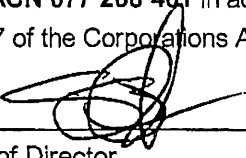


Group A Attorney
State Manager (Corporate & Legal Services) (Qld)

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

Date Accepted: 31/10/10
Time Accepted: From 12 pm

EXECUTED by LM INVESTMENT MANAGEMENT)
LIMITED ACN 077 208 461 in accordance with)
section 127 of the Corporations Act 2001 (Cth):)
)
)



Signature of Director

Simon Jeremy Tickner
Full name of Director



Signature of Director

Eghard Van Der Hoven
Full name of Director

AGENT'S INDEMNITY

OVST Pty Ltd

ACN 103 216 771

(Controller Appointed)(in Liquidation)

The Trust Company (PTAL) Limited ACN 008 412 913

LM Investment Management Pty Ltd ACN 077 208 461

MONAGHAN LAWYERS

PO Box 315, Surfers Paradise Qld 4217

Level 4, 9 Beach Road, Surfers Paradise Qld 4217

P 5584 4550 F 5592 2505

E admin@monaghanlawyers.com.au

Agent's Indemnity

Date 29th October 2010

Parties

The Trust Company (PTAL) Limited ACN 008 412 913, in its capacity as agent for **LM Investment Management Limited** ACN 077 208 461, of c/- Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland "the Mortgagee"; and

LM Investment Management Pty Ltd ACN 077 208 461, of Level 4, 9 Beach Road, Surfers Paradise in the State of Queensland (together with their executors, administrators and permitted assigns) "the Agent".

Recitals

- A OVST Pty Ltd ACN 103 216 771 (Controller Appointed)(in Liquidation) "the Mortgagor" C/- of Vambels Pty Ltd, Unit 14, 67 O'Connell Terrace, Bowen Hills, Queensland 4006 is indebted to the Mortgagee.
- B The Mortgagee holds:
- (a) a mortgage given by the Mortgagor in favour of LM Investment Management Limited ACN 077 208 461 registered with the New South Wales Land and Property Management Authority as dealing no. AA391969 and subsequently transferred to the Mortgagee by transfer of mortgage registered in the New South Wales Land and Property Management Authority as dealing no. AA518433 on 24 March 2004 "the First Mortgage", under which the Mortgagor mortgaged the estate and interest of the Mortgagor specified in the First Mortgage in the land described in the First Mortgage "the First Mortgaged Property" to secure the payment to the Mortgagee of the Money Secured as defined in the First Mortgage;
 - (b) a mortgage given by the Mortgagor in favour of the Mortgagee and registered in the New South Wales Land and Property Management Authority as dealing no. AA893065 "the Second Mortgage", under which the Mortgagor mortgaged the Secured Property as defined in the Second Mortgage "the Second Mortgaged Property" to secure the payment to the Mortgagee of all monies and other amounts as set out in the Second Mortgage;
 - (c) a Fixed and Floating Charge given by the Mortgagor dated 6 February 2004 and registered with the Australian Securities and Investments Commission as charge no. 1018734 "the Charge", under which the Mortgagor charged the Secured Property as defined in the Charge to secure the payment to the Mortgagee of the Money Secured as defined in the Charge.
- C In the events which have happened, the security constituted by the First Mortgage,

Agent's Indemnity

the Second Mortgage and the Charge has become enforceable.

- D By a Deed of Appointment of Agent dated on or about the date of this Deed "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:

- (a) all Liabilities arising out of any defect in the First Mortgage, the Second Mortgage or the Charge, or any invalidity or unenforceability of the First Mortgage, the Second Mortgage, the Charge, 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.
-

Agent's Indemnity

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 First Mortgaged Property, the Second Mortgaged Property in respect of all amounts referred to in this clause.

4. Emergency Preference Payments

Notwithstanding the provisions of the First Mortgage, the Second Mortgage and the Charge, 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.

5. Warranties

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 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
- (d) 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).

Agent's Indemnity

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.
- (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.

Agent's Indemnity

- (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

EXECUTED and delivered as a Deed in Brisbane.

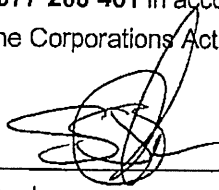
Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

THE TRUST COMPANY (PTAL) LIMITED ACN 008)
412 913 as Lender, by its Attorney who state that it)
has had no notice of revocation of the Power of)
Attorney dated 12 July 2010 registration number)
713351029)



Group A Attorney
State Manager (Corporate & Legal Services) (Qld)

EXECUTED by LM INVESTMENT MANAGEMENT)
LIMITED ACN 077 208 461 in accordance with)
section 127 of the Corporations Act 2001 (Cth):)
)
)
)



Signature of Director

Simon Jeremy Tickner
Full name of Director



Signature of Director

Eghard Van Der Hoven
Full name of Director

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 ^{is} 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.

~~X~~ **"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 no 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

- (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

- (c) Mortgagee and any independent expert appointed by the Mortgagee; and 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

- (g) a limitation on its powers or the powers of its directors, to be exceeded; and 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

- (m) Mortgagee or any of its subsidiaries or any Security Provider; or 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 Mortgagee 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 Mortgagee, or of the Mortgagee 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 Mortgagee 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 Mortgagee 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 Mortgagee 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 Mortgagee 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 Mortgagee or any Security Provider is a trustee, whether or not the fact is notified to the Mortgagee, the Mortgagee 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 Mortgagee. The Mortgagee 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 Mortgagee of a notice from the Mortgagee to that effect; or
- (d) if the Mortgagee 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 Mortgagee; or
 - (ii) which is held on account of the Mortgagee, or by a person for payment to the Mortgagee, or on account of a person for payment to the Mortgagee.

10.3 At any time after this Charge has taken effect as a fixed charge over any or all of the assets of the Mortgagee, the Mortgagee may by notice in writing to the Mortgagee 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;
- (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.

THE SCHEDULE

Item 1

Date of Execution: 7 February 2007

Item 2

The Mortgagor:

Redland Bay Leisure Life Development Pty Ltd A.C.N. 112 002 383

c/- Anthony Wetmore & Co, Level 7, Sherwood House, 39 Sherwood Road, Toowong Q 4066

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:

Redland Bay Leisure Life Development Pty Ltd A.C.N. 112 002 383 in its own right and as trustee for the Redland Bay Leisure Life Development Partnership

c/- Anthony Wetmore & Co, Level 7, Sherwood House, 39 Sherwood Road, Toowong Q 4066

Item 5

The Guarantor:

Redland Bay Leisure Life Pty Ltd A.C.N. 109 932 916

c/- Anthony Wetmore & Co, Level 7, Sherwood House, 39 Sherwood Road, Toowong Q 4066

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) First Registered Mortgage No. 708745479 given by **Redland Bay Leisure Life Pty Ltd A.C.N. 109 932 916** as the mortgagor and the Lender as the Mortgagee over land situated at Cnr Government Road, Salisbury, Weinham & Meissner Streets, Redland Bay Q 4165 being all that land described as Lot 2 in RP 95747 Title Reference 13465183; Lot 11 in Crown Plan SL1595 Title Reference 12136103; Lot 2 in RP 48270 Title Reference 11818116; Lot 24 & 25 in RP 30555 Title Reference 10786196; Lots 16 & 17 in RP 30555

Title Reference 12166113 and Lot 3 in RP 90361 Title Reference 13189150;

- (b) First registered Fixed and Floating Charge intended to be executed on the same date as this Agreement by **Redland Bay Leisure Life Development Pty Ltd A.C.N. 112 002 383** as mortgagor in favour of the Lender as mortgagee over all the property, assets and undertaking of **Redland Bay Leisure Life Development Pty Ltd A.C.N. 112 002 383** of whatsoever nature and kind and wheresoever situated, present and future.
- (c) First registered Fixed and Floating Charge No. 1171483 given by **Redland Bay Leisure Life Pty Ltd A.C.N. 109 932 916** as mortgagor in favour of the Lender as mortgagee over all the property, assets and undertaking of **Redland Bay Leisure Life Pty Ltd A.C.N. 109 932 916** of whatsoever nature and kind and wheresoever situated, present and future.

Item 8

Address for Notices (Clause 31)

(a) Mortgagor: **Redland Bay Leisure Life Development Pty Ltd A.C.N. 112 002 383**
 Address: c/- Anthony Wetmore & Co, Level 7, Sherwood House, 39 Sherwood Road,
 Toowong Q 4066
 Facsimile No.: (07) 3004 7401

(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) One Hundred Million Dollars (\$100,000,000.00)

Item 10

Governing law (clause 35) Queensland

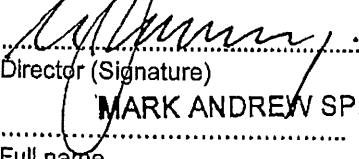
Item 11

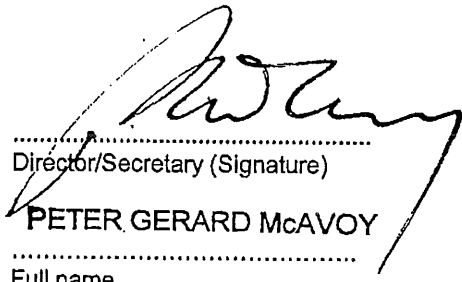
Fixed Assets (clause 4.1(b))

- (a) All plans and specifications, development approvals, building approvals and other approvals or consents relating in whole or in part to Cnr Government Road, Salisbury, Weinham & Meissner Streets, Redland Bay Q 4165 being all that land described as Lot 2 in RP 95747 Title Reference 13465183; Lot 11 in Crown Plan SL1595 Title Reference 12136103; Lot 2 in RP 48270 Title Reference 11818116; Lot 24 & 25 in RP 30555 Title Reference 10786196; Lots 16 & 17 in RP 30555 Title Reference 12166113 and Lot 3 in RP 90361 Title Reference 13189150 (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.

EXECUTED as a Deed.

EXECUTED by Redland Bay Leisure Life Development Pty)
Ltd A.C.N. 112 002 383 in accordance with section 127 of the)
Corporations Act 2001 (Cth):)


.....
Director (Signature)
MARK ANDREW SPEDDING
.....
Full name


.....
Director/Secretary (Signature)
PETER GERARD McAVOY
.....
Full name

Appointment of Agent
Redland Bay Leisure Life Development Pty Ltd
(ACN 112 002 383)

The Trust Company (PTAL) Limited
LM Investment Management Limited

Appointment of Agent

Date

8 February

2011

Recitals

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:

- A **Redland Bay Leisure Life Development Pty Ltd** (ACN 112 002 383) (the *Company*) of Petrac Projects Pty Ltd, Suite 15, 67 O'Connell Terrace, Bowen Hills in the State of Queensland is indebted to the Mortgagee.
- B The Mortgagee holds a Fixed and Floating Charge given by the Company dated 7 February 2007 and registered with the Australian Securities and Investments Commission as charge no. 1420084 (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

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

- 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

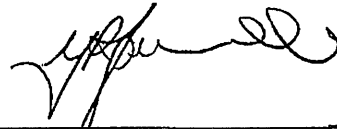
10/10/2010 10:01:00 AM

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.

~~Signed Sealed and Delivered for The Trust Company (PTAL) Limited ACN 008 412 913 by its attorneys who state that they have no notice of revocation of the power of attorney dated 2 June 1993 and registered in the Queensland Land Titles Office as Dealing No. L664541T in the presence of:~~

The Trust Company (PTAL) Limited ACN 008 412 913
by its duly appointed attorney Geoffrey Funnell
under Power of Attorney dated 12 July 2010
Registered No... 713351029



Group A Attorney Signature

Group B Attorney Signature **Geoffrey Funnell**
State Manager (Corporate & Legal Services) (Qld)

Print Name

Print Name

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

ED HARTS VAN DER HOVEN

Print Name

Director/Secretary Signature

PETER CHARLES DRACE

Print Name

Agents Indemnity
Redland Bay Leisure Life Development Pty Ltd
(ACN 112 002 383)

The Trust Company (PTAL) Limited
LM Investment Management Limited

Appointment of Agent

Date

8 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 **Redland Bay Leisure Life Development Pty Ltd** (ACN 112 002 383) (the *Company*) of Petrac Projects Pty Ltd, Suite 15, 67 O'Connell Terrace, Bowen Hills in the State of Queensland is indebted to the Mortgagee.
- B The Mortgagee holds a Fixed and Floating Charge given by the Company dated 7 February 2007 and registered with the Australian Securities and Investments Commission as charge no. 1420084 (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:

Appointment of Agent

- (a) all Liabilities arising out of any defect in the Charge, the First Mortgage or the Second Mortgage, or any invalidity or unenforceability of the Charge, the First Mortgage, the Second 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 and the Second 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 and the Second 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.

Appointment of Agent

5. Warranties

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 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
- (d) 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.

Appointment of Agent

- (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.

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.

Signed Sealed and Delivered for **The Trust Company (PTAL) Limited** (ACN 008 412 913) by its attorneys who state that they have no notice of revocation of the power of attorney dated 2 June 1993 and registered in the Queensland Land Titles Office as Dealing No. L664541T in the presence of:

THE TRUST COMPANY (PTAL) LIMITED ACN
008412913 BY ITS DULY APPOINTED
ATTORNEY GEOFFREY FUNNELL
UNDER POWER OF ATTORNEY
DATED 12 JULY 2010
REGISTERED NO. 713851029



Geoffrey Funnell

Group A Attorney Signature

Group B Attorney Signature
State Manager (Corporate & Legal Services) (Qld)

Print Name

Print Name

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

Director/Secretary Signature

EGHARD VAN DER HOVEN

PETER CHARLES DRAKE

Print Name

Print Name

Appointment of Agent
Redland Bay Leisure Life Pty Ltd
(ACN 109 932 916)

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 **Redland Bay Leisure Life Pty Ltd** (ACN 109 932 916) (the *Mortgagor*) of Petrac Projects Pty Ltd, Suite 15, 67 O'Connell Terrace, Bowen Hills in the State of Queensland is indebted to the Mortgagee.
- B The Mortgagee holds:
- (a) a mortgage given by the Mortgagor and registered with the Queensland Land Registry as registered dealing No. 708745479 (the *First Mortgage*) under which the Mortgagor mortgaged the Secured Property as described in the Mortgage (the *First Mortgaged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the First Mortgage);
 - (b) a mortgage given by the Mortgagor and registered with the Queensland Land Registry as registered dealing No. 710688878 (the *Second Mortgage*) under which the Mortgagor mortgaged the Secured Property as described in the Mortgage (the *Second Mortgaged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Second Mortgage);
 - (c) a Fixed and Floating Charge given by the Mortgagor dated 2 June 2005 and registered with the Australian Securities and Investments Commission as charge no. 1171483 (the *Charge*), under which the Mortgagor 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 virtue of the powers in the Charge, the First Mortgage and the Second Mortgage, 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, the First Mortgage and the Second Mortgage, and the Mortgagee wishes to exercise this power.

Appointment of Agent

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, the First Mortgage, the Second 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. The Mortgagee may, without prejudice to any or all other rights and remedies it may have under this deed or applicable law, terminate this deed by giving 7 days written notice to the Agent. The Agent must formally retire by executing an appropriate deed of retirement prior to the end of the notice period given by the Mortgagee.
4. This appointment of the Agent shall take effect from the actual time it is accepted by the Agent signing below.
5. **Limit of Liability**
 - 5.1 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.
 - 5.2 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.
 - 5.3 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.
 - 5.4 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.
 - 5.5 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

Appointment of Agent

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

- 5.6 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.
 - 5.7 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.
 - 5.8 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.
 - 5.9 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.
 - 5.10 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.
 - 5.11 All of the terms, clauses and conditions of this Deed are subject to this clause 6.
6. 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

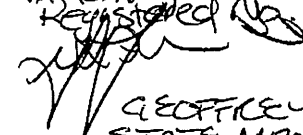
EXECUTED and delivered as a deed in Brisbane.

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

Signed Sealed and Delivered for The Trust Company (PTAL) Limited ACN 008 412 913 by its attorneys who state that they have no notice of revocation of the power of attorney dated 2 June 1993 and registered in the Queensland Land Titles Office as Dealing No. L664541T in the presence of:

Group A Attorney Signature

Print Name

The Trust Company (PTAL)
Limited ACN 008 412 913
by its duly appointed attorney
Geoffrey Funnell under Power of
Attorney dated 12 July 2010
Registered No. 713351029.

GEOFFREY FUNNELL
STATE MANAGER
CORPORATE + LEGAL SERVICES

Group B Attorney Signature

Print Name

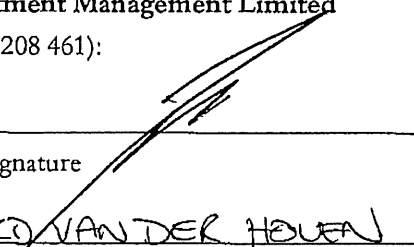
The Agent accepts the above appointment at the time and on the date written below:

Date Accepted:

Time Accepted:

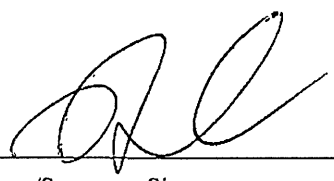
Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **LM Investment Management Limited** (ACN 077 208 461):

Director Signature


ELHACO VAN DER HOUWEN

Print Name

Director/Secretary Signature


PETER CHARLES DRAKE

Print Name

Agents Indemnity
Redland Bay Leisure Life Pty Ltd
(ACN 109 932 916)

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 **Redland Bay Leisure Life Pty Ltd** (ACN 109 932 916) (the *Mortgagor*) of Petrac Projects Pty Ltd, Suite 15, 67 O'Connell Terrace, Bowen Hills in the State of Queensland is indebted to the Mortgagee.
- B The Mortgagee holds:
- (a) a mortgage given by the Mortgagor and registered with the Queensland Land Registry as registered dealing No. 708745479 (the *First Mortgage*) under which the Mortgagor mortgaged the Secured Property as described in the Mortgage (the *First Mortgaged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the First Mortgage);
 - (b) a mortgage given by the Mortgagor and registered with the Queensland Land Registry as registered dealing No. 710688878 (the *Second Mortgage*) under which the Mortgagor mortgaged the Secured Property as described in the Mortgage (the *Second Mortgaged Property*) to secure the payment to the Mortgagee of the Money Secured (as that term is defined in the Second Mortgage);
 - (c) a Fixed and Floating Charge given by the Mortgagor dated 2 June 2005 and registered with the Australian Securities and Investments Commission as charge no. 1171483 (the *Charge*), under which the Mortgagor 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

Appointment of Agent

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:

- (a) all Liabilities arising out of any defect in the Charge, the First Mortgage or the Second Mortgage, or any invalidity or unenforceability of the Charge, the First Mortgage, the Second 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

Appointment of Agent

the Charged Property, the First Mortgaged Property and the Second 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 and the Second 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.

5. Warranties

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 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
- (d) 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.

Appointment of Agent

- (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 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

Appointment of Agent

- (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.

Appointment of Agent

EXECUTED and delivered as a deed in Brisbane.

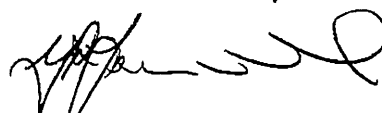
Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

~~Signed Sealed and Delivered for The Trust Company (PTAL) Limited (ACN 008 412 913) by its attorneys who state that they have no notice of revocation of the power of attorney dated 2 June 1993 and registered in the Queensland Land Titles Office as Dealing No. L664541T in the presence of:~~

~~_____~~
Group A Attorney Signature

~~_____~~
Print Name

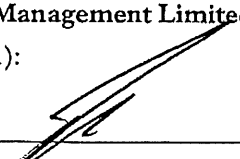
The Trust Company (PTAL) Limited ACN 008 412 913
by its duly appointed attorney Geoffrey Funnell
under Power of Attorney dated 12 July 2010
Registered No. to 71335029



Group B Attorney Signature **Geoffrey Funnell**
State Manager (Corporate & Legal Services) (Qld)

Print Name


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

EDWARD VAN DER HOUWEN

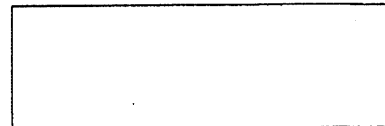
Print Name



Director/Secretary Signature

PETER CHARLES DRAKE

Print Name



Notification that a person has been appointed controller/ entered into possession etc.

If there is insufficient space in any section of the form, you may photocopy the relevant page(s) and submit as part of this lodgement

Company details

Company in respect of which the controller was appointed/entered into possession etc

Company name

Redland Bay Leisure Life Pty Ltd

ACN/ABN/ARBN

A.C.N. 109 932 916

This notice is being given by:

ASIC internal form code

Tick one box

- the person who obtained an order for the appointment of, or who appointed, the receiver or receiver and manager under s427(1)
- the appointer of the controller under s427(1A)
- the controller (other than receiver, receiver and manager or managing controller) under s427(1B)
- the managing controller (other than receiver and manager) under s427(1B)

504A & B
504C
504D
504E

Lodgement details

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

Firm/organisation

LM Investment Management Limited

Contact name/position description

Katie Scott / Manager

ASIC registered agent number (if applicable)

Telephone number

07 5584 4500

Postal address or DX address

PO Box 485

Surfers Paradise

1 Details of the appointment/entry into possession etc.

Tick one box

- Receiver of the property described in the Schedule to this form
- Receiver and manager of the property described in the Schedule to this form
- Controller (other than receiver, receiver and manager or managing controller) of the property described in the Schedule to this form
- Managing controller (other than receiver and manager) of the property described in the Schedule to this form

1 Continued... Details of the appointment/entry into possession etc.

If appointment by Court order, tick box to indicate the Court and provide details

Appointment by Court order

Federal Court of Australia
State or territory registry

Family Court of Australia
State or territory registry

Supreme Court
State or territory

Date of obtaining order

/ /
[D] [D] [M] [M] [Y] [Y]

Proceeding-matter number

Year

If appointment by instrument, tick box to indicate the type of instrument and provide details

Appointment by instrument

Date of appointment/entry into possession etc.

/ /
[D] [D] [M] [M] [Y] [Y]

Date of instrument

/ /
[D] [D] [M] [M] [Y] [Y]

Description of instrument

Instrument registered in the Australian register of company charges
Registered charge number

Description of instrument

Instrument registered in the register of charges of a state or territory

Registered charge number

State or territory

Instrument registered in other register
Please specify details

Instrument not registered
Name of appointer

2 Details of the person(s) appointed

Family name	Given name
<input type="text"/>	<input type="text"/>
Firm name (if applicable)	
<input type="text" value="The Trust Company (PTAL) Limited"/>	
Unit, level	
<input type="text" value="C/- LM Investment Management Ltd, Level-4"/>	
Street number and street name	
<input type="text" value="9 Beach Road"/>	
Suburb/City	State/Territory
<input type="text" value="Surfers Paradise"/>	<input type="text" value="QLD"/>
Postcode	Country (if not Australia)
<input type="text" value="4217"/>	<input type="text"/>

Type of appointment

appointed singly appointed jointly appointed jointly and severally

Family name	Given name
<input type="text"/>	<input type="text"/>
Firm name (if applicable)	
<input type="text"/>	
Unit, level	
<input type="text"/>	
Street number and street name	
<input type="text"/>	
Suburb/City	State/Territory
<input type="text"/>	<input type="text"/>
Postcode	Country (if not Australia)
<input type="text"/>	<input type="text"/>

Type of appointment

appointed singly appointed jointly appointed jointly and severally

4 Schedule of property

1. Pursuant to the real property mortgage, all of the land described as Lot 2 in RP 95747, Lot 11 on CP SL1595, Lot 2 in RP 48270, Lot 24 on RP 30555, Lot 25 on RP 30555, Lot 16 on RP 30555, Lot 17 on RP 30555, Lot 3 in RP 90361, Lot 1 in RP 48270 and Lot 500 in SP 197855 situated at Cnr Government, Meissners, Weinham & Salisbury St, Redland Bay Qld.

2. Pursuant to the registered charges, all of the property, rights, assets and undertakings of the mortgagor whether the 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).

(If insufficient space) Further details are enclosed in the annexure marked () of () pages.

Signature

This form must be signed by:

- (a) where the form is lodged for the purposes of s427(1) or s427(1A), by the person who obtains an order for the appointment of, or who appoints, the controller, or
- (b) where the form is lodged for the purposes of s427(1B), by the controller or managing controller.

Name

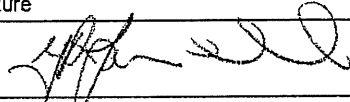
Geoffrey Funnell

Capacity

Attorney

Corporation name (if applicable)

Signature



Date signed

09/08/11
[D] [D] [M] [M] [Y] [Y]

Lodgement

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

For help or more information

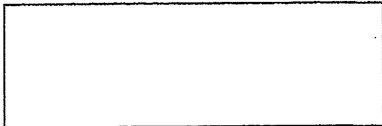
Telephone 1300 300 630
Email info.enquiries@asic.gov.au
Web www.asic.gov.au

Guide: Notification that a person has been appointed controller/ entered into possession etc.

This guide does not form part of the form. It is included by ASIC to assist you in completing and lodging the Form 504.

Lodgement period	Within 7 days of the date of appointment or taking possession.
Lodgement fees	Nil if lodged within the prescribed lodging period.
Late fees	<p>Late fees will apply if you lodge outside of the lodgement period.</p> <p>The late fees are:</p> <ul style="list-style-type: none">• \$65 for up to one month late• \$270 for over one month late. <p>A form is not considered lodged until it is received and accepted by ASIC as complying with s1274(8) of the <i>Corporations Act 2001</i>. A receipt will not be issued unless requested.</p>
Additional information	<p>The Schedule of Property must be annexed to the Form 504.</p> <p>See <i>INFO 29 External Administration Forms Guide</i> for more information.</p>
How to provide additional information	<p>Photocopied form 504 pages</p> <p>If there is insufficient space in any section of the form, you may photocopy the relevant page(s) and submit as part of this lodgement.</p> <p>Annexures</p> <p>To make any annexure conform to the regulations, you must</p> <ol style="list-style-type: none">1. use A4 size paper of white or light pastel colour with a margin of at least 10mm on all sides2. show the company name and ACN3. number the pages consecutively4. print or type in BLOCK letters in dark blue or black ink so that the document is clearly legible when photocopied5. mark the annexure with an identifying letter or symbol eg a,b,c or 1,2,3 etc.6. endorse the annexure with the words: This annexure (mark) of (number) pages referred to in form (form number and title)7. sign and date the annexure <p>The annexure must be signed by the same person(s) who signed the form.</p>

Lodgement	Send completed and signed forms to: Australian Securities and Investments Commission PO Box 4000, Gippsland Mail Centre VIC 3841.	For help or more information Telephone 1300 300 630 Email info.enquiries@asic.gov.au Web www.asic.gov.au
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Company details

Company in respect of which the controller was appointed/entered into possession etc

Company name

Redland Bay Leisure Life Pty Ltd

ACN/ABN/ARBN

A.C.N. 109 932 916

This notice is being given by:

ASIC internal form code

Tick one box

the person who obtained an order for the appointment of, or who appointed, the receiver or receiver and manager under s427(1)

504A & B

the appointer of the controller under s427(1A)

504C

the controller (other than receiver, receiver and manager or managing controller) under s427(1B)

504D

the managing controller (other than receiver and manager) under s427(1B)

504E

Lodgement details

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

Firm/organisation

LM Investment Management Limited

Contact name/position description

Katie Scott / Manager

ASIC registered agent number (if applicable)

Telephone number

07 5584 4500

Postal address or DX address

PO Box 485

Surfers Paradise

1 Details of the appointment/entry into possession etc.

Tick one box

Receiver of the property described in the Schedule to this form

Receiver and manager of the property described in the Schedule to this form

Controller (other than receiver, receiver and manager or managing controller) of the property described in the Schedule to this form

Managing controller (other than receiver and manager) of the property described in the Schedule to this form

1 Continued... Details of the appointment/entry into possession etc.

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State or territory registry

Family Court of Australia
State or territory registry

Supreme Court
State or territory

Date of obtaining order

/ /
[D] [D] [M] [M] [Y] [Y]

Proceeding-matter number

Year

If appointment by instrument, tick box to indicate the type of instrument and provide details

Appointment by instrument

Date of appointment/entry into possession etc.

/ /
[D] [D] [M] [M] [Y] [Y]

Date of instrument

/ /
[D] [D] [M] [M] [Y] [Y]

Description of instrument

Instrument registered in the Australian register of company charges
Registered charge number

Description of instrument

Instrument registered in the register of charges of a state or territory

Registered charge number

State or territory

Instrument registered in other register

Please specify details

Instrument not registered
Name of appointer

2 Details of the person(s) appointed

Family name	Given name
<input type="text"/>	<input type="text"/>
Firm name (if applicable)	
LM Investment Management Ltd	
Unit, level	
Level 4	
Street number and street name	
9 Beach Road	
Suburb/City	State/Territory
Surfers Paradise	QLD
Postcode	Country (if not Australia)
4217	<input type="text"/>

Type of appointment

appointed singly appointed jointly appointed jointly and severally

Family name	Given name
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Firm name (if applicable)	
<input type="text"/>	
Unit, level	
<input type="text"/>	
Street number and street name	
<input type="text"/>	
Suburb/City	State/Territory
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Postcode	Country (if not Australia)
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Type of appointment

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Signature

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- (b) where the form is lodged for the purposes of s427(1B), by the controller or managing controller.

Name

SIMON JEREMY TICKNER

Capacity

DIRECTOR

Corporation name (if applicable)

LM Investment Management Limited

Signature



Date signed

6 8 / 0 8 / 1 7
[D] [D] [M] [M] [Y] [Y]

Lodgement

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

For help or more information

Telephone 1300 300 630
Email info.enquiries@asic.gov.au
Web www.asic.gov.au

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Lodgement	Send completed and signed forms to: Australian Securities and Investments Commission PO Box 4000, Gippsland Mail Centre VIC 3841.	For help or more information Telephone 1300 300 630 Email info.enquiries@asic.gov.au Web www.asic.gov.au
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30 May 2014

Ms Ginette Muller
Liquidator
c/o FTI
Level 9, Corporate Centre One, 2 Corporate Court
Bundall QLD 4217

By email: ginette.muller@fticonsulting.com

By Email

Dear Madam

LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) as responsible entity for the LM First Mortgage Income Fund ACN 077 208 461 ("FMIF")

RE: Retirement Assets (refer to Annexure A) sale strategy

I refer to my appointment as Joint and Several Receiver and Manager of the FMIF.

As you may be aware, I intend on taking the Retirement Assets to market. In your role as Controllers of the Retirement Assets, we (myself along with David Whyte at BDO) wish to ensure that you have a chance to consider the realisation strategy that we intend to adopt.

Accordingly, please find below a summary of work undertaken to date and the intended strategy:

1 Background

The five Retirement Assets set out in Annexure A are collectively the final major asset realisations remaining in the FMIF. They are also the most costly to run, with an average monthly expenditure per village of circa \$100k.

Given the above, it is important that, for the preservation of the FMIF, these assets now be realised. The timing is right to bring these assets to market, and we have conducted significant work in preparing the Retirement Assets for sale.

2 Pre-sale work conducted

To date, we have conducted the following pre-sale preparation:

- + Obtained submissions from three sales agents (Colliers, Jones Lang LaSalle and Knight Frank);
- + Interviewed each agent on their submissions and conducted internal discussions around agent preference;
- + Preparation of various models to be used in the pre-sale and due diligence process;
- + Discussed BDOs role within the sales process with the Court Appointed Receiver; and
- + Discussed in detail internally and with BDO and LM staff, the best strategy to realise the assets.

3 Strategy conclusion

The following represents our conclusions as to how the sale process should be conducted:

- + Given product and geographical differences, appoint two separate sales agents to the Supported Aged Care Living ("SACL") and Independent Living Unit ("ILU") assets:
 - Colliers to be appointed to the SACL assets, namely OVST, Redland Bay and Pinevale;
 - Colliers had a good understanding of the assets, and were not conflicted by having prepared valuations for the SACL assets (as was the case for JLL).
 - Jones Lang LaSalle to be appointed to the ILUs, namely Bridgewater and Cameo;
 - Jones Lang LaSalle are a good fit geographically (based in Melbourne) and were not conflicted by having prepared valuations for the ILU assets (as was the case for Colliers).
- + Marketing to commence conjunctively, but two separate campaigns to sell in either one line or individually;
- + BDO's role to be as follows:
 - Pre-sale process including packaging financials, model preparation and any other relevant information required for the marketing agent's;
 - Managing the due diligence process including responding to any buyer queries via a electronic data room;
 - General assistance as and when required by the agent's; and
 - Liaising with LM staff, McGrathNicol and FTI on general realisation strategy and approvals.

4 Costs

- + We anticipate the costs to be as follows:
 - Colliers commission – 1.35%;
 - JLL commission – 1.00%; and
 - BDO and McGrathNicol to be remunerated on an hourly basis.

5 Conclusion

The above approach has been agreed with BDO, however given your capacity as Controllers of the Retirement Assets, I am also seeking your confirmation prior to commencing the campaign.

Accordingly, would you please let me know as soon as possible so we may commence the sale process.

M^CN⁺

McGRATHNICOL

Should you have any queries regarding the above, please contact either Ian Niccol or myself.

Yours faithfully

LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) as responsible entity for the LM First Mortgage Income Fund



Joseph Hayes
Joint and Several Receiver and Manager

CC:
David Whyte
BDO
By email: David.Whyte@bdo.com.au

Annexure A**Assets subject to sale**

The following is a list of the Retirement Assets subject to sale (collectively referred to as "the Retirement Assets"). The assets can be broken down into 2 distinct product categories:

Supported Aged Care Living ("SACL"):

- + Tall Trees Ocean View, 2-4 Terranora Road, Banora Point, NSW ("OVST");
- + Tall Trees Redland Bay, 16-20 Government Road & 21 and 46 Salisbury Street, Redland Bay, QLD ("Redland Bay"); and
- + Tall Trees Caboolture, 23 Adelaide Drive, Caboolture South, QLD ("Pinevale").

Independent Living Units ("ILUs"):

- + Bridgewater Lake Estate, Wedgewood Road, Roxburgh Park, VIC ("Bridgewater"); and
- + Cameo Estates Lifestyle Village, Lot 1 and Lot 200, 30 Janefield Street, Mowbray, Tasmania ("Cameo").

13 June 2014

Our Ref: RFZ_8974|114.doc

Joseph Hayes and Anthony Connelly
As Joint and Several Receivers and Managers
Of the Assets of the LM First Mortgage
Income Fund

GPO Box 9986
SYDNEY NSW 2001

Dear Sir

**RE: LM Investment Management Limited (In Liquidation) ACN 077 208 461 (LMIM)
LM First Mortgage Income Fund (the Fund)**

I refer to your correspondence of 30 May 2014 and respond utilising your definition of Retirement Assets.

I note the appointment of LM Investment Management Limited (In Liquidation) as Controller to the Retirement Assets. As we are all aware such an appointment carries strict duties and liabilities under the Corporations Act and other legislation. These duties include the sale of assets.

I infer from your correspondence you, in collaboration with David Whyte as Receiver and Manager, wish to undertake the Controllership process.

I believe there is commercial benefit for the Fund and its investors for LMIM to remain as Controller of the Retirement Assets but am naturally concerned to ensure there is no apparent dereliction of duties in this regard. As such a carte-blanc approval to the proposal outlined in your correspondence is of some concern.

As an alternative and in the interests of the Fund, the Company is conditionally prepared to act on written instructions from you as joint and several Receivers and Managers of the Assets of the Fund.

FTI Consulting (Australia) Pty Limited
ABN 49 160 397 811 | ACN 160 397 811
Level 9, Corporate Centre One | 2 Corporate Court | Bundall QLD 4217 | Australia
Postal Address | PO Box 8965 | GCMC QLD 9726 | Australia
+61.(0)7,5630.5222 main | +61.(0)7,5630.5299 fax | fticonsulting.com

Liability limited by a scheme approved under Professional Standards Legislation.

The proposed conditions are as follows:

1. You and David Whyte provide unequivocal indemnities to both Ginette Muller, myself and the Company for any action or time spent involved with this process. The indemnities relate to any and all expenditure or liabilities that may arise either directly or indirectly from this process.
2. The indemnities are to be documented in formal Deeds to be prepared at your cost. You will fund a solicitor of our choosing to act on behalf of the Company in relation to drafting of the Deeds.
3. You and David Whyte release LMIM from any and all claims by the Fund and/or its investors for any action undertaken arising out of this process.
4. LMIM is paid an administrative fee. I propose the administrative fee be calculated as a percentage of the contract price obtained for each of the Retirement Assets as part of the realisation process.
5. You will meet any and all legal expenses incurred by the Company in relation to this process.
6. You and David Whyte irrevocably accept and declare that LMIM in its capacity as Responsible Entity for the LM First Mortgage Income Fund has not provided its consent to this process and will not do so without the express written authority by Ginette Muller and I.

Should you continue with this process without my consent, I will have no choice but to retire the Company as Controller.

Should you have any queries relating to the above matter, please contact Kelly-Anne Trenfield of this office on +61 7 3225 4920.

Yours faithfully
FTI Consulting


John Park
Liquidator

RUSSELLS

DEED OF INDEMNITY

DATED the

July, 2014

JOSEPH HAYES

AND

ANTHONY CONNELLY

AND

DAVID WHYTE

AND

**LM INVESTMENT MANAGEMENT LIMITED (IN
LIQUIDATION) (RECEIVERS AND MANAGERS
APPOINTED) ACN 077 208 461**

AND

JOHN PARK

AND

GINETTE MULLER

The Russells contact for this document is
Ian Bisson on + 61 7 3004 8890

Liability limited by a scheme approved under professional standards legislation

Brisbane / Sydney

Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 18, 300 Queen Street, Brisbane QLD 4000
Telephone (07) 3004 8888 / Facsimile (07) 3004 8899

RussellsLaw.com.au

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THIS DEED OF INDEMNITY is made the July, 2014

- BETWEEN:** **JOSEPH HAYES** of Level 31, 60 Margaret Street, Sydney, New South Wales ("First Receiver of the Assets")
- AND:** **ANTHONY CONNELLY** of Level 31, 60 Margaret Street, Sydney, New South Wales ("Second Receiver of the Assets")
- AND** **DAVID WHYTE** of Level 10, 12 Creek Street, Brisbane, Queensland ("Receiver")
- AND:** **LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION (RECEIVERS AND MANAGERS APPOINTED) (ACN 077 208 461)** of Level 4, RSL Centre, 9 Beach Road, Surfers Paradise, Queensland. ("Company")
- AND:** **JOHN PARK** of 22 Market Street, Brisbane, Queensland ("First Agent")
- AND:** **GINETTE MULLER** of 22 Market Street, Brisbane, Queensland ("Second Agent").

WHEREAS:

- A. The Company was appointed as agent for the Trust Company (PTAL) Limited as mortgagee in possession of the Retirement Assets. The dates of appointment are included in Annexure A. The Retirement Assets are owned by the LM First Mortgage Income Fund. The Company is the Responsible Entity for the LM First Mortgage Income Fund.
- B. On 11 July, 2013 the First Receiver of the Assets and the Second Receiver of the Assets were appointed as joint and several receivers and managers of the LM First Mortgage Income Fund.
- C. On 1 August, 2013, the First Agent and the Second Agent were appointed as the liquidators of the Company. Under section 419 of the *Corporations Act 2001*, the First Agent and Second Agent would therefore be personally liable for debts incurred in the course of dealing with the Retirement Assets.
- D. On 8 August, 2013 the Receiver was appointed as the receiver and manager of the Company.
- E. The First Receiver of the Assets and the Second Receiver of the Assets have also informed the First Agent and the Second Agent of their intention to realise the Retirement Assets.
- F. The First Receiver of the Assets and the Second Receiver of the Assets have requested that the Company continue in its role as Controller of the Retirement Assets.
- G. The First Agent and the Second Agent recognise that there is a net commercial benefit to the members of the LM First Mortgage Income Fund for the Company to remain as the Controller of the Retirement

Assets. The First Agent and the Second Agent are therefore, so as to preserve the commercial benefit to the members of the LM First Mortgage Income Fund, prepared to act on written instructions from the First Receiver of the Assets and the Second Receiver of the Assets as outlined in Clause 5 of this Deed.

- H. In consideration of the First Agent and the Second Agent carrying out the Duties, tThe First Receiver of the Assets, the Second Receiver of the Assets and Receiver agree to jointly and severally personally indemnify the First Agent and the Second Agent on the terms contained in Clause 4 of this Deed.

NOW THIS DEED WITNESSES:

1. DEFINITIONS

- 1.1 When used in this Deed, the following terms shall have the following meanings unless the context otherwise requires:-

Company:	LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) (ACN 077 208 461)
Controller	has the same meaning as in Section 9 of the <i>Corporations Act 2001</i> (Cth)
Duties	as described in Clause 5
First Agent	John Park of FTI Consulting, acting in his capacity as liquidator of the Company
First Receiver of the Assets	Joseph Hayes of McGrath Nicol, acting in his capacity as joint and several Receiver and Manager of the Assets of LM First Mortgage Income Fund ACN 077 208 461
Rates	the schedule of rates for work performed set out in Annexure B
Receiver	David Whyte of BDO, acting in his capacity as Receiver and Manager of LM investment Management Limited (In Liquidation) (Receivers and Managers Appointed) (ACN 077 208 461)
Retirement Assets:	the assets described in Annexure A
Second Agent	Ginette Muller of FTI Consulting, acting in her capacity as liquidator of the Company
Second Receiver of the Assets:	Anthony Connelly of McGrath Nicol, acting in his capacity as joint and several Receiver and Manager of the Assets of LM First Mortgage Income Fund
The Trust Company (PTAL) Limited	The Trust Company (PTAL) Limited ACN 008 412 913

2. INTERPRETATIONS

In this Deed, headings are for convenience only and shall not affect its interpretation. Except to the extent that the context otherwise requires:-

- (a) reference to any statute or statutory provision shall include any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
- (b) words denoting the singular shall include the plural and vice versa;
- (c) words denoting individuals shall include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
- (d) words denoting any gender shall include all genders;
- (e) references to Parts and Clauses are references to Parts and Clauses to this Deed as modified or varied from time to time;
- (f) references to any document, deed or agreement shall include references to such document, deed or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (g) references to any party to this Deed or any other document, deed or agreement shall include its successors or permitted assigns;
- (h) all references to dates and times are to Queensland time.

2.2 The parties agree that the Recitals are accurate, that they shall abide by the Recitals, and that this Deed shall, if necessary, be construed by reference to the Recitals.

3. CONFIRMATION OF RECITALS

3.1 The Recitals to this Deed shall be read as, and form part of, the context of this Deed and the parties confirm and warrant the truth and accuracy of the Recitals.

4. INDEMNITY

4.1 In consideration of the First Agent and Second Agent acting as the agents in relation to the Retirement Assets of the Company, the First Receiver of the Assets, the Second Receiver of the Assets and the Receiver hereby jointly and severally personally indemnify and shall keep indemnified the First Agent, Second Agent and the Company from:

-
- (a) all expenditure, liabilities, claims and payments of any nature whatsoever for which the First Agent, the Second Agent or the Company may directly or indirectly become liable;
 - (b) all actions, suits, proceedings, fines, penalties, claims, demands, costs and expenses whatsoever,

which may be taken, made, imposed or levied against the First Agent, the Second Agent or the Company or incurred or become payable by the First Agent, the Second Agent or the Company in his or its capacity or in the course of or in connection with:-

- (c) performing the Duties;
- (d) any debt, liability or other obligation incurred reasonably and properly in carrying out the Duties;
- (e) any loss or damage caused by any act, default or omission by the First Agent, the Second Agent or on behalf of the Company in the performance of the Duties; or
- (f) all liabilities reasonably and properly incurred by the First Agent, the Second Agent and the Company in the course of carrying out the Duties, including any monies borrowed and any interest thereon and any contracts adopted or otherwise agreed by the First Agent, the Second Agent or the Company.

4.2 Without limiting the generality of the indemnity contained in Clause 4.1, the First Receiver of the Assets, the Second Receiver of the Assets and the Receiver jointly and severally agree that such indemnity will extend to and include:-

- (a) all legal costs on a solicitor and own client basis incurred by the Company, the First Agent or the Second Agent in connection with any of the Duties referred to in Clause 5;
- (b) remuneration, costs, fees and expenses properly incurred by the First Agent, the Second Agent and the Company, directly or indirectly in connection with any of the Duties referred to in Clause 5 at the Rates charged by the First Agent and the Second Agent for their time;
- (c) all out-of-pocket expenses incurred by the First Agent and the Second Agent in respect of any of the Duties referred to in Clause 5; and
- (d) all actions, suits, proceedings, accounts, claims and demands arising out of the Duties which may be reasonably and properly commenced, incurred by or made on the First Agent, the Second Agent or the Company by any person and against all costs, charges and expenses incurred by the First Agent and the Second Agent in respect thereof.

4.3 This indemnity shall take effect on and from 13 July, 2014, and is without limitation as to time and shall endure for the benefit of the First Agent, the Second Agent and the Company.

-
- 4.4 The indemnity under Clause 4 shall not affect or prejudice all or any rights that the First Agent or the Second Agent may have against the Company or any other persons to be indemnified against the costs, charges, expenses and liabilities incurred by the First Agent or the Second Agent of or incidental to the exercise or performance of any of the powers or authorities conferred on the First Agent and the Second Agent.

5. DUTIES

- 5.1 The Duties are as follows:

- (a) The First Agent and the Second Agent are to act on the instructions of the First Receiver of the Assets and the Second Receiver of the Assets and their agents in relation to the Retirement Assets.
- (b) In the event that the First Receiver of the Assets and the Second Receiver of the Assets no longer have authority in respect of the Retirement Assets, the First Agent and Second Agent will act on the instructions of the Receiver in relation to the Retirement Assets.

- 5.2 The First Receiver of the Assets and the Second Receiver of the Assets hereby warrant that:

- (a) Any instructions given under Clause 5.1 are:
- (i) Lawful;
- (ii) Necessary for the proper realisation of the Retirement Assets; and
- (iii) Given with the best interests of the members of the LM First Mortgage Income Fund in mind.
- (b) The First Receiver of the Assets and the Second Receiver of the Assets have complied with all legislative requirements with respect to the realisation of the Retirement Assets prior to issuing the First Agent and Second Agent instructions under Clause 5.1.

6. NON-WAIVER

The Company reserves its right to pursue the First Receiver of the Assets, the Second Receiver of the Assets, or the Receiver for breach of their respective duties under the *Corporations Act 2001*.

7. ASSIGNMENT

- 7.1 No party may assign this Deed without the prior written consent of the other.

8. ENTIRE AGREEMENT

- 8.1 This Deed constitutes the full and complete understanding between the parties with respect to the subject matter of this Deed. There is no other oral understanding, agreement, warranty or representation whether express or implied in any way extending, defining or otherwise relating to the provisions hereof or binding on the parties with respect to any of the matters to which this Deed relates.
- 8.2 Each of the parties hereby covenants and irrevocably acknowledges that it has not been induced to enter into this Deed by any statement, warranty, representation, understanding, act, omission, fact, matter, thing or conduct by or on behalf of any person including the other party, other than as expressly recorded in this Deed.
- 8.3 The provisions of Clauses 8.1 and 8.2 shall operate and remain in full force and effect, except in the case of fraud by another party to this Deed. No other fact, matter or circumstance including breach of the provisions of *The Australian Consumer Law* or of Part 2 of the *Australian Securities and Investments Commission Act 2001* or of Part 7.10 of the *Corporations Act 2001* by a party to this Deed shall interfere with or in any way derogate from the operation and effect of Clauses 8.1 and 8.2.

9. GOVERNING LAW

- 9.1 This Deed shall be governed by and construed in accordance with the law of Queensland and each of the parties hereby submits to the non-exclusive jurisdiction of the Courts of Queensland.

10. SEVERANCE

- 10.1 In the event that any term or provision of this Deed for any reason whatsoever be acknowledged by the parties, or be adjudged by a Court of competent jurisdiction or be held or rendered by any competent Government authority to be invalid, illegal or unenforceable, such term or provision shall be severed from the remainder of the terms and provisions of this Deed and shall be deemed never to have been part of this Deed and the remainder of the terms and provisions of this Deed shall subsist and remain in full force and effect unless the basic purpose or purposes of this Deed would thereby be defeated.

11. AMENDMENTS

- 11.1 No modification or alteration of this Deed shall be valid or binding upon any party unless made in writing and duly executed or signed on behalf of such party under its seal or by its proper officers or representatives or attorneys thereunto duly authorised or, in the case of an individual by such party under his hand.

12. COUNTERPARTS

12.1 This Deed may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

SIGNED SEALED AND DELIVERED)
by **JOSEPH HAYES** in the presence of:)
)
)

Witness

SIGNED SEALED AND DELIVERED)
by **ANTHONY CONNELLY** in the)
presence of:)
)

Witness

SIGNED SEALED AND DELIVERED)
by **DAVID WHYTE** in the presence of:)
)
)

Witness

EXECUTED BY LM INVESTMENT)
MANAGEMENT LIMITED (IN)
LIQUIDATION) (RECEIVERS AND)
MANAGERS APPOINTED))
(ACN 077 208 461) pursuant to)
Section 127 of the *Corporations Act 2001*)
by:)
)

SIGNED SEALED AND DELIVERED)
by **JOHN PARK** as joint and several)
liquidator in the presence of:)
)

Witness

SIGNED SEALED AND DELIVERED)
by **GINETTE MULLER** as joint and)
several liquidator in the presence of:)
)

Witness

ANNEXURE A - RETIREMENT ASSETS

ANNEXURE B - SCHEDULE OF RATES

TO WHOM IT MAY CONCERN

I, Andrew Peter Fielding, a member of the firm of BDO and an Official Liquidator, am willing to accept an appointment by The Trust Company (PTAL) Limited as its agent in respect of securities held from the companies mentioned in paragraph 1 of the application by David Whyte filed on 4 September, 2014 in proceedings BS 3383 of 2013.

Dated:

9.9.14

.....
Andrew Fielding




Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
www.bdo.com.au

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
AUSTRALIA

TO WHOM IT MAY CONCERN

I, Gerald Thomas Collins, a member of the firm of BDO and an Official Liquidator, am willing to accept an appointment by The Trust Company (PTAL) Limited as its agent in respect of securities held from the companies mentioned in paragraph 1 of the application by David Whyte filed on 4 September, 2014 in proceedings BS 3383 of 2013.

Dated: 9/9/2014


.....
Gerald Collins