

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 2013

Applicants

**KORDAMENTHA PTY LTD (ACN 100 169 391) AND
CALIBRE CAPITAL LTD (ACN 108 318 985) IN THEIR
CAPACITY AS TRUSTEES FOR THE LM MANAGED
PERFORMANCE FUND**

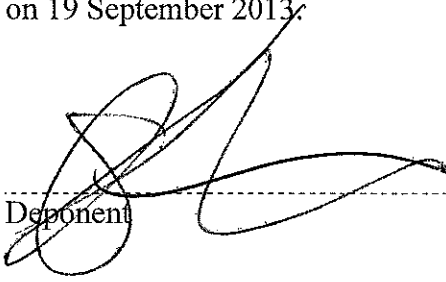
AND

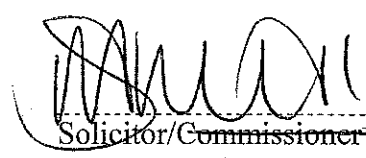
Respondent

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

CERTIFICATE OF EXHIBIT

Exhibit SMV-13 to SMV-21 to the affidavit of SIMON MICHAEL VERTULLO SWORN
on 19 September 2013.


Deponent


Solicitor/Commissioner for
Declarations/Justice of the Peace

CERTIFICATE OF EXHIBIT

Filed on behalf of the applicants

Form 47 Rule 435

MINTER ELLISON

Lawyers

Waterfront Place

1 Eagle Street

BRISBANE QLD 4000

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Telephone (07) 3119 6000

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Email david.obrien@minterellison.com

Reference MJV DOB 40-7744031

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LIST OF EXHIBITS

Exhibit	Document	Pages
Exhibits Book 1		
SMV-1	Draft statement of claim	1-19
SMV-2	ASIC current company search of LMIM dated 16 September 2013	20-30
SMV-3	Constitution of 4 December 2001	31-54
SMV-4	Deed Poll dated 25 November 2009	55-93
SMV-5	ASIC historical company search of KordaMentha Pty Ltd dated 17 September 2013	94-98
SMV-6	ASIC historical company search of Calibre Capital Ltd dated 17 September 2013	99-104

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Exhibit	Document	Pages
SMV-7	ASIC search of AIF dated 17 September 2013	105-107
SMV-8	MPF Investment Committee - Synopsis dated 21 June 2010	108-161
SMV-9	ASIC historical company search of Peregrine Beach Pty Ltd dated 17 September 2013	162-165
SMV-10	Handwritten diary note dated 28 June 2010	166
SMV-11	Loan agreement dated 29 June 2010	167-195
SMV-12	Title search of Lot 26 on SP224073, County of Stanley, Parish of Redcliffe, Title Reference 50780250 dated 6 August 2013	196-197
Exhibits Book 2		
SMV-13	Fixed and floating charge (no. 2010141) dated 29 June 2010	198-229
SMV-14	Contract dated 5 August 2010	230-267
SMV-15	Deed of variation dated 21 October 2010	268-310
SMV-16	Title search of Lot 74 on SP236546, County of Stanley, Parish of Redcliffe, Title Reference 508487222 dated 13 August 2013	311-312
SMV-17	Deed of assignment dated 1 November 2011	313-348
SMV-18	Custody agreement dated 4 February 1999	349-379
SMV-19	Redacted email Shelley Chalmers to AIF Credit Committee dated 9 December 2011	380
SMV-20	Email Bronwyn Kingston to the 'Credit Committee' dated 20 December 2011	381-382
SMV-21	Stockland mortgage no. 714235917 dated 22 December 2011	383-396

Exhibit	Document	Pages
Exhibits Book 3		
SMV-22	Deed of Variation of Loan Agreement dated 22 December 2011	397-443
SMV-23	Deed of Variation of Contract of Sale dated 22 December 2011	444-484
SMV-24	Transfer no. 714235916	485
SMV-25	Mortgage no. 714236897	486-488
SMV-26	Settlement statement of Lot 74	489-491
SMV-27	Priority Subordination Deed dated 25 June 2012	492-513
SMV-28	Release of Mortgage numbered 714574198	514
SMV-29	Mortgage no. 714574199	515-519
SMV-30	Mortgage Priority no. 714602919	520
SMV-31	Statement for Loan Agreement from 1 July 2010 to 18 March 2013	521-527
SMV-32	Three bank requisitions made under the Loan Agreement	528-532
SMV-33	Annual financial report of MPF as at 30 June 2012	533-573
SMV-34	Annual financial report of AIF as at 30 June 2012	574-613
SMV-35	Standstill Agreement	614

Australian Securities & Investments Commission



Corporations Act 2001
263, 264

Notification of details of a charge

Related Forms

350 – Certification of compliance with stamp duties law
CH02 – Terms and conditions of charges

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)

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

Company details (chargor)

Company name

Peregian Beach Pty Ltd

ACN/ARB/ABN

ACN 127 412 864

original instrument provided

Lodgement details

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

Name

DLA Phillips Fox

ASIC registered agent number (if applicable)

2016

Telephone number

(07) 3246 4000

Postal address

Level 28, 1 Eagle Street

Brisbane QLD 4000

Total number of pages

1

1 Charge details

Date the charge was created must be the date written in the document creating the charge (eg, instrument, resolution) attached to this form.

Date charge was created

2 9 / 0 6 / 1 0
[D] [D] [M] [M] [Y] [Y]

OR

Date property was acquired

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

Charge creation

How was the charge created?

☐ By resolution

☒ By instrument

☐ By deposit

☐ By other conduct. Specify below

Charge type

Indicate type of charge created

☐ Fixed

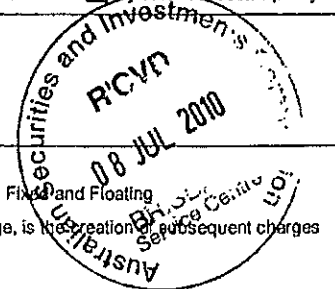
☐ Floating

☒ Fixed and Floating

If the charge is a floating charge or a fixed and floating charge, is the creation of subsequent charges restricted or prohibited?

☒ Yes

☐ No



1 Continued ... Charge details

Liability

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

All moneys owing actually or contingently by the Chargor to the Chargee on any account whatsoever including the Money Secured as described in the Charge

The maximum prospective liability (if applicable; see s282) is \$[]

Property charged

Briefly describe the property charged:

All the property, undertaking and rights presently or in the future held by the Chargor on any account whatsoever.

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.

2 Details of chargee or trustee

Tick one box.

These are the details of

- ☒ the chargee
☐ the trustee for the debenture holders

The chargee/trustee is a

- ☒ company registered under the Corporations Act (Cth)
☐ an individual
☐ an organisation other than a company registered under the Corporations Act (Cth)

Chargee/trustee is a company

If the chargee/trustee is a company registered under the Act, enter the company name and the ACN or ARBN or ABN.

Company name

LM Investment Management Limited

ACN/ARBN/ABN

ACN 077 208 461

Address of chargee/trustee

Office, floor, building name

Level 4

Street number and Street name

9 Beach Road

Suburb/City

Surfers Paradise

State/Territory

Queensland

Postcode

4217

Country (if not Australia)

2 Continued ... Details of chargee or trustee**Chargee/trustee is an individual**

If the chargee/trustee is an individual, enter the individual's name.

Family name

Given names

Address of chargee/trustee

Office, floor, building name

Street number and Street name

Suburb/City

State/Territory

Postcode

Country (if not Australia)

Address of chargee/trustee

Family name

Given names

Office, floor, building name

Street number and Street name

Suburb/City

State/Territory

Postcode

Country (if not Australia)

Chargee/trustee is an organisation other than a company

If the chargee/trustee is an organisation other than a company registered under the Corporations Act (Cth), enter the entity details.

Entity name

Describe the legal basis of the entity.

Address of chargee/trustee**The address of the chargee/trustee is**

Office, floor, building name

Street number and Street name

Suburb/City

State/Territory

Postcode

Country (if not Australia)

3 Documents

Indicate which documents are annexed to this form.

Tick one box.

☐ Charge created by issue of debentures

Attach the signed original resolution(s) passed by the corporation authorising the issue of a series of debentures constituting the charge, or a copy of the document(s), and a copy of the first debenture in the series.

☒ Charge created by an instrument

Attach the signed original instrument(s) creating or evidencing the charge or a copy of the document(s).

☐ Charge existing on property acquired

Attach the signed original instrument(s) creating or evidencing the charge or a copy of the document(s).

☐ Other, please specify

☐ Not applicable

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 company name and ACN or ARBN.
3. Number the pages consecutively.
4. Print or type in BLOCK letters in dark blue or black ink so that the document is clearly legible when photocopied.
5. 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. The annexure must be signed by the same individual(s) who signed the form.

4 Stamp duty

Certification

Tick one box

I certify that all the documents accompanying the notification of details of this charge in accordance with s263(1) of the Act, 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 stamp duty on any such documents.

☒ Yes

☐ No

If no, this charge will be registered as a provisional charge only. A Form 350 *Certification of compliance with stamp duties law* will need to be lodged within the required timeframe.

Signature

Name

Capacity

- ☐ The chargee
☐ A service provider/agent to the chargee
☒ The chargor
☐ A service provider/agent to the chargor
☐ Other, please specify

Authority under which this charge is lodged (for chargee, e.g. director; for service provider, e.g. solicitor)

For the chargor, by a director

Tick boxes that 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 authorising the issue of a series of debentures constituting the charge, and
☐ I verify the first debenture in the series was executed, and
☐ The annexure marked (()) is a true copy of the first debenture in the series.

Charge created by an instrument

- ☒ The original of the instrument(s) creating or evidencing the charge is attached.

OR

- ☐ I verify the annexure marked (()) of (()) pages is a true copy of the instrument(s) creating or evidencing the charge and the instrument(s) has (have) been executed.

Charge existing on the property acquired

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

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

012

Signature

Date signed

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

Lodgement

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

Or lodge the form electronically by visiting the ASIC website
www.asic.gov.au

For help or more information

Telephone 03 5177 3988
Email info.enquiries@asic.gov.au
Web www.asic.gov.au

"A"

Peregrine Beach Pty Ltd ACN 127 412 864
("the Mortgagor")

And

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
as trustee for the LM Managed Performance Fund
("Mortgagee ")

and

Fixed and Floating Charge

This is the Annexure marked "A" of 27 pages referred to in the Form 309 Details of Charge
signed by me and dated the 27th day of JUNE 2010

per:



Director

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

PHONE: 07 5584 4500
FAX: 07 5592 2505

Peregrine Beach Pty Ltd ACN 127 412 864
("the Mortgagor")

and

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
as trustee for the LM Managed Performance Fund
("the Mortgagee")

Fixed and Floating Charge

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

PHONE: 07 5584 4500
FAX: 07 5592 2505

FIXED AND FLOATING CHARGE

THIS CHARGE is made on the date specified in Item 1

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

IN FAVOUR OF: LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund ("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:
 - (i) the methods by which financial statements are made up; and
 - (ii) adjustments to be made in preparing financial statements.

"Fund" means the LM Managed Performance Fund.

"Fund Trust Deed " means the trust deed between the Lender and [####] dated [###] in respect of the Fund.

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

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

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

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

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

"Money Secured" includes:

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

- (c) stamp duty, financial institutions duty or any other levy, final impost or tax payable or arising out of or in connection with this Charge or the Security;
- (d) all costs charges and expenses incurred by the Mortgagee in enforcing the Security (including legal expenses on a full indemnity basis or solicitor and own client basis whichever is the greater) which in the Mortgagee's opinion are required or desirable for or in connection with:
 - (i) the drawing accepting or discounting of any bill of exchange at the request of, or for the accommodation of, any Security Provider or the Mortgagor under the Security;
 - (ii) the Mortgagee protecting its interest under the Security including all moneys which the mortgagee or any receiver or any attorney appointed under any Security may have paid or may pay in the exercise or enforcement or attempted exercise or enforcement of any right power or remedy conferred on the Mortgagee by the Security;
 - (iii) the preparation, execution, stamping or registration of the Security;
 - (iv) full or partial release or discharge from, transfer or variation of the Security;
 - (v) any advice in respect of the Security;
 - (vi) any breach of or default of any covenant contained or implied in the Security; or
 - (vii) the Mortgagee making good any default by any party (other than the Mortgagee) under the Security,

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

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

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

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

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

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

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

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

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

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

1.2

In this Charge, unless the contrary intention appears:

- (a) a reference to this Charge or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes an individual, a firm, a body corporate, a partnership, an unincorporated association or an authority and references to any person include the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by

- (e) novation) and assigns;
- (f) an agreement, representation or warranty on the part of two or more parties binds them jointly and severally;
- (g) 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;
- (h) a reference to an Item is a reference to an Item contained in the Schedule hereto; and
- (i) 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 including the Mortgagee entering into the Secured Agreement or providing continuing financial accommodation from time to time, or both.

2.2 Capacity of Mortgagor

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

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

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

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

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

2.2.5 The Trustee represents and warrants that:

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

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

- (a) any resettlement, appointment, or distribution of uncalled and called but unpaid capital and share premiums of the Trust;
- (b) the retirement or replacement of the Trustee or appointment of a new trustee of the Trust;
- (c) any amendment to the Trust Deed;
- (d) the giving of an Encumbrance over any of the assets of the Trust;
- (e) any breach of the provisions of the Trust Deed;
- (f) termination of the Trust or variation of the vesting date;
- (g) the creation of any restriction whatever on the Trustee's right of indemnity out of and lien over the

- (h) assets of the Trust; or
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 to the Mortgagee 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 created by this clause 2.2.7 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) subject to clauses 4.2, 4.3 and 10.2, 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.

4.5 This Charge is a first charge and takes priority over all other security interests over the Secured Property, unless otherwise agreed in writing by the Mortgagee.

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. After an Event of Default, the Mortgagor shall pay all Money Secured on demand by the Mortgagee.

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

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

6. **OTHER UNDERTAKINGS BY THE MORTGAGOR**

6.1 **Other Securities over Secured Property**

- (a) The Mortgagor shall not without the prior written consent of the Mortgagee:
 - (i) dispose of, deal with or part with possession of any interest in the Secured Property over which this Charge is fixed; or
 - (ii) dispose of, deal with or part with possession of any interest in the Secured Property over which this Charge is floating except in the ordinary course of its business or as permitted by a specific provision of this Charge; or
 - (iii) create or allow to come into existence an Encumbrance which affects the Secured Property except an Encumbrance which arises by operation of statute to secure an amount payable to any authority which amount has been due for payment for no more than 14 days; or
 - (iv) dispose of any interest in or permit a set-off or combination of Financial Records in respect of a book debt.
- (b) If the Mortgagor creates or allows to exist an Encumbrance over the Secured Property without the consent of the Mortgagee, then, despite anything contained in any Security:
 - (i) the Mortgagor must ensure that a priority agreement is entered into between the persons receiving the benefit of the Encumbrance and the Mortgagee; and
 - (ii) such priority agreement must be in a form acceptable to the Mortgagee.

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

6.2 **Insurance**

The Mortgagor agrees to:

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

- (d) to pay each premium in respect of such insurance at least three days before the due date, and upon demand deposit the receipt for that premium with the Mortgagee; and
- (e) not to do or permit to be done anything which may prejudicially affect such insurance.

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

6.4 **Other undertakings**
The Mortgagor must:

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

- (i) necessary because the immovable property, building, plant or machinery is worn out or damaged (when it must be replaced by the Mortgagor with property of a similar nature and of no lesser value); or
- (ii) required by law or in connection with its refurbishment or improvement.

6.5

Environmental laws

The Mortgagor hereby agrees to:

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

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

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

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

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

6.6

Supply of Information

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

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

at the Mortgagee's absolute discretion:

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

6.7

No Derogation from Security

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

6.8

Further Assurances

- (a) The Mortgagor agrees to

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

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

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

6.9 Independent Experts The Mortgagor:

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

7. RESUMPTION OR COMPULSORY TRANSFER OF SECURED PROPERTY

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

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

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

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

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

- (a) inspect the condition of the Secured Property;
- (b) determine whether the terms of this Charge are being complied with;
- (c) inspect and take copies of any Financial Records or any other documents relating to the Mortgagor's business;

- (d) exercise the rights of the Mortgagee under this Charge; or
- (e) investigate the affairs and financial position of the Mortgagor.

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

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

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

9. WARRANTIES BY MORTGAGOR

9.1 The Mortgagor warrants that:

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

9.2 These warranties are taken also to be made:

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

10. EVENTS OF DEFAULT

10.1

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

- (a) the Mortgagor and/or any Security Provider fails or neglects to pay on the due date for payment any part of the Money Secured at the time or times and in the manner provided by the Secured Agreement or under any Security; or;
- (b) the Mortgagor and/or any Security Provider fails or neglects to observe or perform any of the covenants conditions or agreements contained in the Secured Agreement or any Security; or
- (c) the Mortgagor and/or any Security Provider does not fully and punctually observe or comply with its agreements, undertakings or obligations in respect of the Money Secured or any Security or any other agreement or instrument between the Mortgagor or the Security Provider and the Mortgagee; or
- (d) an Insolvency Event occurs in respect of the Mortgagor or any of its subsidiaries or any Security Provider; or
- (e) a receiver administrator or controller of any of the real or personal property of the Mortgagor or the Security Provider shall be appointed; or
- (f) any judgement which is obtained against the Mortgagor or the Security Provider remains unsatisfied for more than 14 days; or
- (g) any execution, distress or Encumbrance is enforced or levied against any of the property or the assets of the Mortgagor or the Security Provider, or can be rendered enforceable by the giving of notice, lapse of time or fulfilment of any condition; or
- (h) the Mortgagor or any of its subsidiaries or any Security Provider stops payment, ceases to carry on business or a material part of it, or threatens to do either of those things, except to reconstruct or amalgamate while solvent on terms approved by the Mortgagee; or
- (i) default is made under any agreements other than the Security which are given by the Mortgagor or the Security Provider (whether in the Mortgagor's or the Security Provider's personal capacity or in its capacity as a trustee, or a partner of any partnership) with or without any other person in favour of the Mortgagee; or
- (j) the Mortgagor or any of its subsidiaries or the Security Provider takes action to reduce its capital or buy back any of its ordinary shares or passes a resolution referred to in section S254N of the Corporations Act 2001, in any case without the consent of the Mortgagee; or
- (k) if the Mortgagor or the Security Provider breach any undertaking at any time given to the Mortgagee or its legal advisers from time to time or if any condition imposed by the Mortgagee in agreeing to any matter (including any waiver) is not complied with or fulfilled or if any warranty or representation by the Mortgagor or the Security Provider to the Mortgagee prior to or subsequent to the date hereof is untrue or false; or
- (l) a person is appointed under legislation to investigate or manage any part of the affairs of the Mortgagor or any of its subsidiaries or any Security Provider; or
- (m) any Security is or becomes wholly or partly void, voidable or unenforceable, or is claimed to be so or loses the priority which it has at or after the date of this Charge (other than by an act or omission of the Mortgagee) or a claim to that effect is made by the Mortgagor or the Security Provider, by anyone on either of their respective behalf or by anyone who claims to have an interest in the property the subject of such Security Document; or
- (n) a change occurs in a circumstance which is warranted or taken to be warranted under any terms and conditions applicable to the Secured Property, Money Secured or any Security to exist or in the business assets or financial condition of the Mortgagor, or of the Mortgagor and its subsidiaries taken as a whole or of any Security Provider, which in any case in the reasonable opinion of the Mortgagee may have a material adverse effect on the ability of the Mortgagor or the Security Provider to observe its obligations, or on the rights of the Mortgagee, in respect of the Money Secured or under any Security; or
- (o) the Mortgagor or the Security Provider shall mortgage or otherwise encumber (except as expressly permitted by Section 80 of the Queensland Property Law Act 1974 or equivalent legislation in the State set out in Item 10) or sell or dispose of or attempt or contract to sell or dispose of any land mortgaged or charged in favour of the Mortgagee without the previous consent in writing of the Mortgagee; or
- (p) the Mortgagor or the Security Provider ceases to be a subsidiary of any company which is its holding company at the date of this Charge; or
- (q) in the reasonable opinion of the Mortgagee the value to the Mortgagee of any Security is materially and adversely affected or any of the property secured by any Security is in jeopardy, other than as a result of any act or omission of the Mortgagee; or
- (r) if any other event occurs or circumstances arise which in the reasonable opinion of the Mortgagee, is likely to materially or adversely effect the liability of the Mortgagor or any Security Provider to observe and perform all or any of its obligations under this Charge or otherwise to

- (s) comply with the terms of this Charge or any Security; or
- (s) if the Mortgagor or any Security Provider is a trustee, whether or not the fact is notified to the Mortgagee, the Mortgagor or Security Provider carry out or permit to occur any of those events described in clause 2.2.6 hereof without the Mortgagee's prior written consent; or
- (t) any Security Provider or any other person liable for the payment of any part of the Money Secured to the Mortgagee shall do or suffer any of the above;

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

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

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

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

11. APPOINTMENT OF RECEIVER

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

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

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

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

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

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

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

11.8 The power to appoint a receiver or receiver and manager over all of the Secured Property may be exercised

whether or not a Receiver has already been appointed over part of it.

12. OTHER POWERS OF MORTGAGEE

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

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

- (a) when a period of notice or lapse of time is mandatory, that period of notice must be given or that lapse of time must occur or be permitted by the Mortgagee; or
- (b) when the law provides that a period of notice or lapse of time may be stipulated or fixed by this Charge, one day is stipulated and fixed as that period of notice or lapse of time and, without limitation, where applicable, one day is stipulated and fixed as the period of notice or lapse of time during which:
 - (i) default must continue before a notice is given or requirement otherwise made for payment of the Money Secured or the observance of obligations under this Charge; and
 - (ii) a notice or requirement for payment of the Money Secured or the observance of obligations under this Charge must remain not complied with before the Mortgagee's rights, powers or remedies may be exercised.

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

13. POWERS OF RECEIVER

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

- (a) enter, take possession of, have access to and make use of the Secured Property as often as the Receiver deems expedient;
- (b) receive rents and profits derived from the Secured Property;
- (c) exercise the rights, powers and remedies of the Mortgagor over, in connection with or comprising part of the Secured Property;
- (d) manage the Secured Property;
- (e) carry on any business or pursuit within the powers of the Mortgagor;
- (f) subject to obligations imposed by law, sell or agree to sell the Secured Property on any terms, including, without limitation, the following:
 - (i) the sale may take place whether or not the Receiver has taken possession of the Secured Property;
 - (ii) the sale may be by public auction, private treaty or by tender;
 - (iii) the sale may be in one lot or in parcels, and with or without special provisions about title, or time, or mode of payment of purchase money, or otherwise;
 - (iv) fixtures may be severed and sold apart from any real property;
 - (v) allow the purchase money to remain secured by a mortgage or charge of the property sold, or secured by other security, or without security, and on any other terms, without being responsible for any resultant loss;
 - (vi) enter into, rescind or vary a contract for sale, and resell without being responsible for loss, and execute assurances of the Secured Property in the name and on behalf of the Mortgagor or otherwise;
 - (vii) do anything to complete any sale which the Receiver considers desirable, and set aside from the proceeds of sale the amount which the Receiver considers desirable to meet future claims until the possibility of claims being made is ended;

- (g) obtain the benefit of any agreement entered into by the Mortgagor (including, without limitation, by specific performance), whether or not the agreement is entered into in the exercise of the rights, powers and remedies conferred by this Charge;
- (h) institute, conduct, defend, submit to arbitration, settle, compromise or defer in the name of the Mortgagor or otherwise on any terms, any proceeding, claim, question or dispute in connection with the Secured Property or this Charge and execute releases or other discharges in connection with them;
- (i) call and get in capital;
- (j) delegate the Receiver's powers including this power of delegation to any person for any period;
- (k) pull down, rebuild, erect, alter, improve, subdivide, provide services to, insure, and maintain the Secured Property;
- (l) lease or license, end, renew, surrender, or accept the surrender of a lease or licence of, the Secured Property, and compromise with or make concessions to tenants, lessees or licensees, or agree to do any of these things, for any period and on any terms;
- (m) give a person an option to purchase, lease or license the Secured Property on any terms, and give, create, release or vary easements, profits a prendre or restrictions relating to the Secured Property;
- (n) surrender or transfer the Secured Property to any person;
- (o) exchange the Secured Property with a person for an interest in other property of any tenure (with or without giving or receiving other consideration). The property so acquired may be dealt with by the Receiver as if it were part of the Secured Property and the Receiver may grant an Encumbrance over that property for the payment of the Money Secured;
- (p) remove personal property from the Secured Property and store that property in the name of the Mortgagor without liability for loss or damage suffered by the Mortgagor;
- (q) do anything which should have been done by the Mortgagor under this Charge but which has not been done or which the Receiver considers has not been done properly;
- (r) borrow or raise from the Mortgagee or from another person in the name and on behalf of the Mortgagor or otherwise money required from time to time for any of the purposes mentioned in this clause 13 and do any ancillary act (including, without limitation, draw, accept or endorse bills of exchange). (Neither the Mortgagee nor any other person providing accommodation to the Receiver need enquire about the necessity or propriety of a borrowing or raising or is to be responsible for the misapplication or non-application of money borrowed or raised);
- (s) exercise all powers (including, without limitation, the powers of the directors of the Mortgagor) in connection with the transfer of shares held by any person in the Mortgagor;
- (t) secure money borrowed or raised by Encumbrance over the Secured Property so that the Encumbrance ranks in priority to, equally with, or after this Charge;
- (u) employ or engage persons (including, without limitation, employees of the Receiver and consultants and professional advisers) in connection with the powers conferred on the Receiver by this clause 13;
- (v) do or cause to be done anything to protect the priority of this Charge, to protect the Mortgagor's or the Mortgagee's estate or interest in the Secured Property, to enforce this Charge, to recover the Money Secured or to protect or enhance the Secured Property; and
- (w) expend money or incur liabilities in exercising the powers conferred on the Receiver by this clause 13.

14. APPLICATION OF MONEY

14.1

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

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

14.2

In applying any moneys toward satisfaction of the Money Secured, the Mortgagor shall be credited only with so much of those moneys as are actually received by the Mortgagee or the Receiver and such credit is to date from the time of such receipt. This provision shall apply notwithstanding that in exercising any power of sale

the Mortgagee or the Receiver may have transferred the Secured Property (in whole or in part) and taken an Encumbrance to secure the unpaid balance of purchase money. If the Mortgagee takes any mortgage, promissory note, bill of exchange or other security in payment of or to secure the payment of any purchase moneys on sale of the Secured Property by the Mortgagee, no amount representative of such security shall be credited in or towards payment of the Money Secured until all moneys payable under or the proceeds from such security is received by the Mortgagee in cash.

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

15. NO WAIVER

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

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

16. NO MERGER

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

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

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

17. NO SUSPENSION OF LIABILITY TO PAY

- 17.1 The Mortgagee may:

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

18. CONTINUING SECURITY

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

19. OTHER SECURITIES HELD BY THE MORTGAGEE

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

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

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

20. DISCHARGE OF PRIOR-RANKING DEBTS

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

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

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 falling 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 and Investments 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.

38. LIMIT OF LIABILITY

- (a) **Mortgagee**
The Mortgagee enters into this Deed and each other Security, and the other parties to this Deed acknowledge that they are aware that the Mortgagee enters into this Deed and each other Security, only in its capacity as trustee of the Fund pursuant to the Fund Trust Deed and in no other capacity and the other parties to this Deed are aware of the limited scope of the Mortgagee's obligations and powers under the Fund Trust Deed.
- (b) **Liability Limited**
A liability arising under or in connection with this Deed and each Security is limited to and can be enforced against the Mortgagee only to the extent to which it can be satisfied out of the property of the Fund 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 or any other Security 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 and each other Security.
- (c) **No Right to Appoint or Prove**
The parties 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) **Limit of Liability Not to Apply**
The provisions of this clause 38 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Fund Trust Deed, or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets of the Fund, as a result of the Mortgagee's fraud, negligence or wilful default.

- (e) **Inconsistency with the Fund Trust Deed**
Any failure by the Mortgagee to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Fund Trust Deed will not amount to a breach of or a default under this Deed. 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 Fund Trust Deed is final and binding on all Parties.
- (f) **Future Limitations**
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.
- (g) **Agents**
No attorney, agent, Receiver or receiver and manager appointed in accordance with this Deed and each other Security 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 38(d).
- (h) **Failure by the Mortgagee**
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.
- (i) **Override Provision**
All of the terms, clauses and conditions of this Deed are subject to this clause 38.

THE SCHEDULE

Item 1

Date of Execution: 20TH JUNE 2010.

Item 2

The Mortgagor: Peregian Beach Pty Ltd ACN 127 412 864
10 Glenside Street, Balgowlah Heights NSW 2093

Facsimile No: (02) 9986 1681

Item 3

The Mortgagee: LM Investment Management Limited ACN 077 208 461 as trustee
for the LM Managed Performance Fund
C/- Level 4, 9 Beach Road, Surfers Paradise QLD 4217
Facsimile No: 07 5592 2505

Item 4

The Borrower: Peregian Beach Pty Ltd ACN 127 412 864
10 Glenside Street, Balgowlah Heights NSW 2093

Facsimile No: (02) 9986 1681

Item 5

The Guarantor: David Richard Hawes
Glenside Group (Qld) Pty Ltd ACN 114 620 -93
Lot 111 Pty Ltd ACN 106 102 005
Green Square Property Development Corporation Pty Ltd ACN 104
248 053
of 10 Glenside Street, Balgowlah Heights NSW 2093

Facsimile No: (02) 9986 1681

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 Deed of Charge intended to be executed on the same date as this Agreement by the Borrower as mortgagor in favour of the Lender as mortgagee over all the property, assets and undertaking of the Borrower of whatsoever nature and kind and wheresoever situated, present and future.
- (b) Deed of Charge intended to be executed on the same date as this Agreement by the corporate Guarantors as mortgagor in favour of the Lender as mortgagee over all the property, assets and undertaking of each corporate Guarantor of whatsoever nature and kind and wheresoever situated, present and future

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

(a)

Mortgagor: Peregian Beach Pty Ltd ACN 127 412 864
 Address: 10 Glenside Street, Balgowlah Heights NSW 2093

Facsimile No: (02) 9986 1681

(b)

Mortgagee: **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461**
 Address: C/- Level 4, 9 Beach Road, Surfers Paradise, QLD 4217

Facsimile No: (07) 5592 2505

Item 9**Maximum Prospective Liability (clause 32)**

\$20,000,000

Item 10

Governing law (clause 35) Queensland

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

(a) The Contract between Peregian Beach Pty Ltd and Stockland North Lakes Pty Ltd
 ACN 086 244 762.

EXECUTED as a Deed.

EXECUTED by PEREGIAN BEACH PTY LTD ACN 127 412 864 in accordance with section 127 of the Corporations Act 2001 (Cth):

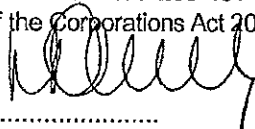

 Director/Secretary (Signature)

Director (Signature)

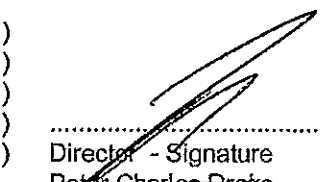
DAVID HAVER
 Full name

Full name

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



Director - Signature
 Lisa Maree D'Arcy


 Director - Signature
 Peter Charles Drake
PETER CHARLES DRAKE

SMV-14

THIS CONTRACT is made on the Contract Date

BETWEEN

STOCKLAND NORTH LAKES PTY LTD ABN 99 068 244 762 of 2 Lakeland Drive, North Lakes,
Queensland 4509

("Vendor")

AND

PEREGIAN BEACH PTY LTD ABN 22 127 412 864 AS TRUSTEE FOR THE PEREGIAN BEACH TRUST
of Suite 202, 164A Mona Vale Road, St Ives, New South Wales 2075

("Purchaser")

RECITALS

- A. The Vendor is the registered owner of the Land.
- B. The Vendor has agreed to sell and the Purchaser has agreed to buy the Land for the Purchase Price in accordance with the conditions of this Contract.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless inconsistent with the context or subject matter:

"Agent" includes auctioneer;

"Building Works" includes carrying out on the Land any works relating to the construction, installation, alteration, renovation or repair of any -

- aerials
- air conditioning units
- driveway or carpark
- building
- external fittings
- external flood lights or spotlights
- external sign or hoarding
- fences
- Landscaping Works
- other structure of any kind
- paving
- retaining wall;
- satellite dishes or aerials
- solar heaters
- solar panels
- swimming pool

"Business Day" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in the city or town listed in Item Q;

"Buy Back Expiry Date" means the date which is fifteen (15) years from the Date for Completion;

"Buy Back Price" means the current market value of the Land at the time of: -

- 1.1.1 the offer by the Purchaser under clause 40.2; or
- 1.1.2 the Vendor exercising its rights under clause 58.

The current market value of the Land is to be as:-

- 1.1.3 agreed by the parties; or failing agreement within seven (7) days
- 1.1.4 determined by a valuer agreed between the parties; or failing agreement on the valuer within seven (7) days
- 1.1.5 determined by a valuer appointed by the president (at that time) of the Australian Land Institute.

The valuer's costs must be borne equally by the Vendor and Purchaser;

"Claim or Claims" means any claims, demands or causes of action (whether based in contract, equity, tort or statute), losses, liabilities, costs, compensation, damages or expenses;

"Council" means the Moreton Bay Regional Council;

"Date for Completion" means the date stated in Item P or such other date as may be agreed in writing by the parties or fixed pursuant to the conditions of this Contract;

"DCP" means the Mango Hill Infrastructure Development Control Plan No 14 gazetted on 27 November 1998;

"Deposit" means the sum stated in Item N;

"Deposit Holder" means the person named in Item G;

"Drawings" means the documents approved by the Vendor in accordance with clause 34;

"Encumbrances" includes but is not limited to encumbrances which are not registered and an encumbrance created or arising under or by virtue of a statute;

"Financial Institution" means bank, building society or credit union;

"Infrastructure Agreements" means agreements between the Vendor, the principal developer, the Council and the State of Queensland as required by Clause 12.2 of the DCP;

"ITAA" means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*;

"Item" means an item of particulars in the Items Schedule;

"Land" means the Land described in Item H;

"Landscaping Works" means all landscaping including the turfing of any footpath adjoining the Land;

"North Lakes" means the master planned community envisaged in the Pine Rivers Shire Council Mango Hill Infrastructure Development Control Plan gazetted on 27 November 1998 (DCP);

"Object" includes delay settlement, make or assert a Claim, withhold or require a retention of all or part of the Purchase Price or terminate or rescind this Contract;

"Plan of Subdivision" means the Plan in Annexure 1;

"Precinct Plan" means a Precinct Plan made under Section 2 of the DCP;

"Purchase Price" means the sum stated in Item M;

"Purchaser" means the party named in Item E;

"Sector Plan" means a Sector Plan made under Section 2 of the DCP;

"Solicitor" means a solicitor currently entitled to practice in Australia whether acting as principal or agent;

"SPA" means the *Sustainable Planning Act 2009*;

"Taxable Supply" has the meaning given to that term by the GST law;

"Tax Invoice" means a tax invoice under the GST law;

"Vendor" means the person named in Item C;

"Vendor's Agent" means the person named in Item B;

- 1.2 Unless the contrary is shown, this Contract is to be taken to have been formed on the Contract Date.
- 1.3 Any reference in this Contract to a statute includes:
 - 1.3.1 any statute amending, consolidating or replacing the statute; or
 - 1.3.2 Orders in Council, proclamations, regulations, rules, by-laws and ordinances made under the statute.
- 1.4 In this Contract, unless inconsistent with the context or subject matter, where the term "Item" is used in conjunction with a particular letter of the alphabet, it is a reference to the Item set opposite the letter referred to.
- 1.5 Any defined terms used in any part of this Contract have the same meaning when used in any other part of this Contract.
- 1.6 This Contract is to be governed by the laws of Queensland.
- 1.7 Headings have been included for ease of reference and guidance and this Contract is to be construed without reference to them.
- 1.8 The terms used in this Contract and defined in the DCP have, unless this Contract requires otherwise, the same meaning as defined in the DCP.

2 AGREEMENT TO SELL

The Vendor agrees to sell and the Purchaser agrees to buy the Land subject to the conditions of this Contract for the Purchase Price.

3 DEPOSIT

- 3.1 The Deposit must be paid by the Purchaser to the Deposit Holder on the date of execution of this Contract.
- 3.2 If the Purchaser:
 - 3.2.1 fails to pay the Deposit as provided in clause 3.1;
 - 3.2.2 pays the Deposit by cheque which is postdated; or
 - 3.2.3 pays the Deposit by cheque which is not honoured on presentation,then, the Purchaser will be in substantial breach of this Contract and the Vendor may:

- 3.2.4 affirm this Contract and exercise the rights expressed in clause 12.2; or
- 3.2.5 terminate this Contract and exercise the rights expressed in clause 12.3.
- 3.3 The rights and powers conferred by clause 3.2 are in addition to any other rights the Vendor may have at law or in equity.
- 3.4 The Deposit must be retained by the Deposit Holder until completion or earlier termination of this Contract and then the Deposit Holder must pay the Deposit to the person entitled to it.

4 COMPLETION AND POSSESSION

The balance of the Purchase Price must be paid on the Date for Completion in exchange for:

- 4.1 vacant possession of the Land;
- 4.2 a properly executed transfer for the Land in favour of the Purchaser capable of immediate registration (after stamping) in the appropriate office free from Encumbrances (other than those set out in Item L) but subject to the conditions of this Contract;
- 4.3 any declaration required, by the Duties Act 2001, to be furnished to procure the stamping of the transfer (if not already delivered to the Purchaser);
- 4.4 such other instruments or declarations as are required by law to be signed by the Vendor to procure the stamping and/or registration of the transfer;
- 4.5 except as otherwise provided in this Contract, any instrument of title for the Land required to register the transfer.

5 INVESTMENT OF DEPOSIT

- 5.1 If either party directs the Deposit Holder by notice in writing to invest the Deposit then (where the Deposit Holder is lawfully able) the Deposit Holder must invest the Deposit with any Financial Institution permitted by law for the investment of trust money until the Date for Completion.
- 5.2 If this Contract is completed, all interest accruing on the investment of the Deposit must be paid to the Vendor and Purchaser in equal shares. If this Contract is not completed for any reason, the interest accruing on the Deposit must be paid to the party entitled to the Deposit upon termination of this Contract.
- 5.3 The Deposit and any accrued interest is invested at the risk of the party to whom the Deposit and accrued interest is ultimately payable and the Deposit Holder is not liable for any loss suffered by the parties in consequence of an investment under clause 5.1.
- 5.4 To facilitate investment of the Deposit, each party must notify its tax file number to the Deposit Holder within four (4) Business Days following the date of this Contract.
- 5.5 The parties authorise the Deposit Holder to prepare and lodge any taxation return necessary in respect of the Deposit and interest and to pay any tax assessed out of the Deposit and interest and indemnify the Deposit Holder against any taxation assessed in respect of the interest.
- 5.6 The Vendor and the Purchaser are to be taken to be presently entitled in equal shares to any interest accrued for the purposes of the ITAA.
- 5.7 The Deposit Holder is not obliged to account to the Vendor or the Purchaser until maturity of the investment of the deposit under this clause. In calculating the amount of interest for distribution purposes under this clause, bank debits tax and any other charges and expenses must first be deducted before any apportionment or payment is made.

6 NO REQUISITIONS

- 6.1 The Purchaser is not entitled to deliver to the Vendor requisitions or inquiries on or to the Vendor's title to the Land.
- 6.2 The Vendor states that, except as disclosed in this Contract each of the following statements is accurate at the time the Vendor executes this Contract:
 - 6.2.1 the Vendor has free and unqualified capacity and power to contract and to complete this Contract;
 - 6.2.2 the Vendor is not under any legal disability which affects the Vendor's capacity to contract and to complete this Contract; and
- 6.3 The Vendor states that, except as disclosed in this Contract, each of the following statements will be accurate at the Date for Completion:
 - 6.3.1 there is no current litigation by any person claiming an estate or interest in the Land;
 - 6.3.2 no order has been made under Part 11 of the *Property Land Law Act 1974* which would operate as a charge on the Land;
 - 6.3.3 there is no order of a Court or other competent authority affecting the ability of the Vendor to complete this Contract;
 - 6.3.4 no notice has been issued by a competent authority or proceedings instituted in a Court pursuant to any statute whereby the interest of the Vendor in the Land may be rendered liable to forfeiture to the Crown;
 - 6.3.5 the Vendor is not in liquidation;
 - 6.3.6 no action has been taken by or against the Vendor which could lead to the winding up of the Vendor;
 - 6.3.7 the Vendor is not under official management;
 - 6.3.8 an administrator, controller or managing controller has not been appointed to the Vendor or in respect of the whole or any part of the Land; and
 - 6.3.9 a compromise or arrangement has not been proposed between the Vendor and its members or creditors nor agreed to by the members or creditors nor sanctioned by a Court; and
 - 6.3.10 the Vendor is the registered owner of the Land.
- 6.4 If a statement contained in either clause 6.2 or clause 6.3 is not accurate then the Purchaser may terminate this Contract by notice in writing to the Vendor.
- 6.5 If this Contract is terminated under clause 6.4, the Deposit and other moneys paid under this Contract must be refunded to the Purchaser by the Deposit Holder. The Purchaser will have no claim against the Vendor arising out of such termination.
- 6.6 If requested by the Purchaser, the Vendor within fourteen (14) days of such request must:
 - 6.6.1 produce to the Purchaser all unregistered documents relating to the Land and full and proper particulars of those dealings; and
 - 6.6.2 deliver to the Purchaser photocopies of the documents or dealings (if the dealings are in writing) certified by the Vendor or the Vendor's solicitor as being true copies.

7 ERRORS AND MISDESCRIPTIONS

Any mistake, error or omission in the description or particulars of the Land (whether material or immaterial) will not annul the sale nor be the subject of a claim for compensation by the Purchaser.

8 SURVEY AND INSPECTION

- 8.1 The Purchaser must satisfy itself as to the boundaries of the Land and for that purpose the Purchaser may conduct an identification survey of the Land.
- 8.2 The Vendor gives no warranty and makes no representation that any improvements purporting to be on the Land are wholly on the Land or that buildings or improvements on adjoining Land do not encroach on the Land. Despite the result of any identification survey, this sale is declared to be subject to any encroachments which may exist and any encroachment (whether of a material or substantial nature or otherwise) will not annul the sale. No objection, requisition or claim for compensation may be made by the Purchaser about an encroachment.

9 EXECUTION AND PRODUCTION OF DOCUMENTS

- 9.1 Subject to compliance by the Purchaser with the Purchaser's obligations under this Contract the Vendor must do all acts and execute all documents necessary for the purpose of completing the sale and ensuring the Purchaser obtains a good and valid title to the Land but all documents required by clause 4.2 and 4.3 must be prepared by and at the expense of the Purchaser and delivered to the Vendor within a reasonable time prior to the Date for Completion.
- 9.2 After execution of the transfer, if requested by the Purchaser and upon payment of the usual production fee by the Purchaser, the Vendor must cause the transfer together with the declaration referred to in clause 4 to be tendered to the Office of State Revenue for stamping.
- 9.3 If an instrument of title is required to register a transfer of the Land and the instrument of title relating to the Land also relates to other Land, the Vendor is not obliged to deliver it to the Purchaser but must enter into reasonable covenants with the Purchaser for production of the instrument of title.
- 9.4 If the instrument of title is partially cancelled the Vendor is not obliged to produce a separate instrument of title on completion.
- 9.5 If either clause 9.3 or clause 9.4 applies, the Purchaser must bear the cost of any new instrument of title relating to the Land.
- 9.6 The Vendor is not obliged to apply for a Certificate of Title for the Land.

10 INTEREST ON LATE PAYMENTS

- 10.1 Without derogating from the strict effect of clauses 12 and 23 if any money (including the Deposit) payable under this Contract is not paid when due this money is to bear interest from the due date for payment to the date of payment, both inclusive, at the rate stated in Item O per annum simple interest which interest must be paid with the balance of the Purchase Price.
- 10.2 A judgment for money will likewise bear interest from the date of judgment to the date of payment, both inclusive.

11 DIVIDING FENCES

- 11.1 Despite anything in the *Dividing Fences Act 1953* to the contrary, the Vendor is not bound to contribute to the construction of any dividing fence between the Land and any adjoining Land owned by the Vendor.

- 11.2 The Vendor states that at the date of this Contract there are no outstanding notices, orders or agreements with respect to the construction or repair of a dividing fence between the Land and any adjoining Land under the *Dividing Fences Act 1953* or otherwise.
- 11.3 A notice, order or agreement about the construction or repair of a dividing fence between the Land and any adjoining Land, received, given or made after the date of this Contract must be complied with by the Purchaser.
- 11.4 Immediately upon receipt of a notice or order or the making of an agreement in accordance with clause 11.3, the Vendor must give to the Purchaser a copy of the notice, order or agreement.

12 PURCHASER'S DEFAULT

- 12.1 If the Purchaser:
- 12.1.1 fails to pay the balance of the Purchase Price as provided in clause 4; or
- 12.1.2 fails to comply with a condition of this Contract;
- then the Vendor may:
- 12.1.3 affirm this Contract; or
- 12.1.4 terminate this Contract.
- 12.2 If the Vendor affirms this Contract under clause 3.2, clause 12.1 or clause 40.8.1, the Vendor may:
- 12.2.1 sue the Purchaser for damages for breach or for specific performance and damages in addition to or instead of damages for breach; and
- 12.2.2 recover from the Purchaser as a liquidated debt the Deposit or any part of it which the Purchaser has failed to pay.
- 12.3 If the Vendor terminates this Contract pursuant to clause 3.2 or clause 12.1, the Vendor may elect to:
- 12.3.1 declare the Deposit (or so much of it as has been paid) forfeited and/or sue the Purchaser for breach; or
- 12.3.2 declare the Deposit (or so much of it as has been paid) forfeited and/or resell the Land and if the resale is completed within two (2) years from the date of termination any deficiency and any expense arising from resale will be recoverable by the Vendor from the Purchaser as liquidated damages;
- and in either case the Vendor may recover from the Purchaser as a liquidated debt the Deposit or any part of it which has not been paid by the Purchaser.
- 12.4 The rights and powers conferred upon the Vendor by this clause 12 are in addition to any other right or power which the Vendor may have at law or in equity.

13 PARTICULARS OF ADJUSTABLE ITEMS

- 13.1 Within a reasonable time after written request by the Purchaser prior to the Date for Completion, the Vendor must deliver to the Purchaser a written statement of all rates, taxes, outgoings, rents and profits not capable of discovery by search or inquiry in any office of public record or pursuant to the provisions of any statute in respect of the Land.
- 13.2 If the Vendor becomes aware of any information at any time after delivering a statement the effect of which is or may be to render the statement untrue in a material respect the Vendor must immediately disclose that information to the Purchaser by notice in writing.

- 13.3 The Vendor warrants that every such statement will be true at the Date for Completion.

14 ADJUSTMENTS

- 14.1 The Vendor must pay or discharge all rates, taxes (including Land Tax) and other outgoings (except insurance premiums on insurances effected by the Purchaser) with respect to the Land up to and including the date of possession.
- 14.2 The Purchaser must pay or discharge all rates, taxes (including Land Tax) and other outgoings with respect to the Land from the date of possession.
- 14.3 Except for water charges based on the quantity of water used all rates, taxes and outgoings must be apportioned:
- 14.3.1 in the case of those paid by the Vendor, on the amount actually paid;
- 14.3.2 in the case of those levied but unpaid, on the amount payable taking into account any discount for early payment;
- 14.3.3 in the case of those not levied but the amount can be ascertained by advice from the relevant rating and taxing authority, on the amount advised by the relevant rating and taxing authority taking into account any discount for early payment; and
- 14.3.4 in the case of those not levied and not ascertainable from the relevant rating and taxing authority and where a separate assessment was issued for the Land for the assessment period immediately prior to the date of possession, on the amount payable in that separate assessment taking into account any discount for early payment.
- 14.4 Any rates in the nature of water rates and which are not determined by reference to water usage are to be apportioned in accordance with clause 14.3. Any water charges based on the quantity of water used are to be adjusted as follows:
- 14.4.1 the Purchaser, at the expense of the Purchaser, must read the water meter installed on the Land no more than five (5) days and no less than three (3) days prior to the date of possession, and must inform the Vendor of the results of the water meter reading;
- 14.4.2 the deemed water usage in litres for the whole of the current rating period for water charges ("the deemed water usage") must be calculated as the amount which is directly proportionate to the water usage between the date of commencement of the current rating period for water charges and the date of the water meter reading referred to in clause 14.4.1 (no allowance being made for seasonal or other factors);
- 14.4.3 the likely assessment of water charges for the deemed water usage is to be calculated by using the method and rates then being used by the Council ("the likely assessment");
- 14.4.4 the likely assessment is to then be apportioned.
- 14.5 Land Tax is to be apportioned on the basis of the Land Tax paid or payable on the Land by the Vendor.

- 14.6 If at the date of possession there is not a separate unimproved value of the Land in effect under the *Valuation of Land Act 1944*, the Land Tax is to be apportioned in accordance with the formula:

$$\frac{(A \times B)}{C} \quad \text{where:}$$

- A. is the Land Tax assessed or assessable on the parcel of which the Land forms part;
- B. is the area of the Land; and
- C. is the area of the parcel.

- 14.7 Despite Land Tax may not have been paid for the year current at the date of possession (or any prior year) and despite the Office of State Revenue specifying, in writing, to the Purchaser it would be prudent to hold a sum of money until a final clearance issues for that year:

14.7.1 the Purchaser must not require payment of Land Tax by the Vendor prior to completion;

14.7.2 the Purchaser must not require any retention from the Purchase Price; and

14.7.3 the Purchaser must not raise or make any objection,

but this clause 14.7 is subject to any appointment of agent made by the Office of State Revenue.

- 14.8 The Vendor must pay or cause to be paid all assessments for Land Tax with respect to the Land for the period up to and including the date of possession. The Vendor must indemnify the Purchaser with respect to any failure by the Vendor to pay those assessments. Land Tax is to be treated as paid by the Vendor at the Date for Completion.

15 LIABILITY OF PURCHASER

The Land is to be at the risk of the Purchaser from the date of this Contract. The Vendor whilst continuing in possession must use the Land with reasonable care, but the Vendor is not responsible for any damage or deterioration to the Land occurring after the Contract Date. No compensation will be payable for any damage or deterioration. Despite the provisions of this clause the Vendor may develop the Land as required to satisfy its obligations under this Contract.

16 ACCESS

- 16.1 The Vendor licenses the Purchaser, its servants, agents, workmen and consultants bearing the written authority of the Purchaser to enter upon the Land at any time after the date of this Contract for the purpose of conducting any inspection, tests (including soil tests, measurement surveys or other inspections) and for all purposes incidental to the preparation or prosecution of any application by the Purchaser to the Council or other relevant authority in connection with the Land whether contemplated by this Contract or not. Those persons enter the Land at the risk of the Purchaser. In exercising its rights under this Clause, the Purchaser must cause minimal interference to the Vendor and must reinstate the Land if the entry or tests cause any damage or disturbance to the Land or any improvements.

- 16.2 The Purchaser:-

16.2.1 releases the Vendor from, and agrees the Vendor is not liable for any; and

16.2.2 indemnifies the Vendor from and against all:

claims, losses, damages, costs and expenses for or in respect of:-

16.2.3 death of or any injury to any person; or

16.2.4 any loss or damage to the Land or any path or road adjoining the Land;

arising from or in connection with the Purchaser, its servants, agents, workmen and servants entering the Land.

17 NOTICES

17.1 Any valid notice or order issued prior to the Date for Completion under any statute or by the Council or Court necessitating the doing of work or expenditure of money on or in relation to, the Land or any path or road adjoining the Land (other than those the specific responsibility of the Purchaser under this Contract) must be complied with by the Vendor who must indemnify the Purchaser in respect of it.

17.2 Any valid notice or order whether issued after the Date for Completion under any statute or by the Council or Court necessitating the doing of work or expenditure of money on or in relation to, the Land or any path or road adjoining the Land (whether addressed or directed to the Vendor or the Purchaser) (other than those the specific responsibility of the Vendor under this Contract) must be complied with by the Purchaser who must indemnify the Vendor in respect of it

18 LAND ADVERSELY AFFECTED/STATE OF LAND

18.1 The existing and proposed water supply, sewerage and drainage, electricity, telephone and other installations and services (on and in the vicinity of the Land) are shown on the Plan of Subdivision in Annexure 1.

18.2 The Purchaser:-

18.2.1 is purchasing the Land subject to the existing and proposed water supply, sewerage and drainage, electricity, telephone and other installations and services (if any) shown on the Plan of Subdivision in Annexure 1; and

18.2.2 must (except as otherwise set out in this Contract) at its cost construct any other water supply, sewerage and drainage, gas, electricity, telephone and other installations and services required by the Purchaser;

18.2.3 acknowledges only electricity and telephone conduits will be provided to the Land and the Purchaser must at its cost arrange for the connection of electricity and telephone services to the Land.

18.3 The Purchaser must not make any objection or make any requisition or claim for compensation:

18.3.1 in respect of the:-

(a) nature, location or availability (if the services are provided in approximately the location shown on the Plan of Subdivision); or

(b) non-availability (if the services are not shown on the Plan of Subdivision);

of any service;

18.3.2 whether or not the Land is subject to or has the benefit of any rights or easements in respect of any service or mains, pipes or connections therefore;

18.3.3 in respect of any defects in installations and services;

18.3.4 if any underground or surface stormwater drain passes through or over the Land or should any manhole or vent be on the Land.

In any of these events the Purchaser must not terminate this Contract and must not delay completion or refuse to complete or withhold any part of the Purchase Price or make any claim against the Vendor.

18.4 The Purchaser acknowledges and agrees:-

18.4.1 that the Land is purchased in an "as is where is" condition subject to all faults and defects whether or not they are apparent;

18.4.2 that the Purchaser does not rely on any representations, warranties or information provided or statements about the Land made by or on behalf of the Vendor, the Vendor's agent or their respective employees or agents, other than as set out in this Contract; and

18.4.3 that the Purchaser has not been induced to enter into this Contract by any representation, warranty or information provided by the Vendor, the Vendor's agent or their respective employees or agents, other than as set out in this Contract.

18.5 The Purchaser represents and warrants that:-

18.5.1 the Purchaser has obtained its own independent professional advice on the nature of the Land and its permitted uses and the Purchaser's rights and obligations under this Contract (including, but not limited to the matters referred to in clause 18.5.3); and

18.5.2 the Purchaser has relied entirely on its own independent investigations and enquiries about the Land in entering into this Contract.

18.5.3 the Purchaser has, prior to the date of this Contract, carried out extensive and comprehensive investigations in relation to the Land and has satisfied itself in relation to the following matters:

- (a) the viability, profitability, condition, state of repair or suitability of the Land for any use or purpose;
- (b) the terms of any planning approvals relating to the Land;
- (c) the state of repair of any improvements comprising the Land;
- (d) whether any improvements erected on the Land comply with the terms of any act, ordinance or regulation or requirement of any Authority;
- (e) access to the Land;
- (f) whether the Land is affected by a proposal of an Authority for the realignment, widening, resiting or altering of the level or direction of any road abutting the Land;
- (g) whether there is current in respect of the whole or part of the Land, a notice to treat or a notice of intention to resume issued by an Authority;
- (h) services to and passing through, over or under the Land;
- (i) the lawfulness of the existing use of the Land and the potential for its future development;

- (j) whether the Land, or any part thereof is or has been contaminated or complies with or will at completion comply with all laws concerning or relating to the environment, and
- (k) the existence or otherwise of necessary consents, approvals and licences from Authorities relating to the Land, including compliance with any such approvals or licences.

18.6 Except as otherwise specifically provided in this Contract:

18.6.1 the Vendor gives no warranty whatsoever in relation to the matters referred to in this clause; and

18.6.2 the Purchaser will not be entitled to Object because of any of the matters referred to in this clause.

18.7 Without limitation to the foregoing the Purchaser acknowledges no representation or warranty is made or given by the Vendor (or anyone on the Vendor's behalf) as to the current state of the Land (including the presence or otherwise of any hazardous substance, waste, contaminated soil or other contaminated matter - within the meaning of the *Environmental Protection Act 1994*) or any past use of the Land.

19 NO WARRANTY ON PRESENT USE

No warranty is implied that the use of the Land as described in Item H is permissible under any town planning scheme and no compensation is payable if the particulars stated in Item H are not correct. No warranty is given about the purposes for which the Land may be used.

20 COSTS

The parties must pay their own costs of and incidental to the sale and purchase but all duty on this Contract and any duty in respect of the conveyance by the Vendor to the Purchaser must be paid by the Purchaser and if not paid by the Purchaser may be paid by the Vendor and recovered from the Purchaser as a liquidated debt.

21 MERGER

Despite completion and despite the registration of the transfer in favour of the Purchaser any general or special condition (or any part or parts thereof) to which effect is not given by completion or registration and which is capable of taking effect at or after completion or registration remains in full force and effect.

22 TIME AND PLACE FOR COMPLETION

22.1 Completion must be effected at the time and place as agreed by the parties. The time for completion must be between the hours of 9.00am and 5.00pm on the Date for Completion. Despite any agreement by the parties as to a specific time for completion the provisions of clause 23 do not apply in respect of that time. In the absence of agreement as to place, completion must be effected at the office of the solicitor for the Vendor in Brisbane or at the office of the Vendor's mortgagee.

22.2 If the Date for Completion falls on a Saturday, a Sunday or a public holiday in Brisbane then unless Item P expressly designates the date a Saturday or Sunday or by the name of the public holiday, completion is to be effected:

22.2.1 on another day agreed by the parties; or

22.2.2 in default of agreement on the Business Day next following the Date for Completion.

23 TIME OF THE ESSENCE

Except as otherwise provided in this Contract time is of the essence of the Contract.

24 NOTICES, COMMUNICATIONS, AUTHORITY, DIRECTIONS, ETC.

- 24.1 Any document and any notice in writing or other written communication required or desired to be given by one party to the other may be:
- 24.1.1 given by the solicitor for that party;
 - 24.1.2 given to the other party's solicitor;
 - 24.1.3 signed by the solicitor for that party.
- 24.2 Any document, notice or other communication is to be taken to have been given by one party to the other if:
- 24.2.1 delivered to the other party or the other party's solicitor personally;
 - 24.2.2 left for the other party at that party's address for notices;
 - 24.2.3 posted to the other party by pre-paid mail in an envelope addressed to that party at that party's address for notices;
 - 24.2.4 left for the other party's solicitor at the usual or last known place of business of that solicitor;
 - 24.2.5 posted to the other party's solicitor by pre-paid mail in an envelope addressed to that solicitor at the usual or last known place of business of that solicitor.
- 24.3 For the purposes of this clause 24, a party's address for notices in the case of the Vendor is the address specified in Item D and in the case of the Purchaser the address specified in Item E.
- 24.4 Any document, notice or other communication sent by post is to be taken to have been given at the time when by the ordinary course of post it would have been delivered.
- 24.5 Any copy of a document, notice in writing or other communication required or desired to be given by one party to the other may be given by transmitting a facsimile copy of it via the telephone network to the address for service of the other party or to the usual or last known place of business of that party's solicitor and is to be taken to have been given (unless the contrary is shown) upon the date and at the time contained in any transmission confirmation report which contains the identification code of the person to whom it was intended to be transmitted and which indicates that the transmission was received without error.
- 24.6 If a document or a copy of a document or a notice in writing or other written communication is given after 5.00 pm on any Business Day and before 9.00am on the next following Business Day by a party or a party's solicitor and its receipt is not acknowledged by the other party or that party's solicitor during that period, it is to be taken to have been given at 9.00am on that next following Business Day.
- 24.7 As between the parties, a document or a copy of a document and a notice in writing or other written communication given by a party's solicitors given with the authority of that party.
- 24.8 Any money payable by the Purchaser or the Deposit Holder to the Vendor must be paid to the Vendor or as the Vendor's solicitors direct in writing.

25 FINANCE

This Contract is not subject to the Purchaser obtaining finance.

26 FOREIGN INTERESTS

The Purchaser warrants that:-

- 26.1 the Purchaser is not a "foreign person" within the meaning of Section 21A of the Foreign Acquisitions & Takeover Act 1975 as the meaning of that expression is intended by the operation of Section 4(6) of that Act; and
- 26.2 the Purchaser is not a "person to whom this section applies" within the meaning of that expression in Section 26A of the Foreign Acquisitions and Takeovers Act 1975 as that section is affected by Section 5A of that Act.

27 APPORTIONMENT OF PURCHASE PRICE

The purchase price is to be apportioned wholly to Land.

28 CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS

- 28.1 The Purchaser agrees that the matters set out in this Contract including the commercial terms of this Contract, and the arrangements between the Purchaser and the Vendor and any information relating to the negotiations relating to this Contract (**Confidential Information**) are strictly confidential.
- 28.2 The Purchaser must not disclose that it has entered into this Contract or the contents or terms of this Contract or any Confidential Information to any third party without the prior written consent of the Vendor, other than:
 - 28.2.1 to the Purchaser's auditors, legal advisors, accountants, consultants, financial advisors, financiers and financiers' legal advisors, and then only to the extent necessary and on the condition that person is obliged to keep the Confidential Information confidential; or
 - 28.2.2 as may be required by any applicable law or the rules or requirements of a regulatory body (including a stock exchange).
- 28.3 The Purchaser must use its best endeavours and must ensure that any person over whom it has control, use their best endeavours to prevent the unauthorised access to, use or disclosure of the Confidential Information.
- 28.4 The Purchaser may not make any public announcement or press release relating to the negotiations of the parties or the existence or subject matter of this Contract without the prior written consent of the Vendor, such consent not to be unreasonably withheld or delayed.

29 NO NOMINEE, AGENCY OR TRANSFER BY DIRECTION

- 29.1 This Contract or any part of it is not to be assigned by the Purchaser.
- 29.2 The Purchaser may not require or direct a transfer of the Land in favour of any person (including but not limited to the Purchaser's transferee, assignee or nominee).
- 29.3 The Purchaser declares that it is purchasing the Land on its own behalf as Principal and not as an agent for a third party.

30 WHOLE AGREEMENT

This Contract constitutes the whole of the agreement and understanding between the Vendor and the Purchaser about the Land. The Purchaser acknowledges it has made its own inquiries and has

not relied upon any representation by the Vendor, the Vendor's solicitor or the Vendor's agent or any servant or agent of the Vendor or any other person inducing the Purchaser to enter into this Contract other than as expressly set out in this Contract. Representations, warranties and agreements not expressly contained in this Contract are not binding upon any party as conditions, warranties or otherwise.

31 CONDITIONS PRECEDENT TO COMPLETION

- 31.1 Completion of this Contract is subject to and conditional upon:-
- 31.1.1 the Registrar within the meaning of the *Land Sales Act 1984* granting to the Vendor an exemption from compliance with Sections 8, 9, 10 and 10A of that Act by that day which is three (3) months after the Contract Date;
 - 31.1.2 the approval by the Council of an amendment to the Sector Plan to enable 100 dwelling units/ha on terms acceptable to the Vendor by that day which is six (6) months after the Contract Date;
 - 31.1.3 the Purchaser obtaining a development permit from the Council for a material change of use to permit the use of the Land for apartments (maximum 100 dwelling units/ha) and shop < 300m² GFA on terms which are satisfactory to the Purchaser acting reasonably within four (4) months after the lodgement of the application in accordance with clause 36.2;
 - 31.1.4 the registration in the Department of Environment and Resource Management of the Plan of Subdivision by 30 June 2011.
- 31.2 If the conditions precedent are not satisfied by the dates stated either party may terminate this Contract by notice in writing to the other and in that event, this Contract will be at an end and the deposit money must be refunded to the Purchaser and neither party will have any further claim against the other.
- 31.3 The notice referred to in clause 31.2 may only be given by a party who is not at the time of the giving of that notice in default under this Contract. If a notice is given by a party in default, that notice will be null, void and of no effect.
- 31.4 If completion of this Contract is effected despite that one or more of the conditions precedent have not been satisfied, the Vendor and the Purchaser are to be taken to have waived their respective rights of and incidental to the unsatisfied conditions precedent unless there is a separate Contract in writing to the contrary completed and executed by the parties prior to completion.

32 LAND SALES ACT

- 32.1 In order to give effect to clause 31.1.1 the Vendor must at its cost within thirty (30) days after the Contract Date apply to the Registrar within the meaning of the *Land Sales Act 1984* for exemption of this Contract from compliance with Sections 8, 9, 10 and 10A of the Act pursuant to Section 19 of it.
- 32.2 The Vendor and the Purchaser must provide all information that is required by the Registrar when requested.

33 APPROVAL OF AMENDMENT TO SECTOR PLAN

- 33.1 The Vendor must lodge the application to amend the Sector Plan to enable 100 dwelling units/ha with Council for approval and resolve the requirement for open space in respect of the development of the Land with Council.
- 33.2 The Purchaser acknowledges the Sector Plan is the code of development for the Land and that applications for development approval must be made by it and approved by Council before use and development of the Land for "apartments (maximum 100 dwelling units/ha)" may lawfully commence.

34 DRAWINGS

- 34.1 The Purchaser must before lodging a development application in respect of the Land or obtaining the Vendor's consent in accordance with clauses 36 or 37 and in any event within twenty one (21) days of the Contract Date deliver to the Vendor (for its approval) architectural site plans, elevations, cross sections, external finishes schedule, proposed finished levels and landscaping plan for the Purchaser's proposed development of the Land.
- 34.2 Within fourteen (14) days of receiving the documents referred to in clause 34.1, the Vendor must notify the Purchaser whether or not it approves the documents (with or without conditions).
- 34.3 The Purchaser acknowledges the drawings for its proposed development of the Land must address the Vendor's design intent for the Land which is as follows:-

"Development of this lot is to include a high quality building that reflects the character of the North Lakes Town Centre. The development must achieve the planning and development intent for the Town Centre Frame land use element as outlined in the Mango Hill Infrastructure Development Control Plan.

The development must address street frontages.

These requirements will be detailed during the formulation of the necessary planning documents which require consideration and approval by the Council. The requirements and the design will include, but are not limited to:

- Vertical and horizontal articulation;
- Awnings;
- Depth;
- Shade;
- Streetscape appeal;
- Quality and mature landscaping;
- Signage; and
- Appropriate materials and colours."

35 RECONFIGURATION

- 35.1 The Vendor must at its cost immediately after the approval of the Sector Plan apply to the Council for a development permit for the reconfiguration in accordance with the Plan of Subdivision and following approval on conditions acceptable to the Vendor apply as soon as reasonably possible for development approval for operational works to give effect to the reconfiguration approval.
- 35.2 The Vendor must at its cost satisfy all conditions of Council's approval of the Plan of Subdivision other than those which apply to the use of the Land for "apartments (maximum 100 dwelling units/ha)" or referred to in clause 35.3 which must be satisfied by the Purchaser at its cost.
- 35.3 For the avoidance of doubt the Vendor must at its cost construct roads and provide services to the boundary of the Land as shown on the Plan of Subdivision. The Vendor must also satisfy Council requirements for park provision (from land outside the boundary of the Land), park enhancement works and contributions to park equipment. The

Purchaser must on the Date for Completion pay to the Vendor the monetary equivalent (based on the rates current at the Date for Completion) of contributions paid / applied credits used by the Vendor for headworks (water and sewerage) and bulk water supply charge based on the EP/ET set out in clause 41.2. The cost of providing roads, water, sewerage, electricity, gas, drainage, telecommunications and other services within the Land are to be borne by the Purchaser. These costs are in addition to the Purchase Price.

36 APPROVAL OF APPLICATION FOR MATERIAL CHANGE OF USE

- 36.1 Prior to the Purchaser (at its cost) making application to the Council for its approval as referred to in clause 31.1.3, the Purchaser must obtain the written approval of the Vendor to the application. The Vendor's approval may not be unreasonably withheld but may be given subject to any conditions which are necessary or desirable to ensure the proposed development complies with the law and any conditions imposed as part of the approval for the subdivision of the Land.
- 36.2 The Purchaser must within three (3) months of receiving written notice from the Vendor of the approval of the amendment to the Sector Plan make application to the Council for a development permit for a material change of use to permit the use of the Land for apartments (maximum 100 dwelling units/ha) and shop < 300m² GFA which application complies with the law and the Purchaser must do all things necessary to ensure the application is assessed promptly by Council. If the Purchaser fails to lodge the application within the time referred to then clause 31.1.3 is taken to be satisfied.
- 36.3 The Purchaser must:-
- 36.3.1 diligently pursue the application;
 - 36.3.2 provide a response (within a maximum period of thirty (30) days) to any information request for the application.
- 36.4 The Purchaser must not:-
- 36.4.1 once the application has been lodged change or withdraw the application or any part of the application;
 - 36.4.2 allow the application to lapse;
 - 36.4.3 agree to extend or take any action to stop or suspend any time period under IDAS or elsewhere under SPA in respect of the application;
 - 36.4.4 make representations to the assessment manager about a matter stated in any decision notice in respect of the application;
 - 36.4.5 file an appeal in the court in respect of the application or an approval;
- without the prior written consent of the Vendor which shall not be unreasonably withheld.
- 36.5 If this Contract is terminated (for whatever reason):-
- 36.5.1 the Vendor:-
 - (a) will be entitled to the benefit of the application and the Purchaser assigns the application to the Vendor and appoints the Vendor as its agent and attorney for the purpose of finalising the application; and
 - (b) may take whatever action it wishes in relation to the application and any approval (including cancellation of the approval) and the Purchaser consents to this action;
 - 36.5.2 and at the date of termination the Purchaser is a party to proceedings (including but not limited to an appeal in the Planning and Environment Court) involving

the application or any approval, the Purchaser must (if requested by the Vendor):-

- (a) provide the Vendor with all assistance required by the Vendor to have the Vendor substituted for the Purchaser as a party to the proceedings; or
- (b) withdraw from (or discontinue) the proceedings.

The Purchaser:-

- 36.5.3 must provide any assistance required by the Vendor in satisfying this clause; and
- 36.5.4 warrants that it holds all rights necessary to enter into this clause and the Purchaser indemnifies and must keep indemnified the Vendor for any loss whatsoever which the Vendor may suffer as a result of the Purchaser breaching this warranty.
- 36.6 The Purchaser acknowledges that the development permit for a material change of use it obtains from the Council must be consistent with the relevant Council Codes and agrees that any condition imposed by the Council which is consistent with the relevant Council Codes will be deemed to be satisfactory to the Purchaser.
- 36.7 The Purchaser must not (without the Vendor's prior written consent) change the design approved by the Vendor under this clause.

37 APPROVAL OF BUILDING WORKS

- 37.1 The Purchaser must obtain the written approval of the Vendor (which can be given with or without conditions) prior to commencing any Building Works.
- 37.2 Prior to commencing any Building Works and prior to making an application to the Council or other relevant authority (including a private certifier) for approval for such Building Works, the Purchaser must first submit to the Vendor plans and specifications of the proposed Building Works and such other information as may be required by the Vendor to enable it to consider giving its approval.
- 37.3 The Purchaser must not submit any plans of Building Works to the Council or other relevant authority (including a private certifier) for its approval prior to obtaining the approval of the Vendor.
- 37.4 The Purchaser must after receipt of the Vendor's written approval of the Building Works, and before commencing construction of the Building Works obtain at its own expense all necessary approvals and clearances from the Council (or a private certifier) and all other relevant authorities for the Building Works.
- 37.5 No approval granted by the Vendor will constitute any agreement or representation as to the adequacy, suitability or fitness of any plans of Building Works or to the siting of the Building Works or that the relevant State or Local Government or other competent authority (including a private certifier) will grant its approval, and the Purchaser acknowledges the Purchaser will not place any reliance on such approval.
- 37.6 The Vendor will not act unreasonably or capriciously in refusing any application or imposing terms and conditions under this clause. The refusal of any application or the imposition of terms and conditions will not be unreasonable nor capricious if a registered architect certifies the proposed Building Works do not conform with the building controls in the Sector Plan or the Drawings, or they are undesirable by reason of the effect they would or might have upon the appearance, health or amenity of the neighbourhood or any part of it. The registered architect is to be appointed by agreement between the Vendor and the Purchaser but failing agreement will be a registered architect appointed by the President for the time being of The Royal Australian Institute of Architects (Queensland Chapter).

- 37.7 The Purchaser must not construct or undertake any Building Works other than Building Works approved from time to time by the Vendor pursuant to this clause.
- 37.8 All Building Works must be carried out strictly in accordance with the Vendor's approval under this clause.
- 37.9 This clause ceases to have effect when the last building comprising the Purchaser's development of the Land is constructed.

38 CONSENT TO DEVELOPMENT APPLICATION

The Vendor must when requested by the Purchaser consent to a development application to authorise a material change of use, operational works or building works for the Land provided the applications are in accordance with clause 36.1, the Sector Plan, Council's local laws and policies and the Drawings and in the case of:-

- 38.1 a development application to authorise a material change of use the Purchaser has complied with clause 36; and
- 38.2 Building Works the Purchaser has complied with clause 37.

39 DEVELOPMENT BY PURCHASER

The Purchaser must:-

- 39.1 develop and use the Land for apartments (maximum 100 dwelling units/ha) for a period of fifteen (15) years from the Date for Completion; and
- 39.2 not develop the Land or permit the Land to be used for a school or private hospital.

40 RIGHT OF FIRST REFUSAL

- 40.1 The covenant in this clause shall continue until:-
 - 40.1.1 the last Building Works (approved by the Vendor) comprising the Purchaser's development on the Land have been completed; or
 - 40.1.2 the time provided in clause 48.2.2 has elapsed;whichever is the sooner.
- 40.2 During such period, the Purchaser must not sell, transfer or dispose (or agree to sell, transfer or dispose) of the Land (or any part of the Land) without first offering to sell it to the Vendor for the Buy Back Price by delivering to it a contract (in duplicate) in the form then usually used for the conveyance of commercial land in Queensland providing:-
 - 40.2.1 for completion within thirty (30) days but providing for no deposit and not subject to finance; and
 - 40.2.2 an obligation for the Purchaser to pay (at settlement) all costs of and incidental to the preparation, stamping and registration of the contract and the transfer of the Land including but not limited to all duty and registration fees and the Vendor's legal fees (on a solicitor and own client basis);signed by the Purchaser ("the Offer").
- 40.3 The Offer shall remain open for acceptance by the Vendor for a period of twenty-eight (28) days after and not including the date of receipt by the Vendor of the contract referred to in the preceding subclause.
- 40.4 The Vendor may accept the Offer by executing the contract and returning one copy to the Purchaser.

- 40.5 If the Vendor does not accept the Offer within the time provided, the Purchaser may subject always to clause 50, during the six (6) months following the date of lapse of the Offer, sell the Land to any persons on such terms and conditions as the Purchaser thinks fit.
- 40.6 If a period of six (6) months has elapsed since the date on which the Purchaser's last Offer to the Vendor lapsed, and the Purchaser again wishes to sell the Land, then the Purchaser must first offer it again to the Vendor, and the provisions of the preceding subclauses of this clause shall apply.
- 40.7 This clause does not apply in the case of a transfer of the Land to the person entitled on the death of the Purchaser (if the Purchaser is a natural person).
- 40.8 If prior to completion, the Purchaser agrees to sell, transfer or dispose of the Land in contravention of clause 40, then the Purchaser will be in substantial breach of this Contract and the Vendor may:-
- 40.8.1 affirm this Contract and exercise the rights expressed in clause 12.2; or
- 40.8.2 terminate this Contract and exercise the rights expressed in clause 12.3.

41 DEVELOPMENT POPULATION

- 41.1 The Purchaser acknowledges that the Infrastructure Agreement (between the principal developer and the Council) requires the Sector Plan to estimate the number of equivalent tenements (ET) for water and equivalent population (EP) for sewerage for which provision is to be made in the sector and requires the allocation of numbers of ET and EP to each lot in a plan of subdivision and that Council in approving development for a lot must not issue a permit which will create a demand for water or sewerage greater than the ET and EP assigned unless to do so will not adversely impact minimum standards and the principal developer under the Infrastructure Agreement will not be prevented from servicing the total ET and EP for the DCP area.
- 41.2 The Vendor has allocated (or will allocate):-
- 41.2.1 35 ET and 168 EP to the Land; and
- 41.2.2 sufficient ET and EP to the Land to enable development of a shop < 300m² GFA on the Land.
- 41.3 The Purchaser undertakes not to develop or use the Land for a purpose which generates a demand for services in excess of those ET and EP allocated to the Land by the Vendor.

42 FINAL BOUNDARIES

- 42.1 The Vendor and Purchaser each acknowledge that the linear dimensions, surface contours and fill levels of the Land as shown on the Plan of Subdivision in Annexure 1 may vary.
- 42.2 If:
- 42.2.1 the variation in the linear dimensions reduces or increases the area of the Land by more than 2% from the area shown in Item H of the Items Schedule; or
- 42.2.2 the variation in the surface contours or fill levels is more than 1m,
- the Purchaser may terminate this Contract in which case the Deposit will be refunded in full, however if :-
- 42.2.3 the variation in the linear dimensions reduces or increases the area of the Land by 2% or less from the area shown in Item H of the Items Schedule; or
- 42.2.4 the variation in the surface contours or fill levels is 1m or less,

the Purchaser must not raise objection to, claim compensation for, or refuse to settle.

43 PURCHASE PRICE

43.1 The parties acknowledge that the area of the Land as shown in the Plan of Subdivision is an approximation only. The Land will be surveyed and the final area of the Land advised when a Plan of Subdivision in registrable form creating the Land is prepared and registered.

43.2 The Purchase Price payable by the Purchaser will be calculated as follows:

$$\text{Purchase Price} = A \times \$340.00$$

where A equals the area of the Land in m² shown on the Plan of Subdivision creating the Land registered with the Department of Environment and Resource Management.

44 ADVERTISING SIGNS

44.1 The Purchaser agrees not to erect signs or advertising devices on the Land or on any buildings constructed on the Land without first obtaining the consent in writing of the Vendor which consent must not be unreasonably withheld if the sign and advertising device complies with the provisions of the Sector Plan and the Drawings.

44.2 The Purchaser must only erect signs or advertising devices on the Land strictly in accordance with an approval by the Vendor pursuant to this clause.

45 GOODS & SERVICES TAX

45.1 In this clause 45:

45.1.1 words and expressions which are not defined in this Contract but which have a defined meaning in GST Law have the same meaning as in the GST Law;

45.1.2 GST Law has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999; and

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

45.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Contract are exclusive of GST.

45.3 If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under or in connection with this Contract, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

45.4 Subject to clause 45.5, the recipient will pay the amount referred to in clause 45.3 in addition to and at the same time and in the same manner that the consideration for the supply, or the first part of the consideration for the supply as appropriate, is to be provided under this Contract.

45.5 The parties agree that to the extent permitted by law, the Land will be supplied by the Seller under the margin scheme as set out in Division 75 of the GST Act.

45.6 Except where the margin scheme applies, if any part of the consideration to be provided by the recipient under this Contract is consideration for a taxable supply, the supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 45.3. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

- 45.7 If an adjustment event arises in respect of a taxable supply made by a supplier under or in connection with this Contract, the amount payable by the recipient under clause 45.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- 45.8 Where a party is required under this Contract to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- 45.8.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- 45.8.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.
- 45.9 This clause 45 will not merge on the completion of this Contract.

46 EASEMENT(S)

If:

- 46.1 the Vendor is required by Council or other relevant authority to grant an easement over the Land as a condition of approval of the Plan of Subdivision;
- 46.2 as a result of the grant of the easement, the area of the Land capable of development is materially reduced,

the Purchaser may terminate this Contract in which case the Deposit will be refunded in full.

47 GUARANTEE AND INDEMNITY

Unless a guarantee and indemnity in the form set out in Annexure 2 has been executed by all of the directors of the Purchaser and delivered to the Vendor's solicitors by the Contract Date the Vendor may at any time after that date until completion terminate this Contract by notice to the Purchaser and in that event any monies paid are to be paid to the Vendor.

48 CONSTRUCTION OF IMPROVEMENTS

- 48.1 The Purchaser acknowledges that:-
- 48.1.1 North Lakes is to be developed as a master planned community which will when developed be a well balanced urban community providing an appropriate mix of development to service all the needs of the community. This objective will be achieved by the Vendor identifying the various uses needed for the community and then when planning and market conditions are appropriate selling land to be developed for the provision of those uses.
- 48.1.2 The Vendor is concerned to see that the development it has determined is appropriate to fulfil those needs, is provided in an orderly, logical well planned manner so that over time each of the needs are satisfied.
- 48.1.3 It is important to the Vendor for reasons of planning and expectations created in third parties that land once identified for a purpose and sold for development is actually developed for that purpose according to an agreed timeframe and that land is not left undeveloped.
- 48.2 On the basis of the matters set out in clause 48.1 the Purchaser agrees to develop the Land for the purposes of apartments (maximum 100 dwelling units/ha) and shop < 300m² GFA and accordingly must:

- 48.2.1 substantially commence construction within twelve (12) months of the Date for Completion; and
 - 48.2.2 proceed to complete construction and complete the Landscaping Works within thirty (30) months from the commencement of construction and after commencement of construction not allow a period of more than three (3) months to elapse without substantial construction being carried out.
- 48.3 If:-
- 48.3.1 the construction referred to in clause 48.2.1 is not commenced within the time provided in that clause; or
 - 48.3.2 the construction is not completed in the time provided in clause 48.2.2; or
 - 48.3.3 after commencement of construction a period of more than three (3) months elapses without substantial construction being carried out;
- the Purchaser will be in default.
- 48.4 If the Purchaser is in default under this clause then in addition to the remedies the Vendor has under clause 12 or clause 58 the Vendor may at its option exercise any or all of its rights, powers and remedies under this Contract or under statute or common law and the Vendor may (without prejudice to any other rights or entitlements it may have pursuant to this Contract or under statute or common law):-
- 48.4.1 enter upon the Land and take over the completion of the Building Works in such manner as the Vendor may think fit either adhering to or varying in any manner the original design and to call for and accept any tender or tenders or to use any materials on or intended for the Building Works and employ any architect, builder or other person;
 - 48.4.2 use any plans, specifications or drawings which have been prepared by or for the Purchaser for the construction of the Building Works without expense to the Vendor and without being liable to or to indemnify the Purchaser for conversion or breach of copyright and the Purchaser indemnifies the Vendor from and against all damages, costs and expenses which may be sustained or suffered by the Vendor or any person in respect of the Vendor's and/or its servants, agents, employees and contractors use of the plans, specifications and drawings;
 - 48.4.3 despite any other provision of this Contract, sell the Land (as agent for the Purchaser) and any improvements on the Land, including the Building Works whether complete or incomplete, and upon such terms as the Vendor may in its absolute discretion determine and the Purchaser shall not make any claim or objection in respect of such sale;
 - 48.4.4 require the Purchaser, at the Purchaser's cost, to pull down and remove from the Land any Building Works that are partially completed falling which, the Vendor may at the Purchaser's expense, pull down and remove the Building Works and sell all materials and equipment after such demolition and pay to the Purchaser the proceeds of such sale less the costs incurred by the Vendor;
 - 48.4.5 require the Purchaser to assign or novate in favour of the Vendor free of charge and on terms and conditions acceptable to the Vendor, all right, title and interest of the Purchaser under or in connection with subcontracts, supply contracts or any other agreements entered into in respect of the carrying out of the Building Works (in which case the Purchaser shall do all acts and things necessary to give effect to such assignment or novation); and/or
 - 48.4.6 without payment of any compensation take possession of and use any temporary work, plant and equipment, unfixed materials or other things on or in the vicinity of the Land required by the Vendor in connection with the completion of the Building Works.

49 LICENCE TO USE AND SUB-LICENCE COPYRIGHT IN BUILDING WORKS

- 49.1 In consideration of the Vendor agreeing to sell the Land to the Purchaser the Purchaser:-
- 49.1.1 grants to the Vendor an irrevocable, non exclusive, royalty free licence to use the copyright in any and all plans, specifications, drawings, engineering information and other information in relation to the Building Works the Purchaser builds on the Land ("Copyright Works"); and
- 49.1.2 agrees to grant to the Vendor an irrevocable, non exclusive, royalty free licence to use the copyright in any Copyright Works brought into existence in the future,
- from the Contract Date until the Vendor completes, markets and sells any Building Works under clause 0 and/or clause 58.
- 49.2 The Purchaser grants to the Vendor the right to sub-licence any licence to use the copyright granted to the Vendor under this clause.
- 49.3 The Vendor must not exercise the rights granted to it under this clause 49 unless and until the Purchaser is in default.
- 49.4 The Purchaser warrants that it holds all rights in the Copyright Works necessary to licence the Copyright Works to the Vendor in accordance with this Contract and the licence of the Copyright Works to the Vendor in accordance with this Contract does not (and will not at any time) infringe any rights of any third party and the reproduction, adaptation or other use of any or all of the Copyright Works by the Vendor does not (and will not at any time) infringe any rights of any third party.

50 DEED FROM DISPONEE

- 50.1 In addition to any other provision of this Contract, the Purchaser may not dispose of its interest in the Land:
- 50.1.1 before the Date for Completion, without the prior written consent of the Vendor, which may be given or refused in the absolute discretion of the Vendor;
- 50.1.2 after the Date for Completion without complying with special condition 50.2.
- 50.2 The Purchaser must not sell or otherwise dispose of the Land (or any part of the Land) unless the subsequent purchaser or donee enters into a deed (to be prepared by the Vendor's solicitors at the Purchaser's cost) with the Vendor agreeing to be bound by the terms of this Contract as if they were named as the Purchaser, with such incidental changes as may be reasonably required. That deed must include a covenant that if the subsequent purchaser or donee sells or otherwise disposes of the Land (or any part of the Land) the subsequent purchaser or donee obtains a deed in similar terms including this term.

51 DEVELOPMENT OF OTHER LAND

The Purchaser acknowledges that:-

- 51.1 the principal developer has various intentions for the future development of the land the subject of the DCP, including the land adjoining or surrounding the Land;
- 51.2 those intentions will vary from time to time depending on consents of the Council, market forces and economic conditions, availability of purchasers and developers of the land, and any other matters which the principal developer considers are relevant in its absolute discretion;
- 51.3 in particular, the timing of particular development on land subject to the DCP, including land adjoining or surrounding the Land, will vary from time to time;

- 51.4 any statements, representations or other information made or provided by the principal developer, the Vendor, or by any other party in relation to the proposed future development of the land subject to the DCP, and in particular the land adjoining or surrounding the Land, are statements of intention only, and are not promises or representations that particular land will be developed at a particular time, or for a particular use, or will be developed at all;
- 51.5 any statements, representations or other information in the DCP, the Structure Plan, the Sector Plan and any Precinct Plan are statements of intention only, and not promises or representations that particular land will be developed at a particular time, or for particular uses, or will be developed at all;
- 51.6 the Purchaser has not relied on any statements, representations or other information made or provided by the principal developer, the Vendor, or by any other party in relation to the proposed future development of the land the subject of the DCP, whether in relation to the timing of development, the particular uses to be made of relevant land, or particular anticipated population figures in relation to any of the relevant land, in deciding to enter into this Contract, and acknowledges that future development of the land the subject of the DCP is totally within the discretion of the principal developer;
- 51.7 the Purchaser accepts the risk the land the subject of the DCP may not be developed as represented in any relevant documents or information.

52 TRUSTEE

If the Purchaser enters into this Contract as trustee, the Purchaser:-

- 52.1 accepts this Contract both as trustee and in its own capacity;
- 52.2 acknowledges its own liability for the performance of its obligations under this Contract;
- 52.3 must take steps to ensure the assets of the trust are available to rectify any breach under this Contract;
- 52.4 must on demand by the Vendor, assign the rights of indemnity the Purchaser (as trustee) has against the assets of the trust; and
- 52.5 warrants that:-
- 52.5.1 it has the power and authority to enter into this Contract; and
- 52.5.2 entry into this Contract is due administration of the trust.+

53 PERSONAL INFORMATION

The Purchaser:-

- 53.1 acknowledges the Vendor has collected personal information (as defined in the *Privacy Act 1988*) of the Purchaser (the "Personal Information") for the purposes set out in the Stockland Privacy Policy (the "Privacy Policy") which is available on request and for completing the transaction as set out in this Contract;
- 53.2 consents to the Vendor disclosing Personal Information:-
- 53.2.1 to the parties identified and in the circumstances listed in the Privacy Policy;
- 53.2.2 comprising the Purchaser's name, address, telephone number(s) and/or email address (to assist in contacting the Purchaser about the construction of a dividing fence) to the owners of properties adjoining the Land;
- 53.2.3 to the Council, any government department or other authority;

- 53.3 is able to gain access to the Personal Information of the Purchaser which is held by the Vendor by providing the Vendor with a written request.

54 LODGEMENT OF TRANSFER DOCUMENTS

To ensure notice of change of ownership of the Land is provided to the Council and other authorities promptly after completion, the Purchaser must lodge the transfer documents (including the combined form (currently a Form 24)) with the Department of Environment and Resource Management no later than thirty (30) days after the Date for Completion.

55 VENDOR'S RIGHT TO TRANSFER LAND

The Vendor may transfer its interest in the Land and assign this Contract.

56 CAVEATS

The Purchaser acknowledges that it waives the right to lodge any caveat in relation to the Land and the Purchaser appoints the Vendor as its attorney to sign any documentation to remove any caveat lodged by the Purchaser in contravention of this clause.

57 DOCUMENTATION MADE AVAILABLE

57.1 In this clause:-

Documents means the documents and other information (in written form or otherwise) relating to the Land made available to the Purchaser by the Vendor or the Vendor's representative or agent for inspection prior to or on or about the Contract Date.

57.2 The Vendor has previously made available to the Purchaser, at the Purchaser's request, the Documents to assist the Purchaser to gather information in relation to the Land.

57.3 The Purchaser acknowledges and confirms that the Documents were made available by the Vendor or the Vendor's representative or agent to the Purchaser on the express basis that no representation or warranty was made or given by the Vendor or the Vendor's representative or agent to the effect that:

57.3.1 the information or contents of the Documents were accurate or current; and

57.3.2 the information made available was exhaustive or complete,

and the Purchaser confirms that the Vendor and/or the Vendor's representatives or agents have made no such warranty or representation either before, at the time or after the Documents were made available to the Purchaser.

57.4 Notwithstanding the terms of this clause, if any warranty or representation has been made by the Vendor or by the Vendor's representative or agent in relation to the Documents, then the Purchaser confirms, by execution of this Contract, that the Purchaser has placed no reliance on such warranty or representation when executing this Contract.

58 BUY BACK RIGHT

58.1 In consideration of the parties mutual obligations under this contract, the Purchaser grants to the Vendor an irrevocable right up to the Buy Back Expiry Date to buy back the Land for the Buy Back Price on the terms and conditions contained in this clause if the Purchaser defaults under or breaches any of the Purchaser's obligations under:

58.1.1 clause 36.7;

58.1.2 clauses 37.7 or 37.8;

58.1.3 clause 39;

58.1.4 clause 41.3;

58.1.5 clause 44;

58.1.6 clauses 48.2 and 48.3.

and such default or breach is not remedied within fourteen (14) days after written notice to the Purchaser specifying the default or breach.

58.2 If in the reasonable opinion of the Vendor clause 58.1 applies, the Vendor may elect to buy back the Land for the Buy Back Price by delivering to the Purchaser a written notice requiring the Purchaser to transfer the Land free of encumbrances to the Vendor, in consideration of the payment of the Buy Back Price.

58.3 In the case of the Vendor exercising its rights pursuant to clause 58.2:-

58.3.1 the Vendor must prepare the necessary form of transfer and ancillary documents and submit them to the Purchaser for execution;

58.3.2 the Purchaser must deliver any instrument of title for the Land required to register a transfer and do all things and execute all documents necessary to give effect to clause 58.2;

58.3.3 the Buy Back Price is payable in exchange for possession, any instrument of title for the Land required to register a transfer, the transfer duly executed by the Purchaser and any necessary ancillary documents, on a date nominated by the Vendor, but not prior to twenty one (21) days after delivery of the notice referred to in clause 58.2;

58.3.4 the Purchaser must pay (at the time of payment of the Buy Back Price by the Vendor) all costs of and incidental to the preparation, stamping and registration of the transfer including but not limited to all duty and registration fees, and must also pay any outstanding rates, land tax or charges in respect of the Land and the Vendor's legal fees (on a solicitor and own client basis).

58.4 In the event the Purchaser is in default as set out in clause 58.1 and for the purposes of giving effect to clauses 58.2 and 58.3, the Purchaser irrevocably and unconditionally appoints the Vendor to be its attorney to conduct the sale, receive the sale proceeds, execute all documents, deeds, instruments, assurances and agreements and do all acts, matters, deeds and things as are necessary.

58.5 The rights under this clause are in addition to, and do not affect, the Vendor's other rights arising from the Purchaser's default under this Contract.

58.6 Despite any other provision of this Contract, the Vendor may set off any amount owing or owed to the Vendor under this Contract against the Buy Back Price.

58.7 Any delay of the Vendor in exercising its rights under clause 58.1 or 58.2, shall not be a waiver of, or amount to a termination of, the entitlement to exercise its buy back rights.

58.8 This special condition will not merge on settlement.

ITEM SCHEDULE

ITEM A Contract Date: The 5th day of August 2010.

ITEM B Vendor's Agent:
Address:
Phone:
Facsimile:

ITEM C Vendor: STOCKLAND NORTH LAKES PTY LTD ABN 99 068 244 762
Address: 2 Lakefield Drive, North Lakes Qld 4509
Telephone: (07) 3480 9000
Facsimile: (07) 3480 9099

ITEM D Vendor's Solicitor: Shand Taylor Lawyers (Matthew Shannon)
Address: Level 12, 241 Adelaide Street, Brisbane Qld 4000
Telephone: (07) 3307 4500
Facsimile: (07) 3307 4599

ITEM E Purchaser: PEREGIAN BEACH PTY LTD ABN 22 127 412 864-AS-
~~TRUSTEE FOR THE PEREGIAN BEACH TRUST~~
Address: Suite 202, 164A Mona Vale Road, St Ives, New South Wales 2075
Telephone:
Facsimile:

ITEM F Purchaser's Solicitor: Reaburn Solicitors (David Lobbezoo)
Address: 39 Tallebudgera Creek Road, West Burleigh Qld 4219
Telephone: (07) 5586 2222
Facsimile: (07) 5586 2233

ITEM G Deposit Holder: Shand Taylor Lawyers
Telephone: (07) 3307 4500
Facsimile: (07) 3307 4599

ITEM H Particulars of Land Sold: Corner of Endeavour Boulevard and Lakefield Drive
Address: North Lakes, Queensland
Present Use (if any): Vacant Land

No.	Title Reference	County	Parish	Description	Area
1.	To issue from Stanley 50480250	Redcliffe		Part of Lot 26 on SP 224073 being proposed Lot 74 as shown on the Plan of Subdivision	7,000m ² (approximate only - subject to survey)

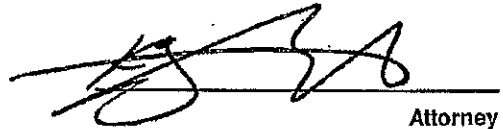
	Local Government:	Pine Rivers Shire Council
ITEM I	Improvements included in sale:	Nil
	Buildings:	Nil
	Exclusions:	Nil
ITEM J	Other chattels included in the sale:	Nil
ITEM K	The Land is sold: as Freehold (subject to the reservations exceptions and conditions in the Deed of Grant)	
ITEM L	Encumbrances:	See clause 45
ITEM M	Purchase Price:	As calculated in accordance with clause 43. In addition to the Purchase Price, the Purchaser is responsible for any costs as set out in clause 35.3 and GST as per clause 45.
ITEM N	Deposit:	\$47,600.00
ITEM O	Default Interest:	Twelve (12%) percent simple interest per annum
ITEM P	Date for Completion:	Fourteen (14) days after satisfaction of all Conditions Precedent.
ITEM Q	City or Town for Completion:	Brisbane

SCHEDULE OF ANNEXURES

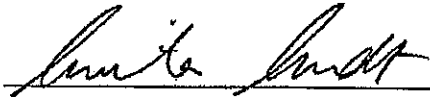
Annexures	Description	Clause
Annexure 1	Plan of Subdivision	definitions, clauses 18.1, 18.2.1, 18.3.1, 31.1.4, 35.1, 35.2, 35.3, 41.1, 42.1, 43.1, 43.2, and 46.1
Annexure 2	Guarantee and Indemnity	clause 47

EXECUTED as an Agreement.

STOCKLAND NORTH LAKES PTY LTD)
ABN 99 068 244 762 by its duly)
constituted Attorney)
KINGSLEY JAMES ANDREW)
under Power of Attorney No. *712605138*)
in the presence of:


Attorney

05/08/10


Witness

EXECUTED as an agreement by)
PEREGIAN BEACH PTY LTD ABN. 22)
127 412 864 in accordance with The)
Corporations Act 2001:


Sole Director / Secretary

ANNEXURE 1
PLAN OF SUBDIVISION

Service Location & Earthworks Plan

For Proposed Lot 74

North Lakes
Described as part of lot 807 on SP 174537,
Parish of Redcliffe, County of Stanley,
Local Authority: Moreton Bay Regional Council.

Metes and Bounds

From the Initial Point being the northwest corner of lot 827 on SP 157401 at a bearing of 245°13' for a distance of 123.6m to the Point of Commencement, then:
Bearing 287°51'55" for a Distance of 82.399m, Bearing 177°0' for a Distance of 82.18m, Bearing 107°0' for a Distance of 86.653m, Bearing 199°55'30" for a Distance of 83.653m.

Notes and Legend

Areas and Dimensions are subject to plan registration. Surface information shown was surveyed by the PIM Group in March and August 2008. Natural Surface information was surveyed by the PIM Group in August 1998. See detailed engineering drawings for the dimensions of any structures that may affect the lot.

Area of Fill	Proposed No. Site Access Zone
27	Natural Surface Contour
27	Surface Contour as at 12-8-05
+12m Fill	Depth of Fill
8	Gas Line
D	Stormwater Line
S	Sewer Line
W	Water Line
T	Telstra Line
E	Electrical Line
K	Kerb & Channel

Height Datum: AHD
Origin: PM 44805

Scale: See Scale Bar

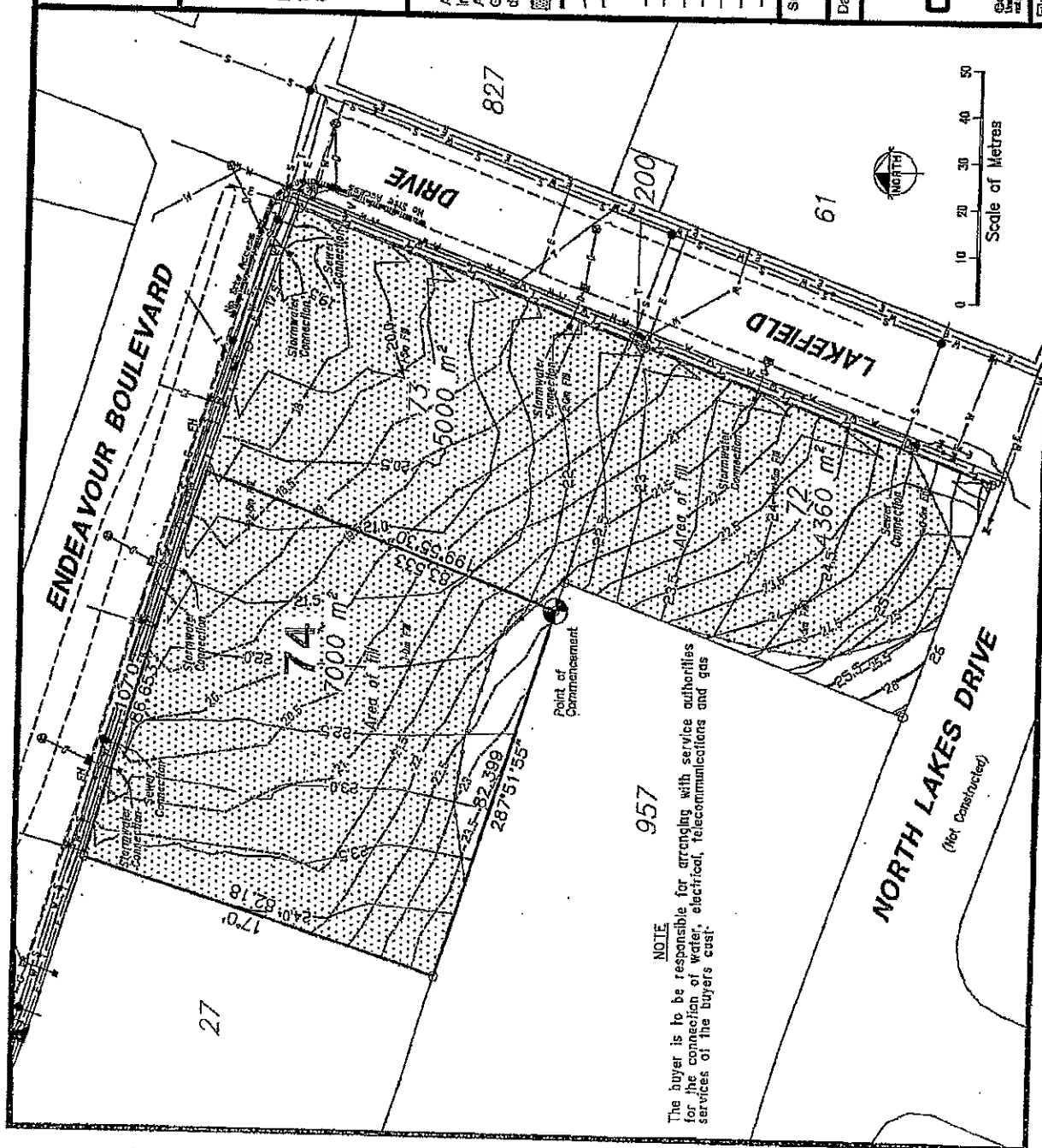
Date:

CONICS (BESSEMER) PTY LTD
ACN 81627048
ABN 816270488
739 ANN STREET
PO BOX 159
FORTITUDE VALLEY QLD 4024
TELEPHONE 07 237 8800
FAX 07 237 8833
email: conics@conics.com.au
web: www.conics.com.au

CONICS

CONICS PROJECTS THIS PLAN
IS A PRELIMINARY DESIGN AND
NOT A FINAL DESIGN. IT IS NOT
TO BE USED FOR CONSTRUCTION.

Filename: nsls74 Plan Number: 2836-SALES-D-74



NOTE
The buyer is to be responsible for arranging with service authorities for the connection of water, electrical, telecommunications and gas services of the buyers cost.

ANNEXURE 2
GUARANTEE AND INDEMNITY

THIS AGREEMENT is made on day of

TO: **STOCKLAND NORTH LAKES PTY LTD ABN 99 068 244 762** of 2 Lakefield Drive, North Lakes, Queensland 4509

("Vendor")

The Guarantor hereby requests that you accept the offer of the Purchaser and enter into a binding agreement with the Purchaser upon the terms of the Contract to which this guarantee and indemnity is annexed.

1 INTERPRETATION

1.1 Definitions

"**Claim or Claims**" means any claims, demands or causes of action (whether based in contract, equity, tort or statute), losses, liabilities, costs, compensation, damages or expenses.

"**Contract**" means the Contract to which the guarantee and indemnity is annexed.

"**Guaranteed Money**" means all amounts which at any time for any reason or circumstance are payable, are owing but not currently payable, are contingently owing or remain unpaid (or which are reasonably foreseeable as likely, after that time, to fall within any of those categories), by the Purchaser to the Vendor in connection with the Contract or any transaction contemplated by it, whether at law, in equity, under statute or otherwise.

"**Guaranteed Obligations**" means all express or implied obligations of the Purchaser to the Vendor in connection with the Contract or any transaction contemplated by it.

"**Guarantor**" means the persons described in the schedule to this guarantee and indemnity.

"**Vendor**" means Stockland North Lakes Pty Ltd ABN 99 068 244 762 and includes its successors and assigns.

The terms defined in the Contract have the same meaning in this guarantee and indemnity.

2 PROVISION OF GUARANTEE

2.1 The Guarantor gives this guarantee and indemnity in consideration of the Vendor agreeing to enter into the Contract.

2.2 The Guarantor acknowledges incurring obligations and giving rights under this guarantee and indemnity for valuable consideration received from the Vendor including the agreement of the Vendor to enter into the Contract.

3 GUARANTEE UNCONDITIONAL

The Guarantor unconditionally and irrevocably guarantees payment to the Vendor of the Guaranteed Money and unconditionally and irrevocably guarantees the due and punctual performance of the Guaranteed Obligations.

4 GUARANTEE MONEY

If the Purchaser does not pay the Guaranteed Money on time and in accordance with the terms of the Contract or other document under which they are to be paid, then the Guarantor agrees to pay the Guaranteed Money to the Vendor on demand from the Vendor (whether or not demand has been made on the Purchaser). A demand may be made at any time and from time to time.

5 GUARANTEE OBLIGATIONS

If the Purchaser does not duly and punctually perform the Guaranteed Obligations in accordance with the terms of the Contract or other document under which they are to be performed, then the Guarantor agrees to perform the Guaranteed Obligations on demand from the Vendor (whether or not demand has been made on the Purchaser). A demand may be made at any time and from time to time.

6 INDEMNITY

As a separate undertaking, the Guarantor indemnifies the Vendor against:

- 6.1 all liability or loss arising from, and any costs, charges or expenses incurred in connection with, the Guaranteed Money not being recoverable from the Guarantor or from the Purchaser because of any circumstance whatsoever; and
- 6.2 all liability or loss arising from, and any costs, charges or expenses incurred in connection with, the Guaranteed Obligations not being duly and punctually performed because of any circumstance whatsoever.

7 CONTINUING OBLIGATION

This guarantee and indemnity is a continuing security and extends to all of the Guaranteed Money and other money payable under this guarantee and indemnity and to all the Guaranteed Obligations. The Guarantor waives any right it has of first requiring the Vendor to proceed against or enforce any other right, power, remedy or security or claim payment from the Purchaser or any other person before claiming from the Guarantor under this guarantee and indemnity.

8 LIABILITY

The liabilities under this guarantee and indemnity of the Guarantor as a guarantor, principal debtor, principal obligor or indemnifier and the rights of the Vendor under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including one or more of the following:

- 8.1 the Vendor or another person granting time or other indulgence to, compounding or compromising with or releasing the Purchaser;
- 8.2 acquiescence, delay, acts, omissions or mistakes on the part of the Vendor; or
- 8.3 any variation or novation of a right of the Vendor, or alteration of the Contract or a document, in respect of the Purchaser.

9 NO CLAIMS BY GUARANTOR

As long as the Guaranteed Money or other money payable under this guarantee and indemnity remains unpaid or the Guaranteed Obligations or any of them remain unperformed, the Guarantor may not, without the consent of the Vendor:

- 9.1 make a claim or enforce a right (including a mortgage, charge or other encumbrance) against the Purchaser, the Land or any other Land of the Purchaser; or
- 9.2 prove in competition with the Vendor if a liquidator, provisional liquidator, official manager or trustee in bankruptcy is appointed in respect of the Purchaser or the Purchaser is otherwise unable to pay its debts when they fall due.

10 REPRESENTATIONS AND WARRANTIES

The Guarantor represents and warrants that its obligations under this guarantee and indemnity are valid and binding and that It does not enter into this guarantee and indemnity in the capacity of a trustee of any trust or settlement.

11 JOINT AND SEVERAL

Every covenant, acknowledgment or provision expressed or implied in this guarantee and indemnity by which more persons than one covenant, acknowledge, agree or undertake bind those persons and every two or more of them jointly and each of them severally and every covenant, acknowledgment, agreement or provision expressed or implied in this guarantee and indemnity which applies to more persons than one apply to those persons and every two or more of them jointly and each of them severally.

THE SCHEDULE
GUARANTEE AND INDEMNITY

GUARANTOR(S):

First Guarantor:



Name: DAVID RICHARD HAWES

Address: 10 Glenside Street, Balgowlah Heights, NSW 2093

DATE OF GUARANTEE AND INDEMNITY:

28th day of June 2010

EXECUTED as a DEED

SIGNED, SEALED and DELIVERED by
DAVID RICHARD HAWES as Guarantor
in the presence of:

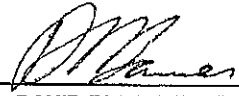


Witness

CAROLINE HAWES

Name

)
)
)



DAVID RICHARD HAWES

SMV-15

DEED OF VARIATION

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461
AS TRUSTEE FOR THE LM MANAGED PERFORMANCE FUND

PEREGIAN BEACH PTY LTD
ACN 127 412 864

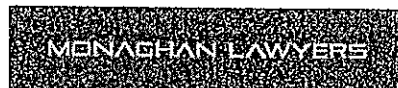
DAVID RICHARD HAWES

GLENSIDE GROUP (QLD) PTY LTD
ACN 144 620 093

GLENSIDE GROUP PTY LTD
ACN 003 515 893

LOT 111 PTY LTD
ACN 106 102 005

GREEN SQUARE PROPERTY DEVELOPMENT CORPORATION
PTY LTD
ACN 104 248 053



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

This **DEED OF VARIATION** is made the 21st day of OCTOBER 2010

PARTIES:

LM Investment Management Limited ACN 077 208 461
as trustee for the LM Managed Performance Fund
("Lender")

Peregian Beach Pty Ltd
ACN 127 412 864
("Borrower")

David Richard Hawes

Glenside Group (Qld) Pty Ltd
ACN 144 620 093

Lot 111 Pty Ltd
ACN 106 102 005

Green Square Property Development Corporation Pty Ltd
ACN 104 248 053
("Guarantor")

Glenside Group Pty Ltd
ACN 003 515 893

BACKGROUND:

- A. The Lender at the request of the Guarantor agreed to lend certain monies to the Borrower on the terms of the Loan Agreement;
- B. The Guarantor has provided the Guarantee and the Security Providers have provided the Security in support of the Borrower's obligations under the Loan Agreement;
- C. The Borrower and the Security Provider have requested the Lender to consent to an amendment of the Loan Agreement;
- D. The Lender has agreed to the requested amendment on the terms of this Deed.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising, whether present or future, fixed or unascertained, actual or contingent, known or unknown and whether at law, in equity, under statute or otherwise.

Custody Deed means the custody Deed between the Lender and LM dated 4 February 1999.

Effective Date means the date of this Deed.

Facility means the loan facility and security arrangement recorded in and evidenced by the Loan Agreement and the Security and every other document between the Lender, the Borrower and any Guarantor relating to or incidental to the facility that is provided under the Loan Agreement and the Security.

Fund means the LM Managed Performance Fund.

Guarantee means the Deed of Guarantee and Indemnity provided by David Richard Hawes, Glenside Group (Qld) Pty Ltd ACN 144 620 093, Lot 111 Pty Ltd ACN 106 102 005 and Green Square Property Development Corporation Pty Ltd ACN 104 248 053 dated 29 June 2010.

Liabilities means all liabilities, debts, costs, expenses or obligations, whether actual or contingent, present or future, quantified or unquantified.

Loan Agreement means the Loan Agreement dated 29 June 2010 (as amended from time to time) between Peregian Beach Pty Ltd (as Borrower), LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund under which the Lender agreed to loan an amount of \$6,000,000.00 to the Borrower.

Loss means all loss, Liabilities, damages, costs, expenses, claims, demands, suits, actions and causes of actions, including attorneys' fees, other professionals' and experts' fees, and court or arbitration costs.

Peregian Security means the:-

- (a) Fixed and Floating Charge No. 2010141 over Peregian Beach Pty Ltd ACN 127 412 864
- (b) Fixed and Floating Charge No. 2010143 over Glenside Group (Qld) Pty Ltd ACN 144 620 093
- (b) Deed of Guarantee and Indemnity by David Richard Hawes, Glenside Group (Qld) Pty Ltd ACN 144 620 093, Lot 111 Pty Ltd ACN 106 102 005 and Green Square Property Development Corporation Pty Ltd ACN 104248 053 dated 29 June 2010

Schedule 1 means Schedule 1 to this Deed of Variation.

Security means the security that is described in Schedule 1 and the other security that is intended to secure the Borrower's obligations under the Loan Agreement.

Security Providers means each Guarantor, Glenside Group Pty Ltd ACN 003 515 893 and any other party who has provided a Security in support of the Borrower's obligations under the Loan Agreement and where the context permits includes any one or more of them.

Words and expressions which are defined in the Loan Agreement have the same meanings when used in this Deed.

1.2 Interpretation

Reference to:-

- (i) one gender includes the others;
- (ii) the singular includes the plural and the plural includes the singular;
- (iii) a person includes a body corporate; and
- (iv) a party includes the party's executors, administrators, successors and permitted assigns.

Headings are for convenience only and do not form part of this Deed or affect its interpretation.

Terms defined in the Loan Agreement have a corresponding meaning when used in this Deed.

1.3 Parties:-

- (a) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (b) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (c) A party which is a trustee is bound both personally and in its capacity as a trustee.

2. CONDITIONS PRECEDENT

2.1 This Deed of Variation is subject to and conditional upon:-

- (a) the Lender being satisfied in its sole and absolute discretion with the results of their enquiries and searches in relation to the Borrower, the Security Provider and the Security;
- (b) this Deed of Variation and all supplementary documentation that the Lender requires being provided in support of this Deed being executed by the relevant parties.

3. VARIATION OF LOAN DEED

- 3.1 Subject to clause 2, the Loan Agreement is amended with effect as and from the Effective Date to read as set out in Annexure "A".

4. REPRESENTATIONS, WARRANTIES AND EVENTS OF DEFAULT

- 4.1 The Borrower and the Security Provider hereby represent and warrant to the Lender that no Event of Default or Potential Event of Default subsists under the Loan Agreement or the Peregrin Security or will result from clause 3.1 taking effect.
- 4.2 The Borrower and the Security Provider hereby confirm and repeat each of the representations and warranties made by them in the Loan Agreement and the Security with reference to the facts and circumstances subsisting as at the date of this Deed.

5. GENERAL CONFIRMATIONS AND RATIFICATIONS

5.1 The Borrower and the Security Provider hereby unconditionally and irrevocably:-

- (a) ratify and confirm to the Lender their continuing obligations under the Loan Agreement, the Guarantee and the Security to which they are a party as supplemented or amended by this Deed; and
- (b) acknowledge and agree that the provisions of the Loan Agreement (as amended by this Deed), the Guarantee and the Security shall in all respects remain in full force and effect and continue to apply.

5.2 The Borrower and the Security Provider confirm and acknowledge that:-

- (c) they have not executed the Loan Agreement, the Guarantee, the Security or this Deed (to which they are a party) as a result of any dealings, promise, representation, warranty, statement or information of any kind given or offered by or on behalf of the

Lender or any officer or employee of the Lender whether in answer to an enquiry by or on behalf of the Borrower or the Guarantor or not;

- (d) they have not, and will not in future, rely on any promise, representation, statement, information or dealings with the Lender or any officer or employee of the Lender unless it has been produced in writing;
- (e) any promise, representation, statement, information or dealings made by any officer or employee of the Lender (even if in writing) is subject to formal approval by the Lenders investment approval committee and cannot be relied upon; and
- (f) any broker or other person that introduces the Borrower or the Guarantor to the Lender or arranges or negotiates the Loan with the Lender:-
 - (i) is not acting as the broker or agent or in any capacity for the Lender and is acting solely in its capacity as broker or agent for the Borrower or the Guarantor;
 - (ii) has no authority to buy or in any way act on behalf of or make any statements or representations on behalf of the Lender. The Borrower and the Guarantor will not rely on any actual statement by the broker that purports to bind the Lender.

6. RELEASE

- 6.1 With effect from the date of this Deed, the Borrower and each Security Provider releases and forever discharges and indemnifies the Lender from all action, suites, Claims, demands, costs, liabilities and/or Loss of any nature whatsoever which they now or at any time may have, or, but for the execution of the Deed, could or might have had, against the Lender and the any of their respective officers, agents, representatives or employees, in connection with or incidental to the Facility and the Security.

7. FURTHER ASSURANCES

- 7.1 The Borrower and the Security Provider shall immediately on demand by the Lender at the entire cost and expense of the Borrower and the Security Provider make, execute, do, perform and provide all such further acts, Deeds, assurances, contracts, deeds, documents, guarantees, indemnities, instruments, matters and things as the Lender shall require to perfect or improve the rights and powers afforded or created or intended to be a afforded or created by this Deed or any of the documents or transactions contemplated in this Deed.

8. SEVERABILITY

- 8.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

9. ENTIRE DEED

- 9.1 This Deed, read together with the Loan Agreement and Security constitutes the full and entire Deed between the parties with respect to the subject matter of it and prevails over all prior negotiations, proposals and Deeds whether oral or written.

10. COSTS

- 10.1 The Borrower must pay the Lender's costs of preparing, executing and stamping this Deed.

11. RECITALS

- 11.1 The recitals form part of this Deed and are binding on the parties.

12. COUNTERPARTS

- 12.1 This Deed may be executed in any number of counterparts (including by way of facsimile) and all such counterparts taken together shall constitute one and the same instrument.

13. GOVERNING LAW AND JURISDICTION

- 13.1 The law of Queensland governs this Deed.
- 13.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

14. LM INVESTMENT MANAGEMENT LIMITED LIMITATION OF LIABILITY

- 14.1 Lender – the Lender enters into this Deed, the Loan Agreement and each other Security and the other parties to this Deed acknowledge that they are aware that the Lender enters into this Deed, the Loan Agreement and each other Security only, in its capacity as the as Custodian of the Fund's Trust Deed and the other parties to this Deed are aware of the limited scope of the Lender's obligations and powers under the Fund's Trust Deed.
- 14.2 Liability Limited - A liability arising under or in connection with this Deed is limited to and can be enforced against the Lender only to the extent to which it can be satisfied out of the property of the Fund out of which the Lender is actually indemnified for the particular liability. This limitation of the Lender's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Lender in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.
- 14.3 No Right to Appoint or Prove - The parties to this Deed other than the Lender may not sue the Lender personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Lender or prove in any liquidation, administration or arrangement of, or affecting, the Lender.
- 14.4 Limit of Liability Not to Apply - The provisions of this clause 14 do not apply to any obligation or liability of the Lender to the extent that it is not satisfied because under the Fund's Trust Deed or other constituent documents, or by operation of law, there is a reduction in the extent of the Lender's indemnification out of the assets of the Fund, as a result of the Lender's fraud, negligence or wilful default.
- 14.5 Inconsistency with the Fund's Trust Deed - Any failure by the Lender to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the the Fund's Trust Deed will not amount to a breach of or a default under this Deed. the Lender'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 the Fund's Trust Deed is final and binding on all parties.
- 14.6 Future Limitations - the Lender is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Lender's liability is limited in the manner satisfactory to the Lender in its absolute discretion.

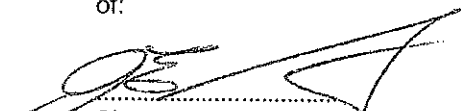
- 14.7 Agents - No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed, the Deed of Cross Collateralisation and each other Security (if any) or otherwise has authority to act on behalf of the Lender in a way which exposes the Lender to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Lender for the purpose of clause 14.4.
- 14.8 Failure by the Lender - A failure by the Lender to comply with, or a breach by the Lender of any of its obligations under this Deed and each other Security (if any) will not be considered to be fraud, negligence or wilful default by the Lender if the relevant failure or breach:
- (a) arose as a result of a breach by a person other than the Lender where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Lender performing the said obligation; or
 - (b) was in accordance with a lawful court order or direction or otherwise required by law.
- 14.9 Override Provision - All of the terms, clauses and conditions of this Deed are subject to this clause 14.

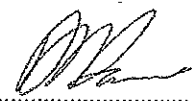
SCHEDULE 1

1. Mortgage No. AB586774P given by Green Square Property Development Corporation Pty Ltd;
2. Mortgage No. AB831157C given by Lot 111 Pty Ltd;
3. Fixed and Floating Charge No. 1301177 over Lot 111 Pty Ltd;
4. Fixed and Floating Charge No. 1301176 over Glenside Group Pty Ltd;
5. Fixed and Floating Charge No. 2010141 over Peregrine Beach Pty Ltd ACN 127 412 864;
6. Fixed and Floating Charge No. 1171133 over Green Square Property Development Corporation Pty Ltd.
7. Fixed and Floating Charge No. 2010143 over Glenside Group (Qld) Pty Ltd;
8. Deed of Guarantee and Indemnity by David Hawes dated 02.06.2005;
9. Deed of Guarantee and Indemnity by David Richard Hawes, Glenside Group Pty Ltd and Green Square Property Development Corporation Pty Ltd dated 2 June, 2005;
10. Deed of Guarantee and Indemnity by David Richard Hawes, Glenside Group (Qld) Pty Ltd ACN 144 620 093, Lot 111 Pty Ltd ACN 106 102 005 and Green Square Property Development Corporation Pty Ltd ACN 104248 053 dated 29 June 2010
11. Deed of Cross Collateralisation dated 08.06.2005 between Green Square Property Development Corporation Pty Ltd, Lot 111 Pty Ltd (as Borrower), David Hawes and Glenside Group Pty Ltd (Guarantors) and LM Investment Management Limited (Lender).

EXECUTED as a Deed on

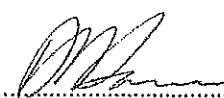
SIGNED SEALED AND DELIVERED by
DAVID RICHARD HAWES in the presence
of:


Signature of Witness

) 
)
)
)

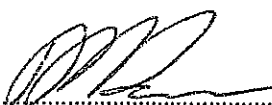
.....
Solicitor/Justice of the Peace

EXECUTED by GLENSIDE GROUP (QLD)
PTY LTD ACN 144 620 093
in accordance with section 127 of the
Corporations Act 2001 (Cth):

) 
)
) Sole Director – Signature
)

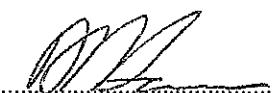
.....
DAVID HAWES
Print full name

EXECUTED by GLENSIDE GROUP PTY
LTD ACN 003 515 893
in accordance with section 127 of the
Corporations Act 2001 (Cth):

) 
)
) Sole Director – Signature
)

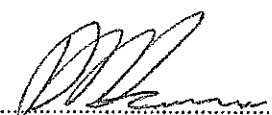
.....
DAVID HAWES
Print full name

EXECUTED by LOT 111 PTY LTD ACN
106 102 005 in accordance with section 127
of the Corporations Act 2001 (Cth):

) 
)
) Sole Director – Signature
)

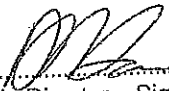
.....
DAVID HAWES
Print full name

EXECUTED by GREEN SQUARE
PROPERTY DEVELOPMENT
CORPORATION PTY LTD ACN 104 248
053 in accordance with section 127 of the
Corporations Act 2001 (Cth):

) 
)
) Sole Director – Signature
)

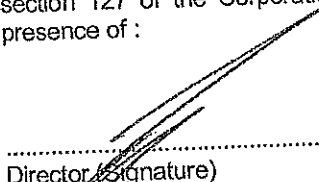
.....
DAVID HAWES
Print full name

EXECUTED by PEREGIAN BEACH PTY
LTD ACN 127 412 864 in accordance with
section 127 of the Corporations Act 2001
(Cth):

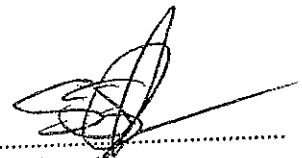

Sole Director – Signature

DAVID JAMES
Print full name

EXECUTED by LM INVESTMENT MANAGEMENT
LIMITED ACN 077 208 461 as Trustee for the LM
MANAGED PERFORMANCE FUND in accordance with
section 127 of the Corporations Act 2001 (Cth) in the
presence of :


Director (Signature)

RICHARD VAN DER HOUWEN
Full name


Director/ Secretary

SIMON JEREMY TICKNELL
Full name

SOLICITOR'S CERTIFICATE (BORROWER)

I
of

Solicitors **CERTIFY** to **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 AS TRUSTEE FOR THE LM MANAGED PERFORMANCE FUND** as follows:

1. I am a Solicitor holding a current practising certificate and I act for Peregrine Beach Pty Ltd ACN 127 412 864, the Borrower;
2. That before the Borrower executed this Deed of Variation, I fully explained the contents and nature and effect of same to the Borrower or the Directors of the Borrower and each of them who were, in my opinion, aware of and fully understood the nature and effect of the terms of the Deed of Variation and the Borrower's obligations under and pursuant to the Deed of Variation;
3. The Borrower stated to me that the Borrower understood the nature and effect of the terms of the Deed of Variation and to the best of my knowledge and belief, that statement is true; and
4. The Borrower voluntarily executed the Deed of Variation in my presence.

DATED this day of October 2010

Signed:

(Signature of certifying Solicitor)

FULL NAME OF SOLICITOR
TO BE PRINTED:

FULL NAME AND ADDRESS OF LEGAL FIRM:

1

Solicitors CERTIFY to LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 AS TRUSTEE FOR THE LM MANAGED PERFORMANCE FUND as follows:

- DATED** this day of October 2010

(Signature of certifying Solicitor)

FULL NAME AND ADDRESS OF LEGAL FIRM:

1

Solicitors CERTIFY to LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 AS TRUSTEE FOR THE LM MANAGED PERFORMANCE FUND as follows:

- DATED** this day of October 2010

(Signature of certifying Solicitor)

FULL NAME AND ADDRESS OF LEGAL FIRM:

SOLICITOR'S CERTIFICATE (GUARANTOR)

I
of

Solicitors **CERTIFY** to **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 AS TRUSTEE FOR THE LM MANAGED PERFORMANCE FUND** as follows:

1. I am a Solicitor holding a current practising certificate and I act for Lot 111 Pty Ltd ACN 106 102 005, the Guarantor;
2. That before the Guarantor executed this Deed of Variation, I fully explained the contents and nature and effect of same to the Guarantor or the Directors of the Guarantor and each of them who were, in my opinion, aware of and fully understood the nature and effect of the terms of the Deed of Variation and the Guarantor's obligations under and pursuant to the Deed of Variation;
3. The Guarantor stated to me that the Guarantor understood the nature and effect of the terms of the Deed of Variation and to the best of my knowledge and belief, that statement is true; and
4. The Guarantor voluntarily executed the Deed of Variation in my presence.
5. I do not act for the Borrower in this transaction.

DATED this day of October 2010

Signed:

(Signature of certifying Solicitor)

FULL NAME OF SOLICITOR
TO BE PRINTED:

FULL NAME AND ADDRESS OF LEGAL FIRM:

SOLICITOR'S CERTIFICATE (GUARANTOR)

I
of

Solicitors **CERTIFY** to **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 AS TRUSTEE FOR THE LM MANAGED PERFORMANCE FUND** as follows:

1. I am a Solicitor holding a current practising certificate and I act for Green Square Property Development Corporation Pty Ltd ACN 104 248 053, the Guarantor;
2. That before the Guarantor executed this Deed of Variation, I fully explained the contents and nature and effect of same to the Guarantor or the Directors of the Guarantor and each of them who were, in my opinion, aware of and fully understood the nature and effect of the terms of the Deed of Variation and the Guarantor's obligations under and pursuant to the Deed of Variation;
3. The Guarantor stated to me that the Guarantor understood the nature and effect of the terms of the Deed of Variation and to the best of my knowledge and belief, that statement is true; and
4. The Guarantor voluntarily executed the Deed of Variation in my presence.
5. I do not act for the Borrower in this transaction.

DATED this day of October 2010

Signed:

(Signature of certifying Solicitor)

FULL NAME OF SOLICITOR
TO BE PRINTED:

FULL NAME AND ADDRESS OF LEGAL FIRM:

SOLICITOR'S CERTIFICATE (GUARANTOR)

I
of

Solicitors **CERTIFY** to **LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 AS TRUSTEE FOR THE LM MANAGED PERFORMANCE FUND** as follows:

1. I am a Solicitor holding a current practising certificate and I act for Glenside Group Pty Ltd ACN 003 515 893 the Guarantor;
2. That before the Guarantor executed this Deed of Variation, I fully explained the contents and nature and effect of same to the Guarantor or the Directors of the Guarantor and each of them who were, in my opinion, aware of and fully understood the nature and effect of the terms of the Deed of Variation and the Guarantor's obligations under and pursuant to the Deed of Variation;
3. The Guarantor stated to me that the Guarantor understood the nature and effect of the terms of the Deed of Variation and to the best of my knowledge and belief, that statement is true; and
4. The Guarantor voluntarily executed the Deed of Variation in my presence.
5. I do not act for the Borrower in this transaction.

DATED this day of October 2010

Signed:

(Signature of certifying Solicitor)

FULL NAME OF SOLICITOR
TO BE PRINTED:

FULL NAME AND ADDRESS OF LEGAL FIRM:

ANNEXURE 'A'
LOAN DEED

Peregian Beach Pty Ltd ACN 127 412 864
("Borrower")

and

LM Investment Management Limited ACN 077 208 461
as trustee for the LM Managed Performance Fund
("Lender")

Loan Agreement

LM INVESTMENT MANAGEMENT LTD
Level 4,
9 Beach Road
Surfers Paradise Qld 4217

Ph: 07 5584 4500
Fax: 07 5592 2505

THIS AGREEMENT is made on the date stipulated in Item 1

BETWEEN: LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund ("Lender")

AND: The party described in Item 2 ("the Borrower")

AGREEMENT

- A. The Lender has, at the Borrower's request, agreed to lend and advance to the Borrower the Loan Amount on the conditions, among others, that the Borrower execute this Agreement.
- B. The Lender is the trustee for the Managed Performance.

THE PARTIES AGREE

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

- (o) **"Agreement"** means this agreement and includes the Security.
- (p) **"Business Day"** means a day other than Saturday, Sunday or other day on which the Lender or trading banks generally are closed or obliged to close in Brisbane.
- (q) **"Consumer Credit Legislation"** means the Consumer Credit Code or the earlier Credit Acts.
- (r) **"Contract Date"** means the date of the Contract between the Borrower as Purchaser and Stockland North Lakes Pty Ltd as Vendor for the sale to the Borrower of the Land;
- (s) **"Date for Repayment"** means that date specified in Item 5.
- (t) **"DDR Authority"** means the Direct Debit Request, periodic payment authority or periodic debt/credit authority relating to the DDR System.
- (u) **"DDR System"** means any process by which the Borrower, at the request of the Lender, authorises the deduction of instalments of principal and/or interest payable by the Borrower to the Lender in accordance with this Agreement from the Borrower's bank account.
- (v) **"DA"** means a Development Approval for a material change of use to permit the use of the property for apartments (ninety three (93) dwelling units/hectare) and shop 300m2 GFA or such other number and dimensions as approved by the Lender in writing on terms satisfactory to the Lender.
- (w) **"Development Approval"** means a development approval as that term is defined in the *Sustainable Planning Act, 2009* (Qld);
- (x) **"Development Management Agreement"** means the agreement between the Borrower and Glenside Group (Qld) Pty Ltd contained in a letter dated 28 June, 2010 from the Borrower to Glenside Group (Qld) Pty Ltd which was accepted by Glenside Group (Qld) Pty Ltd or such other document or agreement that the Lender and the Borrower agree in writing to be a development management agreement for the purposes of this Loan Agreement.
- (y) **"Development Management Fees"** means fees that are payable by the Borrower to the Development Manager under the Development Management Agreement.

- (z) **"Event of Default"** means any of the events of default described as such in this Agreement (including the events of default described in **clause 7.1**).
- (aa) **"Facility to Security Ratio"** means the maximum acceptable ratio between the Money Secured and the GST exclusive value of the Principal Security as determined by the Lender in its absolute discretion and expressed as a percentage as specified in **Item 13**.
- (bb) **"Fund"** means the LM Managed Performance Fund.
- (cc) **"Guarantor"** means jointly and severally each person described in **Item 12** and any other person who may from time to time guarantee the payment of the Money Secured.
- (dd) **"Higher Rate"** means the rate of interest stipulated in **Item 6**.
- (ee) **"Land"** means the land described as Lot 26 on Survey Plan 224073 comprised in the reference 50780250 County Stanley, Parish Redcliffe.
- (ff) **"Liquidated Damages"** has the meaning as defined in **clause 4.10**.
- (gg) **"Lower Rate"** means the rate of interest stipulated in **Item 7**. If no rate is stipulated the rate shall be deemed to be the same as the Higher Rate;
- (hh) **"Loan Amount"** means that sum specified in **Item 4** and includes all further advances or re-advances, if any, under this Agreement.
- (ii) **"Money Secured"** includes:
 - (a) the Loan Amount;
 - (b) all moneys deemed to be principal in arrears;
 - (c) all money now or in the future owing or payable to the Lender by the Borrower or the Security Provider either alone or jointly with another person, whether directly or indirectly or contingently under this Agreement, a Security, or on any other account whatsoever, and including without limitation 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 Lender against the Borrower or the Security Provider in respect of the Money Secured;
 - (iv) all costs, expenses or losses, including liquidated damages, incurred or sustained by the Lender in relation to any failure by the Borrower or the Security Provider to comply with the terms of the Security; and
 - (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 Lender in its absolute discretion to for or on account of or at the expressed or implied request of the Borrower or the Security Provider;
 - (d) postage, commissions, valuation fees, fees, costs, charges and expenses relating to the advance hereunder and the Security, according to the usage and course of business of the Lender or payable by the Borrower and/or any Security Provider under any Security;

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

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

- (jj) **"month"** means a calendar month.
- (kk) **"Mortgagor"** means any and every party to any Security, other than the Lender.
- (ll) **"person"** includes a company or other incorporated body.
- (mm) **"Plan of Sub-division"** means a plan of subdivision subdividing the land that is acceptable to the Lender in its sole and absolute discretion.
- (nn) **"Principal Security"** means the property referred to in **Item 10**.
- (oo) **"Purpose"** means the funding to assist with the acquisition of the Land, including to pay the deposit (or an amount not exceeding \$80,000) in respect of the SPA, the payment of Development Management Fees and to fund costs and outlays that are associated with obtaining a DA.
- (pp) **"Receiver"** means and includes receiver or receiver and manager.
- (qq) **"Sector Plan"** means that has been approved by the Moreton Bay Regional Council in accordance with the Mango Hill Infrastructure Development Control Plan.

- (rr) **"Security"** means each and every document, agreement or other security provided 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 Lender, which may be executed or provided by the Security Provider or any other person (including this Agreement, those documents described in **Item 9** and any additional security provided in accordance with **clause 5.1(c)**).
- (ss) **"Security Provider"** means each and every party to or provider of the Security including the Borrower, the Mortgagor and the Guarantor, but not including the Lender;
- (tt) **"SPA"** means the sale and purchase agreement between the Borrower (as buyer) and Stockland North Lakes Pty Ltd ACN 068 244 762 (as seller) in respect of the Land.
- (uu) **"Valuer"** means such person (having the appropriate qualifications, accreditation and experience relating to properties similar to the Principal Security) appointed by the Lender as its valuer for the purposes of this Agreement.

1.2 Interpretation

In this Agreement unless the context requires otherwise:

- (a) words importing:
- (b) the singular include the plural and vice versa; and
- (c) one gender shall include all other genders.
- (d) references to persons or individuals shall include corporations and partnerships and vice versa;
- (e) references to clauses are references to clauses of this Agreement and references to sub-clauses are references to sub-clauses of this Agreement;
- (f) references to this Agreement and any deed, agreement or instrument shall be deemed to include references to this Agreement or such other deed agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) references to any party to this Agreement shall include its successors or permitted assigns;
- (h) references to an Item shall mean an Item in the Schedule hereto;
- (i) where there are two or more persons in a party each are bound jointly and severally;
- (j) reference to any legislation or to any section or provision thereof shall include any statutory modification or re-enactment thereof or any statutory provision substituted therefor and ordinances by-laws regulations and other statutory instruments issued thereunder; and
- (k) time shall be of the essence.

1.3 Business Days

If any act to be done hereunder or any payment to be made by any party under this Agreement shall be due to be done or paid on a day which is not a Business Day, the time and day for such act or payment shall be by 2.00 p.m. local time in the place where the act is to be done or the payment made on the Business Day immediately following such day.

1.4 Headings

Headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

1.5 Payments

Any payments required to be made by the Borrower to the Lender shall at the Lender's discretion be deemed not to have been made until the moneys are actually received by the Lender as cleared funds.

2. ADVANCE

2.1 Lender's discretion

The Lender may, in its sole discretion on the terms and conditions set out in this Agreement:

- (a) lend and advance to the Borrower the Loan Amount for the Purpose; or
- (b) permit the Borrower to draw down the Loan Amount by two or more draw downs which total the Loan Amount, for the Purpose on such terms and conditions as the Lender may otherwise advise.

2.2 Conditions Precedent to all advances

Prior to electing whether or not to exercise its discretion under **clause 2.1** to advance the Loan Amount or any part of it, the Borrower must first deliver to the Lender, in a form and in substance satisfactory to the Lender:

- (a) where the Borrower or the Security Provider is a corporation, a certified copy of the following:
- (b) the certificate of registration or incorporation;
- (c) an extract of the minutes of a meeting of the board of directors which evidences the resolutions authorising the signing and delivery of an observance of obligations under the Security to which it is a party, and the appointment of an authorised representative and such other resolutions as may be required by the Lender;
- (d) each instrument which evidences any other necessary corporate or other action in connection with the Security;
- (e) where the Borrower or the Security Provider is a trustee of any trust, a certified copy of the following:
- (f) the instruments creating or varying such Trust;
- (g) an extract of the minutes of a meeting of the trustee which evidences the resolutions authorising the signing and delivery of an observance of obligations under the Security to which it is a party, and the appointment of an authorised representative of the Trust and such other resolutions as may be required by the Lender; and
- (h) each instrument which evidences any other necessary corporate or other action in connection with the Security;
- (i) a certified copy of each authorisation necessary to enter into, observe obligations under and enforce the Security (including without limitation, the approval from the Foreign Investment Review Board (if necessary));
- (j) a certified copy of each Power of Attorney under which a person signs and delivers the Security for the Borrower or the Security Provider and if required by the Lender, evidence of its stamping and registration and a declaration of non revocation of such Power of Attorney;
- (k) a certified copy of any licences, leases or tenancy agreements effecting the Security;

- (l) a certificate of currency of a policy (or policies) of insurance for the full insurable value of all lots, buildings and improvements and covering such other risks (including public liability insurance cover for an amount of not less than \$20,000,000.00, or such other amount as the Lender may require, for each and every event or claim) and such other insurances as may be required by the Lender in respect of the Security for such amount or amounts as the Lender may determine from time to time, noting the interests of the Lender as first mortgagee;
- (m) strata insurance for the full replacement cost of buildings, common property and machinery;
- (n) key man life insurance on the lives of each Borrower, Mortgagor, Guarantor and/or other persons as may be required by the RE.
- (o) The Borrower and/or the Security Provider shall deliver the original policy of insurance or alternatively a certificate of currency of such insurance with the Lender's and RE's interests noted thereon together with receipted proof of payment of the premium for such insurance cover;
- (p) a fully completed and executed Direct Debit Request to enable operation of the DDR System in favour of the Lender or as otherwise directed by the Lender;
- (q) a valuation on terms satisfactory to the Lender in respect of the Principal Security;
- (r) this Agreement and each and every Security duly signed and delivered by the Borrower and/or the Security Provider and such other person as may be required to perfect the Security and, if required by the Lender, evidence of its stamping and registration.
- (s) such financial information for each Security Provider and Guarantor as the Lender determines, to enable the Lender to determine the financial status of those parties; and
- (t) such other information as the Lender determines.

2.3 Conditions Precedent to first advance

- (a) The first advance of the Loan Amount (or any part) is further conditional upon:
- (b) the first advance not exceeding \$80,000 or such higher amount as the Lender may approve in its absolute discretion;
- (b) the Lender having obtained satisfactory results from all searches and inquiries as it considers appropriate made in respect of the credit worthiness of the Borrower and the Security Provider;
- (c) the Lender being satisfied in its sole discretion with the terms and conditions of the SPA;
- (d) the Lender's legal advisers having obtained satisfactory results from all searches and inquiries made in respect of the real and/or personal property comprising the Security; and
- (f) the Lender's legal advisers certifying to the Lender in terms satisfactory to the Lender that it is in order for the Loan Amount to be advanced; and
- (g) the Lender having inspected the Principal Security and satisfying itself in relation to location, local market, tenancies, state of repair and presentation and such other issues as the Lender considers relevant.

2.4 Conditions precedent where an advance is to be used for Development Management Fees, the Lender:-

- (a) being satisfied in its sole and absolute discretion that the Development Management Fee is payable under the Development Management Agreement; and
- (b) is provided with a Tax Invoice from the Development Manager addressed to the Borrower in a form and content satisfactory to the Lender;

2.5 Conditions precedent where an advance is to be used to complete the SPA, the Lender:

- (a) receiving in form and substance satisfactory to it a mortgage over the Land and such other security as the Lender may require in its absolute discretion; and
- (b) being satisfied in its sole discretion with its due diligence enquiries in respect of the Land including searches, the feasibility, and such other matters as the Lender may in its absolute discretion require;
- (c) being satisfied that the Registrar within the meaning of the *Land Sales Act 1984*, has granted to the Borrower an exception from compliance with Sections 8,9, 10 and 10A of that Act;
- (d) is satisfied that the Moreton Bay Council has approved amendments to the Sector Plan to enable apartments (ninety three (93) dwelling units/hectare) and shop 300m2 GFA or such other number and dimensions as approved by the Lender in writing on terms satisfactory to the Lender;
- (e) being provided with a copy of the DA in a form which is satisfactory to the Lender;
- (f) being provided with proof that the Plan of Sub-division has been registered with the Department of Environment and Resource Management.

2.6 Where an advance is to be used to fund costs associated with obtaining a DA, the Lender being provided with documentary evidence in support of the claim for the advance which is satisfactory to the Lender.

3. **Intentionally deleted.**

4. REPAYMENT

4.1 The Borrower will pay to the Lender the total amount outstanding of the Money Secured on the date stipulated in **Item 5** or such other day as the Lender may advise the Borrower in writing.

4.2 Interest under this Agreement shall be calculated on the Money Secured or on so much thereof as remains outstanding and upon any judgment or order in which the liability of the Borrower under this Agreement may become merged at the Higher Rate in accordance with the provisions of this clause. Such interest shall be:

- (a) computed from the day on which the Lender makes the first advance on account of the Money Secured;
- (b) calculated and charged on the daily outstanding balances to the Borrower's account with the first such payment of interest being payable on the date set out in Item 8 on account of the Money Secured with subsequent payments being due and payable on the days referred to in Item 8 whilst the Money Secured or part thereof remains outstanding;
- (c) provided no Event of Default is outstanding, interest may be, at the discretion of the Lender, capitalised and the amount capitalised added to the Loan Amount provided that neither the Loan Amount nor the Facility to Security Ratio are exceeded; and
- (d) in the event of default in payment such interest shall be added to the Money Secured and thereafter such capitalised interest shall bear interest at the Higher Rate determined in accordance with this clause.

4.3 Provided that:

- (a) the Borrower shall on every day on which interest is payable under this Agreement pay to the Lender interest on the Money Secured or so much thereof as shall from time to time remain unpaid under this Agreement at the Lower Rate; and
- (b) all the terms, covenants and conditions contained in and implied by any Security are duly observed and performed;

- (c) In the event of default in payment such interest shall be added to the Money Secured and thereafter such capitalised interest shall bear interest at the Higher Rate determined in accordance with this clause.

then the Lender shall accept payment of the interest calculated and charged at the Lower Rate for every such instalment of interest payable under this Agreement.

then the Lender shall accept payment of the interest calculated and charged at the Lower Rate for every such instalment of interest payable under this Agreement.

- 4.4 During the term the Lender will conduct reviews of the Interest rate (the first review to be conducted on the twelve month anniversary of the date of this deed and other reviews regularly thereafter). Following reviews occurring, the Lender may on 30 days written notice to the Borrower, elect to vary the interest rate.
- 4.5 If the Lender shall at any time obtain judgment for all or any of the Money Secured such judgment shall until satisfied bear interest at the Higher Rate.
- 4.6 The Borrower shall repay to the Lender the interest instalments in such amount specified in Item 8 (being inclusive of the fees referred to in clause 4.8 hereof). Such payments shall unless the Lender agrees to capitalise interest, be made through the DDR System or as otherwise stipulated by the Lender from time to time by notice in writing to the Borrower.
- 4.7 The Borrower shall establish and maintain for so long as there exists any outstanding Money Secured a DDR Authority and execute and deliver to the Lender such documentation as the Lender reasonably requires from time to time authorising payment under the DDR System to such bank and bank account as nominated by the Lender from time to time.
- 4.8 The Borrower may at any time on giving to the Lender one month's written notice, repay the whole or any part of the Money Secured outstanding at the expiry of such notice provided that the Borrower's right to make such repayment, shall be conditional upon payment by the Borrower to the Lender of the following amount(s) in addition to any other moneys payable under this Agreement a sum equivalent to:
 - (a) one month's interest on the amount repaid then outstanding calculated at the Lower Rate of interest; and
 - (b) if such notice shall expire within 3 months from the date on which the Loan Amount (or part thereof) is advanced under this Agreement, 3 months interest on the amount repaid calculated at the Higher Rate of interest less any interest paid in accordance with clause 4.6;

provided always that if an Event of Default is subsisting at the time of repayment then the Lender (in addition to all other amounts which it would be entitled to recover) will be entitled to receive payment of an additional amount equivalent to one months interest on the amount proposed to be repaid calculated at the Higher Rate.

- 4.9 The Borrower agrees with the Lender that it may not be permitted to voluntarily make greater repayments, instalments or further payments save as expressly permitted or required by this Agreement but subject always to clause 4.8.
- 4.10 The Borrower agrees with the Lender that:
 - (a) it is a fundamental basis of this Agreement, without which the Lender would not have advanced to the Borrower the Loan Amount, that no Event of Default is to occur;
 - (b) in the event that an Event of Default does occur the Lender will suffer significant loss and damages in that:
 - (i) an Event of Default will cause the Lender to suffer loss and damages by reason of any reduction in the confidence of investors in the return to be derived from the Trust;

- (ii) an Event of Default will cause the Lender to suffer loss and damages by reason of any reduction in the investments made in the Trust as a consequence thereof;
- (iii) an Event of Default will cause the Lender to suffer loss and damages by reason of any perceived change in the risk profile of the Trust within the financial markets and amongst persons responsible for advising investors regarding the investment of funds;
- (iv) an Event of Default will cause the Lender to suffer loss and damages both under this Agreement and by reference to the return to be derived from the pool of funds and chooses in action held by the Trust;
- (v) an Event of Default will cause the Lender to suffer loss and damages by reason of any inability on the part of the Lender to re-advance monies which are received by the Lender from the Borrower earlier than the dates for repayment provided for by this Agreement.

- 4.11 In the event of an Event of Default the Borrower shall pay and the Lender shall be entitled to an amount by way of liquidated damages.
- 4.12 The liquidated damages referred to in clause 4.11 are difficult to estimate but that an amount equal to five percent (5%) of the Money Secured (the "Liquidated Damages") is agreed to be a genuine pre-estimate of the loss and damages which will be suffered by the Lender.

5. SECURITY

- 5.1 The obligations of the Lender under this Agreement are subject to and conditional upon the Borrower and/or the Security Provider:
- (a) providing the Security specified in Item 9 in such form and containing such provisions as are satisfactory to the Lender;
 - (b) maintaining the Security for so long as any Money Secured is outstanding; and
 - (c) as and when required by the Lender, causing to be entered into and executed in favour of the Lender, any such securities, instruments, deeds and/or agreements in writing as the Lender shall require and may immediately after the execution of such additional security deliver to the Lender such documents together with all such other instruments and do or cause to be done such further acts or things as may be necessary for the additional security to be duly registered in such registry or registries as the Lender shall require. The document or documents referred to herein shall be prepared by the solicitors for the Lender and shall contain all such covenants terms conditions and provisos as the Lender may require.
- 5.2 The Borrower acknowledges that the Security is charged with payment of the Money Secured.
- 5.3 All of the covenants conditions terms stipulations and provisos contained in the Security to be observed performed and fulfilled by the Borrower and / or the Security Provider and all the rights powers and remedies conferred upon the Lender under the Security shall with necessary changes be read into and form part of this Agreement in the same manner as if the same were fully set forth herein and vice versa.

- 5.4 (a) If at any time the Lender determines that the Facility to Security Ratio has been exceeded then the Lender may by notice in writing to the Borrower require the Borrower, within seven days of the date of service of such notice either (at the option of the Lender):
- (i) to reduce the Money Secured by paying to the Lender such amount as the Lender determines is required to restore the Facility to Security Ratio; or
 - (ii) to provide further or additional security to the Lender's satisfaction ("the further security") of such a value as would restore the Facility to Security Ratio.
- (b) the Borrower covenants and agrees with the Lender that:
- (i) for the purpose of determining the value of the Principal Security, the Borrower will permit the Lender or any person authorised by the Lender (including specifically the Valuer), to enter upon any property the subject of the Principal Security at all reasonable times or upon two day's notice to inspect the state and condition of the property for the purpose of valuing or revaluing the same; and
 - (ii) the Lender shall be entitled to revalue the property, the subject of the Principal Security, annually at the expense of the Borrower during the term of the facility.
- (c) pending compliance by the Borrower with the terms of any notice pursuant to clause 5.4(a), the Lender shall not be required to make any further advances to the Borrower. In the event that the Borrower does not fully comply with the terms of any such notice then:
- (i) the Borrower shall have committed an Event of Default under this Agreement; and
 - (ii) the Lender shall be entitled to exercise the discretions, powers, rights and remedies conferred on the Lender by this Agreement and/or the Security.
- 5.5 The Borrower and the Lender may by mutual agreement from time to time vary the Security for this facility by releasing all or any of the Security in whole or in part and the taking of such further Security or the variation of any of the terms and conditions of this Agreement as may be agreed upon by the parties.

6. CONTINUING SECURITY

- 6.1 This Agreement 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 Lender shall be under no further obligation whatsoever to advance moneys under the Security and all moneys payable by the Borrower and/or the Security Provider under the Security have been paid or recovered in full and the Lender has executed a full release hereof.

7. EVENTS OF DEFAULT

- 7.1 The Borrower shall at the option of the Lender 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 Borrower and/or the Security Provider fails or neglects to pay on the due date for payment any part of the Money Secured, or any interest or other moneys payable at the time and in the manner provided by this Agreement or under any Security; or
 - (b) the Borrower and/or the Security Provider fails or neglects to observe or perform any of the covenants conditions or agreements contained in this Agreement or any Security; or
 - (c) where the Borrower and/or the Security Provider is an individual, any Borrower and/or the Security Provider:
 - (i) becomes of unsound mind or a person who is liable to be dealt with in any way under the law relating to mental health;
 - (ii) commits an act of bankruptcy or assigns his/her estate for the benefit of creditors;

- (iii) is presented with a petition for bankruptcy or sequestration of his/her respective estates;
 - (iv) convenes a meeting, or proposes, to enter into any arrangement or composition for the benefit of his/her creditors;
 - (v) has a trustee in bankruptcy appointed over any of his/her property;
 - (i) dies or becomes incapable of managing his/her own affairs; or
 - (vii) becomes bankrupt or enters into a composition, assignment or arrangement with creditors; or
- (d) where the Borrower and/or the Security Provider is a company:
- (i) an administrator, controller, liquidator, provisional liquidator or an inspector of that company is appointed;
 - (ii) if an application or petition is presented (and is not withdrawn, struck out or dismissed within seven (7) days of it being filed) or any order shall be made or any effective resolution shall be passed for the winding up or dissolution of that company;
 - (iii) an application shall be made to the Court under Section 411 of the Corporations Act 2001;
 - (iv) any arrangement or compromise shall be approved under Part 5.1 of the Corporations Act 2001;
 - (v) an event described in section 461 of the Corporations Act 2001 occurs; or
 - (vi) that company applies for, resolves to or is deregistered or struck off; or
- (e) a receiver and/or manager of any of the real or personal property of the Borrower and/or the Security Provider shall be appointed; or
- (f) any judgment which is obtained against the Borrower and/or the Security Provider is outstanding for more than fourteen days; or
- (g) any execution or distress is enforced or levied against any of the real or personal property of the Borrower and/or the Security Provider; or
- (h) the Borrower and/or the Security Provider ceases to carry on business or a substantial part of its business; or
- (i) the Borrower and/or the Security Provider is unable to pay its debts (including any wages and taxes in respect of its employees, group tax, superannuation levies and other taxes and charges) as and when they fall due for payment or becomes insolvent; or
- (j) the Borrower and/or the Security Provider in the reasonable opinion of the Lender suffers anything whereby the property of the Borrower and/or the Security Provider either real or personal may deteriorate or diminish or may become deteriorated or diminished whether wholly or partly in title estate value or quantity; or
- (k) the Borrower and/or the Security Provider shall mortgage, pledge, charge or otherwise encumber or sell or dispose of, or attempt or contract to sell or dispose of any of its land or property or assets without the previous consent in writing of the Lender; or
- (l) the Borrower and/or the Security Provider erects, causes or permits to be erected any building or other structure upon any land mortgaged in favour of the Lender and forming part of any Security without first obtaining the written consent of the Lender; or

- (m) default is made under any agreements other than the Security which are given by the Borrower and/or the Security Provider in their personal capacity or in their capacity as a trustee, or a partner of any partnership with or without any other person in favour of the Lender; or
- (n) in the case of the Borrower and/or the Security Provider being an incorporated body other than a company subject to the Corporations Act an administrator is appointed in respect of the Borrower and/or the Security Provider or any of the property of the Borrower and/or the Security Provider or proceedings or other steps are taken by the Borrower and/or the Security Provider or any other person for the winding up or dissolution or suspension of the Borrower and/or the Security Provider involving arrangements with creditors of the Borrower and/or the Security Provider; or
- (o) if the Borrower and/or the Security Provider breaches any undertaking at any time given to the Lender or its legal advisers or if any condition imposed by the Lender in agreeing to any matter (including any waiver) is not complied with or fulfilled or if any warranty or representation by the Borrower and/or the Security Provider to the Lender prior to or subsequent to the date hereof is untrue or false; or
- (p) if a change occurs in a circumstance which is warranted or taken to be warranted under this Agreement to exist in the business assets or financial condition of the Borrower and/or the Security Provider as the case may be which, in the reasonable opinion of the Lender, may have a material adverse effect on the ability of the Borrower and/or the Security Provider to observe or perform any of its obligations under this Agreement or any Security or on the rights of the Lender under any Security; or
- (q) if any other event occurs or circumstances arise which, in the reasonable opinion of the Lender, is likely to materially or adversely affect the ability of the Borrower and/or the Security Provider to observe and perform all or any of its obligations under this Agreement or otherwise to comply with the terms of this Agreement or any Security; or
- (r) if the Borrower and/or the Security Provider is a trustee, whether or not the fact is notified to the Lender, the Borrower ceases for any reason without the prior written consent of the Lender to be the sole trustee of any trust of which it is trustee or without the prior written consent of the Lender pays distributes or applies or advances any capital of such a trust or lends any amounts to any beneficiary of the trust fund of such trust or purchase units from any unit holder of such trust fund or breaches any terms of the trust deed of such trust; or
- (s) any other person liable for the payment of any part of the Money Secured to the Lender shall do or suffer any of the above; or
- (t) any Security becomes enforceable or is enforced; or
- (u) the Borrower and/or any Security Provider enters into or resolves to enter into a scheme, arrangement or composition with, or assignment for the benefit of its creditors generally or any class of its creditors; or
- (v) if at any time all or any material part of any provision of any Security is determined or ceases to have effect otherwise than as permitted by the Securities or is, or becomes void, voidable, illegal, invalid or unenforceable or of limited force and effect or the performance of any such provision becomes illegal or any Security Provider alleges or claims that any of the matters contained in this clause have occurred; or
- (w) Any indebtedness of the Borrower or any Security Provider whether owing to the Lender or any other person becomes due and payable or capable of being declared due and payable prior to its stated maturity or the Borrower or any Security Provider fails for whatever reason to pay any indebtedness when due or within any applicable grace period or any mortgage, pledge, lien, charge, encumbrance or any security, preferential or trust interest or arrangement of any kind granted by the Borrower or any Security Provider is enforced or becomes capable of being enforced;
- (x) if at any time the obligations secured by the Securities do not rank ahead of all other obligations of the Borrower and the Security Providers (other than which under statute have priority on a winding up, liquidation, dissolution or similar process); or

- (y) if any breach, default, amendment, termination, extension, surrender or alteration of any kind occurs in relation to any lease or tenancy agreement relating to the Property;
- (z) there is a change in control, shareholding or the directors of the Borrower or any Security Provider without the prior written consent of the Lender; or
- (aa) the Borrower without the prior written consent of the Lender grants any options, sells, agrees to sell, transfers, assigns, parts with possession, leases, agrees to lease, licences or assigns, supplements, varies, terminates, cancels or surrenders any interest it has in the Property; or
- (bb) the Borrower defaults in the performance of an obligation under the SPA or the Borrower or the seller under the SPA gives notice or is entitled to give notice terminating the SPA
- (cc) The Borrower fails to provide the Lender with documentary proof on terms and conditions which are satisfactory to the Lender that the Borrower has obtained an unconditional offer from an independent financier to fund the construction of units on the Land;

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

8. RIGHTS UPON DEFAULT

8.1 At any time after the occurrence of an Event of Default the Lender may in the manner and at the times the Lender in its absolute discretion deems appropriate but without any obligation to do so:

- (a) demand and require immediate repayment of the whole of the Money Secured and recover same from the Borrower and/or the Security Provider notwithstanding that the date for repayment thereof had not arrived;
- (b) exercise any powers rights or privileges conferred by law, this Agreement, the Security and/or any other collateral document or securities;
- (c) perform any one or more of the Borrower's obligations under this Agreement or the Security Provider's obligations under the Security; and/or
- (d) apply any moneys received by the Lender in exercising its rights under this Agreement or for any other reason in and towards full or partial payment of any outstanding Money Secured.

The Lender may exercise its rights under this clause notwithstanding any omission neglect delay or waiver of the right to exercise such option and without liability for loss.

8.2 Any restriction or requirements for notice and/or the effluxion of time relating to the exercise of the Lender's rights and default which is stipulated or required by any statute is hereby negated in so far as is lawful.

9. COSTS AND EXPENSES

9.1 The Borrower will upon the Lender's demand pay to the Lender or as directed by the Lender all costs expenses, damages, liquidated damages, compensation and other amounts of the nature whatsoever payable incurred, suffered or paid by the Lender in respect of this Agreement and/or the Security including without limitation:

- (a) The Lender's and/or RE's non-refundable up front fees and outlays incidental to the providing of this loan facility;
- (b) legal costs on a full indemnity basis or on a solicitor and own client basis, whichever is the greater;
- (c) costs resulting from or on account of any default by the Borrower and/or the Security Provider or any Event of Default;

- (d) the cost of obtaining any advice reasonably required by the Lender from time to time;
- (e) the costs of the Lender registering or causing to be registered any Security (or a copy thereof) with such government body or registrar as the Lender reasonably requires;
- (f) the Lender's costs, fees and expenses charged as a result of any failure by the Borrower or the Security Provider to comply with the terms of the Security;
- (g) any other fees that the RE may impose from time to time in its normal course of business;
- (h) costs resulting from the exercise or purported or attempted exercise or of any of the Lender's rights or powers under this Agreement and/or the Security; and
- (i) 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 the Security or any transaction contemplated thereby.

9.2 The Borrower will pay to the Lender upon demand all other fees, charges, costs and expenses (whether novel or not) charged or chargeable by the Lender according to its usual practice from time to time in respect of its financial products and administration of its loan portfolios and as advised from time to time by the Lender to the Borrower.

9.3 If:

- (a) the Borrower defaults in effecting or keeping up any insurance policy required under this Agreement or a Security; or
- (b) any insurance policy required under this Agreement or a Security becomes void or voidable due to any cause, then

the Lender may, but without any obligation so to do and without prejudice to the Lender's other rights and remedies under this Agreement or a Security, effect and keep up that insurance policy at the cost of the Borrower which must on demand repay to the Lender all premiums and other money paid or payable by the Lender in respect of that policy. Any amount demanded by the Lender under this clause but which remains unpaid for ten (10) business days from the date of demand may at the discretion of the Lender be capitalised to the Loan Amount and accrue interest in accordance with this Agreement.

10. BORROWER'S COVENANTS AND WARRANTIES

10.1 The Borrower will pay all moneys payable and observe and perform fulfil and keep all the covenants conditions agreements stipulations and conditions to be observed performed fulfilled and kept by the Borrower under this Agreement and each Security.

10.2 The Borrower shall, at the request at any time and from time to time by the Lender but at the cost of the Borrower, deliver to the Lender a certified copy of a valuation in a form acceptable to the Lender prepared by the Valuer and addressed in favour of the Lender as to the value of any land or property subject to any Security or any part thereof as specified by the Lender as at the date of such valuation.

10.3 The Borrower shall permit the Lender during reasonable hours and at any time and from time to time upon the giving of reasonable notice by the Lender to the Borrower (having regard to the notice provisions in the Lease) to enter upon the Property and/or to enter upon any land on which is located any property the subject of any Security to:

- (a) inspect the condition of the land and/or the property;
- (b) determine whether the terms of the Security are being complied with;
- (c) inspect and take copies of records relating to the Borrower and/or any Security Provider or any property or business the subject of any Security; and

- (d) exercise any other rights conferred on the Lender by the common law, equity, this Agreement, the Security or any statute.

10.4 The Lender is authorised to debit the account(s) of the Borrower with all or part of the Money Secured.

10.5 The Borrower hereby **WARRANTS AND REPRESENTS** to the Lender as follows:-

- (a) it has power to enter into and observe its obligations under this Agreement and each and every Security to which it is a party;
- (b) it has in full force and effect all the authorisations necessary to enter into this Agreement and each and every Security to which it is a party, observe its obligations under them and to allow them to be enforced;
- (c) its obligations under this Agreement and each and every Security to which it is a party are valid and binding and are enforceable against it in accordance with their terms;
- (d) this Agreement and each and every Security to which it is a party and the transactions under them do not contravene its constituent documents or any law, regulations or official directive or any of its obligations or undertakings to which any of its assets are bound or cause a limitation on its powers or the powers of its directors (if a corporation) to be exceeded; and
- (e) no Event of Default or event which with the giving of notice, the lapse of time or the fulfilment of any condition would be likely to become an Event of Default, continues unremedied.

Each of the warranties and representations contained in Clause 10.7 shall be repeated on each day whilst any of the Money Secured remains outstanding with reference to the facts and circumstances then subsisting, as if made on each such day.

10.6 The Borrower must take out and maintain such public risk, workers' compensation, business interruption, key man, relevant death or total and permanent disablement and other liability insurances as will cover the risks of the Lender, for such amount as the Lender may reasonably require.

11. NO WAIVER

Notwithstanding any provision contained in this Agreement or any rule of law or equity to the contrary, the granting of any time or any other indulgence by the Lender to the Security Provider in relation to any existing or future default under any Security or this Agreement shall not be deemed a sanction or waiver of any continuing or recurring breach nor shall the Lender's right to exercise its rights under the Security or this Agreement at any subsequent time be effected or diminished by the grant of time or any other indulgence.

12. NO SET-OFF

12.1 All payments under this Agreement shall :

- (a) be paid at such place and to such person as notified in writing by the Lender to the Borrower, and in the absence of such notification to the Lender at the address of the Lender specified in this Agreement; and
- (b) be paid free of any deduction or set-off whatsoever.

12.2 A receipt for any money paid under the Security of the Lender or by any manager, acting manager, solicitor, clerk or any other person acting on behalf of the Lender shall be a sufficient discharge of the obligation to pay such money and from seeing to the application of that money.

13. NOTICES AND CONSENTS

13.1 In addition to any other method of service provided in any Security or the Property Law Act (or such equivalent legislation in the State set out in Item 11) any notice, consent or demand given in relation to this Agreement shall be in writing in order to be valid and shall be deemed to have been duly served if it is:

- (a) delivered personally, or left at, or posted by pre-paid post to the address specified in the Schedule hereto for the relevant party, or
- (b) sent by facsimile to the facsimile number specified in the Schedule hereto for the relevant party, or
- (c) delivered personally or left at the address specified in the Schedule at the time of delivery,

and shall be deemed to have been served:

in the case of posting, on the next business day after posting, or
in the case of the facsimile on receipt of a transmission report confirming the successful transmission.

- 13.2 Any notice, consent or demand given by the Lender may be given or made in writing signed by an officer of or solicitor for the Lender and such writing may in addition to the methods of service contained in paragraph 13.1 be delivered personally to the Borrower or left at or upon the usual or last known place of abode or business of the Borrower.
- 13.3 The Borrower or the Lender may from time to time by notice in writing given in accordance with this Agreement nominate a new address and/or facsimile number for the purposes of clause 13.1, and such new address or facsimile notice shall apply from the date of service of such notice.
- 13.4 If the Borrower is more than one person service of a notice, consent or demand on any one such person shall be deemed to be service upon all such persons irrespective of whether that notice or demand is or is not received by the intended recipients.

14. CERTIFICATE

- 14.1 A certificate in writing signed by an officer of or solicitor for the Lender certifying the amount payable by the Borrower or stating any other act, matters or thing relating to this Agreement or the Security shall in the absence of manifest error be conclusive evidence of the matters stated therein.

15. GOVERNING LAW

- 15.1 This Agreement shall be governed and construed in accordance with the laws of the State referred to in Item 11 (herein called "the State").
- 15.2 The Borrower irrevocably submits to and accepts generally and unconditionally the non exclusive jurisdiction of the Courts of the capital city of the State and the Appellate Courts of the State with respect to any legal action or proceedings which may be brought in any way relating to this Agreement.

16. COLLATERAL AGREEMENT

- 16.1 The parties hereto agree:
 - (a) this Agreement is collateral to the Securities for stamp duty purposes;
 - (b) the Money Secured owing under this Agreement 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 Agreement, 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 Agreement;

and vice versa.
- 16.2 To the extent that there is an inconsistency between the provisions of this Agreement and the provisions of any Security (in that there are different or conflicting obligations or requirements in relation to the same subject matter) the provisions of this Agreement will prevail.

17. FINANCIAL RECORDS

- 17.1 The Borrower agrees at its own cost to provide to the Lender on request any financial information, reports or records that the Lender may require at any time and from time to time.
- 17.2 If the Borrower is a company, incorporated body, partnership or trust, the Borrower shall within ninety days from the close of each financial year while this Agreement and any Security shall continue in force, furnish the Lender with such copies of its balance sheets and profit and loss accounts as prepared by its accountants in accordance with the requirements of all relevant statutes and generally accepted accounting principles (and audited if required by the Lender at its absolute discretion) and any special reports as the Lender may request from time to time.

18. MARSHALLING

- 18.1 The Lender shall be under no obligation to marshal in favour of the Borrower any Security whatsoever held by the Lender or any of the funds or assets that the Lender may be entitled to receive or have a claim upon and the Lender may at its absolute discretion vary exchange renew modify release refuse to complete or to enforce or to assign any judgments specialties guarantees or other securities or instruments negotiable or otherwise held by the Lender and whether satisfied by payment or not without affecting or discharging the liability of the Borrower hereunder.

19. TRUST

- 19.1 If the Borrower is entering into this Agreement, borrowing any of the Loan Amount or is giving or purporting to give Security over any property in its capacity of trustee of any trust (hereinafter called "the Trust") then whether or not the Lender received notice of the Trust, the Borrower covenants with the Lender as follows:
- (a) the provisions of the Security shall extend not only to the property of which the Borrower is the beneficial owner but all property of whatsoever nature and kind and wheresoever situate both present and future of the Trust AND FURTHER shall extend to all rights of indemnity which the Borrower as trustee now or hereafter may have against the Trust and the trust fund;
 - (b) the Borrower has full and complete power and authority pursuant to the Trust to enter into the Security over the trust property and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the trustee against the Trust or the trust fund, and the Borrower will not release such right of indemnity or commit any breach of trust or be a party to any other action which might prejudice such right of indemnity;
 - (c) anything in any deed of trust or settlement or other document containing the terms of the Trust the Borrower shall be and at all times remain personally liable to the Lender for the performance of all covenants on the part of the Borrower herein contained;
 - (d) the execution of these presents is and shall be deemed to be for the benefit of both the Trust and/or one or more of the beneficiaries thereof;
 - (e) during the currency of this Agreement or of any Security the Borrower will not without the consent in writing of the Lender cause permit or suffer to happen any of the following events:
 - (i) the removal replacement or retirement of the Borrower as sole trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust;
 - (iv) any resettlement of the trust property; or
 - (v) (should the Trust be a unit trust) any transfer of any units of the Trust.

- 19.2 The Borrower further covenants with the Lender that in the event that the Borrower shall be guilty of any breach of trust in respect of the Trust or shall cease to be the sole trustee of the Trust or otherwise suffer removal replacement or retirement as trustee of the Trust or in the event that there should be any breach of the covenants contained in clause 19.1 hereof then immediately upon any such events the Borrower will be deemed to have committed an Event of Default under this Agreement and the Money Secured shall at the option of the Lender (notwithstanding anything herein contained) immediately become due and payable and all the rights powers and privileges of the Lender exercisable on default of the Borrower or otherwise shall immediately become enforceable without the necessity for any demand or notice (and notwithstanding any delay or previous waiver of the provisions of this clause by the Lender).

20. ADVANCES AND RE-ADVANCES

At any time and from time to time the Lender may at its absolute discretion, and at the request of the Borrower advance and/or re-advance the Loan Amount or part thereof provided that in no case shall the moneys so advanced or re-advanced exceed the Loan Amount and the Borrower and/or Security Provider shall not be in breach or default under this Agreement or any Security. Prior to doing so, the parties hereto will agree upon:

- (a) the date (if any) by which the moneys so advanced or re-advanced must be repaid; and
- (b) the terms and conditions upon which the moneys are to be so advanced or re-advanced; and
- (c) any fees to be paid to the Lender in consideration of it advancing or re-advancing such moneys.

21. ASSIGNMENT

- 21.1 The Lender may assign or otherwise dispose of or deal with its rights under this Agreement and/or the Security. The Lender may disclose to a potential assignee or any other person who is considering or entering into contractual relations with the Lender in connection with this Agreement and/or the Security all information about the Borrower, any related document and any related party to any Security and the transactions contemplated thereby as the Lender considers appropriate.
- 21.2 The Borrower shall not, without the Lender's prior written consent, assign or otherwise dispose of or attempt to deal with its rights this Agreement or any Security.

22. CONSUMER CREDIT LEGISLATION NOT APPLICABLE

- 22.1 Notwithstanding any provision to the contrary this Agreement shall be construed so as not to secure payment of any moneys or the performance of any obligations by any Security Provider under or in respect of any contract or mortgage to which the Consumer Credit Legislation applies.
- 22.2 The Borrower warrants to the Lender that the Loan Amount which is to be provided to the Borrower by the Lender is to be used wholly or predominantly for business or investment purposes.

23. SEVERABILITY

- 23.1 Should any provision of this Agreement prove to be prohibited or unenforceable in any jurisdiction then, as to that jurisdiction, it shall be ineffective to the extent only of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.

24. POWER OF ATTORNEY

24.1 Appointment of Attorney

The Borrower irrevocably appoints the Lender its attorney with the right:

- (a) at any time to:
 - (i) do everything which in the attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of the Lender in relation to this Agreement and the Security;

- (ii) complete this Agreement and any Security provided by the Borrower; and
- (iii) appoint substitutes and otherwise delegate its powers (including this power of delegation); and
- (b) after any Event of Default has occurred to do everything that the Borrower may lawfully authorise an agent to do in relation to this Agreement and under any Security.

24.2 General

- (a) Any attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty;
- (b) The Borrower will from time to time and at all times ratify any exercise of a right by an attorney;
- (c) This power of attorney is granted to secure compliance by the Borrower with its obligations to the Lender under this Agreement and the Security and any proprietary interest of the Lender under any Security;
- (d) The Borrower indemnifies and will keep indemnified any attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the attorney under this power of attorney; and
- (e) This power of attorney is granted for valuable consideration (the receipt of which is hereby acknowledged), as and by way of security for the payment of the Money Secured, the Borrower's obligations under this Agreement and any Security and is deemed irrevocable.

25. INDEMNITY

- 25.1 The Borrower hereby indemnifies the Lender and shall keep the Lender indemnified from and against any expense, loss, loss of profit, damage (including liquidated damages) or liability which the Lender may suffer or incur as a consequence of any prepayment, the occurrence of any Event of Default or otherwise in connection with this Agreement, the Security and/or any other collateral documents or securities.
- 25.2 Without prejudice to the generality of clause 25.1, clause 25.1 shall extend to any loss (including loss of profit) premium, penalty or expense which may be incurred in terminating or varying contractual arrangements entered into by the Lender or in repaying deposits obtained or maintained as security or in redeploying or reinvesting the moneys repaid and is in addition to any other monies payable under clause 3.8.
- 25.3 The Borrower acknowledges that the amount of loss and 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 Lender made to fund the advance(s) under this Agreement.
- 25.4 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Borrower and survives termination of this Agreement. It is not necessary for the Lender to incur expenses or make payment before enforcing a right of indemnity conferred by this Agreement.

26. GENERAL

- 26.1 Nothing hereby contained shall merge, extinguish, discharge, postpone, lessen or otherwise prejudicially affect any other Security held from time to time by the Lender or any right of remedy conferred on the Lender, nor shall any other Security held by the Lender in any way prejudicially affect the powers and provisions contained or implied in this Agreement.

- 26.2 This Agreement and the Security embody the entire agreement between the parties in relation to the advance under this Agreement and supersede all prior negotiations, agreements, arrangements and understanding with respect to such advance. In particular, the Borrower and the Lender agree that this Agreement and the Security supersede any letter of offer or loan facility proposal relating to the advance and in the event of any inconsistency between the terms and conditions of this Agreement and Security and any letter of offer or loan facility proposal then, the terms of this Agreement and the Security shall prevail and in the further event of any inconsistency between the terms and conditions of this Agreement on one hand and any Security on the other then the terms of this Agreement shall prevail.
- 26.3 The Borrower acknowledges that it has had an opportunity of taking independent legal and financial advice from either the Borrower's own legal adviser and/or accountant with respect to this Agreement, the Security and the Borrower confirms and agrees that it does not execute this Agreement, or the Security as a result of or by reason of any promise, representation, statement or information of any kind or nature given or offered to the Borrower by or on behalf of the Lender, the Lender's legal advisers or any other person, other than as expressly set out in this Agreement.
- 26.4 The Lender may in its absolute discretion pay such commission, fees or other remuneration, to any adviser, broker, agent or other person as the Lender sees fit in relation to any advance under this Agreement and the Borrower consents and agrees to same. The Borrower acknowledges and agrees that any adviser, broker, agent or other person who introduced the Borrower to the Lender or the Lender's legal advisers are not and were not at any stage an agent for the Lender and do not have any authority to bind the Lender or to vary the terms of the proposed loan facility.
- 26.5 If any Security Provider should provide, permit or become aware of an encumbrance of any type which affects the Security or the property the subject of the Security, the Borrower shall ensure that the Security Provider obtains a priority agreement between the Lender and the beneficiary of such encumbrance on terms and conditions satisfactory to the Lender in its absolute discretion. The obligation contained in this clause shall apply notwithstanding that the Lender may have notice of such encumbrance.

27. APPLICATION OF MONEY

- 27.1 The Lender 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 Lender shall not bear interest, and the Lender's liability to account for the surplus money may be discharged in full by:
- (a) the Lender depositing it to the credit of an account in the name of the Borrower in any bank the Lender thinks fit;
 - (b) the Lender crediting it to an account in its books in the name of the person to whom it is payable; or
 - (c) by the Lender paying it into court.
- 27.2 In applying any moneys toward satisfaction of the Money Secured, the Borrower shall be credited only with so much of those moneys as are actually received by the Lender and such credit is to date from the time of such receipt. This provision shall apply notwithstanding that in exercising any power of sale under the Security, the Lender may have transferred any property the subject of the Security (in whole or in part) and taken any form of encumbrance to secure the unpaid balance of purchase money. If the Lender 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 any chattels secured by the Security by the Lender, 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 Lender in cash.
- 27.3 If the Lender receives money in connection with this Agreement when part of the Money Secured is contingently owing or falls within paragraph (f) of the definition of "Money Secured", then the Lender may deposit in any financial institution thought fit by the Lender an amount not exceeding that part in an interest-bearing deposit account on terms which the Lender 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 Lender 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 27.1.

28. GOODS AND SERVICES TAX

Without limitation to any other obligations under this agreement, the borrower will pay on demand the cost of any Goods and Services Tax (GST) incurred in relation to any supply under this agreement and the Lender may increase the amount of any payments due under the agreement to include the payment of such GST use.

29. LIMIT OF LIABILITY

29.1 Lender

The Lender enters into this Agreement and each other Security, and the other parties to this Agreement acknowledge that they are aware that the Lender enters into this Agreement and each other Security, only in its capacity as custodian of the Fund pursuant to the Fund Trust Deed and in no other capacity and the other parties to this Agreement are aware of the limited scope of the Lender's obligations and powers under the Fund Trust Deed.

29.2 Liability Limited

A liability arising under or in connection with this Agreement and each Security is limited to and can be enforced against the Lender only to the extent to which it can be satisfied out of the property of the Fund out of which the Lender is actually indemnified for the liability. This limitation of the Lender's liability applies despite any other provision of this Agreement or any other Security and extends to all liabilities and obligations of the Lender in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Agreement and each other Security.

29.3 No Right to Appoint or Prove

The parties to this Agreement other than the Lender may not sue the Lender personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Lender or prove in any liquidation, administration or arrangement of, or affecting, the Lender.

29.4 Limit of Liability Not to Apply

The provisions of this clause 31 do not apply to any obligation or liability of the Lender to the extent that it is not satisfied because under the Fund's Constitution, the Fund Trust Deed, or by operation of law there is a reduction in the extent of the Lender's indemnification out of the assets of the Fund, as a result of the Lender's fraud, negligence or wilful default.

29.5 Inconsistency with the Fund Trust Deed

Any failure by the Lender to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Fund Trust Deed will not amount to a breach of or a default under this Agreement. the Lender's determination as to whether an obligation otherwise imposed upon it under this Agreement is inconsistent with or beyond the scope of its obligations and powers under the Fund Trust Deed is final and binding on all Parties.

29.6 Future Limitations

PTAL is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless the Lender's liability is limited in the manner satisfactory to the Lender in its absolute discretion.

29.7 Agents

No attorney, agent, receiver or receiver and manager appointed in accordance with this Agreement and each other Security or otherwise has authority to act on behalf of the Lender in a way which exposes the Lender to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Lender for the purpose of clause 29 (d).

29.8 Failure by the Lender

A failure by the Lender to comply with, or a breach by the Lender of any of its obligations under this Agreement will not be considered to be fraud, negligence or wilful default by the Lender if the relevant failure or breach:

- (a) arose as a result of a breach by a person other than the Lender where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to the Lender performing the said obligation; or
- (b) was in accordance with a lawful court order or direction or otherwise required by law.

29.9 Override Provision

All of the terms, clauses and conditions of this Agreement are subject to this clause 29.

30. SPECIAL COVENANTS AND CONDITIONS

The special covenants and conditions (if any) contained in Item 14 form part of this Agreement.

SCHEDULE

- Item 1 Date of Agreement** June 2010
- Item 2 Borrower**
- Peregrine Beach Pty Ltd ACN 127 412 864**
10 Glenside Street, Balgowlah Heights, New South Wales, 2093
Facsimile No: (02) 9986 1681
- Item 3 Lender**
- LM Investment Management Limited as trustee for the
LM Managed Performance Fund**
C/-, Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile No: 07 5592 2505
- Item 4 Loan Amount:**
Six Million dollars (\$6,000,000)
- Item 5 Date for Repayment:** 40 calendar months from the date of the first advance of the Loan Amount.
- Item 6 Higher Rate:** 29% per annum
- Item 7 Lower Rate:** 25% per annum
- Item 8 Payments:**
- Interest instalments commencing on the 18th day of the month (or such other date as nominated by the Lender to the Borrower in writing) immediately following the date on which the Loan Amount (or part thereof) is first advanced under this Agreement and thereafter on the 18th day of each calendar month in each succeeding month until the total of all the Money Secured is repaid. Pro-rata instalments for any broken periods will be calculated by the Lender and payable by the Borrower as directed by the Lender.
- The interest payable at the time of each monthly instalment shall be calculated on the total of moneys advanced as at that date at the Higher rate. Should the circumstances set out in clause 4.3 be present then, the Lender will accept instalments calculated on the total of moneys advanced as at that date at the Lower rate.
- Item 9 Security:**
- First registered Deed of Charge intended to be executed on or about date of this Agreement by the Borrower as mortgagor in favour of the Lender as mortgagee over all the property, assets and undertaking of the Borrower of whatsoever nature and kind and wheresoever situated, present and future.
- First registered Deed of Charge executed on the same date as this Agreement by Glenside Group (Qld) Pty Ltd ACN 144 620 093 as mortgagor in favour of the Lender as mortgagee over all the property, assets and undertaking of Glenside Group (Qld) Pty Ltd of whatsoever nature and kind and wheresoever situated, present and future.
- Guarantee Indemnity by each Guarantor and supported by fixed and floating charges and land mortgages over all of the assets (present and future) of each corporate Guarantor.

Lot 111 Pty Ltd Security**Greensquare Property Development Corporation Pty Ltd**

- Item 10 Principal Security:**
Fixed and Floating Charge dated on or about the date of this Agreement by the Borrower as mortgagor securing all of its assets both present and future including its interest in the SPA and any money payable by the seller to the Borrower under or in respect of the SPA.
- Item 11 Governing Law:** Queensland
- Item 12 Guarantors:**
David Richard Hawes
Glenside Group (Qld) Pty Ltd ACN 144 620 093
Lot 111 Pty Ltd ACN 106 102 055
Green Square Property Development Corporation Pty Ltd ACN 104 248 053
- Item 13 Facility to Security Ratio:**
Not Applicable.

Item 14 Special Covenants:

Not Applicable

EXECUTED as an Agreement.

EXECUTED by **PEREGIAN BEACH PTY**)
LTD ACN 127 412 864 in accordance with)
 section 127 of the Corporations Act 2001)
 (Cth):)) Director – Signature

.....
 Director/Secretary - Signature Print full name

.....
 Print full name

EXECUTED by **LM INVESTMENT**)
MANAGEMENT LIMITED ACN 077 208)
 461 as Trustee for the LM Managed)
 Performance Fund in accordance with)
 section 127 of the Corporations Act 2001)
 (Cth):)) Director - Signature

.....
 Director - Signature

SMV-16

HISTORICAL TITLE SEARCH

DEPT OF NATURAL RESOURCES AND MINES, QUEENSLAND

Request No: 16750496

Search Date: 13/08/2013 14:54

Title Reference: 50848722

Date Created: 09/06/2011

Previous Title: 50780250

REGISTERED OWNER

Dealing No: 714235916 22/12/2011

PEREGIAN BEACH PTY LTD A.C.N. 127 412 864

TRANSFER No 714235916

PEREGIAN BEACH PTY LTD A.C.N. 127 412 864

Lodged at 16:32 on 22/12/2011

ESTATE AND LAND

Estate in Fee Simple

LOT 74 SURVEY PLAN 236546
County of STANLEY Parish of REDCLIFFE
Local Government: MORETON BAY

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. APPLICATION FOR TITLE No 714602920
A Certificate of Title has been issued
Lodged at 08:50 on 02/08/2012
2. PRIORITY OF MORTGAGE No 714602919
MORTGAGE: 714574199
is given priority over
MORTGAGE: 714236897
Lodged at 08:50 on 02/08/2012
3. APPLICATION FOR TITLE No 714574202
A Certificate of Title has been issued
Lodged at 08:40 on 18/07/2012
4. MORTGAGE No 714574199
THE TRUST COMPANY (PTAL) LIMITED A.C.N. 008 412 913
Lodged at 08:39 on 18/07/2012
5. RELEASE No 714574198
MORTGAGE: 714235917
Lodged at 08:39 on 18/07/2012
6. MORTGAGE No 714236897
THE TRUST COMPANY (PTAL) LIMITED A.C.N. 008 412 913
Lodged at 11:19 on 23/12/2011

HISTORICAL TITLE SEARCH

DEPT OF NATURAL RESOURCES AND MINES, QUEENSLAND

Request No: 16750496

Search Date: 13/08/2013 14:54

Title Reference: 50848722

Date Created: 09/06/2011

EASEMENTS, ENCUMBRANCES AND INTERESTS

7. MORTGAGE No 714235917 CANCELLED BY 714574198
STOCKLAND NORTH LAKES PTY LTD A.B.N. 99 068 244 762
Lodged at 16:34 on 22/12/2011
8. Rights and interests reserved to the Crown by
Deed of Grant No. 10616074 (POR 508)

ADMINISTRATIVE ADVICES

Dealing	Type	Lodgement Date	Status
714532415	SETTLMNT NTC	27/06/2012 11:00	NOT CURRENT
UNREGISTERED DEALINGS - NIL			

CERTIFICATE OF TITLE ISSUED - Yes 03/08/2012 714602920 Certificate No. 2

Caution - Charges do not necessarily appear in order of priority

** End of Historical Title Search **

COPYRIGHT THE STATE OF QUEENSLAND (DEPT OF NATURAL RESOURCES AND MINES) [2013]
Requested By: D APPLICATIONS CITEC CONFIRM

DEED OF ASSIGNMENT

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 AS
TRUSTEE FOR THE LM MANAGED PERFORMANCE FUND

THE TRUST COMPANY (PTAL) LIMITED ACN 008 412 913

MONAGHAN LAWYERS

PO Box 315, Surfers Paradise Qld 4217
Level 4, 9 Beach Road, Surfers Paradise Qld 4217
P 5584 4550 F 5504 5167
E admin@monaghanlawyers.com.au

THIS DEED is made on 1 November

2011

PARTIES

LM Investment Management Limited ACN 077 208 461 of level 4 Beach Road Surfers Paradise, Queensland
(LM)

AND

The Trust Company (PTAL) Limited ACN 008 412 913 of 213-217 St Paul's Terrace, Brisbane, Queensland
(PTAL)

BACKGROUND

- A LM is the Responsible Entity of the Fund.
- B LM in its capacity as Responsible Entity of the Fund has provided the Loans to the Borrowers and holds the Securities as security for the Loans.
- C PTAL and LM have agreed that PTAL will assume the role and responsibilities of custodian of the Fund in accordance with the terms of the Custody Agreement which will require LM to transfer the legal interest in the securities to PTAL.
- D PTAL and LM wish to enter into this document to record the basis upon which the legal interest in the Securities will be transferred to PTAL.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document, unless the context otherwise requires:

Assets means the assets of the Fund including the Securities.

Borrowers means the borrowers under the Loan Agreements that are described in Schedule 2.

Business Day means a day on which banks are open for general banking business in Brisbane, excluding Saturdays, Sundays and public holidays.

Commencement Date means 1 November 2011 or such other date which LM and PTAL agree in writing.

Constitution means the constitution of the Fund dated 10 April 2008.

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

Custody Agreement means the Agreement that is described in Schedule 3.

Fund means the LM Managed Performance Fund.

GST means any tax, levy, charge or impost implemented under the GST Act;

GST Act means A New Tax System (Goods and Services Tax) Act or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act

Liabilities means all liabilities of the Fund as at the Commencement Date.

LM means LM Investment Management Limited ACN 007 208 461.

Loans means the loans that have been provided pursuant to the loan agreements that are described in Schedule 2.

PTAL means The Trust Company (PTAL) Limited ACN 008 412 913.

Registrable Securities means the fixed and floating charges and the mortgages that form part of the Securities.

Responsible Entity has the same meaning as in the Corporations Act.

Schedule means a Schedule to this Deed.

Securities means the securities, agreements and other documents that are described in Schedule 2.

1.2 Interpretation

In this document, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this document;
- (d) a reference to this document includes any schedules or annexures;
- (e) headings are for convenience and do not affect interpretation;
- (f) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (g) a reference to "\$", "A\$" or "dollar" is a reference to Australian currency;
- (h) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns; and
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it.

2 CUSTODIAN

2.1 Replacement

With effect from the Commencement Date PTAL will become the legal owner of the Assets and the Securities.

2.2 Release and Indemnity of LM

- (a) LM is discharged from the further performance of its obligations and duties the legal owner of the Securities from the Commencement Date.
- (b) To the extent that LM is entitled to be reimbursed from the assets of the Fund and subject to the limitations described in clause 9, PTAL:
 - (i) indemnifies LM against all debts and liabilities that LM properly incurred whilst acting as the legal owner of the Securities and which are outstanding or unpaid as at the date of this document; and
 - (ii) must pay and discharge those obligations only to the extent it is able to be reimbursed out of the assets of the Fund under the terms of credit or otherwise under which the obligations were incurred,

except to the extent that debts and liabilities arise as a result of a breach by LM of its express or implied obligations under the Corporations Act.

2.3 Transfer of title to securities

LM agrees to:

- (a) do all things necessary to transfer legal title to the Securities to PTAL.
- (b) sign all documents and do all things reasonably required to enable PTAL to assume and carry out its duties as custodian of the Fund.

3 WARRANTIES

3.1 PTAL

PTAL warrants for the benefit of LM that:

- (a) it has the corporate power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;
- (b) it has taken all necessary corporate action to authorise the entry into and performance of this Deed and to carry out the transactions contemplated in this Deed; and
- (c) its obligations under this Deed are valid and binding and enforceable against it in accordance with their terms.

3.2 LM

LM warrants for the benefit of PTAL that:

- (a) it has the corporate power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;
- (b) it has taken all necessary corporate action to authorise the entry into and performance of this Deed and to carry out the transactions contemplated in this Deed; and
- (c) its obligations under this Deed are valid and binding and enforceable against it in accordance with their terms.

4 PROCEDURE

4.1 Time and place for Completion

Completion will take place at the Brisbane offices of PTAL on the Commencement Date, unless otherwise agreed by the parties.

4.2 Registrable Transfers

- (a) Prior to the Commencement Date, LM will deliver to PTAL transfers of the Registrable Securities duly executed by LM together with such ancillary documents as PTAL may require, in a form to be approved by PTAL.
- (b) PTAL will promptly execute the transfers of the Registrable Securities as transferee and return the documents to LM.
- (c) At or as soon as practicable following the Commencement Date LM will lodge the transfers of the Registrable Securities for registration with the relevant authorities.

4.3 Title

Legal title in and to the Assets and the Securities will pass to PTAL on and from the transfer of the Assets and the Securities on the Commencement Date.

4.4 Reassignment

- (a) PTAL acknowledges that LM may require in some circumstances a retransfer to LM of the legal title to any one or more of the Securities and other assets of the Fund. PTAL cannot object to that retransfer.
- (b) LM must give notice of any such requirement together with all documents necessary to effect such the retransfer to LM at least ten (10) Business Days prior to the date on which the retransfer is to occur. The notice of assignment must specify those Securities and other assets of the Fund required to be retransferred to LM together with the date on which the retransfer is required to occur.
- (c) PTAL must sign all documents delivered by LM under clause 4.4(b) no later than the Business Day prior to the date on which the retransfer is required to occur.
- (d) LM must:
 - (i) pay PTAL's reasonable costs in relation to the retransfer; and
 - (ii) do all things reasonably necessary to ensure that the retransfer of such Securities and other assets of the Fund is effected as soon as reasonably practicable after the date specified in the notice and notify PTAL that the retransfer has occurred.
- (e) At any time after the retransfer has occurred, LM may require the Securities and other assets of the Fund transfers to LM to be transferred back to PTAL and PTAL must do all things reasonably required to ensure that this occurs, LM must pay PTAL's reasonable costs of doing so.

5 COSTS AND STAMP DUTY

5.1 Costs

LM will bear the costs (including the reasonable legal costs of PTAL), charges and expenses incurred by it in connection with the negotiation, preparation and execution of this document and all other documents to be executed in connection with this document.

5.2 Stamp duty

- (a) LM must pay all stamp duty and other duty on this document and on any instrument or other document executed to give effect to any of the provisions of this document.
- (b) LM must pay any fine, penalty or other cost in respect of a failure to pay any such duty.

6 NOTICE

- 6.1 LM will forthwith after the Completion Date give notice of the assignment of the Securities to each borrower, mortgagor and guarantor that is a party to the Securities substantially in the form of the notice that is contained in Schedule 1.

7 NOTICES

7.1 Method

All notices, requests, demands, consents, approvals, offers, agreements or other communications ("**notices**") given by a party under or in connection with this document must be:

- (a) in writing;
- (b) signed by a person duly authorised by the sender or, where transmitted by e-mail, sent by a person duly authorised by the sender;
- (c) directed to the intended recipient's address (as specified in clause 7.3 or as varied by any notice); and
- (d) hand delivered, sent by prepaid post or transmitted by e-mail or facsimile to that address.

7.2 Receipt

A notice given in accordance with this clause is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post:
 - (i) within Australia, on the second Business Day after the date of posting;
 - (ii) to or from a place outside Australia, on the seventh Business Day after the date of posting;
- (c) if transmitted by e-mail, on transmission; or
- (d) if transmitted by facsimile, at the time recorded on the transmission report indicating successful transmission of the entire notice,

but if the delivery or transmission is not on a Business Day or is after 5.00pm (recipient's time) on a Business Day, the Notice is taken to be received at 9.00am (recipient's time) on the next Business Day.

7.3 Address of parties

Unless varied by notice in accordance with this clause 7, the parties' addresses and other details are:

Party: The Trust Company (PTAL) Limited
Attention: Geoffrey Funnell

Address: 213-217 St Paul's Terrace, Brisbane, Queensland
Facsimile: (07) 3252 3513
E-mail:

Party: LM Investment Management Limited
Attention: Caroline Hodge
Address: Level 4, 9 Beach Road, Surfers Paradise Qld 4217
Facsimile: (07) 5592 2505
E-mail: mail@LMaustralia.com

8 GENERAL

8.1 Entire agreement

This document constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this document and have no further effect.

8.2 Paramountcy of document

If this document conflicts with any other document, agreement or arrangement, this document prevails to the extent of the inconsistency.

8.3 No merger

The provisions of this document will not merge on completion of any transaction contemplated in this document and, to the extent any provision has not been fulfilled, will remain in force.

8.4 Amendment

This document may not be amended or varied unless the amendment or variation is in writing signed by all parties.

8.5 GST

If any payment made to a party pursuant to or relating to this document constitutes consideration for a taxable supply for the purposes of GST, the amount to be paid for the supply will be increased so that the net amount retained by that party after payment of that GST is the same as if that party was not liable to pay GST in respect of that supply.

8.6 Assignment

No party may assign, transfer or otherwise deal with this document or any right or obligation under this document without the prior written consent of each other party.

8.7 Severability

Part or all of any provision of this document that is illegal or unenforceable will be severed from this document and will not affect the continued operation of the remaining provisions of this document.

8.8 Waiver

Waiver of any power or right under this document:

- (a) must be in writing signed by the party entitled to the benefit of that power or right; and

(b) is effective only to the extent set out in that written waiver.

8.9 Further assurances

Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this document and the transactions contemplated by it (including, but not limited to, the execution of documents).

8.10 Counterparts

This document may be executed in any number of counterparts and all counterparts taken together will constitute one document.

8.11 Recitals

The recitals form part of this Deed and are binding on the parties.

8.12 Governing law and jurisdiction

This document will be governed by and construed in accordance with the laws in force in the State of Queensland and each party submits to the non-exclusive jurisdiction of the courts of that State.

9 PTAL - LIMITATION OF LIABILITY

9.1 Custodian

PTAL enters into this Deed, and LM acknowledges that it is aware that PTAL enters into this Deed on the basis that it will with effect from the Commencement Date be the custodian of the Fund pursuant to the Custody Agreement and LM is aware of the limited scope of PTAL's obligations and powers under the Custody Agreement.

9.2 Liability Limited

A liability arising under or in connection with this Deed is limited to and can be enforced against PTAL only to the extent to which it can be satisfied out of the property of the Fund out of which PTAL is actually indemnified for the liability. This limitation of PTAL's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of PTAL in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

9.3 No Right to Appoint or Prove

LM may not sue PTAL personally or seek the appointment of a liquidator, administrator, receiver or similar person to PTAL or prove in any liquidation, administration or arrangement of, or affecting, PTAL.

9.4 Limit of Liability Not to Apply

The provisions of this clause 9 do not apply to any obligation or liability of PTAL to the extent that it is not satisfied because under the Constitution, the Custody Agreement, or by operation of law there is a reduction in the extent of PTAL's indemnification out of the assets of the Fund, as a result of PTAL's fraud, negligence or wilful default.

9.5 Inconsistency with the Custody Agreement

Any failure by PTAL 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 a default under this Deed. PTAL'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 LM.

9.6 Future Limitations

PTAL is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless PTAL's liability is limited in the manner satisfactory to PTAL in its absolute discretion.

9.7 Agents

No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed and each other Security or otherwise has authority to act on behalf of PTAL in a way which exposes PTAL to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of PTAL for the purpose of clause 9.4.

9.8 Failure by PTAL

A failure by PTAL to comply with, or a breach by PTAL of any of its obligations under this Deed will not be considered to be fraud, negligence or wilful default by PTAL if the relevant failure or breach:

- (a) arose as a result of a breach by a person other than PTAL where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to PTAL performing the said obligation; or
- (b) was in accordance with a lawful court order or direction or otherwise required by law.

9.9 Override Provision

All of the terms, clauses and conditions of this Deed are subject to this clause 9.

10 LM - LIMITATION OF LIABILITY

10.1 Responsible Entity

LM enters into this Deed and PTAL acknowledges that it is aware that LM enters into this Deed in its capacity as the trustee of the Fund, pursuant to the Constitution and PTAL is aware of the limited scope of LM's obligations and powers under the Constitution.

10.2 Liability Limited

A liability arising under or in connection with this Deed is limited to and can be enforced against LM only to the extent to which it can be satisfied out of the property of the Fund out of which LM is actually indemnified for the particular liability. This limitation of LM's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of LM in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed.

10.3 No Right to Appoint or Prove

PTAL may not sue LM personally or seek the appointment of a liquidator, administrator, receiver or similar person to LM or prove in any liquidation, administration or arrangement of, or affecting, LM.

10.4 Limit of Liability Not to Apply

The provisions of this clause 10 do not apply to any obligation or liability of LM to the extent that it is not satisfied because under the Constitution or other constituent documents, or by

operation of law, there is a reduction in the extent of LM's indemnification out of the assets of the Fund, as a result of LM's fraud, negligence or wilful default.

10.5 Inconsistency with the Constitution

Any failure by LM to perform an obligation which it determines is either inconsistent with or beyond its powers and obligations under the Constitution will not amount to a breach of or a default under this Deed. LM'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 Constitution is final and binding on all parties.

10.6 Future Limitations

LM is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless LM's liability is limited in the manner satisfactory to LM in its absolute discretion.

10.7 Agents

No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed or otherwise has authority to act on behalf of LM in a way which exposes LM to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of LM for the purpose of clause 10.4.

10.8 Failure by LM

A failure by LM to comply with, or a breach by LM of any of its obligations under this Deed, the Facility Agreement and each Security (if any) will not be considered to be fraud, negligence or wilful default by LM if the relevant failure or breach:

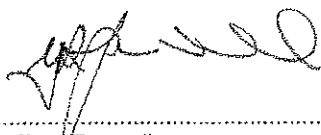
- (c) arose as a result of a breach by a person other than LM where the performance of the action (the non-performance of which gave rise to such breach) is a precondition to LM performing the said obligation; or
- (d) was in accordance with a lawful court order or direction or otherwise required by law.

10.9 Override Provision

All of the terms, clauses and conditions of this Deed are subject to this clause 10.

EXECUTED as a DEED

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 registered in)
Queensland as dealing number 713351029


.....
Geoffrey Funnell
State Manager – Corporate and Legal Services
(Qld)

EXECUTED by LM INVESTMENT MANAGEMENT)
LIMITED ACN 077 208 461 AS TRUSTEE FOR)
THE LM MANAGED PERFORMANCE FUND in)
accordance with section 127 of the Corporations Act)
2001 (Cth):)

Signature of Director/Secretary

Simon Jeremy Tickner
Full name of Director/Secretary

Signature of Director

Lisa Maree Darcy
Full name of Director

**SCHEDULE 1
NOTICE OF ASSIGNMENT**

To: **[BORROWER'S NAME] of [BORROWER'S ADDRESS]**

(Borrower)

AND

To: **[GUARANTOR/MORTGAGOR'S NAME] of [GUARANTOR/MORTGAGOR'S ADDRESS]**

(Guarantor/Mortgagor)

LM INVESTMENT MANAGEMENT LIMITED ACN 077 208 461 GIVES YOU NOTICE that under a Deed of Assignment dated day of 2011 between LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund (**Assignor**) and The Trust Company (PTAL) Limited ACN 008 412 913 (**Assignee**) that the Assignor has assigned to the Assignee all of its legal right, title and interest that it held in the Securities referred to in **Item 1 ("Security")** of the Schedule below with effect from **[INSERT DATE]**

Accordingly LM irrevocably directs you to pay all moneys owing to it under or in connection with the Securities to PTAL at **[INSERT PAYMENT ACCOUNT DETAILS]** or as PTAL directs.

Schedule 1

Item 1
Security:

[INSERT SECURITY DESCRIPTION]

Dated: / /

**EXECUTED by LM INVESTMENT MANAGEMENT)
LIMITED ACN 077 208 461 AS TRUSTEE FOR)
THE LM MANAGED PERFORMANCE FUND in)
accordance with section 127 of the Corporations Act)
2001 (Cth):)**

.....
Signature of Director/Secretary

.....
Signature of Director

.....
Full name of Director/Secretary

.....
Full name of Director

SCHEDULE 2

PART 1

AUSTRALIAN INTERNATIONAL INVESTMENT SERVICES PTY LTD

- (a) Loan Agreement dated 19 January 2005 between LM Investment Management Ltd ACN 077 208 461 as trustee of the LM Managed Performance Fund and Australian International Investment Services Pty Ltd ACN 102 261 898.
- (b) Deed of Variation of Loan Agreement and Consent By Guarantor dated 11 April 2005 between LM Investment Management Ltd ACN 077 208 461 as trustee of the LM Managed Performance Fund and Australian International Investment Services Pty Ltd ACN 102 261 898.
- (c) Deed of Variation of Loan Agreement and Consent By Guarantor dated 30 November 2008 between LM Investment Management Ltd ACN 077 208 461 as trustee of the LM Managed Performance Fund and Australian International Investment Services Pty Ltd ACN 102 261 898.
- (d) Deed of Variation of Loan Agreement and Consent By Guarantor dated 22 December 2009 between LM Investment Management Ltd ACN 077 208 461 as trustee of the LM Managed Performance Fund and Australian International Investment Services Pty Ltd ACN 102 261 898.
- (e) Deed of Variation of Loan Agreement and Consent By Guarantor dated 6 October 2010 between LM Investment Management Ltd ACN 077 208 461 as trustee of the LM Managed Performance Fund and Australian International Investment Services Pty Ltd ACN 102 261 898.
- (f) Variation letter dated 27 May 2011 and acceptance form dated 3 June 2011 extending the term of the loan.
- (g) Mortgage No R.N.1611828 dated 30 November 2008 between Australian International Investment Services Pty Ltd ACN 102 261 898 and LM Investment Management Ltd ACN 077 208 461.
- (h) Priority Deed dated 30 November 2008 between Permanent Trustee Australia Ltd ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund and Australian International Investment Services Pty Ltd ACN 102 261 898.
- (i) Priority Deed dated 12 October 2010 between Permanent Trustee Australia Ltd ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund and Australian International Investment Services Pty Ltd ACN 102 261 898.
- x (j) Fixed and Floating Charge dated 30 November 2008 registered with the Australian Securities and Investments Commission as charge number 1733340 given by Australian International Investment Services Pty Ltd ACN 102 261 898.
✓
- (k) Any other document or security provided to LM in support of the loan to Australian International Investment Services Pty Ltd ACN 102 261 898.

PART 2

Barly Wood Pty Ltd (KPG 13th Beach Pty Ltd)

- (a) Loan Agreement dated 26 November 2003 between LM Investment Management Ltd ACN 077 208 461, Permanent Trustee Australia Limited ACN 008 412 913 and KPG 13th Beach Stage 1 Pty Ltd ACN 105 265 923
- (b) Loan Agreement dated 3 March 2004 between LM Investment Management Ltd ACN 077 208 461, Permanent Trustee Australia Limited ACN 008 412 913 and KPG 13th Beach Stage 1 Pty Ltd ACN 105 265 923.
- (c) Undated Deed of Variation of Loan Agreement dated 26 November 2003 and Consent By Guarantor.
- (d) Undated Deed of Variation of Loan Agreement dated 3 March 2004 and Consent By Guarantor.
- (e) Fixed and Floating Charge dated 3 March 2004 registered with the Australian Securities and Investments Commission as charge number 1003923 given by Barly Wood Pty Ltd ACN 105 265 923 (formerly known as KPG 13th Beach Stage 1 Pty Ltd).
- (f) Fixed and Floating Charge number 1035436 given by Barly Wood Pty Ltd ACN 105 265 923.
- (g) Fixed and Floating Charge number 1061658 charge given by Barly Wood Pty Ltd ACN 105 265 923.
- (h) Fixed and Floating Charge number 1003927 given by Tristaleigh Pty Ltd ACN 086 855 898.
- (i) Fixed and Floating Charge number 995927 given by Tristaleigh Pty Ltd ACN 086 855 898.
- (j) Fixed and Floating Charge number 1035435 given by Tristaleigh Pty Ltd ACN 086 855 898.
- (k) Fixed and Floating Charge number 1061664 given by Tristaleigh Pty Ltd ACN 086 855 898.
- (l) Fixed and Floating Charge number 1003926 given by Jaimeson Woods Pty Ltd ACN 088 725 642.
- (m) Fixed and Floating Charge number 995926 given by Jaimeson Woods Pty Ltd ACN 088 725 642.
- (n) Fixed and Floating Charge number 1035434 given by Jaimeson Woods Pty Ltd ACN 088 725 642.
- (o) Fixed and Floating Charge number 1061655 given by Jaimeson Woods Pty Ltd ACN 088 725 642.
- (p) Deed of Guarantee and Indemnity for dated 26 November 2003 between David Robert Kirkham, Tristaleigh Pty Ltd ACN 086 855 898, Jaimeson Woods Pty Ltd ACN and Turnstile Pty Ltd ACN 059 943 887 and Permanent Trustee Australia Limited ACN 008 412 913.
- (q) Deed of Guarantee and Indemnity dated 3 March 2004 between David Robert Kirkham, Tristaleigh Pty Ltd ACN 086 855 898, Jaimeson Woods Pty Ltd ACN and Turnstile Pty Ltd ACN 059 943 887 and Permanent Trustee Australia Limited ACN 008 412 913.
- (r) Priority Deed dated 30 May 2008 between LM Investment Management Ltd ACN 077 208 461, Permanent Trustee Australia Limited ACN 008 412 913 and KPG 13th Beach Stage 1 Pty Ltd ACN 105 265 923.
- (s) Deed of Variation of Assignment Deed dated 28 August 2009 between LM Investment Management Ltd ACN 077 208 461 (in its capacity as the Responsible Entity for the LM First

Mortgage Income Fund), The Trust Company (PTAL) ACN 008 412 913 and LM Investment Management Ltd ACN 077 208 461 in its capacity as Trustee for the LM Managed Performance Fund.

- (t) Deed of Variation of Assignment Deed dated 12 December 2008 between LM Investment Management Ltd ACN 077 208 461 (in its capacity as the Responsible Entity for the LM First Mortgage Income Fund), The Trust Company (PTAL) ACN 008 412 913 and LM Investment Management Ltd ACN 077 208 461 in its capacity as Trustee for the LM Managed Performance Fund.
- (u) Deed of Variation of Assignment of Deed dated 30 November 2010 between LM Investment Management Ltd ACN 077 208 461 (in its capacity as the Responsible Entity for the LM First Mortgage Income Fund), The Trust Company (PTAL) ACN 008 412 913 and LM Investment Management Ltd ACN 077 208 461 in its capacity as Trustee for the LM Managed Performance Fund.
- (v) Assignment Deed dated 28 August 2008 between LM Investment Management Ltd ACN 077 208 461 (in its capacity as the Responsible Entity for the LM First Mortgage Income Fund), Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461 in its capacity as Trustee for the LM Managed Performance Fund and Barly Wood Pty Ltd ACN 105 265 923 (formerly known as KPG 13th Beach Pty Ltd Stage 1 Pty Limited)
- (w) Mortgage of Land dated 27 November 2003 Mortgage Number AC626247K between KPG 13th Beach Stage 1 Pty Ltd ACN 105 265 923 and Permanent Trustee Australia Limited ACN 008 412 913.
- (x) Mortgage of Land dated 12 March 2004 Mortgage Number AC754113R between KPG 13th Beach Stage 1 Pty Ltd ACN 105 265 923 and Permanent Trustee Australia Limited ACN 008 412 913.
- (y) Deed of Variation of Fixed and Floating Charge number 1003924.
- (z) Deed of Variation of Fixed and Floating Charge number 1003926
- (aa) Deed of Variation of Fixed and Floating Charge number 1003923.
- (bb) Deed of Variation of Fixed and Floating Charge number 1003927.
- (cc) Deed of Cross-Collateralisation dated 26 November 2003 between Permanent Trustee Company Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, Barly Wood Pty Ltd and certain guarantors.
- (dd) Any other document or security provided to LM in support of the loan to Barly Wood Pty Ltd ACN 105 265 923.

PART 3

LM Administration Pty Ltd

- (a) Loan Agreement dated 17 July 2002 between LM Administration Pty Ltd ACN 055 691 in its own right and as trustee for the Ekard Property Trust and LM Investment Management Ltd ACN 077 208 461.
- (b) Fixed and floating charge number 885231 dated 23 August 2002 given by LM Administration Pty Ltd
- (c) Deed of Guarantee and Indemnity dated 13 June 2002 given by Peter Charles Drake in favour of LM Investment Management Limited as trustee for the LM Managed Performance Fund.
- (d) Deed of Guarantee and Indemnity dated 17 April 2003 given by Peter Charles Drake in favour of LM Investment Management Limited as trustee for the LM Managed Performance Fund.
- (e) Deed of Guarantee and Indemnity dated 13 June 2002 given by Belinda Julie Drake in favour of LM Investment Management Limited as trustee for the LM Managed Performance Fund.
- (f) Deed of Release dated 11 March 2008 between LM Investment Management Limited as trustee for the LM Managed Performance Fund, LM Administration Pty Ltd, Peter Charles Drake and Belinda Julie Drake.
- (g) Deed of Variation of Loan Agreement and Consent by Guarantor dated 11 March 2005 between LM Administration Pty Ltd (in its own right and as Trustee of the Ekard Property Trust), Peter Charles Drake, Belinda Julie Drake and LM Investment Management Ltd ACN 077 208 461.
- (h) Deed of Variation of Loan Agreement and Consent by Guarantor dated 11 March 2008 between LM Administration Pty Ltd (in its own right and as Trustee of the Ekard Property Trust), Peter Charles Drake, Belinda Julie Drake and LM Investment Management Ltd ACN 077 208 461.
- (i) Deed of Variation of Loan Agreement and Consent by Guarantor dated 16 December 2009 between LM Administration Pty Ltd (in its own right and as Trustee of the Ekard Property Trust), Peter Charles Drake, LM Investment Management Ltd ACN 077 208 461 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (j) Mortgage No 9907473V dated 17 July 2002 between LM Administration Pty Ltd ACN 055 691 426 and LM Investment Management Ltd ACN 077 208 461.
- (k) Variation letter dated 9 May 2011 and Acceptance Form dated 26 May 2011 extending the loan term to 11 March 2012.
- (l) Any other document or security provided to LM in support of the loan to LM Administration Pty Ltd ACN 055 691 426.

PART 4

TALL TREES MANDURAH PTY LTD

- (a) Loan Agreement dated 25 March 2011 between LM Investment Management Ltd ACN 077 208 461 as trustee for the Managed Performance Fund and Tall Trees Mandurah Pty Ltd ACN 134 323 890 in its capacity as bare trustee for the Tall Trees Mandurah Village Partnership ABN 16429294362.
- ✓ (b) Fixed and Floating Charge Number 2162772 dated 22 March 2011 given by Tall Trees Mandurah Pty Ltd ACN 134 323 890.
- (c) Any other document or security provided to LM in support of the loan to Tall Trees Mandurah Pty Ltd ACN 134 323 890.

PART 5

PEREGIAN BEACH PTY LTD

- (a) Loan Agreement dated 29 June 2010 between Peregian Beach Pty Ltd ACN 127 412 864 and LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund.
- X (b) Fixed and Floating Charge number 2010141 given by Peregian Beach Pty Ltd ACN 127 417 864.
- X (c) Fixed and Floating Charge number 1301176 given by Glenside Group Pty Ltd ACN 003 515 893.
- (d) Deed of Guarantee and Indemnity dated 29 June 2010 between Peregian Beach Pty Ltd ACN 127 412 864, Glenside Group (QLD) Pty Ltd ACN 144 620 093, LM Investment Management Ltd ACN 077 208 461 and Permanent Trustee Australia Limited ACN 008 412 913.
- (e) Deed of Guarantee and Indemnity dated 29 June 2010 between Glenside Group (QLD) Pty Ltd ACN 144 620 093, Peregian Beach Pty Ltd ACN 127 412 864, LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund.
- (f) Deed of Guarantee and Indemnity dated 29 June 2010 between David Richard Hawes, Glenside Group (QLD) Pty Ltd ACN 144 620 093, Lot 111 Pty Ltd ACN 106 102 005, Green Square Property Development Corporation Pty Ltd ACN 104 248 053 and LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund.
- (g) Deed of Variation dated 21 October 2010 between LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund, Peregian Beach Pty Ltd ACN 127 412 864, David Richard Hawes, Glenside Group (QLD) Pty Ltd ACN 144 620 093, Lot 111 Pty Ltd ACN 106 102 005 and Green Square Property Development Corporation Pty Ltd ACN 104 248 053.
- (h) Deed of Cross Collateralisation dated 21 October 2010 between LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund, Peregian Beach Pty Ltd ACN 127 412 864, David Richard Hawes, Glenside Group (QLD) Pty Ltd ACN 144 620 093, Lot 111 Pty Ltd ACN 106 102 005 and Green Square Property Development Corporation Pty Ltd ACN 104 248 053.
- (i) Any other document or security provided to LM in support of the loan to Peregian Beach Pty Ltd ACN 127 412 864.

PART 6

THE LIFESTYLE INVESTMENT COMPANY PTY LTD ACN 095 393 215

- (a) Loan Agreement dated 30 March 2005 between The Lifestyle Investment Company Pty Ltd ACN 095 392 215 and LM Investment Management Ltd ACN 077 208 461 and Permanent Trustee
- (b) Deed of Variation of Loan Agreement and Consent By Guarantor dated 5 February 2007, between The Lifestyle Company Pty Ltd ACN 095 392 215, Grahame Beach, Jacink Pty Ltd ACN 064 853 201 in its own right and atf the Beach Family Trust, LM Investment Management Ltd ACN 077 208 461 and Permanent Trustee.
- (c) Mortgage No AB414899G dated 30 March 2005 between The Lifestyle Investment Company Pty Ltd ACN 095 392 215 and Permanent Trustee Australia ACN 008 412 913.
- K (d) Fixed and Floating Charge dated 30 March 2005 for charge number 1147332 given by The Lifestyle Investment Company Pty Ltd ACN 095 392 215.
- Deeds (e) Fixed and Floating Charge dated 30 March 2005 for Charge number 1147334 given by Jacink Pty Ltd ACN 064 853 201.
- (f) Deed of Guarantee and Indemnity dated 30 March 2005 between Grahame Beach, Jacink Pty Ltd ACN 064 853 201 in its own right and atf the Beach Family Trust and Permanent Trustee Australia Limited ACN 008 412 913.
- (g) Assignment Deed dated 28 August 2008 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Limited ACN 077 208 461 (in its capacity as responsible entity for the LM First Mortgage Income Fund) and LM Investment Management Limited (in its capacity as responsible entity for the LM Managed Performance Fund).
- (h) Deed of Variation of Assignment Deed dated 30 November 2010 between LM Investment Management Ltd ACN 077 208 461 (in its capacity as the Responsible Entity for the LM First Mortgage Income Fund), The Trust Company (PTAL) ACN 008 412 913 and LM Investment Management Ltd ACN 077 208 461 in its capacity as Trustee for the LM Managed Performance Fund.
- (i) Any other document or security provided to LM in support of the loan to The Lifestyle Investment Company Pty Ltd ACN 095 392 215.

PART 7

LM CAPALABA PTY LTD

- (a) Loan Agreement dated 22 August 2008 between LM Capalaba Pty Ltd ACN 132 798 353 and LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund.
- (b) Deed of Variation of Loan Agreement and Consent by Guarantor dated 22 October 2008 between LM Capalaba Pty Ltd ACN 132 798 353 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (c) Deed of Variation of Loan Agreement and Consent by Guarantor dated 1 September 2009 between LM Capalaba Pty Ltd ACN 132 798 353 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (d) Deed of Variation of Loan Agreement and Consent by Guarantor dated 1 September 2010 between LM Capalaba Pty Ltd ACN 132 798 353 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (e) Deed of Variation of Loan Agreement and Consent by Guarantor dated 20 June 2011 between LM Capalaba Pty Ltd ACN 132 798 353 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (f) Any other document or security provided to LM in support of the loan to LM Capalaba Pty Ltd ACN 132 798 353.

PART 8

LM COOMERA PTY LTD

- (a) Loan Agreement dated 13 November 2007 between LM Coomera Pty Ltd ACN 127 543 980 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (b) Deed of Variation of Loan Agreement and Consent By Guarantor dated 11 November 2008 between LM Coomera Pty Ltd ACN 127 543 9808 and LM Investment Management Ltd ACN 077 208 461 as Trustee for LM Managed Performance Fund.
- (c) Deed of Variation of Loan Agreement and Consent By Guarantor dated 6 October 2009 between LM Coomera Pty Ltd ACN 127 543 9808 and LM Investment Management Ltd ACN 077 208 461 as Trustee for LM Managed Performance Fund.
- (d) Deed of Variation of Loan Agreement and Consent By Guarantor dated 14 April 2010 between LM Coomera Pty Ltd ACN 127 543 9808 and LM Investment Management Ltd ACN 077 208 461 as Trustee for LM Managed Performance Fund
- (e) Deed of Variation of Loan Agreement and Consent By Guarantor dated 21 May 2010 between LM Coomera Pty Ltd ACN 127 543 9808 and LM Investment Management Ltd ACN 077 208 461 as Trustee for LM Managed Performance Fund
- (f) Deed of Variation of Loan Agreement and Consent By Guarantor dated 28 June 2011 between LM Coomera Pty Ltd ACN 127 543 9808 and LM Investment Management Ltd ACN 077 208 461 as Trustee for LM Managed Performance Fund.
- (g) Deed of Variation of Loan Agreement and Consent By Guarantor dated 19 October 2011 between LM Coomera Pty Ltd ACN 127 543 9808 and LM Investment Management Ltd ACN 077 208 461 as Trustee for LM Managed Performance Fund.
- ✓ (h) Fixed and Floating Charge number 1733036 dated 11 November 2008 given by LM Coomera Pty Ltd ACN 127 543 980.
- (i) Deed of Guarantee and Indemnity dated 12 July 2007 between LM Investment Management Ltd ACN 077 208 461 in its capacity as trustee for the LM Managed Performance Fund and Permanent Trustee Australia Limited ACN 008 412 923 in its capacity as custodian for the LM First Mortgage Income Fund.
- (j) Deed of Guarantee and Indemnity dated 13 September 2007 between LM Investment Management Ltd ACN 077 208 461 in its capacity as trustee for the LM Managed Performance Fund and Permanent Trustee Australia Limited ACN 008 412 923 in its capacity as custodian for the LM First Mortgage Income Fund.
- (k) Deed of Guarantee and Indemnity dated 2 October 2007 between LM Investment Management Ltd ACN 077 208 461 in its capacity as trustee for the LM Managed Performance Fund and Permanent Trustee Australia Limited ACN 008 412 923 in its capacity as custodian for the LM First Mortgage Income Fund.
- (l) Deed of Guarantee and Indemnity dated 30 October 2007 between LM Investment Management Ltd ACN 077 208 461 in its capacity as trustee for the LM Managed Performance Fund and Permanent Trustee Australia Limited ACN 008 412 923 in its capacity as custodian for the LM First Mortgage Income Fund.
- (m) Deed of Guarantee and Indemnity dated 12 September 2008 between LM Investment Management Ltd ACN 077 208 461 in its capacity as trustee for the LM Managed Performance Fund, Young Land Corporation Pty Ltd ACN 102 989 686, David Jeffrey Young, Keppel Bay Holdings Pty Ltd ACN 107 193 813, Hidden Valley Pty Ltd ACN 124 458 975 and Permanent Trustee Australia Limited ACN 008 412 923 in its capacity for the LM First Mortgage Income Fund.

- (n) Deed of Variation of Mortgage of Units dated 30 October 2007 between Permanent Trustee Australia Limited ACN 008 412 913 in its capacity as custodian for the LM Investment Management Ltd ACN 077 208 461 in its capacity as trustee for the LM Managed Performance Fund.
- (o) Deed dated 12 September 2008 between Young Land Corporation Pty Ltd ACN 102 989 686, David Jeffrey Young, Keppel Bay Holdings Pty Ltd ACN 107 192 843, Young Project Marketing Pty Ltd ACN 107 193 813, Hidden Valley Pty Ltd ACN 124 458 975, Keppel Views Pty Ltd ACN 111 200 036, LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund, LM Investment Management Limited ACN 077 208 461 as responsible entity for the LM First Mortgage Income Fund and Permanent Trustee Australia Limited ACN 008 412 932.
- (p) Any other document or security provided to LM in support of the loan to LM Coomera Pty Ltd ACN 127 543 980.

PART 9

GREYSTANES PROJECTS PTY LTD

- (a) Loan Agreement dated 6 July 2007 between Greystanes Projects Pty Ltd ACN 119 783 470 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (b) Deed of Variation of Loan Agreement and Consent by Guarantor dated 6 July 2007 between Greystanes Projects Pty Ltd ACN 119 783 470, Ryan Mark Strauss, Enrico Leonardo Mariani, Nunziatina Mariani, Ross Lamb and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (c) Mortgage Number AD257213U dated 6 July 2007 between Greystanes Projects Pty Ltd ACN 119 783 470 and LM Investment Management Ltd ACN 077 208 461.
- (d) Deed of Guarantee and Indemnity dated 6 July 2007 between Ryan Mark Strauss, Enrico Leonardo Mariani, Nunziatina Mariani, Ross Lamb and LM Investment Management Ltd ACN 77 208 461.
- (e) Priority Deed dated 6 July 2007 between Permanent Trustee Australia Ltd ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund and Greystanes Projects Pty Ltd ACN 119 783 470.
- ✕ (f) Fixed and Floating Charge number 1478714 dated 6 July 2007 given by Greystanes Projects Pty Ltd ACN 119 783 470.
- (g) Deed of Cross-Collateralisation dated 6 July 2007 between LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund, Greystanes Projects Pty Ltd ACN 119 783 470, Glendenning Developments Pty Limited ACN 119 218 174, Ryan Mark Strauss, Enrico Leonardo Mariani, Nunziatina Mariani, Ross Lamb and Josephine Barillaro.
- (h) Builders Side Deed dated 6 July 2007 between Greystanes Projects Pty Ltd ACN 119 783 470, Toro Constructions Pty Limited ACN 086 516 725 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (i) Any other document or security provided to LM in support of the loan to Greystanes Projects Pty Ltd ACN 119 783 470.

PART 10

PETER CHARLES DRAKE

- (a) Loan Agreement dated 4 May 2007 between Peter Charles Drake and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (b) Deed of Variation of Loan Agreement and Consent By Guarantor dated 1 March 2010 between Peter Charles Drake, LM Administration Pty Ltd ACN 055 691 426 in its own right and as Trustee for the Ekard Property Trust, Century Star Investments Pty Ltd, LM Investment Management Ltd ACN 077 208 461 and as Trustee for the LM Managed Performance Fund.
- (c) Deed of Variation of Loan Agreement and Consent By Guarantor dated 12 January 2011 between Peter Charles Drake, LM Administration Pty Ltd ACN 055 691 426 in its own right and as Trustee for the Ekard Property Trust, Century Star Investments Pty Ltd, LM Investment Management Ltd ACN 077 208 461 and as Trustee for the LM Managed Performance Fund.
- (d) Deed of Guarantee and Indemnity dated 4 May 2007 between LM Administration Pty Ltd ACN 055 691 426 in its own right and as Trustee for the Ekard Property Trust, Century Star Investments Pty Ltd (a registered company in Hong Kong) and LM Investment Management Ltd ACN 077 208 461.
- Drake*
(e) Fixed and Floating Charge number 885231 dated 13 June 2002 given by LM Administration Pty Ltd ACN 055 691 426
- (f) Deed of Variation of Fixed and Floating Charge Number 885231 dated 4 May 2007 between LM Administration Pty Ltd ACN 055 691 426 and LM Investment Management Ltd ACN 077 208 461.
- (g) Fixed and Floating Charge number 2007025590 over Assets dated 7 August 2007 between LM Investment Management Ltd as Trustee for the LM Managed Performance Fund, Century Star Investments Limited and Peter Charles Drake (registered in Hong Kong).
- (h) Any other document or security provided to LM in support of the loan to Peter Charles Drake.

PART 11

GLENDENNING DEVELOPMENTS PTY LTD

- (a) Loan Agreement dated 12 March 2007 between Glendenning Developments Pty Ltd ACN 119 218 174 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Investment Performance Fund.
- (b) Deed of Variation of Loan Agreement and Consent By Guarantor dated 3 July 2007 between Glendenning Developments Pty Ltd ACN 119 218 174, Ryan Mark Strauss, Enrico Leonardo Mariani, Nunziatina Mariani, Josephine Barillaro and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund
- (c) Mortgage Number AC993408 dated 12 March 2007 between Glendenning Developments Pty Ltd ACN 119 218 174 and LM Investment Management Ltd ACN 077 208 461.
- (d) Fixed and Floating Charge Number 1428070 dated 12 March 2007 given by Glendenning Developments Pty Ltd ACN 119 218 174.
- (e) Deed of Guarantee and Indemnity dated 12 March 2007 between Ryan Mark Strauss, Enrico Leonardo Mariani, Nunziatina Mariani, Josephine Barillaro and LM Investment Management Ltd ACN 077 208 461.
- (f) Deed of Guarantee and Indemnity dated 12 March 2007 given by Nunziatina Mariani.
- (g) Deed of Cross-Collateralisation dated 6 July 2007 between Greystanes Projects Pty Limited ACN 119 783 470, Glendenning Developments Pty Ltd ACN 119 218 174, Ryan Mark Strauss, Leonardo Enrico Mariani, Nunziatina Mariani, Ross Lamb, Josephine Barillo and LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund
- (h) Priority Deed dated 12 March 2007 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund and Glendenning Developments Pty Ltd ACN 119 218 174.
- (i) Builder's Side dated 12 March 2007 between Glendenning Developments Pty Limited ACN 119 218 174, Toro Constructions Pty Limited ACN 086 516 725, LM Investment Management Limited ACN 077 208 461 and Permanent Trustee Australia Limited ACN 008 412 913.
- (j) Deed of Guarantee and Indemnity dated 12 March 2007 between Nunziatina Mariani and LM Investment Management Ltd ACN 077 208 461.
- (k) Deed of Cross-Collateralisation dated 6 July 2007 between Greystanes Projects Pty Limited ACN 119 783 470, Glendenning Developments Pty Limited ACN 119 218 174, Ryan Mark Strauss, Leonardo Enrico Mariani, Nunziatina Mariani, Ross Lamb, Josephine Barillo and LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund.
- (l) Any other document or security provided to LM in support of the loan to Glendenning Developments Pty Ltd ACN 119 218 174.

PART 12

KINGOPEN PTY LTD

- (a) Loan Agreement dated 2 November 2006 between LM Investment Management Ltd atf the LM Managed Performance Fund and Kingopen Pty Ltd.
- (b) Variation of Loan Agreement and Consent by Guarantor dated 7 March 2007 between LM Investment Management Ltd atf the LM Managed Performance Fund and Kingopen Pty Ltd.
- (c) Letter of Extension of Loan Term dated 31 July 2008 from LM Investment Management Ltd atf the LM Managed Performance Fund to Kingopen Pty Ltd.
- (d) Variation dated 26 May 2008 between LM Investment Management Ltd atf the LM Managed Performance Fund and Kingopen Pty Ltd.
- (e) Mortgage number J979941 dated 8 November 2006 between Kingopen Pty Ltd and LM Investment Management Ltd over Lot 9 on Diagram 19505.
- (f) Mortgage number J979942 dated 8 November 2006 between Kingopen Pty Ltd and LM Investment Management Ltd over Lot 1004 on Deposited Plan 41555.
- (g) Priority Deed dated 7 March 2007 between LM Investment Management Ltd, LM Investment Management Ltd atf LM Managed Performance Fund and Kingopen Pty Ltd.
- (h) Priority Deed dated 26 May 2008 between Permanent Trustee Australia Limited, LM Managed Performance Fund and Kingopen Pty Ltd.
- X (i) Fixed and Floating Charge dated 10 November 2006 for Charge number 1376864 given by Kingopen Pty Ltd ACN 009 225 576.
- (j) Deed of Variation of Fixed and Floating Charge number 1376864 dated 26 May 2008.
- (k) Deed of Variation of Fixed and Floating Charge number 1376864 dated 7 March 2007.
- X (l) Fixed and Floating Charge dated 10 November 2006 for Charge number 1376907 given by Brooks Garden Lifestyle Village Pty Ltd ACN 101 042 095.
- (m) Deed of Variation of Fixed and Floating Charge number 1376907 dated 7 March 2007.
- (n) Deed of Variation of Fixed and Floating Charge number 1376907 dated 26 May 2008.
- X (o) Fixed and Floating Charge dated 10 November 2006 for Charge number 1376691 given by Semana Nominees Pty Ltd ACN 008 932 214.
- (p) Deed of Variation of Fixed and Floating Charge number 1376691 dated 7 March 2007.
- (q) Deed of Variation of Fixed and Floating Charge number 1376691 dated 26 May 2008.
- X (r) Fixed and Floating Charge number 1376828 dated 10 November 2006 given by Pontus Nominees Pty Ltd ACN 075 430 321.
- (s) Deed of Variation of Fixed and Floating Charge number 1376828 dated 7 March 2007.
- (t) Deed of Variation of Fixed and Floating Charge number 1376828 dated 26 May 2008.
- X (u) Fixed and Floating Charge number 1376764 dated 10 November 2006 given by Chester Pass Investments Pty Ltd 079 271 417.
- (v) Deed of Variation of Fixed and Floating Charge number 1376764 dated 7 March 2007.

- (w) Deed of Variation of Fixed and Floating Charge number 1376764 dated 26 May 2008.
- (x) Fixed and Floating Charge number 1376721 dated 10 November 2006 given by Farm Fresh News Pty Ltd ACN 079 296 227.
- (y) Deed of Variation of Fixed and Floating Charge number 1376721 dated 7 March 2007.
- (z) Deed of Variation of Fixed and Floating Charge number 1376721 dated 26 May 2008.
- (aa) Deed of Guarantee and Indemnity dated 2 November 2006 between LM Investment Management Limited ACN 077 208 461 atf the LM Managed Performance Fund, Semana Nominees Pty Ltd ACN 008 932 214 in its own right and as trustee for the Dulos Trust and the Peter Spanbroek Family Trust, Pontius Nominees Pty Ltd ACN 075 430 321 in its own right and as trustee for the Perry Spanbroek Family Trust, Chester Pass Investments Pty Ltd ACN 079 271 417, Brooks Garden Lifestyle Village Pty Ltd ACN 101 042 095, Petrus Hendrikus Jahonnes Spanbroek, Petrus Hendrikus Antonius Spanbroek, Petronella Catharina Spanbroek, Farm Fresh News Pty Ltd ACN 079 296 227.
- (bb) Deed of Consent to Security dated 12 December 2007 between LM Investment Management Ltd atf the LM Managed Performance Fund, Bank of South Australia, a division of St George Bank Limited ACN 055 513 070, CPT Custodian Pty Ltd ACN 077 870 243 as trustee of the Centro Albany Property Trust, Kingopen Pty Ltd ACN 009 225 576.
- (cc) Assignment by Way of Security dated 1 June 2007 between LM Investment Management Ltd atf the LM Managed Performance Fund and Kingopen Pty Ltd.
- (dd) Priority Deed dated 2 November 2006 between Permanent Trustee Australia Limited, LM Managed Performance Fund and Kingopen Pty Ltd.
- (ee) Deed of Acknowledgement and Release dated 2 November 2006 between LM Investment Management Limited ACN 077 208 461, Kingopen Pty Ltd ACN 009 225 576, Semana Nominees Pty Ltd ACN 008 932 214, Pontius Nominees Pty Ltd ACN 075 430 321, Chester Pass Investments Pty Ltd ACN 079 271 417, Brooks Garden Lifestyle Village Pty Ltd ACN 101 042 095, Petrus Hendrikus Jahonnes Spanbroek, Petrus Hendrikus Antonius Spanbroek, Petronella Catharina Spanbroek, Farm Fresh News Pty Ltd ACN 079 296 227 and Bridgecorp Finance Limited ACN 095 328 948.
- (ff) Side Deed dated 7 June 2007 between Kingopen Pty Ltd ACN 009 225 576, CPT Custodian Pty Limited ABN 67 077 870 243 as trustee of the Centro Albany Property Trust ABN 55 257 979 396 and LM Investment Management Limited ACN 077 208 461 as trustee for the trust.
- (gg) Mortgage number K785398 dated 7 June 2007 between Kingopen Pty Ltd and LM Investment Management Ltd over Lot 1005 on Deposited Plan 49235.
- (hh) Any other document or security provided to LM in support of the loan to Kingopen Pty Ltd ACN 009 225 576.

PART 13

LOT 111 PTY LTD

- (a) Loan Agreement dated 24 March 2006 between Lot 111 Pty Ltd ACN 106 102 005 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (b) Deed of Variation of Loan Agreement and Consent By Guarantor dated 25 July 2007 between Lot 111 Pty Ltd ACN 106 102 005 in its own right and as trustee for the Garigal Trust, David Richard Hawes, Green Square Property Development Corporation Pty Ltd ACN 104 248 053, Glenside Group Pty Ltd ACN 003 515 893 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (c) Deed of Variation of Loan Agreement and Consent By Guarantor dated 28 January 2009 between Lot 111 Pty Ltd ACN 106 102 005 in its own right and as trustee for the Garigal Trust, David Richard Hawes, Green Square Property Development Corporation Pty Ltd ACN 104 248 053, Glenside Group Pty Ltd ACN 003 515 893 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (d) Priority Deed dated 27th February 2006 between Permanent Trustee Australia Ltd ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461 and LM Investment Management Ltd ACN 077 208 461 as Trustee for LM Managed Performance Fund and Lot 111 Pty Ltd CAN 106 102 005.
- (e) Priority Deed dated 28th January 2009 between Permanent Trustee Australia Ltd ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461 and LM Investment Management Ltd ACN 077 208 461 as Trustee for LM Managed Performance Fund and Lot 111 Pty Ltd CAN 106 102 005.
- (f) Priority Deed dated 30 July 2009 between Permanent Trustee Australia Ltd ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461 and LM Investment Management Ltd ACN 077 208 461 as Trustee for LM Managed Performance Fund and Lot 111 Pty Ltd ACN 106 102 005.
- (g) Deed of Guarantee and Indemnity 24 March 2006 between David Richard Hawes, Green Square Developments Pty Ltd ACN 104 248 053, Glenside Group Pty Ltd ACN 003 515 893 and LM Investment Management Ltd ACN 077 208 461.
- (h) Deed of Guarantee and Indemnity 29 June 2010 between Glenside Group Pty Ltd ACN 003 515 893, Peregrine Beach Pty Ltd ACN 127 412 864 and LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund.
- (i) Deed of Guarantee and Indemnity 29 June 2010 between David Richard Hawes, Green Square Developments Pty Ltd ACN 104 248 053, Glenside Group Pty Ltd ACN 003 515 893, Lot 111 Pty Ltd ACN 106 102 005 and LM Investment Management Ltd ACN 077 208 461.
- (j) Mortgage number AC324983U dated 24 March 2006 between Lot 111 Pty Ltd ACN 106 102 005 and LM Investment Management Ltd ACN 077 208 461.
- X (k) Fixed and Floating Charge number 1301176 dated 24 March 2006 given by Glenside Group Pty Ltd ACN 003 515 893.
- X (l) Fixed and Floating Charge number 1301177 dated 24 March 2006 given by Lot 111 Pty Ltd ACN 106 102 005.
- (m) Deed of Cross-Collateralisation dated 24 March 2006 between Lot 111 Pty Ltd ACN 106 102 005, Green Square Developments Pty Ltd ACN 104 248 053 as Borrower, David Hawes, Green Square Developments Pty Ltd ACN 104 248 053 and Glenside Group Pty Ltd ACN 003 515 893 as Guarantors and LM Investment Management Ltd ACN 077 208 461 as Trustee for LM Managed Performance Fund as Lender.

- (n) Any other document or security provided to LM in support of the loan to Lot 111 Pty Ltd ACN 106 102.

PART 14

NORTHSHORE BAYVIEW STREET PTY LTD

- (a) Loan Agreement dated 19 January 2006 between Northshore Bayview Street Pty Ltd ACN 111 109 418 in its own right and as trustee for the Northshore Bayview Street No 1 Pty Ltd and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (b) Deed of Variation of Loan Agreement and Consent By Guarantor dated 18 July 2006 between Northshore Bayview Street Pty Ltd ACN 111 109 418 in its own right and as trustee for the Northshore Bayview Street No 1 Pty Ltd, Phillip Warwick Usher, Alan Noel Powell, George Tech Guan Lee and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (c) Deed of Variation of Loan Agreement and Consent By Guarantor dated 16 October 2006 between Northshore Bayview Street Pty Ltd ACN 111 109 418 in its own right and as trustee for the Northshore Bayview Street No 1 Pty Ltd, Phillip Warwick Usher, Alan Noel Powell, George Tech Guan Lee and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (d) Deed of Variation of Loan Agreement and Consent By Guarantor dated 16 March 2007 between Northshore Bayview Street Pty Ltd ACN 111 109 418 in its own right and as trustee for the Northshore Bayview Street No 1 Pty Ltd, Phillip Warwick Usher, Alan Noel Powell, George Tech Guan Lee and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (e) Deed of Variation of Loan Agreement and Consent By Guarantor dated 15 October 2007 between Northshore Bayview Street Pty Ltd ACN 111 109 418 in its own right and as trustee for the Northshore Bayview Street No 1 Pty Ltd, George Teck Guan Lee, Glee Investments Pty Ltd ACN 059 861 326 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (f) Deed of Variation of Loan Agreement and Consent By Guarantor dated 17 December 2008 between Northshore Bayview Street Pty Ltd ACN 111 109 418 in its own right and as trustee for the Northshore Bayview Street No 1 Pty Ltd, George Teck Guan Lee, Glee Investments Pty Ltd ACN 059 861 326 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (g) Deed of Variation of Loan Agreement and Consent By Guarantor dated 22 December 2009 between Northshore Bayview Street Pty Ltd ACN 111 109 418 in its own right and as trustee for the Northshore Bayview Street No 1 Pty Ltd, George Teck Guan Lee, Glee Investments Pty Ltd ACN 059 861 326 and LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (h) Mortgage number 709309919 dated 20 January 2006 between Northshore Bayview Street Pty Ltd ACN 111 109 418 as Trustee under instrument number 708205552 and LM Investment Management Ltd ACN 077 208 461.
- ✕ (i) Fixed and Floating Charge number 1257618 dated 29 January 2006 given by Northshore Bayview Street Pty Ltd ACN 111 109 418.
- ✕ (j) Fixed and Floating Charge number 1548419 dated 15 October 2007 given by Glee Investments Pty Ltd ACN 059 861 326.
- (k) Deed of Guarantee and Indemnity dated 19 January 2006 between Phillip Warwick Usher, Alan Noel Powell, George Teck Guan Lee and LM Investment Management Ltd ACN 077 208 461.
- (l) Deed of Guarantee and Indemnity dated 15 October 2007 between George Teck Guan Lee and Glee Investments Pty Ltd ACN 059 861 326 and LM Investment Management Ltd ACN 77 208 461.

- (m) Deed of Guarantee and Indemnity dated 16 March 2010 between Inter Mail International Pty Ltd ACN 070 702 340 in its own right and as trustee and LM Investment Management Ltd ACN 077 208 461.
- (n) Priority Deed dated 19 January 2006 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund and Northshore Bayview Street Pty Ltd ACN 111 108 418 in its own right and as Trustee for the Northshore Bayview Street No 1 Unit Trust.
- (o) Priority Deed dated 19 January 2006 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461, Quinest Pty Ltd ACN 079 774 324, Level 8 Investments Pty Ltd ACN 107 395 317 and Northshore Bayview Street Pty Ltd ACN 111 108 418 in its own right and as Trustee for the Northshore Bayview Street No 1 Unit Trust.
- (p) Priority Deed dated 16 March 2007 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461, Quinest Pty Ltd ACN 079 774 324, Level 8 Investments Pty Ltd ACN 107 395 317 and Northshore Bayview Street Pty Ltd ACN 111 108 418 in its own right and as Trustee for the Northshore Bayview Street No 1 Unit Trust.
- (q) Priority Deed dated 10 August 2007 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund and Northshore Bayview Street Pty Ltd ACN 111 108 418 in its own right and as Trustee for the Northshore Bayview Street No 1 Unit Trust.
- (r) Priority Deed dated 15 October 2007 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund and Northshore Bayview Street Pty Ltd ACN 111 108 418 in its own right and as Trustee for the Northshore Bayview Street No 1 Unit Trust.
- (s) Priority Deed dated 12 March 2010 between Permanent Trustee Australia Limited, LM Investment Management Ltd, Northshore Bayview Street Pty Ltd, George Teck Guan Lee and Glee Investments Pty Ltd.
- (t) Deed of Release dated 15 October 2007 between LM Investment Management Ltd ACN 077 208 461 as Trustee for the LM Managed Performance Fund, Northshore Bayview Street Pty Ltd ACN 111 108 418 in its own right and as Trustee for the Northshore Bayview Street No 1 Unit Trust, Phillip Warwick Usher, Alan Noel Powell and George Teck Guan Lee.
- (u) Any other document or security provided to LM in support of the loan to Northshore Bayview Street Pty Ltd ACN 111 108 418 in its own right and as Trustee for the Northshore Bayview Street No 1 Unit Trust.

PART 15

GREEN SQUARE PROPERTY DEVELOPMENT CORPORATION PTY LTD

- (a) Loan Agreement dated 2 June 2005 between Green Square Property Development Corporation Pty Ltd ACN 104 248 053 and LM Investment Management Limited ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (b) Deed of Variation of Loan Agreement and Consent By Guarantor dated 12 December 2005 between Green Square Property Development Corporation Pty Ltd ACN 104 248 053, David Richard Hawes and LM Investment Management Limited ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (c) Deed of Variation of Loan Agreement and Consent By Guarantor dated 24 November 2006 between Green Square Property Development Pty Ltd ACN 104 248 053, David Richard Hawes and LM Investment Management Limited ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (d) Deed of Variation of Loan Agreement and Consent By Guarantor dated 26 May 2006 between Green Square Property Development Corporation Pty Ltd ACN 104 248 053, David Richard Hawes and LM Investment Management Limited ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (e) Deed of Variation of Loan Agreement and Consent By Guarantor dated 25 July 2007 between Green Square Property Development Corporation Pty Ltd ACN 104 248 053, David Richard Hawes and LM Investment Management Limited ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (f) Deed of Variation of Loan Agreement and Consent By Guarantor dated 28 January 2009 between Green Square Property Development Corporation Pty Ltd ACN 104 248 053, David Richard Hawes and LM Investment Management Limited ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (g) Deed of Variation of Loan Agreement and Consent By Guarantor dated 13 March 2009 between Green Square Property Development Corporation Pty Ltd ACN 104 248 053, David Richard Hawes and LM Investment Management Limited ACN 077 208 461 as Trustee for the LM Managed Performance Fund.
- (h) Mortgage Number AB586774P dated 8 June 2005 Green Square Property Development Corporation Pty Ltd ACN 104 248 053 and LM Investment Management Limited ACN 077 208 461.
- (i) Priority Deed dated 2 June 2005 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund and Green Square Property Development Corporation Pty Ltd ACN 104 248 053.
- (j) Priority Deed dated 13 March 2006 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund and Green Square Property Development Pty Corporation Ltd ACN 104 248 053.
- (k) Priority Deed dated 22 February 2006 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund and Green Square Property Development Corporation Pty Ltd ACN 104 248 053.
- (l) Priority Deed dated 29 January 2009 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund, Green Square Property Development Corporation Pty Ltd ACN 104 248 053 and David Richard Hawes.

- (m) Priority Deed dated 13 March 2009 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Ltd ACN 077 208 461, LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund, Green Square Property Development Corporation Pty Ltd ACN 104 248 053 and David Richard Hawes.
- X (n) Fixed and Floating Charge number 1171133 dated 8 June 2005 given by Green Square Property Development Corporation Pty Ltd ACN.
- (o) Deed of Variation of charge number 1171133 dated 4 March 2006.
- (p) Deed of Guarantee and Indemnity dated 2 June 2005 between David Richard Hawes and LM Investment Management Ltd.
- (q) Deed of Guarantee and Indemnity dated 29 June 2010 between David Richard Hawes, Glenside Group (QLD) Pty Ltd ACN 144 620 093, Lot 111 Pty Ltd ACN 106 102 005, Green Square Property Development Corporation Pty Ltd ACN 104 248 053 and LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund.
- (r) Deed of Guarantee and Indemnity dated 29 June 2010 between Glenside Group (QLD) Pty Ltd ACN 144 620 093, Peregrine Beach Pty Ltd ACN 127 412 864 and LM Investment Management Ltd ACN 077 208 461 as trustee for the LM Managed Performance Fund.
- (s) Deed of Cross-Collateralisation dated 28 January 2009 between Green Square Property Development Corporation Pty Ltd ACN 104 248 053, Lot 111 Pty Ltd ACN 106 102 005 in its own right and as trustee for The Garigal Trust, David Richard Hawes, Glenside Group Pty Limited ACN 003 515 893 and LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund.
- (t) Deed of Cross-Collateralisation dated 24 March 2006 between Green Square Property Development Corporation Pty Ltd ACN 104 248 053, Lot 111 Pty Ltd ACN 106 102 005, David Richard Hawes, Glenside Group Pty Limited ACN 003 515 893 and LM Investment Management Limited ACN 077 208 461.
- (u) Deed of Cross-Collateralisation dated 28 January 2009 between Green Square Property Development Corporation Pty Ltd ACN 104 248 053, Lot 111 Pty Ltd ACN 106 102 005 in its own right and as trustee for The Garigal Trust, David Richard Hawes, Glenside Group Pty Limited ACN 003 515 893 and LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund.
- (v) Any other document or security provided to LM in support of the loan to Green Square Property Development Corporation Pty Ltd ACN 104 248 053.

PART 16

BELLPAC PTY LIMITED

- Handwritten note:*
Borrower -
Borrower's
for Bellpac
- (a) Loan Agreement dated 23 June 2006 between LM Investment Management Limited ACN 077 208 461 and Bellpac Pty Limited ACN 101 713 017.
 - (b) Fixed and floating charge number 1327826 dated 23 June 2006 given by Bellpac Pty Limited ACN 101 713 017.
 - (c) Fixed and floating charge number 1327381 dated 23 June 2006 given by Anpor Holdings Pty Ltd.
 - (d) Fixed and floating charge number 1327823 dated 23 June 2006 given by Balgow Pty Ltd ACN 104 282 171.
 - (e) Fixed and floating charge number 1327827 dated 23 June 2006 given by GPC No 8 (Bulli) Pty Ltd ACN 100 895 770 in its own right and as trustee for the Balgownie Coal Investment Trust.
 - (f) Fixed and floating charge number 1327825 dated 23 June 2006 given by Richland Investment (Australia) Pty Ltd.
 - (g) Deed of Guarantee and Indemnity dated 23 June 2007 between GPC No 8 (Bulli) Pty Ltd ACN 100 895 770 in its own right and as trustee for the Balgownie Coal Investment Trust, Great Pacific Capital Limited ACN 096 781 716, Balgow Pty Ltd ACN 104 282 171, Anpor Holdings Pty Ltd and Richland Investment (Australia) Pty Ltd.
 - (h) Deed of Priority dated 23 June 2007 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Limited ACN 077 208 461 as Responsible Entity for the LM First Mortgage Income Fund, LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund and Richland Investment (Australia) Pty Ltd.
 - (i) Deed of Priority dated 23 June 2007 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Limited ACN 077 208 461 as Responsible Entity for the LM First Mortgage Income Fund, LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund, Great Pacific Capital Limited ACN 096 781 716 and Bellpac Pty Limited ACN 101 713 017.
 - (j) Deed of Priority dated 23 June 2007 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Limited ACN 077 208 461 as Responsible Entity for the LM First Mortgage Income Fund, LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund, Bridgecorp Finance Ltd and Anpor Holdings Pty Ltd.
 - (k) Mortgage number AD73934E dated 23 June 2006 given by Richland Investment (Australia) Pty Ltd to LM Investment Management Limited ACN 077 208 461.
 - (l) Mortgage number AB211547W dated 17 December 2004 given by Bellpac Pty Limited ACN 101 713 017 to LM Investment Management Limited ACN 077 208 461.
 - (m) Deed of Variation of Loan Agreement dated 11 July 2008 between LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund and Bellpac Pty Limited ACN 101 713 017.
 - (n) Any other document or security provided to LM in support of the loan to Bellpac Pty Limited ACN 101 713 017.

PART 17

GREAT PACIFIC CAPITAL LIMITED ACN 096 781 716

- (a) Mortgage number AA831703B dated 14 July 2004 given by Anpor Holdings Pty Ltd ACN 093 248 009 to LM Investment Management Limited ACN 077 208 461.
- (b) Mortgage number AB211547W dated 17 December 2004 given by Bellpac Pty Limited ACN 101 713 017 to LM Investment Management Limited ACN 077 208 461.
- (c) Loan Agreement dated 14 July 2004 between LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund and Great Pacific Capital Limited ACN 096 781 716.
- (d) Deed of Variation of Loan Agreement dated 17 December 2004 between LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund and Great Pacific Capital Limited ACN 096 781 716.
- (e) Deed of Variation of Loan Agreement dated 1 September 2005 between LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund and Great Pacific Capital Limited ACN 096 781 716.
- (f) Deed of Variation of Loan Agreement dated 25 May 2006 between LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund and Great Pacific Capital Limited ACN 096 781 716.
- (g) Fixed and floating charge number 1062620 dated 14 July 2004 given by Great Pacific Capital Limited ACN 096 781 716.
- (h) Fixed and floating charge number 1064140 dated 14 July 2004 given by Anpor Holdings Pty Ltd ACN 093 248 009.
- (i) Deed of Guarantee and Indemnity dated 14 July 2004 between Alfred Wong and Anpor Holdings Pty Ltd ACN 093 248 009.
- (j) Variation Deed and Consolidated Loan Agreement dated 23 June 2006 between LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund and Great Pacific Capital Limited ACN 096 781 716.
- (k) Deed of Guarantee dated 23 June 2006 between LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund and Great Pacific Capital Limited ACN 096 781 716.
- (l) Deed of Priority dated 23 June 2006 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Limited ACN 077 208 461 as Responsible Entity for the LM First Mortgage Income Fund, LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund and Richland Investment (Australia) Pty Ltd.
- (m) Deed of Priority dated 23 June 2006 between Permanent Trustee Australia Limited ACN 008 412 913, LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund, Bellpac Pty Limited ACN 101 713 017, Great Pacific Capital No 11 Pty Ltd, Great Pacific Capital No 12 Pty Ltd, Great Pacific Capital No 8 Bulli Pty Ltd, Austcorp Project No 20 Pty Ltd.
- (n) Deed of Variation of Loan Agreement dated 11 July 2008 between LM Investment Management Limited ACN 077 208 461 as trustee for the LM Managed Performance Fund and Great Pacific Capital Limited ACN 096 781 716.

- (o) Loan Agreement dated 23 June 2006 between LM Investment Management Limited ACN 077 208 461 and Great Pacific Capital Limited ACN 096 781 716.
- (p) Any other document or security provided to LM in support of the loan to Great Pacific Capital Limited ACN 096 781 716.

SMV-18

PERMANENT TRUSTEE AUSTRALIA LIMITED

and

LM INVESTMENT MANAGEMENT LTD

CUSTODY AGREEMENT

PERMANENT TRUSTEE AUSTRALIA LIMITED

23-25 O'Connell Street

SYDNEY NSW 2000

DX 383 SYDNEY

Tel: (02) 9321 1600

Fax: (02) 9321 1659

#140216/v2

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CUSTODY AGREEMENT

THIS AGREEMENT is made the ⁴~~15~~ day of February 1999 ~~The Trust Company (PTAL) Ltd~~

BETWEEN: PERMANENT TRUSTEE AUSTRALIA LIMITED (ACN 008 412 913) a company duly incorporated in New South Wales having its registered office at 23-25 O'Connell Street, Sydney, in the said State, and an office at Level 8, 410 Queen St, Brisbane, Queensland ('Permanent')

AND: LIM INVESTMENT MANAGEMENT LTD (ACN 077 208 461) a company duly incorporated in Queensland having its registered office at Level 4, RSL Centre, 44A Cavill Avenue Surfers Paradise in the State of Queensland (the 'Client')

OPERATIVE PROVISIONS:

1. INTERPRETATION

1.1 In this agreement, unless the context otherwise requires:

'Austraclear' means the system operated by Austraclear Limited performing the role of central depository for securities traded in the Australian financial market, and which provides a real-time system for clearing and settling corporate and semi-government debt securities and financial derivatives.

'ASIC' means the Australian Securities and Investments Commission or such other government authority that performs the role undertaken by ASIC in relation to managed investment schemes at the date of this agreement.

'Authorised Person' means the persons nominated by each of the Client and Permanent respectively who are authorised to make any written communication or take action on behalf of the Client or Permanent respectively in relation to the performance of the relevant party under this agreement. The Client may nominate as its Authorised Persons any officers or employees of a Manager employed by the Client. A party may impose restrictions on the authority of any Authorised Person by written notice to the other party. The Authorised Persons and any restrictions on authority as at the date of this agreement are specified in schedule 1 and may be varied upon written notice by the respective party to the other party.

'Business Day' means a day on which banks are open for business in Brisbane, but excludes Saturdays, Sundays, public holidays and bank holidays.

'CHESS' stands for 'Clearing House Electronic Subregister System' and means the clearing house established and operated by Securities Clearing House ('SCH') for the clearing, settlement, transfer and registration of securities approved by SCH.

'Custodially Held', in relation to an asset of a Scheme held by or on behalf of Permanent under this agreement means that Permanent or the person holding the asset on Permanent's behalf has one or more of the following:-

- (i) legal title to the asset;
- (ii) physical possession of the asset;
- (iii) direct control of the asset;

- (iv) is designated as mortgagee of the asset; or
- (v) physical possession or direct control of the essential elements of title of the asset,

where in all the circumstances this results in Permanent or the person holding the asset on Permanent's behalf having effective control of the asset for the purpose of its safekeeping (whether or not Permanent or the person holding the asset on Permanent's behalf, as the case may be, also performs other services in relation to the asset).

'Instructions' has the meaning set out in clause 5.

'Law' means the Corporations Law.

'Manager' means a person appointed by the Client to provide management services in respect of all or part of the Portfolio.

'Portfolio' means property of a Scheme Custodially Held from time to time by Permanent or a Sub-custodian pursuant to this agreement.

'RTTS' stands for 'Reserve Bank Information and Transfer System' and means the real time computerised settlement and information system established by the Reserve Bank of Australia for settlements, electronic trading and bidding, and cash transfers for parties with Reserve Bank accounts.

'SCO' means the Client's Senior Compliance Officer.

'Scheme' means those schemes listed in schedule 2 and any other scheme included by mutual agreement in writing between Permanent and the Client.

'Sub-custodian' means any person engaged pursuant to clause 6.1 to Custodially Hold some part or all of the Portfolio on behalf of Permanent.

'SWIFT' stands for 'Society for Worldwide Interbank Financial Telecommunications' and means the international store and forward network system which processes a range of financial transactions relating to, inter alia, bank transfers, foreign exchange, loans, deposits and securities.

'Taxes' means all taxes of whatever nature lawfully imposed, including income tax, recoupment tax, land tax, sales tax, fringe benefits tax, group tax, capital gains tax, profit tax, interest tax, tax on the provision of goods or services, property tax, undistributed profits tax, withholding tax, municipal rates, financial institutions duty, bank account debit tax, stamp duties and other taxes, charges and liens assessed or charged or assessable or chargeable by, or payable to, any national, Federal, State, Territory or municipal taxation or excise governmental agency, including any interest or fee imposed in connection with any such tax, rates, duties, charges or liens.

'Title Documents' means the written evidence of title to or interest in any of the assets forming part of the Portfolio.

1.2 In this agreement, unless the context otherwise requires:

- (a) words importing one gender include the other genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a party is a reference also to that party's respective successors or assigns;
- (d) a reference to a *person* includes an individual, firm, company, corporation or unincorporated body of persons, or any state or government or any agency thereof (in each case, whether or not having separate legal personality) and reference to a *company* includes a person;
- (e) a reference to an *agent* does not include any pricing service or supplier of pricing information used by Permanent for valuation or pricing purposes;
- (f) headings are for convenience only and shall not affect interpretation;
- (g) mentioning anything after, *include*, *includes* or *including* does not limit what else may be included;
- (h) references to sections, clauses and schedules are references to sections, clauses and schedules of this agreement;
- (i) a reference to Permanent or the Client includes, where the context permits a reference to their respective officers, employees and agents or any of them;
- (j) a reference to the *knowledge, belief or awareness* of any person in relation to a matter means the knowledge, belief or awareness that the person would have if they had made all reasonable enquiries of others who could reasonably be expected to have information relevant to the matter and, where those enquiries would have prompted a reasonable person to make further enquiries, made those further enquiries;
- (k) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued relating to it;
- (l) references to dollar and '\$' refer to amounts in Australian currency; and
- (m) the schedules to this agreement form part of this agreement.

2. **APPOINTMENT OF PERMANENT**

- 2.1 The Client appoints Permanent to provide custodial services on the terms of this agreement.
- 2.2 Permanent accepts its appointment and agrees to provide custodial services to the Client on the terms of this agreement.
- 2.3 Permanent acknowledges that the Client will assess Permanent's performance on a regular basis in accordance with the methods and standards identified in schedule 3.

3. FUNCTION AND POWERS OF PERMANENT

3.1 Subject to the provisions of this agreement, Permanent agrees to custodially hold the Portfolio and Title Documents as agent for the Client in relation to each Scheme.

3.2 The Client authorises Permanent to:

- (a) purchase, acquire, issue, release, sell or dispose of property to form or forming part or all of any Portfolio on receipt of Instructions from the Client and execute all transfers, releases, and assurances and other documents necessary for any such purpose;
- (b) receive and hold or procure the receipt and holding of any property so purchased or acquired and any interest, dividend, rent or other income accruing in respect of it and any document of title to it in safe custody;
- (c) procure safe custody of property of the Portfolio in bearer form;
- (d) procure registration in the name of Permanent or of a Sub-custodian, as the case requires, of property of the Portfolio in a registrable form unless it is otherwise impractical or inconsistent with market practice or otherwise permitted with the consent of the Client; and
- (e) provide the custody services and other administrative services as set out in this agreement or as agreed from time to time between Permanent and the Client. In such circumstances Permanent is entitled to receive additional fees as agreed between the parties.

3.3 Permanent may establish an account in the name of the Client designating a Scheme or, if otherwise instructed by the Client, some other name, with any bank or company approved by the Client and operate on the account in accordance with Instructions from the Client.

3.4 Permanent may refuse to purchase, acquire, issue, release, sell, accept the deposit or transfer of a security, document or other property, and the Client must accept a return of the document or transfer of the security or other property at the request of Permanent. In particular, Permanent has no obligation to accept into the Portfolio or acquire any partly paid investment unless the Client has made arrangements satisfactory to Permanent to set aside in the name of Permanent money or other property sufficient to provide for payment of the investment in full.

3.5 The Client agrees that, in relation to property held on a pooled basis or in an omnibus account, the transfer or delivery of property in accordance with this agreement of the same type and number as the property so held will constitute a proper performance by Permanent of its obligations under this agreement.

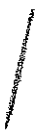
3.6 Permanent may execute or make on behalf of the Client any certificates, declarations or affidavits which are required to receive into or transfer out of its custody any property of or for any Portfolio.

3.7 The Client agrees that Permanent or any Sub-custodian may hold any property included in a Portfolio on a pooled basis or in an omnibus account in accordance with any class order issued by ASIC or any specific relief from the requirements of section 601FC(1)(i) of the Law granted by ASIC in relation to the relevant Scheme.

- 3.8 Permanent may appoint or engage at the Client's expense accountants, auditors, barristers, solicitors, advisers, consultants, brokers, counterparties, couriers or other persons (not being persons appointed under clause 6.1) where it reasonably considers their appointment or engagement necessary or desirable for the purposes of exercising its powers or performing its duties under this agreement. Permanent is not liable for any loss, damage or expense suffered or incurred as a result of any act of omission whatever (including a negligent act or omission) of a person appointed or engaged under this clause 3.8.
- 3.9 Persons appointed or engaged in accordance with clause 3.8 or 6.1 may be related to or associated with Permanent and may be paid and receive their normal fees or commissions.
- 3.10 Permanent may in the ordinary course of its business, without reference to the Client, effect transactions in which Permanent has directly or indirectly a material interest, or a relationship of any kind with another person, which may involve a potential conflict with Permanent's duty to the Client, and Permanent is not liable to account to the Client for any profit, commission or remuneration made or received in relation to those transactions or any connected transactions. A reference in this clause 3.10 to Permanent includes a Sub-custodian, and Permanent shall in any event act in a bona fide manner in relation to any such transaction.
- 3.11 Permanent and its Sub-custodians may for convenience or expedience use Austraclear, RITS, CHESS, SWIFT and/or any other electronic funds or assets transfer system whether within Australia or overseas.
- 3.12 Permanent is authorised to comply with any obligations imposed on it by law.
- 3.13 Permanent may do any other things which it considers necessary, desirable, incidental to or in furtherance of the matters referred to in this clause 3 or clause 4.
- 3.14 Subject to this agreement, Permanent has absolute discretion as to the exercise of all powers, authorities and discretion vested in it under this agreement.

4. DUTIES OF PERMANENT

- 4.1 The ~~Client is responsible~~ for taking all decisions in relation to the Portfolio and properly communicating to Permanent Instructions in relation to the assets of the Portfolio. Subject to this agreement, Permanent must act on the Client's Instructions in relation to any assets of the Portfolio. If Permanent does not have Instructions, Permanent is not required, subject to this agreement, to make any payment or take any other action in relation to any matter concerning any asset in a Portfolio.
- 4.2 Permanent must promptly forward to or notify the Client or the relevant Manager of all forms of proxy, notices of meetings and other material letters, notices or announcements received by Permanent relating to the assets of a Portfolio.
- 4.3 Permanent is not responsible for reviewing or advising the Client on the Portfolio or any part of it nor for any action or omission pursuant to a decision taken or mistakenly not taken by the Client.
- 4.4 Permanent disclaims any knowledge of the terms on which securities are issued or the constituent documents of the issuer and the Client undertakes to investigate and satisfy itself as to those matters and to ensure that any Instructions to Permanent are in conformity and reasonable having regard to them.

- 4.5 Permanent is not responsible for the accuracy or completeness of any information received from third parties and passed to or assessed by the Client or a Manager.
- 4.6 Permanent is not obliged to institute or defend legal proceedings unless requested by the Client and indemnified by the Client to its satisfaction.
- 4.7 The services of Permanent under this agreement are not exclusive. Permanent is free to provide similar services to others, and is not obliged to disclose to the Client anything which comes to its notice in the course of providing services to others or otherwise than in the performance of this agreement.
- 4.8 Permanent is not obliged to see whether, in exercising any of its powers or performing any of its duties under this agreement in accordance with Instructions from an Authorised Person, the Authorised Person is acting in proper exercise or performance of his powers or duties. 
- 4.9 To the extent required by section 601FC(1)(i) of the Law as modified by any relief granted by ASIC, Permanent shall ensure that the assets of each Portfolio are:
- (a) clearly identified as property of the respective Scheme; and
 - (b) held separately from Permanent's own assets, the assets of any other Scheme or any other assets held by Permanent in any other capacity whatsoever.
- 4.10 Permanent is not responsible for checking or ascertaining the value of any property or whether the price to be paid for any property is proper or reasonable or whether any transaction which it is instructed to effect accords with the constitution, compliance requirements, prospectus, investment policy or limit for the time being established for or in force in relation to the Scheme. 
- 4.11 Permanent must notify the Client in writing immediately if Permanent becomes aware that it no longer satisfies the requirements of ASIC Policy Statement 131 or 133.
- 4.12 Permanent must provide to the Client at least annually at a time as agreed between the parties a certificate signed by two directors stating that Permanent has met the requirements of ASIC Policy Statements 131 and 133 during that financial year and must (if the Client reasonably requires such certificate) also provide annually at a time as agreed between the parties a certificate signed by Permanent's external auditor confirming that, in the auditor's opinion, Permanent continues to meet the financial requirements of ASIC Policy Statements 131 and 133.
- 4.13 Subject to clause 4.15, Permanent must not take a charge, mortgage, lien or other encumbrance over, or in relation to, the assets of a Scheme other than in respect of expenses and outlays made within the terms of this agreement.
- 4.14 Permanent must not exercise any right in the nature of a charge, mortgage, lien, or other encumbrance over or in relation to assets of the Scheme in relation to unpaid custodian fees pursuant to clause 8.1, but otherwise Permanent is entitled to exercise any rights in relation to the assets of the Scheme available to it at law in the nature of a charge, mortgage, lien or other encumbrance and is additionally granted by this agreement rights of lien and set off as against the assets of a Portfolio in relation to any liability, loss, cost, claim or expense incurred or arising on account of the Scheme in the proper performance of Permanent's powers or duties under this agreement. In the exercise of rights pursuant to this clause Permanent may sell any

asset from the relevant Portfolio and enforce its rights under this agreement against the proceeds of such sale.

- 4.15 If Permanent receives Instructions to take a charge, mortgage, lien or other encumbrance over or in relation to any assets in a Portfolio, Permanent need only act on those Instructions if it is satisfied that its liability pursuant to such charge, mortgage, lien or encumbrance is limited to the assets available to it pursuant to this agreement.
- 4.16 If the Client instructs Permanent to Custodially Hold any real property pursuant to this agreement, Permanent need not agree to do so unless Permanent is satisfied that its liabilities in relation to the holding of such real property are limited to the assets available to it pursuant to this agreement. In this regard, Permanent may require the Client to effect and maintain insurances identified by Permanent in Permanent's name or to provide additional indemnities to Permanent.
- 4.17 In the event that Permanent has breached a term of this agreement which entitles the Client to exercise rights against Permanent, the existence of such rights does not entitle the Client to prevent Permanent from relying on the provisions of this agreement to seek indemnification or other rights in order to meet or satisfy any claim or demand made by a third party on Permanent.
- 4.18 Permanent agrees to compensate a Scheme by making a payment to that Scheme in the event of Permanent being required by law to make such payment if there is a loss to a Scheme as a result of Permanent failing in its obligations under this agreement.

5. INSTRUCTIONS

- Proper Instruction here to act on behalf of the Trustee of UM MPF.

- 5.1 Permanent is authorised to act, or to cause any other person to act, on any Instructions given to it in accordance with this clause 5.
- 5.2 Permanent is authorised to act on Instructions in writing which bear or purport to bear the signature or a facsimile of the signature of any of the Client's Authorised Persons or Instructions provided by electronic means using security codes or procedures agreed between Permanent and the Client.
- 5.3 Permanent is not liable for acting on any Instructions which appear to it to have been properly and regularly signed or given and is under no duty to inquire whether any such Instructions have been so signed or given. However, Permanent may require written confirmation from the Client before acting on any Instructions.
- 5.4 Permanent is not liable for acting on any Instructions given in accordance with this clause 5 which contain any error or ambiguity.
- 5.5 Nothing in this clause 5 obliges Permanent to obtain Instructions where the other provisions of this agreement do not impose any such obligation.
- 5.6 Permanent may record electronically telephonic discussions relating to this agreement or any transaction effected under it with the prior consent of the Client for each discussion intended to be recorded.

6. SUB-CUSTODIANS

- 6.1 Permanent may, where it considers their appointment necessary or desirable for the purpose of exercising its powers or performing its duties under this agreement, appoint Sub-custodians (including any person related to or associated with Permanent) to perform any of its duties under this agreement with any or all of its powers under this agreement, including this power of delegation, and any delegate appointed by the exercise of such power shall be included in the term Sub-custodian. Any appointment of a Sub-custodian by Permanent is not an assignment of Permanent's rights or obligations under this agreement.
- 6.2 Permanent must supply to the Client on request a description of property included in the Portfolio which is held by or registered in the name of a Sub-custodian, together with the name and address of the Sub-custodian.
- 6.3 Permanent shall be responsible for the actions and omissions of its Sub-custodian appointed by Permanent pursuant to clause 6.1.

7. BOOKS, RECORDS AND STATEMENTS

Permanent must:

- (a) properly maintain adequate books and records, accounts of all receipts, disbursements and other transactions relating to the Portfolio in accordance with generally accepted accounting principles to the extent such principles are relevant;
- (b) provide the Client with the reports and statements relating to the Portfolio described in schedule 4 at the intervals mentioned in schedule 4; and
- (c) provide any auditor of the Client with any reasonably available information in Permanent's possession about the Portfolio which the auditor requires to enable it to perform any audit or investigation involving the Portfolio.

8. FEES AND EXPENSES

- 8.1 The Client agrees to pay to Permanent during the continuance of this agreement fees in the amounts described and at the time set out in schedule 5.
- 8.2 Permanent is entitled to recover from the Client the amount of all Taxes and bank charges, and all other liabilities, costs, charges and expenses which it suffers or incurs (including fees and other amounts payable to Sub-custodians) in connection with the performance of its duties and the exercise of its powers under this agreement including, without limitation, settlement, delivery, registration and transaction charges and foreign currency costs and charges including any reasonable expenses incurred as a result of the Client requesting a certificate pursuant to clause 4.1.
- 8.3 The Client agrees that Permanent may deduct from any part of a Portfolio any amount payable to Permanent under this clause 8 or any other provision of this agreement and with the consent of the Client, the amounts payable under clause 8.1. The Client authorises Permanent in the name of the Client or Permanent to do any thing (including, but not limited to, executing any document) that is required for that purpose. Permanent agrees to record any such deduction in the records maintained under clause 8.

8.4 All monies owing to Permanent including fees under this agreement accrues from day-to-day.

9. INDEMNITIES AND LIMITATIONS OF LIABILITY

9.1 Without limiting any other indemnity or limitation of liability in this agreement, and without prejudice to any indemnity allowed by law, but subject to this agreement and to any law to the contrary, and to the maximum extent permitted by law, it is agreed and declared that:

- (a) the Client indemnifies Permanent against any liability, demand, loss, costs, Taxes charges and expenses which may be incurred by Permanent in connection with:
 - (i) this agreement and the acts and omissions of Permanent in performing services pursuant to this agreement, except those attributable to the negligence or fraud of Permanent.
 - (ii) all actions, suits, claims and demands which may be brought or threatened against or suffered or sustained by Permanent by reason of Permanent complying with any Instruction by an Authorised Person; and
 - (iii) neglect or fraud on the part of the Client, any Manager or any of their employees, servants or agents.
- (b) Permanent does not incur any liability in respect of any thing done or not done in reliance on any Instruction, notice, resolution, direction, consent, certificate, receipt, affidavit, statement, holding out, certificate for stock, shares or other security, plan or reorganisation, or other document or information which Permanent reasonably believed to be genuine or to have been passed, signed or endorsed by the proper parties, where liability but for this provision would attach because that document or matter was not in fact genuine or so passed, signed or endorsed.
- (c) Permanent does not incur any liability in respect of any failure to do any thing which, because of any present or future law or of any order or judgement of any court, it is hindered, prevented or forbidden from doing.
- (d) Permanent will not be responsible or have any liability for any obligations imposed on the Client, a Scheme or Permanent as custodian of the Portfolio or any transaction under this agreement by the tax law of Australia or any State or Territory of Australia. Permanent will be kept indemnified by and be without liability to the Client for any such obligations including Taxes (but excluding any income taxes assessable in respect of compensation paid to Permanent pursuant to this agreement), withholding, certification and reporting requirements, claims for exemption or refund, additions for late payment, interest, penalties and other expenses (including legal expenses) that may be assessed against the Client, a Scheme or Permanent as custodian of the Portfolio except those attributable to the negligence or fraud of Permanent.
- (e) Permanent may act on the opinion or advice of, statements of or information obtained from barristers, solicitors, bankers, accountants, brokers or other persons believed by it in good faith and on reasonable grounds to be expert in relation to the matters on which they are consulted (whether they are instructed by the Client, Permanent or a third party), and Permanent is not liable for anything done or not done by it in good faith in reliance on that opinion, advice, statements or information.

- (f) where Permanent relies in good faith on any opinion, advice, statements or information from any barrister, solicitor or other expert it is not responsible for any misconduct, mistake, oversight, error of judgement, forgetfulness or want of prudence on the part of any such barrister, solicitor or other expert;
- (g) in the event of the liquidation, dissolution or bankruptcy of any person, or if for any other reason it becomes impossible or impracticable to carry out the provisions of this agreement in respect of that person or otherwise, Permanent is not liable for anything done or not done by Permanent, where Permanent has acted in good faith;
- (h) Permanent is entitled to rely on statements or information from the Client or Manager as to the validity of any signature on any transfer, form of application, request or other document which Permanent reasonably believed to be genuine;
- (i) Permanent is not responsible for the loss of any property during transmission between the Client or a Manager and Permanent or Permanent and a third party or fraud on the Client by a third party, nor for the corruption or loss of any data that is transmitted electronically or to which access is given by Permanent to the Client or a Manager or vice versa;
- (j) Permanent is not liable for any act or omission that is believed by Permanent to be in accordance with local market practice;
- (k) Permanent is not liable for the failure of any person to carry out any agreement or obligation on that person's part;
- (l) Notwithstanding any other provision of this agreement, Permanent's liability is limited to the property for the time being comprised in the Portfolio except for a liability arising as a result of Permanent's own negligence or fraud; and
- (m) Permanent, is not liable for any loss, damage or expense suffered or incurred as a result of any delay in executing an Instruction where the delay has occurred as a result of Permanent waiting for the receipt of the written confirmation from the Client pursuant to clause 5.3.

9.2 Permanent is not responsible for insuring the Portfolio or any part of it.

10. WARRANTIES AND UNDERTAKINGS BY CLIENT

10.1 The Client represents and warrants to Permanent that:

- (a) it has the power to enter into and perform this agreement and has obtained all necessary consents to enable it to do so;
- (b) the entry into and performance of this agreement by the Client does not constitute a breach of any obligation (including, but not limited to, any statutory, contractual or fiduciary obligation) or default under any agreement or undertaking by which the Client is bound;
- (c) property transferred or delivered by the Client to Permanent from time to time to form part of a Portfolio will be the property of a Scheme the subject of this agreement and,

unless the consent of Permanent is obtained prior to the transfer, free from any mortgage, charge, lien, pledge, encumbrance or other security interest;

- (d) the Client will, at all times during the term of this agreement, hold any licences or approvals required to be held by it under any law governing its activities relating to this agreement and comply with all conditions of any such licence or approval;
- (e) it is the only responsible entity for each Scheme and no action has been taken or is proposed to remove it as responsible entity of any Scheme;
- (f) the copy of each Scheme constitution provided by the Client to Permanent discloses all the terms of each Scheme and it is not in default under the terms of any Scheme constitution or the Law in relation to any Scheme; and
- (g) it has a right to be fully indemnified out of the relevant Scheme's assets in respect of all obligations and liabilities which it incurs under this agreement.

10.2 The Client undertakes:

- (a) to notify Permanent promptly if the Client appoints or terminates the appointment of a Manager;
- (b) to provide Permanent on request with any documents, information or Instructions reasonably required by Permanent to enable it to perform obligations imposed on Permanent under this agreement or by law;
- (c) to perform its obligations pursuant to this agreement as soon as reasonably practicable and in accordance with the requirements of any relevant Scheme's constitution and the Law;
- (d) to give Permanent notice of any communication from any person including ASIC forthwith upon receipt which relates to the possibility or likelihood of the Client being suspended or removed in relation to a Scheme or that affects or might affect Permanent or any of its Sub-custodians in relation to the performance of their obligations or exercise of their powers under this agreement or otherwise;
- (e) to give Permanent prompt notice of any alteration to a Scheme's constitution.

10.3 The Client undertakes on request to provide and certify to Permanent any information in relation to the Client's status or assessability for taxation purposes in any country which is relevant to the performance of this agreement.

10.4 The Client acknowledges that it enters into this agreement both in its individual capacity and in its capacity as responsible entity for each Scheme and all agreements, warranties and obligations of the Client in this agreement bind the Client in both capacities.

10.5 The Client agrees to inform Permanent promptly if:

- (a) the terms of a Scheme are varied;
- (b) there is any change of responsible entity of a Scheme;
- (c) there is any change of status for taxation purposes of a Scheme; or

- (d) when a Scheme is terminated.

11. TERMINATION OF AGREEMENT

11.1 Subject to clauses 11.2, 11.3 and 11.4, this agreement shall continue for the minimum term specified in schedule 6 and after the expiry of the minimum term shall continue on the same terms unless terminated by either party upon giving to the other party notice for no less than the notice period specified in schedule 6.

11.2 A party may terminate this agreement by notice to the other party: -

- (a) if a receiver or a receiver and manager of the undertaking (or any part) of the other party is appointed either in relation to the capacity in which it acts pursuant to this agreement or where such receiver or receiver and manager is reasonably likely to affect materially such other party's performance pursuant to this agreement, or
- (b) if the other party:-
 - (i) goes into liquidation (other than for the purposes of a reconstruction or amalgamation on terms previously approved in writing by the other party) either in relation to the capacity in which it acts pursuant to this agreement or where such liquidation is reasonably likely to affect such other party's performance pursuant to this agreement;
 - (ii) is subject to a scheme of compromise or arrangement with its creditors or has an administrator appointed to its affairs either in relation to the capacity in which it acts pursuant to this agreement or where such scheme or administration is reasonably likely to affect such other party's performance pursuant to this agreement;
 - (iii) ceases to carry on business in relation to its activities as responsible entity in relation to a Scheme in the case of the Client (in which case Permanent may terminate this agreement in relation to a Scheme) or as a provider of custodial services in the case of Permanent;
 - (iv) breaches any provision of this agreement in a material respect or fails to observe or perform any representation, warranty, indemnity or undertaking pursuant to this agreement in a material respect **PROVIDED THAT** if the breach or failure is capable of remedy in the reasonable opinion of the party not in default, this agreement may not be terminated unless the party in default is given a period of no less than 14 days within which to remedy the breach or failure and if not remedied within such period the party not in default may terminate this agreement;
 - (v) sells or transfers or makes any agreement for the sale or transfer of its principal business and undertaking, or of a beneficial interest therein, other than to a related body corporate for the purposes of a corporate reconstruction upon at least 7 days' notice to the other party; or
- (c) by Permanent if ASIC or a Court having jurisdiction makes a written order vesting any property of the Client in relation to any Scheme in ASIC or some other body other than the Client.

- 11.3 The termination of this agreement does not affect any claim which either party may have against the other.
- 11.4 If after two (2) years from the date of execution of this agreement, the Law and/or ASIC Policy Statements are such that the Client is no longer required to engage the services of a custodian for the Schemes, then the Client may terminate this agreement on not less than three (3) months notice in writing to Permanent.
- 11.5 Subject to this agreement, on termination of this agreement Permanent must, at the expense of the Client, promptly transfer, or cause any Sub-custodian to transfer, the assets of the Portfolio, to or according to the Instructions of the Client (subject to any contrary direction given to Permanent which has the lawful effect of overriding this provision), and the Client agrees promptly to accept the transfer or give the necessary Instructions for the transfer of those assets. Permanent must also, at the expense of the Client, promptly deliver or cause any Sub-custodian to deliver, any documents evidencing title to those assets which it is holding, to or according to the Instructions of the Client. Notwithstanding the provisions of this clause, Permanent may retain any assets which it is lawfully permitted to retain in the exercise of its rights under this agreement.
- 11.6 Upon termination of this agreement pursuant to clause 11.2(c), Permanent shall act upon the instructions of ASIC or an entity properly appointed in relation to a Scheme to the exclusion of the rights of the Client and shall deal with the Portfolio and all books, records, or other material held by it in relation thereto in accordance with the instructions of ASIC or such other entity to the exclusion of any orders, requests or directions from the Client.
- 11.7 Notwithstanding any other provision of this agreement, if ASIC or a Court having jurisdiction has made a written order vesting the property of the Client in relation to a Scheme in another person, Permanent may, upon the receipt of notice of such vesting order, disregard any future Instructions of the Client in relation to a Scheme and any existing Instructions of the Client in relation to a Scheme which have not been fully performed and take instructions in relation to any matter affecting a Scheme from ASIC or such other person.

12. COSTS AND STAMP DUTY

- 12.1 The Client shall pay Permanent's reasonable professional costs, including external legal expenses in connection with the preparation, execution and completion of this agreement and of other documentation related to this agreement.
- 12.2 The Client agrees to bear any stamp duty payable or assessed in connection with this agreement and the transfer of any property to Permanent to form part of the Portfolio. The Client must indemnify Permanent on demand against any liability for that stamp duty (including fines and penalties).

13. NOTICES

Any notice under this agreement shall be in writing and:-

- (a) may be sent to the address, or facsimile number set out in schedule 7 or to any other address or facsimile number that either party may specify in writing to the other;
- (b) is taken to have been given or made:-

- (i) (in the case of delivery in person) when delivered to the address set out in schedule 7;
- (ii) (in the case of delivery by post) on the second Business Day after posting; or
- (iii) (in the case of delivery by facsimile) on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the correct number,

but if the notice is taken to have been given or made on a day which is not a Business Day or is later than 5.00pm (local time) it will be taken to have been duly given at the commencement of the next Business Day.

14. EXERCISE OF RIGHTS

A party 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 a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

15. NO WAIVER

No failure to exercise or any delay in exercising any right, power or remedy under this agreement operates as a waiver. No single or partial exercise of any right, power or remedy precludes any other or further exercise of that right or any other right, power or remedy.

16. SURVIVAL OF INDEMNITIES

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this agreement.

17. ENFORCEMENT OF INDEMNITIES

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

18. ASSIGNMENT

A party may not assign any of its rights or obligations under this agreement without the prior written consent of the other party.

19. CONFIDENTIALITY

19.1 All information exchanged between the parties under this agreement or during the negotiations preceding this agreement is confidential to the party supplying the information and may not be disclosed to any person except:-

- (a) to employees, legal advisers, auditors and other consultants of either party or its related bodies corporate requiring the information for the purposes of this agreement;
- (b) with the consent of the party who supplied the information;

- (c) if the information is, at the date this agreement is entered into, lawfully in the possession of the recipient of the information through sources other than the party who supplied the information;
- (d) if required for the purposes of implementing transaction, dealing or matter pursuant to this agreement or by law or a stock exchange;
- (e) if required in connection with legal proceedings relating to this agreement; or
- (f) if the information is generally and publicly available other than as a result of breach of confidence by the person receiving the information.

19.2 A party disclosing information under clause 19.1(a) or clause 19.1(b) must use all reasonable endeavours to ensure that persons receiving confidential information from it do not disclose the information except in the circumstances permitted in clause 19.1.

20. FURTHER ASSURANCES

Each party agrees on the request of the other party to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it (including the execution of documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

21. FORCE MAJEURE

Where a party is unable, wholly or in part, because of any thing which is not reasonably within its control other than lack of funds ("force majeure") to carry out any obligation under this agreement, and it:

- (a) gives the other party prompt notice of that force majeure with reasonably full particulars and, in so far as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- (b) uses all reasonable endeavours to remove that force majeure as quickly as possible,

that obligation is suspended so far as it is affected by the continuance of that force majeure. Any obligation to pay money is not excused by force majeure, save for any obligation of Permanent to pay money where Permanent is entitled to an indemnity from the Client under this agreement in relation to the Portfolio and there is insufficient money in the relevant Portfolio to pay such money.

22. ENTIRE AGREEMENT

This agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by them or prior agreement between them with respect to its subject matter.

23. AMENDMENT

This agreement may be amended only by another document signed by both the parties.

24. DISPUTES OR CONFLICTING CLAIMS

- 24.1 Where there is a dispute between Permanent and the Client in relation to any matter under this agreement, then any party may refer the matter for decision to an independent expert agreed to by the parties, and failing agreement, an independent expert nominated by the President of the Queensland Law Society. The costs incurred in the determination of the matter by the expert (including the costs of the appointment of the expert) shall be borne by the party or parties as determined by the expert. The decision of the expert shall be final and binding on the parties.
- 24.2 If any dispute or conflicting claim is made by any person or persons with respect of any asset Custodially Held, Permanent shall be entitled to refuse to act in respect of that asset until either:
- (a) such dispute or conflicting claim has been finally determined by a court of competent jurisdiction or settled by agreement between conflicting parties, and Permanent has received written evidence satisfactory to it of such determination or agreement; or
 - (b) Permanent has received an indemnity, reasonably satisfactory to it, to hold it harmless from and against any and all loss, liability and expense which Permanent may incur as a result of its actions.

25. SEVERABILITY

Each part of this agreement is severable from the balance of this agreement. If any part of this agreement is illegal, void, invalid or unenforceable, then that will not affect the legality, effectiveness, validity or enforceability of the balance of this agreement.

26. GOVERNING LAW AND JURISDICTION

This agreement is governed by the laws of Queensland. The parties submit irrevocably and unconditionally to the non-exclusive jurisdiction of the courts of Queensland and courts of appeal from them in relation to any matter or dispute concerning this agreement or the transactions contemplated by this agreement.

27. COUNTERPARTS

This agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

EXECUTED as an agreement.

THE COMMON SEAL of)
PERMANENT TRUSTEE AUSTRALIA)
LIMITED ACN 008 412 913)
is affixed in accordance with)
its articles of association in the presence of:)

^ _____
Director

^ _____
Secretary/or appointed person

THE COMMON SEAL of)
LM INVESTMENT MANAGEMENT)
LTD ACN 077 208 461)
is affixed in accordance with)
its constitution in the presence of:)

^ _____
Director

^ _____
Secretary

SCHEDULE 1

**Authorised Persons
(Clause 1.1)**

Client

The Client's Authorised Persons are each of the group "A" signatories and the group "B" signatories appearing on the attached authorised signatories list dated 18 January 1999 and marked "AA" or such later corresponding lists as may be forwarded by the Client to Permanent from time to time.

The Client will clearly identify instructions to Permanent as either Level 1 or Level 2 instructions.

Level 1 - any "A" signatory together with any "B" signatory are authorised to give Level 1 instructions.

Level 2 - any "B" signatory together with any other "B" signatory are authorised to give Level 2 instructions.

Permanent

Permanent's Authorised Persons are each of the group "A" attorneys and the group "B" attorneys appearing on the attached specimen signature list dated 23 September 1998 and marked "BB" or such later corresponding lists as may be forwarded by Permanent to the Client from time to time.

SCHEDULE 2

LIST OF SCHEMES SUBJECT TO THIS AGREEMENT
(Clause 1.1)

1. LM Select Mortgage Income Fund ?
2. LM Mortgage Income Fund - closed
3. LM Cash Performance Fund (LMIM is RE).
4. LM Special Participation Fund ?

SCHEDULE 3

METHODS AND STANDARDS FOR ASSESSING PERMANENT'S PERFORMANCE

(Clause 2.3)

- (a) The Client will monitor the performance of Permanent and will ensure that Permanent continues to meet its commitments for holding the Portfolio of each Scheme the subject of this agreement. The Client will ensure that the contractual arrangements with Permanent remain current and reflect the requirements of each Scheme and the law and that Permanent maintains appropriate arrangements with respect to information providers, registries, Sub Custodians and clearing systems (if relevant).
- (b) Any or all of the policies and procedures developed by the Client in the monitoring of external service providers may be applied to the monitoring of Permanent.
- (c) While Permanent is the custodian of a Scheme, to satisfy these requirements the SCO will meet with an Authorised Person of Permanent on a quarterly basis. In addition to the above matters, in that meeting the SCO will review any other matters with Permanent relating to a Scheme that has arisen in the course of the delivery of services by Permanent.
- (d) The SCO will report any matters of concern that arise during the course of discussion with Permanent to the Client's compliance committee.
- (e) The Client's compliance auditor will also have regard to the performance of Permanent in its assessment of the performance of the Client in meeting the requirements of its compliance plan. In particular the Client's compliance auditor will assess whether Permanent has appropriate compliance and control systems in place. To do so the Client's compliance auditor will liaise with Permanent's auditors to determine the status and appropriateness of Permanent's compliance and control systems on an ongoing basis.
- (f) The Client's compliance auditor will assess whether Permanent has complied with its obligations under this agreement and include the assessment in its annual report to the Client as required by Section 601HG(3)(c) of the Law.
- (g) A copy of any report by the SOC or the Client's compliance auditor prepared in accordance with this schedule, will be provided to Permanent.

SCHEDULE 4

REPORTS AND STATEMENTS

(Clause 7(b))

- | | | |
|----|--|------------------------------|
| 1. | (a) Bank reconciliation as at each month end | 10 days after month end |
| | (b) List of any cheques cancelled in the month | 10 days after month end |
| 2. | Listing of all assets as at each month end | 10 days after month end |
| 3. | Bank reconciliation as at each Friday | The following Monday morning |
| 4. | List of documents outstanding or in transit | 10 days after month end |
| 5. | List of insurance policies due to expire | 10 days after month end |

SCHEDULE 5

FEES

(Clause 8.1)

A Basic custody for mortgage Schemes:

The greater of either:

- (a) \$400.00 per \$1 million of the gross value of the assets of each Scheme (plus GST) per Year; or
- (b) \$20,000 per Year (plus GST) for each Scheme,

payable quarterly in arrears (and pro-rated for the first quarter) from the Commencement Date of the relevant Scheme.

PLUS

An execution fee of \$20 per Document (excluding this agreement) where Permanent is requested by the Client to execute a Document.

B Basic custody for property Schemes:

The greater of either:

- (a) \$400.00 per \$1 million of the gross value of the assets of each Scheme (plus GST) per Year; or
- (b) \$15,000 per Year (plus GST) for each Scheme,

payable quarterly in arrears (and pro-rated for the first quarter) from the Commencement Date of the relevant Scheme.

PLUS

An execution fee of \$20 per Document (excluding this agreement) where Permanent is requested by the Client to execute a Document.

C Basic custody for the LM Cash Performance Fund (LMCPF Scheme):

The greater of either:

- (a) \$300.00 per \$1 million of the gross value of the assets of the LMCPF Scheme (plus GST) per Year up to and including \$500 million; plus \$200.00 per \$1 million of the gross value of the assets of the LMCPF Scheme (plus GST) per Year for amounts over \$500 million; or
- (b) \$15,000 per Year (plus GST),

payable quarterly in arrears (and pro-rated for the first quarter) from the Commencement Date of the LMCPF Scheme.

D Basic custody for the LM Special Participation Fund:

(a) \$10,000 per Year (plus GST),

payable quarterly in arrears (and pro-rated for the first quarter) from the Commencement Date of the Scheme.

Where:

Commencement Date means the date that Permanent and the Client agree to include a Scheme in Schedule 2 of this agreement;

Document includes but is not limited to a mortgage, discharge of a mortgage, variation of a mortgage, or a contract of sale;

GST means any goods and services tax or tax on the provision of goods and services assessed or charged or assessable or chargeable by, or payable to, any national, Federal, State, or Territory government agency; and

Year means twelve (12) months commencing on the Commencement Date of each Scheme.

SCHEDULE 6

MINIMUM TERM AND NOTICE PERIOD
(Clause 11.1)

The minimum term is the period five (5) years from the date of execution of this agreement.

After expiry of the minimum term, termination may occur on not less than three (3) months notice by either party.

SCHEDULE 7

ADDRESS AND FACSIMILE DETAILS
(Clause 14)

Permanent's Address: Level 8, 410 Queen St, BRISBANE QLD 4000

Facsimile: (07) 3842 7159

Client's Address: LM INVESTMENT MANAGEMENT LTD
Level 4, RSL Centre, 44A Cavill Avenue, Surfers Paradise QLD 4217

Facsimile: (07) 55 922 505

140216/v2

Amending Deed

Date:

November
1 day of October 2011

I certify this copy is a true and complete copy of the original.

[Signature] dated: 08/11/2011
Nicole Lee Careless JP(Qual) 99024
Solicitor / Justice of the Peace / Com. for Declarations

Parties: THE TRUST COMPANY (PTAL) LIMITED (ACN 008 412 913) of Level 4, 35 Clarence Street, Sydney NSW ("Permanent") and,

LM INVESTMENT MANAGEMENT LTD (ACN 004 027 749) of Level 4, RSL Centre, 44A Cavill Avenue, Surfers Paradise, Queensland ("Client").

Recitals:

- A. The Client and Permanent entered into a Custody Agreement dated 4 February 1999 (the "Custody Agreement").
- B. The Custody Agreement appointed Permanent as custodian of the Assets of those Schemes specified in the Custody Agreement.
- C. The Custody Agreement was amended by including additional Schemes on 20 May 1999, 24 May 2000, 18 March 2002, 19 November 2002, 1 September 2004, 26 September 2006 and September 2011.
- D. The Client wishes to appoint Permanent as custodian of an additional scheme not included in the Custody Agreement and to the removal of certain schemes or subsequent amendments and Permanent has agreed to accept the appointment in relation to the additional scheme on the terms and conditions of the Custody Agreement.
- E. Under clause 23 of the Custody Agreement, the Client and Permanent may amend the Custody Agreement by deed. The parties have agreed to amend the Custody Agreement to include the additional appointment as custodian of the **LM Managed Performance Fund** as set out herein.

Terms:

- 1. In this Deed, the words and phrases shall have the same meaning as in the Custody Agreement.

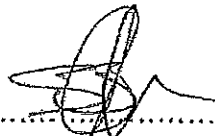
2. The Custody Agreement is amended by deletion of Schedule 2 and its replacement with the Schedule 2 set out as Annexure "A".
3. The Custody Agreement is amended by deletion of Schedule 5 and its replacement with the Schedule 5 set out as Annexure "B".
4. The amendments set out in this Deed shall take effect on and from the date of this Amending Deed.
5. Except as expressly stated in Clauses 2, 3 and 4 of this Amending Deed, the terms of the Custody Agreement are not amended by this Amending Deed.

Executed as a Deed on the date first stated:

EXECUTED BY LM INVESTMENT)
MANAGEMENT LTD ACN 077 208 461)
in accordance with section 127 (i) of the)
Corporation Act by the authority of its)
directors:)
)
)
)
)

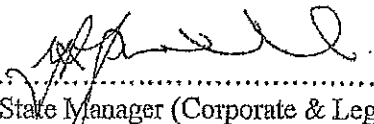

.....

Signature of Secretary/Director-


.....

Signature of Director

THE TRUST COMPANY (PTAL) LIMITED A.C.N. 008 412 913
by its Attorney **GEOFFREY FUNNELL** who states that he has no notice of revocation of the
Power of Attorney dated 12 July 2010, whereby he executes this deed
document or instrument.

Signature.....
State Manager (Corporate & Legal Services) (Qld)

I certify this copy is a true and complete copy of the original.


dated: 08/11/2011
Nicole Lee Careless JP(Qual) 99024
Solicitor / Justice of the Peace / Com. for Declarations

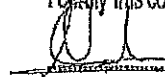
Annexure "A"

Schedule 2

LIST OF SCHEMES SUBJECT TO THIS AGREEMENT

1. LM First Mortgage Income Fund (formerly LM Mortgage Income Fund) - *closed*
2. LM Australian Income Fund - Currency Protected - *LMIM is RE*
3. LM Managed Performance Fund - *KM / calibre - trustee*

I certify this copy is a true and complete copy of the original.



dated: 08/11/2011

Nicole Lee Careless JP (Qual) 99024
Solicitor / Justice of the Peace / Com. for Declarations

Annexure "B"

Schedule 5

FEES:

(Clause 8.1)

A Basic Custody for LM First Mortgage Income Fund;

The greater of either:

(a)

On First \$750 million of GAV	2 basis points
On Next \$750 million of GAV	1.75 basis points
On Next \$500 million of GAV	1.5 basis points
On amounts over \$2.0 billion	1 basis points

or

(b) \$20,000 per Year (plus GST) for each Scheme,

payable quarterly in arrears (and pro-rated for the first quarter) from the Commencement Date of the relevant Scheme.

B Basic Custody for the LM Australian Income Fund - Currency Protected Basic Custody for the LM Managed Performance Fund

The greater of either:

(a) 2 basis points

or

(b) \$15,000 per Year (plus GST) which is subject to CPI adjustment annually in arrears (pro rated for the first year) with the first adjustment to be in the September quarter

payable quarterly in arrears (and pro rated for the first quarter) from the Commencement Date of the scheme

Where:

Commencement Date means the date that Permanent and the Client agree to include a Scheme in Schedule 2 of this agreement;

GST means any goods and services tax or tax on the provision of goods and services assessed or charged or assessable or chargeable by, or payable to, any National, Federal, State, or Territory government agency; and

Year means twelve (12) months commencing on the Commencement date of each Scheme.

I certify this copy is a true and complete copy of the original.

dated: 08/11/2011

Nicole Lee Careless JP(Qual) 99024
Solicitor / Justice of the Peace / Com. for Declarations

SMV-19

Shelley Chalmers

From: Shelley Chalmers
Sent: Friday, 9 December 2011 9:14 AM
To: 801 Credit Committee
Subject: Minutes of AIF CC Meeting 8.12.11 - AIF loan to Pereragian Beach Pty Ltd (Northlakes)

Minutes of AIF CC meeting held 8.12.11

Committee members in attendance:

AIF: ST (Chair),
LD (attending but non voting as the is a fund conflict issue in respect of this loan),
PD, EVH, GF, SK, SC, AM

By invitation: AP

Proposed transaction: AIF loan to Peregrine Beach Pty Ltd (Northlakes)

- MPF had a loan approval in place to fund the land settlement, however is experiencing some cash flow issues and is unable to fund the land settlement. On this basis MPF requested AIF to consider funding the land settlement.
- AIF having considered its risk position, [REDACTED], indicated its willingness to approve this application on the basis that it does so on very similar terms to that were being offered by MPF
- [REDACTED]
- [REDACTED]
- There are issues with settlement timing (as MPF needs to provide some equity funding and has some cash flow issues). [REDACTED]
- [REDACTED]
- [REDACTED]

Approved on the following basis:

- [illegible]

Shelley Chalmers

From: Lisa Darcy
Sent: Tuesday, 20 December 2011 3:07 PM
To: Bronwyn Kingston
Cc: 321 MPF Investment Committee; Scott King; Ann McCallum; Shelley Chalmers
Subject: Re: Peregrian Beach MPF Variation

Approved bron thanks

Lisa D'Arcy
Director
LMIM Ltd

EVH
GF
LD
SIC

On 20/12/2011, at 2:34 PM, "Bronwyn Kingston" <bkingston@lmaustralia.com> wrote:

Dear Credit Committee

Further to our meeting last week, there are some changes being made to enable settlement of the land to occur.

I understand Simon has discussed this proposal with most of you.

The credit committee approved AIF taking a first mortgage position and MPF going into a second mortgage position.

Note however that the AIF transaction is not proceeding at this stage, but is likely to occur in the new year.

Accordingly, the Vendor (Stockland) have agreed to Vendor finance part of the purchase price up to \$2.5M.

Accordingly, MPF will be taking a second mortgage position behind Stockland for a period up to 30 June, 2012 (unless paid out prior).

The contract for purchase has been re-structured to allow for instalment payments as follows:-

MPF funding:-
Settlement \$1M (which includes part purchase price, stamp duty, GST and headworks charges)
On or before 15.2.12 \$300,000.00
On or before 29.2.12 \$500,000.00
On or before 30.6.12 balance (approx \$1.4M)

Interest on the Stockland loan will need to be paid at 15% p.a. which is on the remaining balances.

This is a lower rate than the MPF loan and AIF loans would have been at 25%.

MPF will need to continue to fund this interest each month.

Please confirm your agreement to the above proposal.

Thanks

Bron

Bronwyn Kingston
Property Asset Management
LM Investment Management Ltd
Phone: (07) 5584 4500
Fax: (07) 5592 2505
Email: bkingston@LMaustralia.com
Visit Our Website: www.LMaustralia.com/
<image001.jpg>

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<Peregrine Beach Northlakes 28 June 2010.pdf>

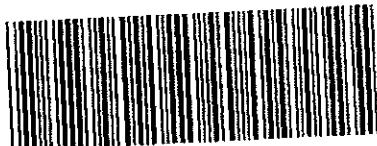
SMV-21

14

QUEENSLAND LAND REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

MORTGAGE

Duty Imprint

FORM 2 Version 4
Page 1 of 13

714235917

\$132.50

22/12/2011 16:34

BE 300

1. Interest being mortgaged (If share show fraction)

FEE SIMPLE

Lodger (Name, address, E-mail & phone number)

Shand Taylor Lawyers
Level 12, 241 Adelaide Street
BRISBANE QLD 4000
Email: bclark@shandtaylor.com.au
Ph: (07) 3307 4500
Ref: BSC: 100446Lodger
Code
BE196A

2. Lot on Plan Description

LOT 74 ON SP 236546

County

STANLEY

Parish

REDCLIFFE

Title Reference

50848722

3. Mortgagor

PEREGIAN BEACH PTY LTD ACN 127 412 864

4. Mortgagee Given names

Surname/Company name and Number

(Include tenancy if more than one)

STOCKLAND NORTH LAKES PTY LTD
ABN 99 068 244 762

5. Description of debt or liability secured

The "principal sum" described in the attached schedule

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

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Separate executions are required for each mortgagor and mortgagee. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).

PEREGIAN BEACH PTY LTD ACN 127 412 864

Witnessing Officer (signature, full name & qualification)

21/12/2011
Execution DateDavid Richard Howes, Sole Director/
Secretary

Witnessing Officer (signature, full name & qualification)

Execution Date

Mortgagor's Signature

NARELLE LEE-ANNE JACOBS JP QUAL 111498
Witnessing Officer (signature, full name & qualification)22/12/11
Execution Date

Mortgagee's or Solicitor's Signature

STOCKLAND NORTH LAKES PTY LTD ABN 99 068
244 762 by its duly constituted Attorney
KINGSLEY JAMES ANDREW under Power of Attorney
No. 712605138

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

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

SCHEDULE

Title Reference 50848722

The Mortgagor and Mortgagee agree as follows:-

1. CONSIDERATION

- 1.1. This Mortgage is given in consideration of the Mortgagee at the request of the Mortgagor (which request is testified by its execution hereof) entering into the Contract of Sale and as provided by that Contract of Sale.
- 1.2. For consideration aforesaid the Mortgagor hereby irrevocably appoints the Mortgagee and each of the officers of the Mortgagee jointly and each of them severally the attorney of the Mortgagor for the purpose of signing all documents and doing all acts on behalf of and in the name of the Mortgagor necessary to perfect the within security and immediately on or at any time after any breach or default by the Mortgagor hereunder to exercise in the name of the Mortgagor all rights, powers and remedies of the Mortgagee expressed or implied herein or to deal with the Mortgaged Land in any way which the Mortgagee may in its absolute and unfettered discretion deem fit and to receive any moneys payable to the Mortgagor in respect of the Mortgaged Land whether in respect of insurance compensation or otherwise and to do all things required to be done by the Mortgagor hereunder and to execute all documents and to do all things necessary in regard to any such matters.

2. PRINCIPAL SUM

- 2.1. In this Mortgage unless the contrary intention appears the "principal sum" means all monies payable by the Mortgagor to the Mortgagee under the Contract of Sale.
- 2.2. The principal sum of this Mortgage shall include in addition to the meaning ascribed to it by clause 2.1 above all and any costs, expenses and damages arising from all actions, suits, proceedings, causes of action, claims, demands and orders whatsoever for which the Mortgagor may now or hereafter become liable to the Mortgagee in relation to this Mortgage.

3. TITLE

The Mortgagor covenants with the Mortgagee that:

- 3.1. the Mortgagor has or is entitled to an absolute and indefeasible title to all and every part of the Mortgaged Land subject only to the prior encumbrances notified in this mortgage and that no other person has any right title estate or interest in the Mortgaged Land or any part thereof as purchaser nor is any part of the Mortgaged Land subject to any right subsisting under any adverse possession of such Mortgaged Land or to any easements or to any rights or claims whatsoever excepting only such easements rights or claims (if any) as are expressly contained in the Deed of Grant and/or Certificate of Title and/or Lease of the Mortgaged Land or are notified as aforesaid;
- 3.2. every Deed of Grant or Certificate of Title or other document of title to the Mortgaged Land (but subject to the rights of any prior Mortgagee under a prior encumbrance notified in this mortgage) shall be delivered to and remain in the custody of the Mortgagee until the whole of the principal sum has been paid to the Mortgagee;
- 3.3. the Mortgagor and every other person having or claiming any estate or interest in the Mortgaged Land or any part thereof otherwise than by virtue of a prior encumbrance notified in this mortgage will at all times hereafter at the request of the Mortgagee and until foreclosure or sale at the Mortgagor's cost and afterwards at the cost of the person requiring the same do all such acts and execute and deliver all such deeds documents instruments and assurances for further or more effectually mortgaging or assuring the Mortgaged Land and every part thereof to the Mortgagee pursuant to the intent of this mortgage as the Mortgagee may require and the Mortgagor authorises the Mortgagee or any of the officers of the Mortgagee for and on behalf of the Mortgagor to sign or execute every such document deed instrument and assurance and do every such thing so as to perfect or attempt to perfect the security intended to be hereby given and also for and on behalf of the Mortgagor to comply with all or any requisitions of the Department of Environment and Resource Management;

Title Reference 50848722

4. INSURANCE

The Mortgagor will insure and keep insured the Mortgaged Land for its full insurable value or such amount as may be specified by the Mortgagee from time to time against loss or damage by fire storm tempest and any other risk stipulated by the Mortgagee and will effect public liability insurance in the name of the Mortgagor (and noting the interests of the Mortgagee) with an insurance office approved by the Mortgagee. In the event of loss or damage the Mortgagor must not (without first consulting the Mortgagee) enforce settle or compromise any claim against any insurance company in respect of any insurance policy wholly or partly in respect of the Mortgaged Land. Any moneys received on account of such insurance shall be applicable towards repair or rebuilding of the improvements. The Mortgagor will pay all premiums on or before the due date for payment thereof and will hand each policy evidencing such insurance and all receipts for moneys paid and other usual evidence of insurance to the Mortgagee immediately upon the issue thereof. The Mortgagor will not do or permit any thing or act whereby any insurance policy at any time relating to the Mortgaged Land may become liable to be vitiated or cancelled or the premium thereon may be increased. The Mortgagor shall not without the prior consent of the Mortgagee effect any insurance in respect of the Mortgaged Land other than in accordance with this clause. In the event that the Mortgagor or any other person receives any moneys paid on any such insurance (notwithstanding that such other insurance was effected in breach of this Mortgage), the Mortgagor shall immediately pay to the Mortgagee any such moneys which until payment shall be held in trust for the Mortgagee.

5. COMPENSATION AND PURCHASE MONEYS

All moneys which may become payable as purchase money or compensation or otherwise in respect of the Mortgaged Land or any part thereof shall at the option of the Mortgagee be applicable in the first instance in or towards payment of the moneys hereby secured. The Mortgagee is empowered to make claim therefor and alone to agree compromise or settle any such claim and to demand sue for recovery receive and give discharge for all such moneys and to execute any necessary assurances and releases and all of the foregoing to do in the name of the Mortgagor and the Mortgagee notwithstanding anything in any statute under which, or under an acquisition pursuant to which, the moneys may be payable. The Mortgagor releases the Mortgagee from any claim for anything done or omitted by the Mortgagee under this sub-clause and should any such moneys come into the hands of the Mortgagor before a final discharge of this mortgage the same shall forthwith be paid to the Mortgagee.

6. RATES, TAXES AND OTHER OUTGOINGS

- 6.1. The Mortgagor will pay punctually all taxes (including land tax) rates charges and other impositions whatever which now or hereafter are or may be imposed upon the Mortgaged Land or any part thereof or on the profits thereof or upon the owner occupier or mortgagee of the Mortgaged Land in respect of it and other land or on the profits thereof.
- 6.2. The Mortgagor will comply with all requirements of law imposed on the Mortgagor as owner and/or occupier of the Mortgaged Land.
- 6.3. The Mortgagor will pay punctually all moneys due and payable and observe and perform all other covenants and obligations binding under each and every lease mortgage charge and encumbrance now or hereafter affecting the Mortgaged Land.
- 6.4. On demand by the Mortgagee the Mortgagor will produce proof to the reasonable satisfaction of the Mortgagee of compliance by the Mortgagor with all covenants and obligations herein contained or implied (including production of receipts for all payments that ought to have been made).

7. REPAIR

The Mortgagor will whether or not the Mortgagee has taken possession of the Mortgaged Land make such repairs as may be necessary for keeping the improvements in good and tenantable repair order and condition and in particular will whenever the Mortgagee considers it necessary paint in a proper and workmanlike manner to the satisfaction of the Mortgagee such parts of the improvements as are usually painted and will on being required by the Mortgagee to do so forthwith amend every defect in the repair and condition thereof, and will forthwith carry out all work that may be ordered by any competent authority in respect thereof. The Mortgagee

SCHEDULE

Title Reference 50848722

and its nominees may at all reasonable times be at liberty to enter upon and inspect the Mortgaged Land and its state of repair.

8. FURTHER COVENANTS

- 8.1. The Mortgagor will not without the prior consent in writing of the Mortgagee sell, agree to sell, give any option to purchase, transfer, lease, agree to lease, part with possession, subdivide, mortgage, charge or otherwise further encumber the Mortgaged Land.
- 8.2. In the event of the Mortgaged Land being subject to the Body Corporate and Community Management Act 1997 the Mortgagor will forthwith upon receipt thereof furnish the Mortgagee with a copy of every notice of meeting and other notice received by the Mortgagor from the body corporate and the Mortgagor will not without the prior consent in writing of the Mortgagee concur in or agree to any dealing with the common property or vote in favour of any resolution of the body corporate which is required to be passed by a resolution without dissent or adds to or alters the by-laws of the body corporate.
- 8.3. Except with the prior consent in writing of the Mortgagee the Mortgagor will not apply for or obtain from the Crown or from any statutory authority any money or material 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 security.
- 8.4. The Mortgagor will prepare and deliver to and/or produce for the inspection of the Mortgagee or the nominee of the Mortgagee on demand at any time or times all books of account and other documents relating to the financial position of the Mortgagor as the Mortgagee may reasonably require.

9. COSTS AND DUTY

The Mortgagor and Mortgagee will each bear their own costs or and incidental to the negotiation, preparation and execution of this mortgage. The Mortgagor will upon demand by the Mortgagee pay all costs (including legal costs as between solicitor and client) expenses and other amounts incurred or paid by the Mortgagee in respect of those arising out of in consequence of or on account of any default by the Mortgagor or the exercise or purported or attempted exercise of any of the Mortgagee's rights or powers. The Mortgagor will pay any mortgage duty or other duty including duties and taxes on receipts or payments arising directly or indirectly in respect of this Mortgage or any collateral security.

10. CHARGE

The Mortgagor hereby charges to the Mortgagee with payment of the principal sum the Mortgaged Land and all income derived or to be derived there from and also the Mortgagor's right to receive any moneys, damages, compensation or otherwise which are due and payable or which become due and payable in respect of the Mortgaged Land under or pursuant to the *Queensland Building Services Authority Act 1991* or otherwise, and in respect thereof all rights, remedies, claims or powers which shall accrue to the Mortgagor. All such moneys until payment to the Mortgagee shall be held on trust for the Mortgagee.

11. NOXIOUS TRADES

The Mortgagor shall not carry on or permit to be carried on upon the Mortgaged Land any illegal, noxious noisome or offensive art, trade, business or occupation.

12. INDEMNITIES

The Mortgagor shall indemnify and hold indemnified the Mortgagee from and against all actions claims demands losses interest fees damages costs and expenses of any nature whatsoever which the Mortgagee may sustain or incur or for which the Mortgagee may become liable whether during or after the term of this Mortgage (and any such amount shall form part of the principal sum) in respect of or arising from:-

- 12.1. any neglect or default of the Mortgagor to observe and perform any of the terms covenants and conditions contained in or implied by this Mortgage;

Title Reference 50848722

- 12.2. any loss or damage occasioned by or liability incurred by the Mortgagee or the Mortgagor in the exercise non-exercise or purported exercise of any of its powers rights and privileges contained in or implied by this Mortgage whether or not the Mortgagee acted negligently or was guilty of laches or waiver;
- 12.3. any rates taxes charges outgoings and assessments (including any land or property tax) that may at any time be payable chargeable assessed or become due upon or in respect of the Mortgaged Land and any liability to any competent authority in respect of any breach of duty or law relating to the Mortgaged Land;
- 12.4. any claims by any lessee tenant occupier licensee invitee or other person in respect of or arising out of their use of or presence upon the Mortgaged Land or otherwise;
- 12.5. any actual or assumed obligation of the Mortgagee (whether solely or jointly with the Mortgagor or any other person howsoever arising) to pay any moneys or to perform any act, matter or thing relating directly or indirectly in any way to the Mortgaged Land.

13. STATUTES

The Mortgagor will duly and punctually comply with and observe the provisions of every act ordinance or regulation at any time imposing any duty obligation or charge upon or in relation to the Mortgaged Land.

14. MORTGAGOR TO GIVE NOTICE

The Mortgagor shall promptly give notice in writing to the Mortgagee upon becoming aware of the following:-

- 14.1. any event or circumstance whereby a claim for compensation may arise in relation to the Mortgaged Land;
- 14.2. any event or circumstance whereby a claim under any policy of insurance may arise in relation to the Mortgaged Land;
- 14.3. any event or circumstance whereby a charge upon the Mortgaged Land may arise in favour of any statutory authority or other person;
- 14.4. any resumption or intended resumption of the Mortgaged Land or any part thereof and the Mortgagor shall not lodge any claim for compensation or reduce or compromise such claim without the prior consent in writing of the Mortgagee;
- 14.5. any damage to or defects in the Mortgaged Land;
- 14.6. any change in the planning scheme or any planning scheme policy affecting the Mortgaged Land;
- 14.7. any default in the performance of any other mortgage or encumbrance affecting the Mortgaged Land or any security collateral thereto;
- 14.8. any event or circumstance whereby the value of the Mortgaged Land is or may be adversely affected; and
- 14.9. the occurrence of any of the events described in default clause 17.

15. OTHER CHARGES

In the event of a sale by the Mortgagee of the Mortgaged Land or any part thereof the same may be sold either subject to or discharged from moneys secured by any prior mortgage and the Mortgagee may pass and settle the accounts of any prior Mortgagee and all the accounts so passed or settled shall be binding on the Mortgagor.

Title Reference 50848722

16. PERFORM OTHER SECURITIES

The Mortgagor will carry out and observe and perform all of the terms covenants and conditions contained in or implied by each and every of the following:

- 16.1. any collateral security;
- 16.2. any mortgage or encumbrance of the Mortgaged Land whether or not registered and whether or not ranking in priority to this Mortgage;
- 16.3. any securities collateral to the mortgages or encumbrances described in clause 16.2; or
- 16.4. any lease agreement or hire purchase agreement in respect of improvements.

17. EVENTS CAUSING MONEYS TO BE PAYABLE ON DEMAND

- 17.1. The principal sum or other monies payable to the Mortgagee under this Mortgage or so much thereof as remains unpaid (together with interest accrued and unpaid to the date of demand) will become immediately payable to and recoverable by the Mortgagee upon the happening of any of the following events: -
 - 17.1.1. default by the Mortgagor in payment at the times and in the manner provided in this mortgage (or any other agreement between the Mortgagor and Mortgagee) of the principal sum or other moneys payable to the Mortgagee or any part thereof or of the interest thereon or any part thereof; or
 - 17.1.2. default by the Mortgagor in the observance or performance of any of the covenants obligations or provisions contained or implied in this mortgage and on the part of the Mortgagor to be observed or performed; or
 - 17.1.3. the appointment of a receiver or receiver and manager of any of the assets of the Mortgagor or the appointment of an administrator (as defined by the Corporations Act 2001) of the Mortgagor; or
 - 17.1.4. the occurrence of any act or event mentioned in Section 461 of the Corporations Act 2001 in relation to the Mortgagor or an investigation into the affairs, of the Mortgagor pursuant to Section 13 or Section 14 of the Australian Securities and Investments Commission Act 2001; or
 - 17.1.5. a resolution being proposed or an application being made for the winding up of the Mortgagor; or
 - 17.1.6. the Mortgagor failing to comply with a statutory demand (as defined by the Corporations Act 2001); or
 - 17.1.7. any execution being levied against any of the assets of the Mortgagor and remaining unsatisfied for seven days; or
 - 17.1.8. possession or control of any of the assets of the Mortgagor being taken by an encumbrancer or person appointed by an encumbrancer.
- 17.2. The Mortgagor will pay the monies payable in accordance with clause 17.1 on demand in writing by the Mortgagee.
- 17.3. Upon demand being made by the Mortgagee pursuant to clause 17.1 the Mortgagor will pay to the Mortgagee simple interest at the rate chargeable on the principal sum or at the higher rate if more than one is specified on any principal or other moneys payable to the Mortgagee under this mortgage or interest from time to time due and unpaid under this mortgage and also on any principal or other moneys or interest accrued and unpaid to the date of such demand and such interest shall accrue and be recoverable from day to day.

Title Reference 50848722

18. MORTGAGEE'S POWERS

18.1. In the event of default by the Mortgagor in payment at the times and in the manner provided in this mortgage of the principal sum or other moneys repayable to the Mortgagee under this mortgage or any part thereof or of the interest thereon or any part thereof or upon default being made in the observance or performance of any of the covenants agreements or conditions contained in this mortgage or implied by the *Property Law Act 1974* the Mortgagee shall (notwithstanding any omission neglect or waiver of the right to exercise all or any of such powers on any former occasion) be at liberty: -

18.1.1. to exercise all or any of the powers of a Mortgagee under the said Act immediately upon or at any time after default as hereinbefore mentioned without the necessity of giving the Mortgagor any notice whatsoever required by the said Act or otherwise other than such notice as is required by such Act upon default being made in payment at the times and in the manner provided in this mortgage of the principal sum or interest or other moneys payable to the Mortgagee under the mortgage or any part thereof;

18.1.2. to do one or more of the following acts matters or things, namely: -

- (a) to do such things as the Mortgagee may think fit to carry on and manage on the Mortgaged Land any business being conducted on the Mortgaged Land and to preserve the goodwill thereof and to sell the goodwill either separately or together with the Mortgaged Land;
- (b) to do any act or execute any document or amend any document (including this Mortgage) to enable registration thereof;
- (c) to do any act matter or thing which the Mortgagor should do or have done under this Mortgage;
- (d) to execute any transfer mortgage plan of subdivision development application consent or other applications or documents which may be necessary or desirable pursuant to provisions of the Land Title Act 1994, Integrated Planning Act 1997 or the Property Law Act 1974 or other statutory provision in connection with the exercise of any other power hereunder;
- (e) to execute and procure the registration of a transfer in pursuance of the exercise of the Mortgagee's power of sale;
- (f) to make payment on behalf of the Mortgagor of the whole or any part of the moneys claimed by any person to be charged or secured on the Mortgaged Land or any part thereof or to be payable from the same or from the proceeds of the sale thereof and whether the interest claimed by such person ranks or would if established rank prior to or subsequent to this mortgage;
- (g) to acquire any land encroached upon by any buildings or improvements erected partly on the Mortgaged Land and to execute all contracts transfer and documents in connection therewith;
- (h) to acquire for such consideration as the Mortgagee shall think fit the whole or any part of any interest claimed by any person (other than the Mortgagee) in the Mortgaged Land or any part thereof and whether such interest ranks or would if established rank prior to or subsequent to this mortgage and whether the same is registered or unregistered;
- (i) to subdivide or re-subdivide the Mortgaged Land into lots or units and in connection with such subdivision or re-subdivision to agree to such conditions as may be required by any assessment manager (including a local government), and to enter into agreements for the provision of electricity water sewerage and other services which the Mortgagee may think necessary or desirable;

SCHEDULE

Title Reference 50848722

- (j) to execute and appeal from judgments;
- (k) upon the Mortgagee becoming entitled to possession of the Mortgaged Land to deliver up, at the expense of the Mortgagor, any personalty of the Mortgagor which may be upon the Mortgaged Land at the address of the Mortgagor herein or at such other address of the Mortgagor as notified to the Mortgagee or to store, at the Mortgagor's expense, any such personalty at such place and upon such terms as the Mortgagee thinks fit;
- (l) where the Mortgaged Land is subject to the Body Corporate and Community Management Act 1997 to exercise any power of voting conferred on the Mortgagor as a member of the body corporate or committee thereof and to apply for and obtain from the body corporate any information to which the Mortgagor shall be entitled as a member of the body corporate PROVIDED that nothing herein contained shall render it obligatory upon the Mortgagee to attend or vote at any meeting of the body corporate and the Mortgagee shall not be answerable or accountable to the Mortgagor by reason of any exercise or failure to exercise such power of voting AND the Mortgagor will from time to time whenever requested by the Mortgagee execute a proxy in proper form in relation to any meeting of the body corporate in favour of such person or persons as the Mortgagee may nominate and deliver the same to the Mortgagee;
- (m) after becoming entitled to possession of the Mortgaged Land to let the Mortgaged Land or any part thereof on lease or otherwise for such term and at such rent and upon such conditions as the Mortgagee shall think fit;
- (n) to settle accounts between the Mortgagor and any person claiming any interest in the Mortgaged Land or any account whatsoever;
- (o) to give effectual releases and receipts for any money received or receivable by the Mortgagee pursuant to any power contained or implied herein;
- (p) to receive the proceeds of any insurance policy over or in respect of the building fixtures fences or other improvements on the Mortgaged Land and also to receive any compensation or consideration payable in respect of the acquisition (compulsory or otherwise) of the Mortgaged Land or any part thereof or of any interest therein pursuant to any statute regulation by-law or any agreement;
- (q) as the Mortgagee shall think fit to apply any moneys received pursuant to clauses (p) and (t) of this clause in the reparation or replacement of any buildings fixtures fences or improvements or towards satisfaction of the interest principal sum and other moneys secured hereby (notwithstanding that the same may not be due);
- (r) to sell or lease the Mortgaged Land or any part thereof together with other property in mortgage from the Mortgagor to the Mortgagee whether (if land) under the Land Title Act 1994 or not by one contract and one price or at one rent or in any other manner that the Mortgagee may deem expedient;
- (s) to allow a purchaser upon sale of the Mortgaged Land or any part thereof any time for payment of the whole or any part of the purchase money with or without interest and either with or without taking security thereof;
- (t) to institute proceed with or settle any legal proceedings or disputes against or by any person claiming any interest in the Mortgaged Land in respect of any insurance on any buildings fixtures fences or other improvements on the Mortgaged Land in respect of any compensation or consideration payable or claimed to be payable in respect of the acquisition of the Mortgaged Land or any interest therein or otherwise in respect of any moneys which the Mortgagee is authorised to receive hereunder or in respect of any matter affecting the Mortgaged Land; and

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(u) to appoint a receiver and/or manager to the Mortgaged Land.

- 18.2. Any receiver appointed by the Mortgagee shall be the agent of the Mortgagor who shall be solely responsible for his acts and defaults and for his remuneration. Any receiver shall in addition to the powers implied by law have all powers conferred on the Mortgagee hereby or by law which the Mortgagee may see fit to confer on the receiver and the receiver shall also have power to appoint such person or persons as the receiver may think fit to exercise on behalf of the receiver such powers and authorities of the receiver as the receiver may think fit.

19. ENVIRONMENTAL LAW

- 19.1. The Mortgagor will duly and punctually comply with and observe all statutes, ordinances, regulations and by-laws of an environmental or anti-pollution nature and all orders or directions of any competent court or authority pertaining thereto (all of which are hereinafter referred to as environmental law) in so far as the same affects or might affect the Mortgaged Land or the carrying on of any activity upon the Mortgaged Land.
- 19.2. If any event or conduct should occur which exposes or might expose the Mortgaged Land or any occupier thereof or any person in control of any activity carried on upon the Mortgaged Land to any liability or obligation pursuant to environmental law the Mortgagor will promptly take or cause to be taken all such action as may be required or desirable to effectively deal with the consequences of such event or conduct in order to negate the said liability or obligation or if negation should not be possible then to minimise any loss, damage or other consequence arising from such event or conduct AND the Mortgagor will indemnify the Mortgagee and keep the Mortgagee indemnified against all loss and liability whatsoever arising from any breach of environmental law or of the covenants of the Mortgagor herein contained.
- 19.3. The Mortgagor agrees: -
- 19.3.1. to comply with all environmental laws and with the conditions (if any) of any permit, work approval, trade waste agreement, environmental authority or licence required by an environmental law and to immediately inform and advise the Mortgagee of a violation, breach or failure to conform with those conditions;
- 19.3.2. not to pollute, place or bring upon the Mortgaged Land contaminated substances or environmentally sensitive materials (except with the previous written consent of any lawful authority);
- 19.3.3. to inform the Mortgagee immediately upon any contamination of the Mortgaged Land and to take such action as is necessary to immediately remedy any contamination of the Mortgaged Land;
- 19.3.4. in the event that the Mortgagor is placed into receivership or is otherwise wound up, any contaminated material on the Mortgaged Land will be deemed to be the property of the Mortgagor and the Mortgagor will be entitled to separate the contaminated material from the Mortgaged Land, place the contaminated material into appropriate storage containers and store those containers either on the Mortgaged Land or remove the containers from the Mortgaged Land; and
- 19.3.5. to authorise the Mortgagee to obtain any information required by it from any environmental law regulatory body and to provide assistance to the Mortgagee in obtaining that information.

20. NOTICES

- 20.1. Any demand or notice to the Mortgagor shall be effectively signed on behalf of the Mortgagee if it is executed by the Mortgagee any of its officers its solicitor or its attorney.
- 20.2. Any demand or notice required or authorised by this mortgage may be served as provided by Section 257 of the *Property Law Act 1974*. If any demand or notice is posted it shall be deemed served the

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day after posting notwithstanding that at the date of such service the Mortgagor to the knowledge of the Mortgagee or otherwise be a lunatic dead bankrupt in liquidation or absent.

21. EXCLUSION OF MORATORIUMS

The provisions of any statute or regulation postponing payment of money reducing rates of interest or purporting to curtail or restrict the rights powers or remedies of the Mortgagee are expressly excluded from and shall not apply to this Mortgage or any renewal or extension of it.

22. MORTGAGEE'S PRIORITY

This Mortgage shall confer upon the Mortgagee priority over any subsequent security over the Mortgaged Land for all moneys intended to be secured by this Mortgage notwithstanding that the whole or any part of those moneys may be advanced readvanced or made available after the date of this Mortgage or after the date of any subsequent security. This Mortgage shall be and remain in force as a continuing security until the principal sum is paid in full. The Mortgagee's rights under this Mortgage shall not be discharged postponed or in any way prejudiced by any subsequent security nor anything contained in this Mortgage nor by the operation of the rules known as the rule in *Hopkinson v. Rolt* or the rule in *Claytons Case*.

23. COVENANTS TO ENURE

The Mortgagor's obligation to perform and the Mortgagee's right to require the Mortgagor to perform all of the terms covenants and conditions contained in or implied by this Mortgage shall not be affected by any omission delay or waiver on the part of the Mortgagee requiring the Mortgagor to perform them or by any partial or other discharge release variation of this Mortgage or any of the security conferred by this Mortgage or any of the terms of this Mortgage or any collateral security or any guarantee.

24. MORTGAGEE'S STATEMENT

A statement in writing by the Mortgagee or any duly authorised person on its behalf of the principal sum or any component parts shall be binding upon the Mortgagor except in the case of manifest error.

25. CONSENT OF MORTGAGEE

Any authority consent or other thing to be given made or exercised by the Mortgagee under this Mortgage must not be unreasonably, capriciously or arbitrarily withheld.

26. STATUTORY POWERS

All powers rights and remedies conferred upon the Mortgagee or any Receiver by law or by any statute shall be in enlargement and augmentation of those contained in this Mortgage and shall not curtail diminish or qualify any of them.

27. APPLICATION OF MONEY RECEIVED

All moneys received by the Mortgagee pursuant to this Mortgage shall be applied in the absolute discretion of the Mortgagee towards reduction or satisfaction of such part of the principal sum as the Mortgagee elects without the need to communicate its election to any person. The Mortgagor shall be given credit for moneys only when same are actually received by the Mortgagee such credit to date from the time of such receipt and all other moneys left outstanding on credit or otherwise shall until actually received by the Mortgagee form part of the principal sum. If at any time the Mortgagee receives surplus moneys such surplus shall not carry interest and the Mortgagee may pay same to the credit of an account in the name of the Mortgagor in any bank the Mortgagee thinks fit and thereafter be under no liability in respect of same. No claim or demand whatsoever that the Mortgagor has now or may have at any time against the Mortgagee will confer upon the Mortgagor any right whatsoever by way of set-off or otherwise to extinguish in whole or in part the Mortgagee's right under this Mortgage to have the principal sum paid to him in full by the Mortgagor in accordance with this Mortgage and/or any collateral security.

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28. SEVERABILITY

If any term covenant or condition of this Mortgage or the application thereof to any person or circumstance shall be or become illegal invalid or unenforceable the same shall be severed and the remaining terms covenants and conditions shall not be affected.

29. OTHER SECURITIES

Neither the taking of this Mortgage nor any other matter or thing shall merge discharge extinguish postpone or prejudice any other security at any time held by the Mortgagee or any right or remedy which the Mortgagee has at any time against the Mortgagor or any other person and no such other security or thing shall affect.

30. BARGAINING POWER

The parties acknowledge that prior to entering this Mortgage:-

- 30.1. each party could negotiate for the alteration of or rejection of any of the provisions of this Mortgage; and
- 30.2. there was no material inequality in bargaining power between the parties; and
- 30.3. each party had consulted or had the opportunity to consult independent legal advisers.

31. ASSIGNMENT

The Mortgagee may assign or participate its rights or obligations under this Mortgage or any part thereof and transfer its obligation or any part of any of them and for this purpose may disclose to a potential participant assignee or transferee such information about the Mortgagor as shall have been made available to the Mortgagee. Where the Mortgagee assigns or participates its rights or obligations or any part thereof, the Mortgagor shall execute such documents as in the opinion of the Mortgagee are reasonably necessary. The Mortgagor shall not assign transfer or deal with their rights or obligations hereunder.

32. GENERAL

- 32.1. No person dealing with the Mortgagee shall be bound or concerned to enquire as to the regularity of or the occasion for the exercise of any power exercised or purported to be exercised by the Mortgagee. This declaration is intended as a representation to any person reading this mortgage and if acted upon the Mortgagor declares that the Mortgagor will be stopped from asserting facts to the contrary.
- 32.2. So long as the Mortgagee acts in good faith and without fraud the Mortgagee shall not be liable to the Mortgagor in damages or otherwise for any loss occasioned to the Mortgagor from the exercise or purported exercise by the Mortgagee of any right or power hereunder notwithstanding any irregularity therein.
- 32.3. No judgment or order obtained by the Mortgagee and no covenant by the Mortgagor shall operate to merge the rights of the Mortgagee against the Mortgagor AND interest shall continue to accrue and be payable to the Mortgagee pursuant to this mortgage until paid notwithstanding that the covenants to pay the principal sum or any other moneys secured by this mortgage may be the subject of any judgment or order.
- 32.4. This mortgage shall not be discharged or affected by the death mental illness or bankruptcy of any principal debtor or by the death mental illness or bankruptcy of the Mortgagor or any one or more of them (if more than one) or by any change which may take place in the person or persons now or hereafter comprising any partnership or firm for the time being constituting the Mortgagor and notwithstanding the incorporation of such partnership or firm and notwithstanding also (if the Mortgagor is a company) any reconstruction or other change in the constitution of such company or its amalgamation with or its absorption of or by any other company or by any change which may take place in the constitution of the Mortgagee or by any other circumstance or event but shall continue to be operative until actually discharged by the Mortgagee And in the event of there being more than one 3

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Mortgagor the Mortgagee may give such release discharge or indulgence to any one or more of them as the Mortgagee may think fit and such release discharge or indulgence shall not discharge or affect in any way the rights and remedies of the Mortgagee under these presents or otherwise against the other or others of them.

- 32.5. Time is of the essence in respect of the Mortgagor's obligations under this Mortgage.
- 32.6. A provision of this Mortgage which can and is intended to operate after its conclusion will remain in full force and effect.
- 32.7. The Mortgage will bind each of the signatories to this Mortgage even if one or more of the named parties does not execute this Mortgage.
- 32.8. This Mortgage is to be governed by and construed in accordance with all applicable Queensland Laws and the parties must submit to the non-exclusive jurisdiction of the Queensland Courts.

33. MORTGAGOR A TRUSTEE

- 33.1. The provisions hereinafter set out in this clause 38 shall apply in any case where the Mortgagor holds the Mortgaged Land as trustee of a trust (hereinafter called "the Trust") and when used in this clause the expression "the Trust Deed" shall include the original deed constituting the Trust and every deed (if any) supplemental thereto.
- 33.2. The covenants and agreements of the Mortgagor under or pursuant to this mortgage shall bind the Mortgagor in his own right as well as in his capacity as trustee of the Trust and nothing contained or implied in this clause shall limit the personal liability of the Mortgagor on his own account under this mortgage.
- 33.3. The Mortgagor warrants that:-
 - 33.3.1. the Mortgagor is the sole trustee of the Trust;
 - 33.3.2. the Mortgagor has power under the Trust Deed to execute this mortgage and perform his obligations thereunder and any necessary action has been taken to authorise the execution of this mortgage under the Trust Deed;
 - 33.3.3. this mortgage is executed and all transactions secured by this mortgage are or will be entered into as part of the due and proper administration of the Trust;
 - 33.3.4. the Mortgagor has a right to be fully indemnified out of the property or assets of the Trust which right is not restricted or limited in any way;
 - 33.3.5. the Mortgagor is not in breach or default of his duties and obligations under the Trust Deed.
- 33.4. Notwithstanding anything in this mortgage the principal sum or other moneys payable to the Mortgagee under this mortgage or so much thereof as shall remain unpaid (together with interest thereon accrued and unpaid to the date of demand therefore in writing by the Mortgagee) shall become forthwith payable to and recoverable by the Mortgagee (and notwithstanding any delay or previous waiver of the provisions of this clause by the Mortgagee) and the Mortgagor will pay the same on demand therefore in writing by the Mortgagee if, without the written consent of the Mortgagee, the Mortgagor:-
 - 33.4.1. retires, resigns or is removed as trustee of the Trust;
 - 33.4.2. causes or permits or suffers any amendment variation or revocation of the Trust Deed;
 - 33.4.3. causes or permits or suffers the appointment of any new or additional trustee of the Trust;

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- 33.4.4. causes or effects or permits or suffers any resettlement setting aside sale transfer alienation assignment or abandonment of any of the property or assets held on the trusts of the Trust Deed;
 - 33.4.5. causes or permits or suffers the determination of the vesting date under the provisions of the Trust Deed;
 - 33.4.6. causes or permits or suffers any breach or default of the duties and obligations on the Mortgagor's part contained in the Trust Deed;
 - 33.4.7. causes or effects or creates or suffers or permits any restriction or limitation on the Mortgagor's right of indemnity whether arising under the Trust Deed or otherwise; or
 - 33.4.8. makes any distribution of capital of the Trust and without limiting the generality of the foregoing pays or applies any amount being part of the capital of the Trust or any of the property or assets held on the trusts of the Trust Deed to any beneficiary of the Trust.
- 33.5. The Mortgagor will on demand being made by the Mortgagee exercise all such rights of indemnity which it as trustee may possess and enjoy in relation to the property or assets held on the trusts of the Trust Deed and the Mortgagor irrevocably appoints the Mortgagee and each of the officers of the Mortgagee jointly and each of them severally the Attorneys and Attorney of the Mortgagor and in the name of the Mortgagor to execute and do all such assurances, documents, acts, deeds and things as the Mortgagee may deem necessary for the due performance and observance of this clause by the Mortgagor and for the purpose of giving effect to this clause as fully and effectually as the Mortgagor could do, and the Mortgagor hereby agrees to ratify all and whatsoever the Attorneys or Attorney may lawfully do or cause to be done in or about or by virtue of this clause.

34. INTERPRETATION

It is hereby agreed and declared that:-

- 34.1. where in this mortgage the context requires or admits the plural number includes the singular number and vice versa and the masculine gender includes the feminine gender and also the neuter gender, the word "person" includes a company and "company" includes a corporation; any reference to the death or personal representatives of a person shall refer also to the liquidation or appointment of any liquidator or official manager of a company where the sense requires.
- 34.2. the expression "the Mortgagor" used herein includes if this mortgage is given by one person that person his executors administrators and transferees and if this mortgage is given by more persons than one those persons jointly and every two or more of them jointly and each of them severally and their respective executors administrators and transferees and if a company is a Mortgagor includes that company its successors and transferees.
- 34.3. the expression "the Mortgagee" used herein includes the successors and transferees of the Mortgagee.
- 34.4. the expression "the officers of the Mortgagee" used herein includes any director, secretary or attorney(s) of the Mortgagee.
- 34.5. all references to Statutes herein shall refer also to Statutes amending modifying or re-enacting the Statute referred to.
- 34.6. the expression "Mortgaged Land" means the land described in Item 2 of the attached Form 2 Mortgage and includes all buildings, fixtures, improvements, plant and machinery of whatsoever nature created or placed on such land at the date hereof or at any time while this security continues in force.
- 34.7. the expression "Contract of Sale" means the contract of sale dated 16 August 2010 (as varied by way of Deed of Variation of Contract dated 2 March 2011, Deed of Variation of Contract dated 29 July 2011, Deed of Variation of Contract dated 4 November 2011 and Deed of Variation of Contract dated 19 5

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on or about 20 December 2011) entered into by the Mortgagee as Vendor and the Mortgagor as Purchaser for the sale and purchase of the Mortgaged Land.