

# HOUSING ASSET INTERCREDITOR DEED

between

**STATE OF QUEENSLAND through the DEPARTMENT OF HOUSING  
AND PUBLIC WORKS**

and

**[insert financier details]**

and

**[insert CHP details]**

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**DEED PARTICULARS**

<b>Item 1</b>	<b>Department:</b>	Name:	
		Address:	
		Email:	
		Contact person:	
<b>Item 2</b>	<b>Financier:</b>	Name and ACN:	
		Address:	
		Email:	
		Contact person:	
<b>Item 3</b>	<b>Provider:</b>	Name and ACN:	
		Address:	
		Email:	
		Contact person:	
<b>Item 4</b>	<b>Effective Date:</b>	The date on which this Deed is executed by the parties and, if executed on different dates, the last of those dates.	
<b>Item 5</b>	<b>Master Agreement</b>	The Master Agreement signed by the Department and the Provider dated [insert].	

## Agreed Terms

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Deed:

**Acceptable CHP** means a registered community housing provider that, at the relevant time:

- (a) is solvent;
- (b) has not been wound up and is not being wound up;
- (c) is not the subject of an extant notice of intent to cancel registration; and
- (d) is registered as a community housing provider in accordance with Relevant CHP Law.

**Affected Financed Housing Project** means any Financed Housing Project that is affected by a Trigger Event;

**Affected Project Finance Debt** means, in respect of any Affected Financed Housing Project, any Relevant Debt made available to the Provider under the Project Finance Agreement that relates to that Affected Financed Housing Project;

**Affected Project Finance Related Site** means, in relation to any Trigger Event, any Project Finance Related Site that is affected by that Trigger Event;

**Affected Project Finance Secured Site** means, in respect of any Affected Financed Housing Project, any Project Finance Secured Site for that Affected Financed Housing Project;

**Affected Project Finance Site** means, in respect of any Affected Financed Housing Project, the Project Finance Site of that Affected Financed Housing Project;

**Another Financier Arrangement** means, in respect of any Financed Housing Project, any document or arrangement entered into between the Provider and the Financier other than:

- (a) the Project Finance Agreement or any Project Finance Security for that Financed Housing Project; or
- (b) any other finance document entered into in connection with that Financed Housing Project;

**Approved Acceptable CHP** has the meaning given in clause 9.1(c);

**Approved Transferee** has the meaning given in clause 15(f);

**Authority** means the Department and any other governmental, semi-governmental or local government authority, minister, statutory corporation, instrumentality or government- owned corporation;

**Business Day** means any day other than a Saturday, Sunday or public holiday in Brisbane, Queensland;

**Chief Executive** means the chief executive under the Housing Act;

**Common Secured Property** means any property that is encumbered by both the Department Security and the Project Finance Security;

**Deed** means this document and any schedules to it;

**Deed Particulars** means the deed particulars at the start of this Deed;

**Department Security** means, in relation to any Funding Document, the Security Interests granted by the Provider in favour of the Department to secure the obligations and liabilities owed by the Provider to the Department under and in connection with that Funding Document and (as the context requires) the document under which any such Security Interests are granted;

**Effective Date** means the date set out in Item 4 of the Deed Particulars;

**Enforcement Proceeds** means, in relation to any Secured Party, any proceeds received by that Secured Party, or by any Receiver appointed by it, from exercising or otherwise enforcing any Powers under its Security over any Common Secured Property (less all Recovery Costs reasonably incurred by that Secured Party or Receiver in exercising or enforcing those Powers);

**Exiting Project Finance Secured Site** has the meaning given in clause 9.5(a);

**FD Portfolio Receipts** means, in relation to any Project Finance Related Site, any rent and other revenue from the operation of that Project Finance Related Site, excluding, for clarity, any funding provided by the Department to the Provider in connection with that Project Finance Related Site;

**Financed Housing Project** means any Housing Project in respect of which the Provider has received or will receive both State Funding and Project Financing;

**Financed Housing Project Specific Trigger Event** means any event described in clause 7(b);

**Financial Model** means, in relation to any Financed Housing Project, the relevant financial model for the operation of the housing services to be provided by the Provider on and in connection with the Project Finance Site for that Financed Housing Project for a period of 20 years prepared by the Provider and in the form approved by the Financier and the Department;

**Funding Document** means, in relation to any Housing Project, any Master Agreement Authorisation Deed Poll, Capital Funded Master Agreement Project Deed or Capital Funded Property Operating Arrangement that the Provider and the Department have entered into under the Master Agreement with reference to that Housing Project;

**Housing Act** means the Housing Act 2003 (Qld);

**Housing Project** has the meaning given in paragraph A of the Background to this Deed;

**Interest, Costs and Charges** means, in relation to any Relevant Debt, any:

- (a) interest payable on that Relevant Debt, including default interest, if any; and
- (b) taxes (including duties or levies), fees, charges, reasonable expenses or reasonable costs, of any nature (including Recovery Costs) which the Provider is obliged to pay to the Financier directly in connection with that Relevant Debt;

**Master Agreement** means the Master Agreement signed by the Provider and the Department specified in the Deed Particulars.

**Mandatory Return Clause** has the meaning given in clause 4.2(a);

**Original Project Finance Agreement** means, in relation to any Financed Housing Project, any agreement between the Provider and the Financier:

- (a) under which the Financier has agreed to make financial accommodation available to the Provider for application towards that Financed Housing Project or to refinance its existing indebtedness in connection with a Financed Housing Project;
- (b) in the form of which has been approved by the Department before the date of this Deed; and
- (c) that is designated to be the "Project Finance Agreement" in respect of that Financed Housing Project in the Security Schedule;

**Other Default** means, in relation to any Financed Housing Project:

- (a) monies that are owed or owing to the Financier by the Provider under Another Financier Arrangement become due and payable or become capable of being declared due and payable prior to their intended maturity; or
- (b) any default or event of default (howsoever described) occurs under Another Financier Arrangement; or
- (c) any Security Interest granted in favour of the Financier in connection with Another Financier Arrangement being enforced or becoming capable of being enforced; or
- (d) any commitment under Another Financier Arrangement is cancelled or suspended as a result of an event of default (howsoever described) or a change of control;

**Powers** means any right, power, authority, discretion, remedy or privilege, whether express or implied (including to exercise a right to terminate or grant releases or waivers) conferred on any person or entity;

**PPS Act** means the Personal Property Securities Act 2009 (Cth);

**Priority Amount** means, in respect of any Project Finance Agreement, the aggregate of:

- (a) the Relevant Debt (or relevant portion of it); and
- (b) all Interest, Costs and Charges,

in each case relating to that Project Finance Agreement and secured by the Project Finance Security for that Project Finance Agreement;

**Project Finance Agreement** means, in relation to any Financed Housing Project:

- (a) the Original Project Finance Agreement for that Financed Housing Project; and
- (b) any other agreement between the Provider and the Financier:
  - (i) under which the Financier has agreed to make financial accommodation available to the Provider for application towards that Financed Housing Project or to refinance the Provider's existing indebtedness in connection with that Financed Housing Project; and
  - (ii) the form of which has been approved by the Department;

**Project Finance Consent** has the meaning given in clause 3.1(a);

**Project Finance Related Site** means, in relation to any Financed Housing Project, any Site that is:

- (a) the Project Finance Site for that Financed Housing Project; or
- (b) subject to clause 9.5, a Project Finance Secured Site for the Project Finance Agreement that relates to that Financed Housing Project;

**Project Finance Request** means a request made by the Provider and the Financier to the Department that is substantially in the form set out in Schedule 2;

**Project Finance Secured Site** means, in relation to the Project Finance Agreement for any Financed Housing Project and subject to clause 9.5, any State Funded Site that is (with the approval of the Department) encumbered by any Project Finance Security granted in respect of that Project Finance Agreement;

**Project Finance Security** means, in relation to any Project Finance Agreement, any Security Interest granted by the Provider in favour of the Financier to secure the obligations and liabilities owed by the Provider to the Financier under that Project Finance Agreement and (as the context requires) the document under which any such Security Interest is to be granted, the terms of which have been approved by the Department;

**Project Finance Site** means, in relation to any Financed Housing Project, any lot or lots of land on which that Financed Housing Project is being or will be delivered;

**Project Financing** means the provision of financial accommodation under any Project Finance Agreement;

**Proposed Documents** has the meaning given in clause 3.1(b);

**Proposed Project Finance** has the meaning given in clause 3.1(a);

**Proposed Security** has the meaning given in clause 3.1(a);

**Provider Trigger Event** means any event described in clause 7(a);

**Receipts** mean, in respect of the housing services to be provided by the Provider in respect of any Project Finance Related Site :

- (a) funding paid to the Provider by the Chief Executive;
- (b) an amount, other than funding referred to in paragraph (a) of this definition, that the Provider receives for providing the housing services (like rent and fees);
- (c) the proceeds of sale of that Project Finance Related Site (other than to the extent that such proceeds are Enforcement Proceeds that are required to be distributed in accordance with the terms of this Deed); or
- (d) interest on the amounts mentioned in paragraphs (a) – (c) (inclusive) of this definition;

**Receiver** means a receiver or receiver and manager, and includes any person who derives a right directly or indirectly from them;

**Recovery Costs** means, in relation to any Trigger Event, all costs and expenses incurred by a Secured Party (or a Receiver appointed by that Secured Party) in enforcing or attempting to

enforce any Security or in exercising any Power consequent on the occurrence of that Trigger Event;

**Relevant Action** has the meaning given in clause 12(f);

**Relevant CHP Law** means:

- (a) the Housing Act;
- (b) any applicable property and tenancy law in the State of Queensland; and
- (c) any other law, regulation or code giving effect to the Queensland State Regulatory System for Community Housing or the National Regulatory System for Community Housing to the extent that it is implemented in the State of Queensland;

**Relevant Debt** means, in respect of any Project Finance Agreement, the aggregate amount set out in the Security Schedule with reference to that Project Finance Agreement, or so much of that amount that is outstanding;

**Return Request** has the meaning given in clause 4.2(b);

**Sale Right** has the meaning given in clause 11(a);

**Secured Party** means the Financier or the Department;

**Security** means the Project Finance Security or the Department Security;

**Security Interest** means any security for the payment of money or performance of obligations including:

- (a) a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect; and
- (b) any 'security interest' as defined in ss 12(1) or (2) of the PPS Act;

**Security Schedule** means:

- (a) as at the date of this Deed, Schedule 1; and
- (b) after the date of this Deed, the schedule that is:
  - (i) substantially in the form of Schedule 1; and
  - (ii) updated and issued by the Department from time to time in accordance with clause 3.1(c)(iv)B;

**Site** means any lot or lots of land on which a Housing Project is being or has been delivered;

**Substitute Project Finance Secured Site** has the meaning given in clause 9.5(a);

**Substitution Process** has the meaning given in clause 9.5(a);

**Standstill Period** means, in relation to any Trigger Event, the period that commences on and from the date on which that Trigger Event occurs until, subject to clause 9.5, the date that is 90 days after (and excluding) the earlier of:

- (a) the date on which the Financier gives the Department a Trigger Event Notice in respect of that Trigger Event; or
- (b) the date on which the Department gives the Financier a Trigger Event Notice in respect of that Trigger Event;

**State Funded Site** means any Site in respect of which the Department has provided capital grant funding and that is encumbered by any Department Security;

**State Funding** means the provision of funding or other financial accommodation made available to the Provider by the Department under any Funding Document;

**Supporting Documentation** has the meaning given in clause 3.1(c)(ii);

**Transfer** has the meaning given in clause 9.3(a);

**Trigger Event** means any Provider Trigger Event or any Financed Housing Project Specific Trigger Event; and

**Trigger Event Notice** has the meaning given in clause 7(d).

## 1.2 Interpretation

In this Deed:

- (a) words importing a gender include any other gender and words in the singular include the plural and vice versa;
- (b) any monetary amounts refer to Australian currency unless otherwise specified;
- (c) a reference to legislation includes subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (d) a reference to an individual or person includes a corporation or other legal entity;
- (e) unless expressly provided otherwise, a reference to a clause means a clause to this Deed;
- (f) a reference to a schedule means a schedule to this Deed as amended, varied or replaced from time to time in accordance with the terms of this Deed;
- (g) a reference to a Funding Document, a Department Security, a Project Finance Agreement or a Project Finance Security is a reference to any such document as amended, varied or replaced from time to time in accordance with the terms of this Deed;
- (h) the index and headings are included for convenience of reference only and are not intended to affect the meaning of this Deed;
- (i) if an expression is defined, other grammatical forms of that expression will have corresponding meanings;
- (j) a reference to days or months means calendar days or months;
- (k) if the day on which any act or thing is to be done under this Deed is a Saturday, Sunday or public holiday in the place where the act or thing is to be done, the act or thing may be done on the next business day in that place;

- (l) an obligation on the part of two or more persons binds them jointly and each of them individually;
- (m) a reference to the registrar is a reference to the registrar (as defined in the Housing Act) and any of their delegates; and
- (n) a reference to consent or approval means prior written consent.

### 1.3 Machinery of Government changes

In the event that a government department or agency mentioned in this Deed:

- (a) ceases to exist; or
- (b) is reconstituted, renamed or replaced,

and its powers or functions are transferred to another government department or agency, a reference to the government department or agency will include that other government department or agency.

### 1.4 No limitations

- (a) Despite any other clause, nothing in this Deed:
  - (i) limits or qualifies any Powers of the Department or the Chief Executive or the registrar under any Relevant CHP Law;
  - (ii) relieves the Provider of any obligation or liability under any Relevant CHP Law;
  - (iii) obliges the Department or the Chief Executive or the registrar to exercise any executive or statutory right or duty, or to influence, override, interfere with or direct any other Authority in the proper exercise and performance of any of its executive or statutory rights or duties; or
  - (iv) constrains the Department or the Chief Executive or the registrar or places any fetter on the Department's or the Chief Executive's or the registrar's discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (b) Except as expressly provided in this Deed, nothing in this Deed:
  - (i) limits or qualifies any Powers of the Department; or
  - (ii) relieves the Provider of any obligation or liability,
 

under any agreement relating to community housing services to which the Department and the Provider are parties.
- (c) Except as expressly provided in this Deed, nothing in this Deed:
  - (i) limits or qualifies any Powers of the Financier; or
  - (ii) relieves the Provider of any obligation or liability,
 

under any agreement to which the Financier and the Provider are parties, including the Project Finance Security.

## 1.5 Inconsistencies

In the event of any inconsistency between the provisions of this Deed and:

- (a) either:
  - (i) the Project Finance Security; or
  - (ii) the Department Security,the provisions of this Deed will apply to the extent of the inconsistency; or
- (b) a Relevant CHP Law, the Relevant CHP Law will prevail but only to the extent the Relevant CHP Law is inconsistent with or expressly overrides the provisions of this Deed; or
- (c) any Funding Document or any Project Finance Agreement, the provisions of this Deed will prevail.

## 1.6 Reasonable endeavours of the Department

A statement in this Deed providing that the Department or any of its officers, employees or agents will or must use or exercise “best endeavours”, “reasonable endeavours”, provide or render “reasonable assistance”, “act reasonably” or “act in good faith” in relation to an outcome does not mean that the Department, or any of its officers, employees or agents:

- (a) guarantees that the relevant outcome will be brought about; or
- (b) is required to:
  - (i) exercise a right of any Authority, or to influence, over-ride, interfere with or direct any Authority in the proper exercise and performance of its legal, statutory or executive duties and functions;
  - (ii) exercise a power or discretion or otherwise act in a manner that the Department regards as not in the public interest;
  - (iii) develop or implement new policy or a change in policy; or
  - (iv) procure any new legislation or a change in legislation.

## 2. TERM

This Deed takes effect on the Effective Date and remains in effect until the earlier of the following:

- (a) when the Financier has discharged and released all of the Project Finance Security;
- (b) when the Department has discharged and released all of the Department Security; and
- (c) this Deed being terminated by an agreement executed by each Secured Party.

### 3. DESIGNATION OF A STATE FUNDED SITE AS A PROJECT FINANCE SITE

#### 3.1 Restrictions on provision of Proposed Project Financings and entry into Proposed Security

- (a) The parties acknowledge and agree that the Provider may wish to seek financial accommodation from the Financier in connection with a Housing Project (or to refinance its existing indebtedness in connection with a Housing Project) and the Financier may be prepared to provide that financing to the Provider (the **Proposed Project Finance**) subject to the Financier being granted a mortgage over one or more State Funded Sites (the **Proposed Security**).
- (b) The Provider and Financier may not enter into any Proposed Project Finance and the Provider must not grant (and the Financier must not accept the grant of) any Proposed Security unless:
- (i) the Proposed Project Finance will be documented in an Original Project Finance Agreement and the form of the Project Finance Security relating to that Original Project Finance Agreement (together with the Financial Model for the relevant Housing Project) have been approved by the Department on or before the date of this Deed; or
  - (ii) it has otherwise obtained:
    - A. the prior written consent of the Department; and
    - B. the Department has approved:
      - 1) the State Funded Sites over which the Proposed Security will be granted; and
      - 2) the form of all documents that the Provider and Financier propose to enter into in connection with the Proposed Project Finance (including without limitation the loan agreement and the Proposed Security) (the **Proposed Documents**); and
      - 3) the financial model for the repayment of that financial accommodation,
- (together the **Project Finance Consent**).
- (c) The parties acknowledge and agree that:
- (i) for the purpose of requesting the Project Finance Consent, the Provider and the Financier:
    - A. may, at any time, provide the Department with a copy of the agreed term sheet for the Proposed Project Finance; and
    - B. must issue a Project Finance Request to the Department;
  - (ii) the Project Finance Request must:
    - A. attach the terms of the Proposed Documents;

- B. the financial model for the relevant Housing Project;
  - C. include details of the State Funded Sites over which the Financier wishes to take the Proposed Security; and
  - D. include any other information requested by the Department, (the **Supporting Documentation**); and
- (iii) the Department may (acting reasonably and, where required, with the approval of the Chief Executive):
- A. accept; or
  - B. request any amendments to; or
  - C. reject,
- any Project Finance Request or the Supporting Documentation relating to that Project Finance Request; and
- (iv) if the Department signs and accepts any Project Finance Request (and approves the Supporting Documentation relating to that Project Finance Request and the State Funded Sites that are proposed to be encumbered by the Proposed Security), the Provider and Financier may enter into the relevant Proposed Documents (in the form approved by the Department) and:
- A. upon doing so:
    - 1) the Provider will notify the Department; and
    - 2) the Housing Project will, for the purposes of this Deed, be treated as a Financed Housing Project;
    - 3) the Site on which the Financed Housing Project is being or will be delivered will, for the purposes of this Deed, be treated as the Project Finance Site for that Financed Housing Project;
    - 4) the form of the loan agreement that has been approved by the Department will, for the purposes of this Deed, be treated as the Project Finance Agreement for that Financed Housing Project;
    - 5) the State Funded Sites that the Department has agreed may be mortgaged to secure the obligations and liabilities owed by the Provider to the Financier under the Project Finance Agreement for that Financed Housing Project will, for the purposes of this Deed, be treated as the Project Finance Secured Sites for that Financed Housing Project; and
    - 6) the form of the mortgages that has been approved by the Department will, for the purposes of this Deed, be treated as the Project Finance Security for that Financed Housing Project; and

- B. promptly after it has received the notice referred to in 3.1(c)(iv)A.1) the Department will update the Security Schedule to reflect the details referred to in the Project Finance Request and in clauses 3.1(c)(iv)A and send a copy of that updated Security Schedule to both the Financier and the Provider.

### 3.2 Undertaking and acknowledgments of Financier

The Financier:

- (a) must not create or register any Security Interest (including a general security agreement or a featherweight floating charge) over any asset of the Provider (or in which the Provider has any rights or interests) which is:
  - (i) encumbered by any Department Security;
  - (ii) a "funded property" (as defined in the Housing Regulation 2015 (Qld)); or
  - (iii) a bank account in which any receipts (as defined in the Housing Regulation 2015 (Qld)) are held,other than a Security Interest granted:
  - (iv) with the prior written consent of the Department; or
  - (v) under any Project Finance Security;
- (b) acknowledges and consents to the existence of each Department Security;
- (c) acknowledges that the Department is not liable or responsible in any way for (and that the Department has not made any representation or warranty of any nature regarding):
  - (i) the business, affairs, solvency or financial viability of the Provider;
  - (ii) the value of any State Funded Site or any Common Secured Property; or
  - (iii) the repayment of any Relevant Debt; and
- (d) confirms that (other than with the prior consent of the Department, which consent must not be unreasonably withheld or delayed, and with, where required, the approval of the Chief Executive):
  - (i) the Financier will not:
    - A. exercise any right entitling the Financier to accelerate any amounts payable to it under or in connection with any Project Finance Agreement; nor
    - B. enforce any Security Interest granted in its favour under any Project Finance Security,solely by reason of the occurrence of an Other Default; and
  - (ii) each Project Finance Agreement will:

- A. only contemplate financial accommodation being made available to the Provider for one Financed Housing Project or for the refinancing of the Provider's existing indebtedness in connection with one Financed Housing Project; and
  - B. require the Provider to prepay to the Financier any amount of the Relevant Debt that the Provider has drawn under that Project Finance Agreement but has not and will not apply towards the agreed purpose relating to the Financed Housing Project contemplated under that Project Finance Agreement, and the Financier will not permit the Provider to apply those funds towards any other purpose; and
- (iii) each Project Finance Security will only secure payment of amounts owing to the Financier by the Provider under the Project Finance Agreement in respect of which that Project Finance Security has been granted and will not secure any other amounts owing or which may be owed to the Financier by the Provider at any time.

### **3.3 Further assurances given by the Provider**

The Provider must:

- (a) co-operate in the performance of the transactions contemplated by this Deed; and
- (b) as soon as practicable execute all documents and do all things that the Department from time to time reasonably requires to:
  - (i) protect and preserve this Deed;
  - (ii) enable the exercise of the Department's Powers under this Deed; and
  - (iii) otherwise give effect to the matters contemplated by this Deed, including under clause 8.

### **3.4 Preservation of liabilities and obligations**

- (a) The liabilities and obligations of the Provider and the respective Powers of the Department and the Financier against the Provider under or in relation to any Security are not affected by:
  - (i) this Deed, other than as expressly provided in it; or
  - (ii) the failure of the Department or the Financier to comply with the terms of this Deed.
- (b) The Provider acknowledges that this Deed is intended only to benefit the Department and the Financier.

## **4. APPLICATION OF PROCEEDS OF FUNDING AND FINANCING**

### **4.1 Consent to use of CFA Portfolio Receipts**

Subject to clause 4.2(a) and the other terms of this Deed and despite any restrictions in any Funding Document, the Department consents to the use of any FD Portfolio Receipts by the Provider to repay the Relevant Debt and any Interest, Costs and Charges.

## 4.2 Application of Receipts

- (a) The parties acknowledge and agree that under the terms of a Funding Document, the Provider may be required to return:
- (i) certain amounts to the Department if:
    - A. the conditions precedent relating to the Project Finance Related Site are not satisfied by the Condition Precedent Date (as defined in that Funding Document); or
    - B. the Contributions exceed the Total Project Costs (as each such term is defined in that Funding Document); and
  - (ii) any unspent Funding and Receipts to the Department upon the termination of that Funding Document (or any part of it),
- (each a **Mandatory Return Clause**) and, notwithstanding anything to the contrary in clause 4.1 or in any other term of this Deed, such amounts (even if they include FD Portfolio Receipts) cannot be used by the Provider to repay the Relevant Debt or any Interest, Costs and Charges and must be paid to the Department.
- (b) If the Department is entitled under any Funding Document that relates to any Project Finance Related Site to request the return of any Funding or Receipts from the Provider (other than any payment required to be made by the Provider under any Mandatory Return Clause), the Department must give notice to the Financier as soon as practicable before it makes the proposed request (a **Return Request**).
- (c) Where the Department gives a notice to the Financier under clause 4.2(b), the parties must consult in good faith with a view to determining any adverse impact of the Return Request on:
- (i) the operation and commercial viability of the housing services to be provided by the Provider on or in respect of the relevant Project Finance Related Site; or
  - (ii) where the Return Request relates to a Project Finance Secured Site:
    - A. the sizing and serviceability of the Relevant Debt that is secured by the Project Finance Security granted over that Project Finance Secured Site;
    - B. the other Project Finance Secured Sites that are encumbered by the same Project Finance Security;
    - C. the ability of the Provider to service and repay that Relevant Debt to the Financier; or
    - D. the value of the Project Finance Security,
- over the residual term specified in respect of the relevant Financial Model relating to the Project Finance Agreement under which the Relevant Debt is due.
- (d) The Provider agrees to comply, in accordance with the terms of the relevant Funding Document, with any Return Request.

## 5. PRIORITY

### 5.1 Priority of Securities and distribution of Enforcement Proceeds

- (a) For the purpose of determining the manner in which any Enforcement Proceeds are to be distributed, the priorities as between the relevant Securities (both at law and in equity) will be determined in accordance with clause 5.1(b).
- (b) The order of priority in respect of the Department Security relating to any Funding Document and the Project Finance Security relating to any Project Finance Agreement where each such Security exists over Common Secured Property and the application of any Enforcement Proceeds of such Securities is:

- (i) **firstly**, the relevant Department Security for payment to the Department of an amount equal to the amounts payable to it by the Provider under any Mandatory Return Clause in that Funding Document, or under any Return Request given by the Department to the Provider under that Funding Document before the relevant Trigger Event;
- (ii) **secondly**, following and subject to the application of the Enforcement Proceeds in accordance with clause 5.1(b)(i), the relevant Project Finance Security for payment to the Financier of the Priority Amount attributed to that Project Finance Agreement;
- (iii) **thirdly**, following and subject to the application of the Enforcement Proceeds in accordance with clause 5.1(b)(ii), the relevant Department Security for payment of the balance of any other amounts secured by that Department Security; and
- (iv) **fourthly**, following and subject to application of the Enforcement Proceeds in accordance with clause 5.1(b)(iii), the relevant Project Finance Security for payment of the balance of any other amounts secured by that Project Finance Security,

despite:

- (v) the respective date or dates on which money may be or may have been advanced or taken to be or taken to have been advanced or become or become payable or secured under the respective Securities;
- (vi) the respective date or dates, and the order of creation, grant, execution, perfection, lodgement for registration or registration of the Securities;
- (vii) the repayment in whole or part of the money secured by the Securities from time to time;
- (viii) the relending or re-advancing of additional money or the furnishing of additional accommodation secured by the respective Securities;
- (ix) any prior agreement between any of the parties to this Deed with respect to priority of money payable by the Provider;
- (x) any notice of any of the things in paragraphs (v) to (ix) above; and
- (xi) any rule of law or equity to the contrary.

## 5.2 Further assurance

The Department must, if requested by the Financier (acting reasonably), promptly provide to the Financier any duly executed Form 30 (Mortgage Priority) to reflect the priority contemplated under clause 5.1.

## 6. OBLIGATION TO ACCOUNT

Each of the Financier and the Department must account to one another for all Enforcement Proceeds received by either of them to the extent necessary to give effect to clause 5.

## 7. TRIGGER EVENTS

- (a) A Provider Trigger Event occurs if:
- (i) a controller (as defined in section 9 of the Corporations Act 2001 (Cth)), administrator, liquidator or similar officer is appointed to the Provider;
  - (ii) the Provider is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts; or
  - (iii) the Provider's registration as a community housing provider under a Relevant CHP Law is or will be cancelled.
- (b) A Financed Housing Project Specific Trigger Event occurs if in relation to any Financed Housing Project:
- (i) any Funding Document which relates to any relevant Project Finance Related Site (or another agreement relating to the provision of housing services on that Project Finance Related Site and to which the Provider and the Department are party) is terminated by the Department;
  - (ii) any event or circumstance that gives the Department an immediate right to enforce any Department Security granted by the Provider over or in connection with any relevant Project Finance Related Site has arisen and the Department has formed an intention to enforce, or to commence action to enforce, that Department Security; or
  - (iii) any event or circumstance that gives the Financier an immediate right to enforce any Project Finance Security granted by the Provider over or in connection with any relevant Project Finance Related Site has arisen and the Financier has formed an intention to enforce, or to commence action to enforce, that Project Finance Security.
- In this clause 8.1, a reference to "relevant Project Finance Related Site" means any Affected Project Finance Related Site.
- (c) Any Provider Trigger Event is deemed to affect all Financed Housing Projects and all Project Finance Related Sites.
- (d) The Department and the Financier must as soon as practicable notify each other in writing upon becoming aware of the occurrence of any Trigger Event (each a **Trigger Event Notice**).

## 8. STANDSTILL PERIOD

### 8.1 Restriction on sale, transfer and foreclosure

A Secured Party must not:

(a) sell or transfer any Project Finance Related Site (or any other Common Secured Property that is related to or used in connection with any Project Finance Related Site); or

(b) exercise any right of foreclosure with respect to any Project Finance Related Site,

before or during any Standstill Period other than in accordance with the terms of this Deed or with the other Secured Party's prior consent.

### 8.2 Permitted enforcement action

(a) In this clause 8.2, a reference to:

(i) "relevant Department Security" means, in relation to any Affected Project Finance Related Site, the Department Security granted by the Provider over that Affected Project Finance Related Site;

(i) "relevant Project Finance Security" means, in relation to any Affected Project Finance Secured Site, Project Finance Security granted by the Provider over that Affected Project Finance Secured Site; and

(ii) "relevant Security" means, in relation to any Affected Project Finance Related Site, the Department Security or Project Finance Security granted by the Provider (if any) over that Affected Project Finance Related Site.

(b) A Secured Party may (as permitted by and subject to the terms of its Security and subject to the terms of this Deed):

(i) enter into possession of that Affected Project Finance Related Site; or

(ii) appoint a Receiver to that Affected Project Finance Related Site; or

(iii) take any other steps that that Secured Party may be entitled to take under the terms of its Security to enforce that Security against that Affected Project Finance Related Site and the Provider.

(c) The Department, in its absolute discretion, may consent in writing to a sale, transfer or other dealing of any or all of the Affected Project Finance Secured Sites (or any other property that is Common Secured Property and is related to or used in connection with any of those Affected Project Finance Secured Sites) by the Financier or a Receiver appointed by the Financier during the relevant Standstill Period.

(d) Subject to clauses 8.1, 8.2(f), 8.2(i), 8.2(j) and 9, the Department may exercise its Powers under the relevant Department Security to recover payment of the money secured by it at any time and in any manner that the Department thinks fit.

(e) Subject to clauses 8.1, 9.1(d), 9.3, 12(a), 12(b), 13(a) and 13(b), the Financier may exercise its Powers under the relevant Project Finance Security to recover payment

of the money secured by it at any time and in any manner that the Financier thinks fit.

- (f) Subject to clause 9.2, the Department must not enforce its Powers under the relevant Department Security unless the Department has given the Financier notice in accordance with clause 13(c).
- (g) Without in any way affecting their respective Powers, the Secured Parties must consult in good faith with a view to determining what action is to be taken to:
  - (i) enforce their respective Securities over the Affected Project Finance Related Sites (and, if required, over any other property that is Common Secured Property and is related to or used in connection with any of those Affected Project Finance Related Sites); and
  - (ii) exercise their respective Powers under those Securities in accordance with this Deed.

The Secured Parties must use best endeavours to undertake such consultation before any such enforcement action is taken.

- (h) Each Secured Party agrees to provide the other Secured Party (upon that other Secured Party's request, acting reasonably) with such information as is reasonable in relation to:
  - (i) their proposed enforcement steps; and
  - (ii) the progress of their enforcement actions,

under their respective Securities.

- (i) Any enforcement action by the Financier under the relevant Project Finance Security or at law and that is taken in accordance with the terms of this Deed, including any enforcement action taken by any Receiver appointed under the relevant Project Finance Security, takes precedence over any enforcement action by the Department under the relevant Department Security.
- (j) If the Financier takes enforcement action under the relevant Project Finance Security over one or more Affected Project Finance Secured Sites and that action is taken in accordance with the terms of this Deed then, if required by the Financier, the Department must:
  - (i) cease any enforcement action it has commenced under the relevant Department Security in connection with those Affected Project Finance Secured Sites; and
  - (ii) to the extent that it is in possession of such Affected Project Finance Secured Sites as a result of that enforcement action, yield that possession to the Financier.
- (k) The Department must do all things reasonably required by the Financier to:
  - (i) facilitate the exercise by the Financier (subject to the terms of this Deed) of any enforcement power under the Project Finance Security that relates to the Affected Project Finance Secured Sites. This includes the provision of duly executed releases of the Department's Security over those Affected Project Finance Secured Sites in registrable form,

together with any other necessary documents to enable registration of the releases; and

- (ii) give effect to this Deed.
- (l) The Financier must do all things reasonably required by the Department to:
  - (i) facilitate the exercise by the Department (subject to the terms of this Deed) of any enforcement power under the Department Security that relates to the Affected Project Finance Related Sites. This includes the provision of duly executed releases of the Financier's Security over any of those Affected Project Finance Related Sites that are Affected Project Finance Secured Sites in registrable form, together with any other necessary documents to enable registration of the releases; and
  - (ii) give effect to this Deed.
- (m) As between the Provider and the Department and as between the Provider and the Financier, nothing in this Deed requires the Department or the Financier, as the case may be, to exercise, or (other than as expressly stated otherwise) prevents it from exercising, any of its Powers.

## 9. DURING STANDSTILL PERIOD

### 9.1 Novation of Affected Project Finance Debt and transfer of Affected Project Finance Related Sites

- (a) As soon as practicable after the start of a Standstill Period, the Department may nominate to the Financier one or more Acceptable CHPs to whom:
  - (i) the Affected Project Finance Debt could be novated (or through which the Affected Project Finance Debt could be refinanced); and
  - (ii) the Affected Project Finance Site or Affected Project Finance Sites could be transferred (through the enforcement of any rights and powers of any Secured Party under their Security or otherwise); and
  - (iii) all or any Affected Project Finance Secured Sites could be transferred (through the enforcement of any rights and powers of any Secured Party under their Security or otherwise and only to the extent necessary to provide continued security for the Affected Project Finance Debt).
- (b) Following a nomination of a registered community housing provider as an Acceptable CHP, the Financier must as soon as practicable and in good faith consider allowing the Affected Project Finance Debt (or the relevant portion of the Affected Project Finance Debt) to be novated to, or to be refinanced for the benefit of, the Acceptable CHP. The Financier must as soon as practicable notify the Department in writing whether credit and other internal approvals have or have not been obtained in relation to the novation or refinance, which decision may be made by the Financier in its absolute discretion.
- (c) If the Financier will allow the novation or refinancing referred to in clause 9.1(b):
  - (i) the Financier must as soon as practicable enter into such documentation with the relevant Acceptable CHP (the **Approved Acceptable CHP**) as is necessary to effect the novation or refinancing, as well as a tripartite

deed between the Financier, the relevant Approved Acceptable CHP and the Department on substantially similar terms to this Deed;

- (ii) the novation or refinancing documentation must be prepared by or on behalf of the Financier and the Financier must act reasonably in so doing; and
  - (iii) the entry into of the novation or refinancing documentation has the effect, as between the Department and the Financier only, of permanently waiving the relevant Trigger Event (but without prejudice to any obligations and liabilities of the Provider owed to the Department or to the Financier) and the Financier must cease the enforcement of the relevant Project Finance Security as it relates to the Affected Project Finance Secured Sites and must cease its possession or must withdraw the appointment of any Receiver.
- (d) If the Financier will not allow the novation or refinancing referred to in clause 9.1(c):
- (i) the process in this clause 9.1 may be repeated during the relevant Standstill Period as often as the Department sees fit; and
  - (ii) the Financier (or the Department on its behalf) must as soon as practicable make further nominations of one or more Acceptable CHP.

## **9.2 Transfer of Affected Project Finance Related Sites without novation of Relevant Debt**

- (a) Nothing in this Deed limits the Powers of the Department under any Relevant CHP Law to transfer or procure the transfer of any Affected Project Finance Related Site during a Standstill Period or at any other time. It is the Department's intention that its Powers for such a transfer only be exercised if a novation or refinancing as referred to in clause 9.1(c) cannot be effected or implemented.
- (b) If, during any Standstill Period, the Department exercises its Powers (whether under any Relevant CHP Law or otherwise) to transfer any Affected Project Finance Site of a Affected Financed Housing Project, then (unless the transfer is made to an Approved Acceptable CHP) the Department must on the date of that transfer pay (at the direction of the Provider, which direction is irrevocable and unconditional and is provided by the Provider to the Department on the date of this Deed) to the Financier the lesser of:
  - (i) the Priority Amount in respect of the Project Finance Agreement for that Affected Financed Housing Project; and
  - (ii) the market value of the relevant Affected Project Finance Site determined by a licensed valuer appointed by the President of the Queensland Division of the Australian Property Institute.
- (c) Simultaneously with the payment referred to in clause 9.2(b), the Financier must give a full release and discharge of any Project Finance Security as it relates to the relevant Affected Project Finance Site.
- (d) If an Affected Project Finance Related Site is an Affected Project Finance Secured Site and not the Affected Project Finance Site of the Affected Financed Housing Project and during the relevant Standstill Period the Department wishes to:
  - (i) exercises its Powers (whether under any Relevant CHP Law or otherwise) to sell that Affected Project Finance Secured Site; or

- (ii) substitute that Affected Project Finance Secured Site with another State Funding Site,

then before that sale or substitution, the Substitution Process must be completed.

- (e) The Provider must give written notice to the Financier before it exercises any transfer of any Affected Project Finance Site that the Provider is required to undertake in accordance with any Relevant CHP Law. The Provider must use best endeavours to give the notice at least 5 Business Days before any such action is taken.

### 9.3 Option to purchase loan

- (a) The Department may, during any Standstill Period and by written notice, require the Financier to transfer all (but not part) of its rights and obligations under any Project Finance Agreement (and any associated loan documentation) under which any Affected Project Finance Debt is due and payable (together with the Project Finance Security relating to that Project Finance Agreement) to the Department (or any other person nominated by the Department) for such amount as the parties may agree or, if no agreement is reached, at face value (including the Affected Project Finance Debt and any Interest, Costs and Charges which remain unpaid) (the **Transfer**).
- (b) If the Department gives a notice under clause 9.3(a):
  - (i) the Financier and the Provider each agree to enter into all documentation with the Department (or other person nominated by the Department) and to otherwise do everything the Department reasonably requires for the transfer of those rights and obligations; and
  - (ii) the Financier agrees to cease all or any enforcement action taken, and not commence any action to enforce its rights under the relevant Project Finance Security, provided completion of the Transfer occurs on or before the last Business Day of the relevant Standstill Period (or such later date approved by the Financier, acting reasonably).
- (c) The Provider and the Financier acknowledge and agree to:
  - (i) the option to purchase granted by the Financier to the Department pursuant to this clause 9.3; and
  - (ii) comply with the terms of this clause 9.3.
- (d) The parties acknowledge and agree that time is of the essence in respect of the matters provided in this clause 9.3, and all such matters will be initiated within a reasonable time, or performed or ceased promptly, to the intent that any costs or expenses (including in respect of administration and legal fees) that may otherwise be incurred by the parties in connection with the operation of this clause 9.3 or in the exercise of other rights are, as far as possible, mitigated.

### 9.4 First right of refusal to purchase any Project Finance Related Site

- (a) The Department acknowledges and agrees that, unless the Financier consents otherwise (which consent must not be unreasonably withheld or delayed), the Department may (following the Provider offering in writing to sell any Affected Project Finance Related Site to the Department in accordance with the terms of the relevant Funding Document) only exercise its first right of refusal under that Funding Document during any Standstill Period if the following conditions are satisfied:

- (i) the first right of refusal is exercised at any time prior to the expiry of that Standstill Period;
  - (ii) completion of the transfer of the relevant Affected Project Finance Related Site to the Department occurs no later than 45 days after the expiry of that Standstill Period; and
  - (iii) where the Affected Project Finance Related Site is the Affected Project Finance Site for the relevant Affected Financed Housing Project, at the time the relevant Affected Project Finance Site is transferred to the Department, the Provider or the Department (at the direction of the Provider, which direction is irrevocable and unconditional and is provided by the Provider to the Department on the date of this Deed) pays the Financier the lesser of:
    - A. the Priority Amount attributable to the Project Finance Agreement for which that Affected Financed Housing Project and any Recovery Costs incurred by the Financier (calculated as at the date of transfer of that Affected Project Finance Site to the Department); and
    - B. the market value of the relevant Affected Project Finance Site as determined by a licensed valuer appointed by the President of the Queensland Division of the Australian Property Institute; and
  - (iv) where the Affected Project Finance Related Site is an Affected Project Finance Secured Site (and not the Affected Project Finance Site) for the relevant Affected Financed Housing Project, before that Affected Project Finance Secured Site is transferred to the Department, the Substitution Process has been completed.
- (b) Nothing in this clause 9.4 affects:
- (i) the obligations of the Provider under, nor relieves any restriction of the Provider in respect of any sale or transfer of any Project Finance Related Site under any Funding Document, Department Security, Project Finance Agreement or Project Finance Security;
  - (ii) the obligations of the Department and the Financier under clause 5 or clause 6; or
  - (iii) the Department's right to exercise its first right of refusal in accordance with the relevant Funding Document that relates to a Project Finance Site (which provides such a right under its terms) at any time before a Trigger Event has occurred provided that at the time the relevant Project Finance Site is transferred to the Department, the Provider or the Department (at the direction of the Provider, which direction is irrevocable and unconditional and is provided by the Provider to the Department on the date of this Deed) pays the Financier the lesser of:
    - A. the Priority Amount attributable to the Project Finance Agreement that relates to that Project Finance Site and any Recovery Costs incurred by the Financier (calculated as at the date of transfer of that Project Finance Site to the Department); and

- B. the market value of the relevant Project Finance Site as determined by a licensed valuer appointed by the President of the Queensland Division of the Australian Property Institute; or
- (iv) the Department's right to exercise its substitution rights under clause 9.5.
- (c) For the avoidance of doubt, if the Financier elects to take enforcement action in relation to any Affected Project Finance Related Site after the expiry of the relevant Standstill Period and otherwise in accordance with clause 11, the Financier (or any Receiver or other controller appointed by the Financier) will not be bound by any first right of refusal granted to the Department in respect of that Affected Project Finance Related Site under the applicable Funding Document.

## 9.5 Substitution Process

- (a) In relation to any Project Finance Related Site that is a Project Finance Secured Site (and not the Project Finance Site) for any Financed Housing Project (the **Exiting Project Finance Secured Site**), the Department may, at any time, require the Financier to accept another State Funding Site (the **Substitute Project Finance Secured Site**) to substitute the Exiting Project Finance Secured Site as a Project Finance Secured Site for that Financed Housing Project (the **Substitution Process**).
- (b) The Financier must accept a State Funding Site as a Substitute Project Finance Secured Site if, following the completion of the Substitution Process, the aggregate market value of the Substitute Project Finance Secured Site and all other Project Finance Secured Sites for the relevant Financed Housing Project will not be less than the Relevant Debt in respect of the Project Finance Agreement for that Financed Housing Project.
- (c) The Financier Security for the Substitute Project Finance Secured Site must be on the same terms as the Financier Security that existed over the Exiting Project Finance Secured Site.
- (d) As a condition to the Financier obtaining the benefit of the Financier Security over the Substitute Project Finance Secured Site, the Financier must deliver written evidence to the Department that the Financier has released its security over the Exiting Project Finance Secured Site. Once the Department has obtained that evidence and it is in form and substance satisfactory to the Department:
  - (i) the Provider may, subject to clause 9.5(c), grant the Financier Security in favour of the Financier over the Substitute Project Finance Secured Site; and
  - (ii) the Substitution Process will, for the purposes of this Deed, be taken to have completed.

## 10. EXTENSION OF A STANDSTILL PERIOD

If, in relation to any Standstill Period, either:

- (a) a nomination is made under clause 9.1 and:
  - (i) the Financier will allow the novation or refinancing referred to in clause 9.1(b); and

- (ii) the procedures and actions in clause 9.1(c) are not duly completed or do not duly occur before the end of that Standstill Period,

then the Financier or the Department may, by no later than the last day of that Standstill Period, give a notice to the other parties to extend that Standstill Period;  
or

- (b) the Department and Financier agree in writing to extend that Standstill Period,

then that Standstill Period will be taken to be extended for such additional period not exceeding 90 days (or such longer period that is agreed by the Financier and the Department) as is necessary to enable those procedures and actions to be duly completed and to duly occur. For clarity and unless the Department and Financier agree otherwise, any Standstill Period may only be extended once.

## 11. AFTER A STANDSTILL PERIOD

- (a) Unless during a Standstill Period:

- (i) the Department exercises the Powers referred to in clause 9.2(b) and makes the payment, that is contemplated under that clause, to the Financier;
- (ii) the Department exercises:
  - A. its option under clause 9.3 and the Transfer is completed; or
  - B. its first right of refusal under the applicable Funding Document that relates to the Affected Project Finance Site; or
  - C. its right to substitute an Affected Project Finance Secured Site (in circumstances where the relevant Trigger Event occurred in respect of that Affected Project Finance Secured Site) and the Substitution Process has been completed;
- (iii) in circumstances where clause 9.1 applies and a nomination is made, the Financier allows a novation or refinancing referred to in clause 9.1(b) and the procedures and actions in clause 9.1(c) are duly completed or the Standstill Period is extended under clause 9.5,

then, subject to clause 12, the Financier or any Receiver appointed by it will not, after that Standstill Period has expired, be restricted by the terms of this Deed from selling, transferring or otherwise disposing of (and taking steps to sell, transfer or otherwise dispose of) one or more of the Affected Project Finance Related Sites (or any other property that is Common Secured Property and is related to or used in connection with any of those Affected Project Finance Related Sites) for market value as it sees fit, subject to the requirement that the Enforcement Proceeds are accounted for in accordance with this Deed (**Sale Right**).

- (b) If:
  - (i) the Financier exercises its Sale Right in accordance with clause 11(a); and
  - (ii) the Financier or any Receiver appointed by it requires any Affected Project Finance Related Site to be in a state of vacant possession and has notified the Provider of this requirement,

then the Provider must, subject to clause 12(b), as soon as practicable after the end of that Standstill Period cause the relevant Affected Project Finance Related Sites to be in a state of vacant possession, including but not limited to giving such notices to the tenants of the relevant Affected Project Finance Related Sites under any relevant laws relating to residential tenancies as required by the Financier.

## 12. TENANTS OR OCCUPIERS

- (a) Prior to and during any Standstill Period, the Financier and any Receiver appointed by it must not at any time interfere with the quiet enjoyment of any tenant or occupier of any Project Finance Related Site (including any Affected Project Finance Related Site).
- (b) If:
  - (i) the Financier becomes entitled to exercise its Powers against more than one Affected Project Finance Related Site; and
  - (ii) the Provider or the Department forms a view that not all of the Affected Project Finance Related Sites are required to be sold, transferred or otherwise dealt with by the Financier or any Receiver appointed by it in order for the Secured Parties to recover the amount secured by their Securities that relate to the Affected Financed Housing Projects and notifies the Financier of that view,

then the Financier will consider in good faith any request by the Provider or by the Department, for the Provider to be relieved of its obligations under clause 11(b) to cause the Affected Project Finance Related Sites to be in a state of vacant possession in respect of those Affected Project Finance Related Sites specified as not being required to be sold, transferred or otherwise dealt with under clause 12(b)(ii). Any relief granted by the Financier under this clause may be revoked by the Financier if required to ensure that the Financier is able to recover the amounts secured by the relevant Project Finance Security that relates to the Affected Financed Housing Project or Affected Financed Housing Projects in full.

- (c) Subject to clause 12(d), the Department agrees with the Financier that, if requested in writing by the Financier (acting reasonably), the Department will provide reasonable assistance to the Financier or the Receiver (as the case may be) to achieve an orderly transition of tenants of one or more Affected Project Finance Related Site(s) to other dwellings to enable the Affected Project Finance Related Sites to be in a state of vacant possession
- (d) Nothing in clause 12(c) obliges the Department to provide assistance if that would be contrary to any Relevant CHP Law or other relevant laws or inconsistent with any obligations which the Department may have under any such law.
- (e) If the Financier exercises its Sale Right then, without in any way affecting the Financier's Powers or the Department's Powers (or the Provider's obligations under this Deed, any Relevant CHP Law or otherwise), the Financier, the Department and the Provider must consult in good faith with a view to determining the strategy for transitioning tenants of all or any of the Affected Project Finance Related Sites to other properties and enabling vacant possession of those Affected Project Finance Related Sites.
- (f) For the avoidance of doubt, the Provider rather than the Department or the Financier will be responsible for transitioning tenants of the Affected Project Finance Related Site to other dwellings or causing those Affected Project Finance Related Sites to be in a state of vacant possession (the **Relevant Action**) in the event that, subject

to the terms of this Deed, any Secured Party enforces its Security that relates to the Affected Financed Housing Project or Affected Financed Housing Projects and requires such Relevant Action to be taken in respect of those Affected Project Finance Related Sites.

### **13. NOTIFICATION OF ACTION TAKEN**

- (a) If the Financier takes action to enforce any Project Finance Security, it must provide prior written notice of such action to the Department. The Financier must use best endeavours to give the notice at least 5 Business Days before any such action is taken.
- (b) The Financier must, as soon as practicable on request by the Department reasonably made from time to time, inform the Department of any action taken by it in enforcing its Powers under any Project Finance Security.
- (c) If the Department takes action to enforce any Department Security, it must provide prior written notice of such action to the Financier. The Department must use best endeavours to give the notice at least 5 Business Days before any such action is taken.

### **14. INSURANCE PROCEEDS**

- (a) Subject to clause 14(b) and clause 14(c), any insurance proceeds paid by any insurer in respect of any Project Finance Related Site must be applied by the Financier or Provider (as applicable) in or towards the reinstatement of or repairs to the dwelling on that Project Finance Related Site.
- (b) Where the Provider makes a request to the Department, the Department may agree in its sole discretion in writing that the insurance proceeds are to be applied in reduction of amounts secured under the Department Security and Project Finance Security that encumbers that Project Finance Related Site in the order of priority conferred by clause 5.1.
- (c) Where an event of default (howsoever described) has occurred under a Project Finance Agreement and that event of default has occurred in respect of any Project Finance Related Site and subsists then, notwithstanding clause 14(a), the insurance proceeds must (if required by the Financier) be applied first towards repayment of the Priority Amount in respect of that Project Finance Agreement and thereafter the balance (if any) must be applied by the Provider in or towards the reinstatement of or repairs to the dwelling on that Project Finance Related Site.
- (d) The Provider must do all things in its power or control to give effect to the matters contemplated by this clause 14, including giving any notice or document to any insurer.

### **15. ASSIGNMENTS AND TRANSFERS**

- (a) The Provider may not assign, transfer or deal with its rights under this Deed or any Project Finance Agreement or any Project Finance Security without the prior written consent of each other party.
- (b) Subject to clause 15(c), the Department may not assign, transfer or deal with its rights under this Deed and any Department Security without the prior written consent of each other party.

- (c) The Department may assign, transfer or deal with its rights and interest in and under this Deed and any Department Security, and the Provider and Financier hereby consent to that assignment, transfer or dealing, if the proposed transferee:
  - (i) is an Authority; and
  - (ii) has agreed to be bound by this Deed.
- (d) Subject to clause 15(e), the Financier may not assign, transfer or deal with its rights under this Deed or any Project Finance Agreement or any Project Finance Security without the prior written consent of each other party.
- (e) The Financier may assign, transfer or deal with its rights under this Deed, any Project Finance Agreement and any Project Finance Security provided that:
  - (i) the proposed assignee, transferee or novatee is an Approved Transferee; and
  - (ii) the Approved Transferee agrees to be bound by the terms of this Deed and agrees not to bring the Department into disrepute.
- (f) For the purposes of clause 15(d), **Approved Transferee** means an assignee, transferee or novatee who:
  - (i) is another authorised deposit-taking institution which has (or whose obligations are guaranteed by an entity which has) a credit rating of at least equal to BBB+ (Standard and Poor's) or Baa1 (Moody's); or
  - (ii) the Department has confirmed in writing is acceptable to it (acting reasonably).

## 16. AMENDMENTS

- (a) The Department undertakes to the Financier that, other than with the Financier's prior written consent (which must not be unreasonably withheld or delayed), the Department will not agree to or permit any variation, amendment or replacement of any Funding Document that relates to any Project Finance Related Site (other than variations or amendments that could not reasonably adversely affect the interests of the Financier).
- (b) The Financier undertakes to the Department that (other than with the prior consent of the Department, which consent must not be unreasonably withheld or delayed, and with, where required, the approval of the Chief Executive) the Financier will not:
  - (i) vary, amend or replace (nor agree to amend, vary or replace) a Project Finance Agreement or a Project Finance Security other than where the variation, amendment or replacement:
    - A. could not reasonably adversely affect the interests of the Department; and
    - B. will not result in:
      - 1) any increase in the principal amount made available under that Project Finance Agreement other than where that increase complies with clause 16(b)(ii) below; or

- 2) any increase or change the property encumbered by that Project Finance Security; or
- (ii) increase the principal amount of the financial accommodation made available to the Provider under any Project Finance Agreement to an aggregate amount in excess of the Relevant Debt for that Project Finance Agreement.

## 17. PERSONAL PROPERTY SECURITIES ACT

- (a) To the full extent permitted by law, in respect of the PPS Act:
  - (i) each Secured Party contracts out of its entitlement to receive from another Secured Party each notice or document which section 115(5) permits it to contract out of, and waives each right to receive from another Secured Party a notice or document which section 144(c) permits it to waive, other than:
    - A. any notice under section 130 (notice of disposal of collateral) where the Secured Party is proposing to dispose of the collateral by purchase; and
    - B. any notice under section 135 (notice of retention of collateral);
  - (ii) each Secured Party agrees with the other Secured Party not to exercise any rights under section 127(2) without its consent, and it contracts out of its right to receive an amount under section 127(6) from the other Secured Party;
  - (iii) each Secured Party agrees with the other Secured Party not to exercise any rights under section 142 (entitled person may redeem collateral) or 143 (entitled persons may reinstate security agreement) without its consent; and
  - (iv) each Secured Party waives its right to receive from another Secured Party anything under section 275, and it agrees not to make any request of another Secured Party under that section.
- (b) Nothing in this clause 17 affects the right of a Secured Party to receive a notice, document or amount or exercise a right which it is entitled to receive or exercise under another provision of this Deed or any other agreement to which it and the other Secured Party are parties.

## 18. NOTICES

- (a) Any notice, request, consent or notification under this Deed must be in writing and must be delivered by prepaid post, by hand or by email to the addresses set out in Item 1, 2 and 3 of the Deed Particulars, or any substitute address notified by the relevant addressee from time to time.
- (b) Notice will be deemed to be given:
  - (i) if posted - 2 days after deposit in the mail with postage prepaid;
  - (ii) if delivered by hand - when delivered by hand; and

- (iii) if emailed - on receipt by the sender of an acknowledgement that the communication has been properly transmitted to the recipient,

except that a delivery or email received after 5:00 pm will be deemed to be given on the next business day in the place of receipt.

## 19. CONFIDENTIALITY OBLIGATIONS

- (a) Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of this Deed) except:
  - (i) to any person in connection with an exercise of rights or a dealing with rights or obligations under this Deed; or
  - (ii) to officers, employees, agents, contractors, legal and other advisers and auditors of that party; or
  - (iii) to any party to this Deed, provided the recipient agrees to act consistently with this clause 19(a); or
  - (iv) any disclosure the disclosing party reasonably believes is required by any law, stock exchange or rating agency (except this paragraph does not permit any party to disclose any information under section 275(4) of the PPS Act unless section 275(7) of the PPS Act applies); or
  - (v) in relation to the Department only, any disclosure:
    - A. under the Right to Information Act 2009 (Qld) or any similar or replacement legislation; or
    - B. to satisfy the disclosure requirements of the Auditor General or to satisfy the requirement of Parliamentary accountability, including tabling information concerning this Deed in Parliament; or
    - C. made in accordance with governmental policies or procedures providing that such disclosure is only to the extent required in the circumstances; or
  - (vi) (without limiting any other part of this clause 19(a)) to:
    - A. a Minister of the State and their advisors;
    - B. the Queensland Parliament; or
    - C. any officer, agency, authority or instrumentality of the Crown; or
  - (vii) with the consent of the party who provided the information (such consent not to be unreasonably withheld).
- (b) Each party consents to disclosures made in accordance with clauses 19(a)(i) to 19(a)(vi) (inclusive).

## **20. PROVISION OF INFORMATION**

- (a) The Financier consents to the Provider providing any information to the Department from time to time in relation to:
- (i) any Project Finance Agreement (including the Relevant Debt incurred by the Provider under that agreement);
  - (ii) any Project Finance Security;
  - (iii) any Proposed Project Finance or Proposed Security;
  - (iv) any event or circumstance that gives the Financier an immediate right to enforce any Project Finance Security or any event or circumstance that, with the giving of notice or lapse of time, would give the Financier that right; and
  - (v) any matter or thing necessary to enable the Provider or an officer of the Provider to comply with a notice given under a Relevant CHP Law,
- and the Department must treat such information received as confidential in accordance with clause 19.
- (b) The Department consents to the Provider providing any information to the Financier from time to time in relation to any Department Security or any Funding Document that relates to any Project Finance Related Site, in accordance with applicable law. The Financier must treat any such information received as confidential in accordance with clause 19.
- (c) If the Department requests the Provider to provide it with any information described in clause 20(a), the Provider must give that information to the Department within 7 days of the date of the Department's request.

## **21. GENERAL PROVISIONS**

### **21.1 Costs**

The Department and the Provider will each bear their own costs of and incidental to the negotiation, preparation and signing of this Deed. The Provider will bear the costs of the Financier of and incidental to the negotiation, preparation and signing of this Deed.

### **21.2 Governing law**

This Deed will be governed by and construed under the law of the State of Queensland and the parties agree to submit to the jurisdiction of the courts of the State of Queensland.

### **21.3 Compliance**

All parties must comply with all relevant laws in performing their obligations under this Deed.

### **21.4 Disclosure**

The parties acknowledge that all documents in the Department's possession or under its control are subject to the Right to Information Act 2009 (Qld) and may be subject to disclosure under that Act.

## **21.5 Invalidity etc**

If any part of this Deed is determined to be invalid, unlawful or unenforceable for any reason then that part will be severed from the rest of this Deed and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

## **21.6 Further assurances**

Each party must do all things reasonably required to give effect to this Deed.

## **21.7 Waiver etc**

- (a) No right under this Deed will be deemed to be waived except by notice signed by each party.
- (b) Any failure by a party at any time to enforce a clause of this Deed, or any forbearance, delay or indulgence granted by a party to another will not constitute a waiver of the party's rights.
- (c) A waiver by a party of a breach of any provision of this Deed will not operate as a waiver of any subsequent breach of the same provision or as a waiver of any other provision.

## **21.8 Variations**

This Deed may be varied at any time by a written agreement signed by all parties.

## **21.9 Entire agreement**

This Deed constitutes the entire agreement between the parties with respect to the subject matter of this Deed and supersedes any prior arrangements, agreements, warranties, representations or undertakings with respect to those issues.

## **21.10 Relationship**

A party will not by virtue of this Deed be or become an agent or partner of another party or a joint venturer with another and must not represent itself or allow itself to be represented as another party's agent, partner or joint venturer.

## **21.11 Counterparts and electronic signatures**

- (a) This Deed may be signed electronically and signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same document.
- (b) Each party warrants that immediately prior to entering into this Deed, it has unconditionally consented to:
  - (i) the requirement for a signature under any law being met; and
  - (ii) any other party to this Deed executing it,by any method of electronic signature that other party uses (at that other party's discretion) including signing on an electronic device or by digital signature.

## **21.12 Consent**

A consent or approval required in this Deed from the Department or the Chief Executive may be given or withheld, or given subject to any conditions, as the Department or Chief Executive thinks fit in its absolute discretion, unless this Deed expressly provides otherwise. No party may make a claim in relation to the exercise of this discretion.

**Schedule 1 – Original Security Schedule**

**1.1 [Name of Financed Housing Project]**

<b>Document or Site</b>	<b>Details</b>
Project Finance Request Number	
Project Finance Site	
Funding Document relating to Project Finance Site	
Project Finance Agreement	
Relevant Debt	

<b>Details of Project Finance Secured Sites</b>	<b>Details of Funding Document and Department Security relating to that Project Finance Secured Site</b>	<b>Details of Project Finance Security relating to that Project Finance Secured Site</b>

## Schedule 2 - Project Finance Request

Date: [insert]  
Project Finance Request number: [insert]  
Provider: []  
Financier: []

### BACKGROUND

- A. The Provider, Financier and the Department entered into the Intercreditor Deed dated [insert date] (the **Intercreditor Deed**).
- B. Under the terms of the Intercreditor Deed, the Provider and the Financier may not enter into any Proposed Project Finance or Proposed Security without the prior consent of the Department.

### AGREED TERMS

- 1. This is a Project Finance Request for the purposes of the Intercreditor Deed.
- 2. Unless expressly defined otherwise, terms used in this Project Finance Request have the meaning given to them in the Intercreditor Deed.
- 3. This Project Finance Request relates to:
  - (a) the Housing Project delivered or to be delivered on the following Site:  
[insert description of land] (the **Relevant Site**) (the **Relevant Housing Project**);  
and
  - (b) the Proposed Project Finance in connection with Relevant Site.
- 4. A copy of the Proposed Documents is attached to this request (together with a proposed form of financial model for the relevant Housing Project).
- 5. The Financier confirms that:
  - (a) the financial accommodation that will be made available to the Provider under the Proposed Project Finance will only be permitted to be used by the Provider for the purpose of the Relevant Housing Project;
  - (b) it wishes to take mortgages over the following State Funded Sites as security for the Proposed Project Finance (each a **Proposed Finance Secured Site**):  
[]
  - (c) the amounts available to be borrowed under the Proposed Project Finance will not exceed \$[] (being the **Proposed Relevant Debt**).
- 6. The Financier and the Provider hereby request the Department to:
  - (a) approve the form of:

- (i) the loan agreement and (subject to any amendments required by the Department and which the Department and the Financier have agreed before the Department has given the Project Finance Consent) treat it as the Project Finance Agreement for that Financed Housing Project (the **Relevant Project Finance Agreement**);
  - (ii) the mortgage or mortgages and (subject to any amendments required by the Department and which the Department and the Financier have agreed before the Department has given the Project Finance Consent) treat them as the Project Finance Security for the Relevant Project Finance Agreement (each a **Relevant Project Finance Security**); and
  - (iii) the financial model and (subject to any amendments required by the Department and which the Department and the Financier have agreed before the Department has given the Project Finance Consent) treat it as the Financial Model under the Tripartite Deed for that Relevant Lot,
- (b) consent to:
- (i) the Relevant Housing Project being a Financed Housing Project for the purposes of the Intercreditor Deed;
  - (ii) the Relevant Site being a Project Finance Site for the purposes of the Intercreditor Deed;
  - (iii) each Proposed Finance Secured Site being a Project Finance Secured Site for the Relevant Housing Project (each a **Relevant Project Finance Secured Site**);
- (c) the Provider entering into the Relevant Project Finance Agreement and each Relevant Project Finance Security;
- (d) the Provider granting the Security Interests over each Relevant Project Finance Secured Site; and
- (e) the Relevant Debt for the Relevant Project Finance Agreement being the Proposed Relevant Debt,
- (the **Relevant Project Finance Consent**).

7. By signing below, the Department agrees to give the Relevant Project Finance Consent.

**EXECUTED** as a deed

**EXECUTED** by [insert CHP Name and ABN or ACN] in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

\_\_\_\_\_  
(name of director)

\_\_\_\_\_  
(signature of director)

\_\_\_\_\_  
(name of director / secretary)

\_\_\_\_\_  
(signature of director/secretary)

..... / ..... / .....  
(date)

**Financier**

**EXECUTED** on behalf of [insert Financier and ABN or ACN] by its Attorney who holds the position of [insert position] under Power of Attorney dated [insert date] in the presence of:

\_\_\_\_\_  
(signature of witness)

\_\_\_\_\_  
(signature of [INSERT])

\_\_\_\_\_  
(name of witness)

..... / ..... / .....  
(date)

Acknowledged and agreed by:

**SIGNED SEALED** and **DELIVERED** on behalf of the **STATE OF QUEENSLAND** through the **DEPARTMENT OF HOUSING AND PUBLIC WORKS** by an authorised officer in the presence of:

\_\_\_\_\_ (signature of witness)

\_\_\_\_\_ (name of witness)

\_\_\_\_\_  
(signature of authorised officer)

\_\_\_\_\_  
(name of authorised officer)

..... / ..... / .....  
(date)

**EXECUTED AS A DEED ON THE DATES APPEARING BELOW**

**Department**

**SIGNED SEALED** and **DELIVERED** on behalf of the **STATE OF QUEENSLAND** through the **DEPARTMENT OF HOUSING AND PUBLIC WORKS** by an authorised officer in the presence of:

\_\_\_\_\_  
(signature of witness)

\_\_\_\_\_  
(name of witness)

\_\_\_\_\_  
(signature of authorised officer)

\_\_\_\_\_  
(name of authorised officer)

..... / ..... / .....  
(date)

**Financier**

**EXECUTED** on behalf of **[INSERT BANK NAME AND CAN]** by its Attorney who holds the position of under Power of Attorney dated in the presence of:

\_\_\_\_\_  
(signature of witness)

\_\_\_\_\_  
(name of witness)

\_\_\_\_\_  
(signature of [INSERT])

..... / ..... / .....  
(date)

**Provider**

**EXECUTED** by [insert CHP name and ACN] in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

\_\_\_\_\_  
(name of director)

\_\_\_\_\_  
(signature of director)

\_\_\_\_\_  
(name of director / secretary)

\_\_\_\_\_  
(signature of director/secretary)

..... / ..... / .....  
(date)