

Lodger Details

Lodger Code BE 013A
 Name
 Address
 Lodger Box
 Phone
 Email
 Reference

For Office Use Only

**THE BACK OF THIS FORM
 MUST NOT BE USED**

MORTGAGE

Jurisdiction QUEENSLAND

Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or interest being mortgaged

FEE SIMPLE

Land Title Reference	Part Land Affected?	Land Description
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Mortgagor

Name
 ACN

Mortgagee

Name THE STATE OF QUEENSLAND (REPRESENTED BY DEPARTMENT OF HOUSING AND PUBLIC WORKS)

The mortgagor mortgages the estate and/or interest in land specified in this mortgage to the mortgagee as security for the debt or liability described in the terms and conditions set out or referred to in this mortgage, and covenants with the mortgagee to comply with those terms and conditions.

Terms and Conditions of this Mortgage

- (a) Document Reference NIL
 (b) Additional terms and conditions See attached Schedule



**Queensland
 Government**

Mortgagor Execution

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Executed on behalf of [insert CHP name and ANC]

Signer Name _____

Full Name of Witness _____

Signer Organisation _____

Witness Signature _____

Signer Role _____

Witness Qualifications _____

Signature _____

Execution Date _____

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Executed on behalf of [insert CHP name and ANC]

Signer Name _____

Full Name of Witness _____

Signer Organisation _____

Witness Signature _____

Signer Role _____

Witness Qualifications _____

Signature _____

Execution Date _____

Mortgagee Execution

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Executed on behalf of The State of Queensland (represented by Department of Housing and Public Works) by a duly authorised delegate

Signer Name _____

Full Name of Witness _____

Signer Organisation Department of Housing and Public Works _____

Witness Signature _____

Signer Role _____

Witness Qualifications _____

Signature _____

Execution Date _____

Title Reference [insert]

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Title Reference [insert]

1. Definitions and interpretation

1.1 Definitions

In this mortgage:

Authorisation means:

- (a) any authorisation, permit, consent, approval, resolution, licence, exemption, permission, recording, filing or registration required by any Government Authority or any law; and
- (b) in relation to any act, matter or thing which will be prohibited or restricted either in whole or in part by any law if a Government Authority intervenes or acts in any way within a specified period after lodgement, filing, registration, notification or any other event, the expiry of that period without intervention or action.

Base Rate for a period means the rate which is:

- (a) the 5 year Commonwealth Government Bond Rate published at or about 10.30 am (Brisbane time) on the first day of that period; or
- (b) if:
 - (i) the Mortgagee is unable to determine the rate in accordance with paragraph (a) of this definition; or
 - (ii) the basis on which the rate referred to in paragraph (a) of this definition is calculated changes after the date of this mortgage and, in the opinion of the Mortgagee, that rate ceases to reflect the Mortgagee's cost of funding to the same extent as at the date of this mortgage,

the rate determined by the Mortgagee, acting reasonably, to be the appropriate equivalent rate having regard to prevailing market conditions.

Rates, if necessary, will be rounded up to the nearest fourth decimal place.

Body Corporate Act means the *Body Corporate and Community Management Act 1997* (Qld).

Building means any building, structure, earthworks or improvement of any kind or any part of same.

Business Day means a day (other than a Saturday or Sunday) on which banks are open for business generally in Brisbane.

Commissioner means the commissioner for body corporate and community management established under the Body Corporate Act.

Controller has the meaning given in section 9 of the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Cost means any cost, expense, charge, liability or disbursement.

Delegate means any agent, attorney or other delegate appointed under this mortgage by the Mortgagee or by any receiver or receiver and manager appointed under this mortgage.

Department of Housing means the department of the State of Queensland in which the Housing Act is administered.

dollar or **\$** means the lawful currency of the Commonwealth of Australia.

Title Reference [insert]

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person, including a "security interest" as defined in section 12 of the *Personal Property Securities Act 2009* (Cth).

Event of Default has the meaning given in clause 5.

Event of Insolvency means:

- (a) a Controller, administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a scheme of arrangement other than with the prior approval of the Mortgagee under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person 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.

Excluded Tax means any Tax imposed by any jurisdiction on the overall net income of the Mortgagee as a consequence of the Mortgagee being a resident of or organised or doing business in that jurisdiction other than any Tax:

- (a) calculated on or by reference to the gross amount of any payment (without the allowance of any deduction) derived under any Transaction Document by the Mortgagee; or

Title Reference [insert]

- (b) imposed as a result of the Mortgagee being considered a resident of or organised or doing business in that jurisdiction solely as a result of:
 - (i) it being a party to any Transaction Document; or
 - (ii) any transaction contemplated by any Transaction Document.

Financial Liability of a person means any liability or indebtedness (whether present or future, actual or contingent) of that person for or in respect of:

- (a) money borrowed or raised and debit balances at banks or financial institutions;
- (b) any indemnity obligation in respect of any guarantee, indemnity, bond or letter of credit or similar instrument issued by a bank or financial institution;
- (c) any guarantee, indemnity, letter of credit or similar assurance in respect of financial loss given in connection with any Financial Liability (as referred to in any other paragraph of this definition) of another person;
- (d) amounts raised under or in connection with any bill acceptance, endorsement or discounting arrangement;
- (e) amounts raised under or in connection with any bond, debenture, note, loan stock or similar instruments;
- (f) any swap, hedge, cap, collar, ceiling or floor agreement, futures contract, forward exchange or forward purchase contract or option contract, in each case, in respect of any currency, interest rate or commodity or any similar transaction; or
- (g) amounts raised under any other transaction or series of transactions having the commercial effect of a borrowing or raising of money.

Government Authority means any government or any governmental or semi-governmental entity, authority, department, agency, commission, corporation or body (including those constituted or formed under any Statute), local government authority, administrative or judicial body or tribunal or stock exchange.

GST means any goods and services Tax, consumption Tax, value added Tax or any similar Tax.

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

Housing Regulation means the *Housing Regulation 2015* (Qld).

Insolvency Provision means any law relating to insolvency, sequestration, liquidation, winding up or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Insurance means any insurance required to be taken out or maintained by the Mortgagor to comply with the provisions of the Transaction Documents.

Interest Period has the meaning given in clause 12.3(a)(ii).

Land means the land described in the Mortgage Form version 1.5 forming part of this mortgage.

Master Agreement means the Master Agreement between the Mortgagee and the Mortgagor dated [insert].

Title Reference [insert]

Material Adverse Effect means a material adverse effect on the:

- (a) ability of the Mortgagor to perform its obligations under any of the Transaction Documents to which it is a party; or
- (b) business, assets or financial condition of the Mortgagor.

Material Authorisation means any Authorisation required to be obtained by the Mortgagor in accordance with clause 3.2(a)(ii).

Mortgage means this mortgage between the Mortgagee and the Mortgagor made up of the Mortgage Form version 1.5 and this Schedule.

Mortgagee means the mortgagee named on the Mortgage Form.

Mortgagor means the mortgagor name on the Mortgage Form.

Mortgaged Property means:

- (a) the Land;
- (b) the Mortgagor's estate and interest in the Land;
- (c) all Buildings, fixtures and any other improvements on the Land; and
- (d) all rights of the Mortgagor under or in respect of any present or future leases, licences, rights or privileges, of any nature, in respect of the Land.

Obligations means all the liabilities and obligations of the Mortgagor to the Mortgagee on any account under or by reason of any Transaction Document and includes any liabilities or obligations which:

- (a) are liquidated, unliquidated, present, prospective or contingent;
- (b) are in existence before or come into existence on or after the date of this mortgage; or
- (c) would exist but for an Event of Insolvency affecting any person,

and irrespective of:

- (d) whether the Mortgagor is liable or obligated solely, jointly or jointly and severally with another person; or
- (e) the capacity in which the Mortgagor and the Mortgagee comes to owe or to be owed that liability or obligation.

Policies has the meaning given in the Master Agreement.

Potential Event of Default means any event or circumstance which, with the giving of notice, lapse of time, satisfaction of a condition or determination (or any combination of these), would be an Event of Default.

Power means any right, power, authority, discretion, remedy or privilege conferred on the Mortgagee, any Receiver or any Delegate, in any case, under this mortgage, under any other Transaction Document or by law.

Priority Deed means any priority deed (howsoever described) under which the Mortgagee has consented to an Encumbrance being granted by the Mortgagor over the Mortgaged Property and the priority of that Encumbrance as against this mortgage has been agreed.

Title Reference [insert]

Receiver means a receiver or receiver and manager appointed by the Mortgagee under this mortgage and, if more than one, then each of them and also any employee, contractor or Delegate of any receiver or receiver and manager.

Registrar of Titles means the Registrar of Titles Queensland or any authorised officer of that person as the context requires.

Secured Money means all money the payment or repayment of which from time to time forms part of the Obligations.

Statute means any legislation of the Parliament of the Commonwealth of Australia, of any State or Territory of the Commonwealth of Australia or of any other jurisdiction or Government Authority in force at any time.

Subsidiary in relation to any person, has the meaning given in the Corporations Act but as if "body corporate" included any person and for the purpose of which any beneficial interests will be deemed shares. A determination by the auditors of a person as to whether a person is a Subsidiary of another person will be evidence of the same until the contrary is proved.

Tax means any taxes, levies, imposts, deductions, charges and withholdings assessed, imposed, collected or withheld under any legislation and, in each case, all interest, fines, penalties, charges, fees or other amounts in respect of them.

Transaction Document means:

- (a) this mortgage;
- (b) any Priority Deed;
- (c) the Master Agreement;
- (d) any Transaction Document as defined in the Master Agreement relating to the Mortgaged Property;
or
- (e) any other document entered into at any time after the date of this mortgage which has the effect of varying, novating, ratifying, replacing or restating, in any manner, any other document referred to in this definition.

Unpaid Sum means any sum due and payable by the Mortgagor under any Transaction Document but unpaid.

Works means the subdivision or stratification of the Land or:

- (a) the construction of a Building;
- (b) the renovation or repair of or addition to any existing or future Building;
- (c) the provision or installation of any amenity on the Land or in any Building; or
- (d) the total or partial demolition of or removal of any Building or amenity with a view to redevelopment, on the Land.

1.2 Interpretation

- (a) In this mortgage:
 - (i) headings are for convenience only and do not affect interpretation;

Title Reference [insert]

and unless the context indicates a contrary intention:

- (ii) **"person"** includes an individual, the estate of an individual, a corporation, a Government Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (iii) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
 - (iv) a reference to a document (including any Transaction Document) is to that document as varied, novated, ratified, replaced or restated from time to time, including for the avoidance of doubt any such variation, novation, ratification, replacement or restatement which has the effect directly or indirectly of increasing in any way the Secured Money;
 - (v) a reference to a law includes any law, principle of equity, Statute and official directive of any Government Authority and a reference to any legislation (including any Statute) includes any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that legislation and, in each case, any consolidations, amendments, re-enactments and replacements;
 - (vi) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
 - (vii) a reference to a party, clause, schedule or annexure is a reference to a party, clause, schedule or annexure to or of this mortgage and a reference to this mortgage includes all schedules and annexures to it;
 - (viii) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (ix) a reference to the Mortgaged Property or any other thing includes any part of it;
 - (x) a reference to a lease or licence includes an agreement to lease or licence;
 - (xi) a reference to an asset includes any real or personal property or asset, whether tangible or intangible, present or future, together with any interest or benefit in or revenue from, such property or asset;
 - (xii) **"includes"** in any form is not a word of limitation;
 - (xiii) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or that act, matter or thing will be done on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not);
 - (xiv) a reference to "subsists" or any similar expression in relation to an Event of Default or a Potential Event of Default indicates an Event of Default or Potential Event of Default which has not been remedied or waived in accordance with the terms of the Transaction Documents; and
 - (xv) this mortgage will take effect as a deed, and any agreement, undertaking, acknowledgement, condition or other term that is made or given by the Mortgagor in this mortgage will be deemed to be a covenant by the Mortgagor in favour and for the benefit of the Mortgagee.
- (b) In the event that a Government Authority referred to in this mortgage:
- (i) ceases to exist; or

Title Reference [insert]

(ii) is reconstituted, renamed or replaced,

and its powers or functions are transferred to another Government Authority, a reference to the Government Authority will include that other Government Authority.

2. The mortgage

2.1 The mortgage

By this mortgage, the Mortgagor mortgages the Mortgaged Property to the Mortgagee to secure the satisfaction of the Obligations and the payment of the Secured Money.

2.2 Priority

This mortgage will operate as a first ranking mortgage subject only to any Encumbrances:

- (a) mandatorily preferred by law; and
- (b) granted by the Mortgagor with the prior consent of the Mortgagee or otherwise expressly permitted in any Transaction Document and which the Mortgagee has agreed may (subject to the terms of any applicable Priority Deed) rank ahead of the Encumbrances granted in favour of the Mortgagee under this mortgage.

3. General undertakings

3.1 Satisfaction of Obligations

- (a) The Mortgagor must satisfy, or procure the satisfaction of, the Obligations and must pay the Secured Money in the manner provided in this mortgage or in any other Transaction Document.
- (b) The Mortgagor must immediately notify the Mortgagee in writing if it becomes aware of the occurrence of any Event of Default or Potential Event of Default.

3.2 Authorisations

The Mortgagor must:

- (a) **(Obtain)** obtain, maintain and comply with all Authorisations required:
 - (i) in connection with:
 - A. the execution, delivery and performance of each Transaction Document to which it is a party;
 - B. the transactions contemplated by those Transaction Documents; and
 - C. the legality, validity and enforcement of each of those Transaction Documents; and
 - (ii) for it to carry on business where failure to obtain or delay in the obtaining of that Authorisation may have a Material Adverse Effect;
- (b) **(Renew)** on or before the time and in the manner prescribed by any law, procure the renewal of each of its Material Authorisations and pay or cause to be paid the fees and other sums required in respect of each of its Material Authorisations (including in connection with any renewal) within the time allowed and in the manner prescribed by any applicable law;

Title Reference [insert]

- (c) **(Production)** on request by the Mortgagee, provide to the Mortgagee a copy of each of its Material Authorisations;
- (d) **(No cancellation)** not do, fail to do or consent to any act, matter or thing as a result of which any of its Material Authorisations is or may be suspended, forfeited, withdrawn, cancelled, refused or rendered void or by which it is disqualified permanently or temporarily from receiving or continuing to hold any of its Material Authorisations;
- (e) **(No transfer)** not surrender or, without limiting clause 4.1, consent to the transfer of any of its Material Authorisations; and
- (f) **(Transfer in blank)** (if possible under any applicable law) on request by the Mortgagee, sign and deliver to the Mortgagee a transfer in blank, or any other transfer document approved by the Mortgagee, for each of its Material Authorisations.

3.3 Mortgagee assumes no obligations

The Mortgagee will not be deemed by virtue of this mortgage to have assumed any obligation of the Mortgagor under any law or under any Authorisation.

3.4 Insurance

The Mortgagor must insure the Mortgaged Property in accordance with the Transaction Documents.

4. Additional undertakings concerning the Mortgaged Property

4.1 Restrictions in relation to the Mortgaged Property

- (a) The Mortgagor must not without the Mortgagee's prior written consent or as expressly permitted in the Transaction Documents create, purport or attempt to create or permit to exist any Encumbrance, however ranking, over the Mortgaged Property
- (b) To the extent a law provides that the granting of an Encumbrance over the Mortgaged Property ranking after this mortgage does not constitute a breach of this mortgage, clause 4.1(a) will not restrict the granting of that Encumbrance but the Mortgagor must:
 - (i) notify the Mortgagee at least 10 Business Days before it proposes to create the Encumbrance; and
 - (ii) ensure that before the Encumbrance is granted the holder of that Encumbrance enters into a priority deed in form and substance satisfactory to the Mortgagee.
- (c) This clause 4.1 is without prejudice to the terms of any other Transaction Document.

4.2 Encumbrances and restrictions

The Mortgagor must duly and punctually:

- (a) **(Other Encumbrances)** pay all money secured by, and comply with all its obligations contained in, every other Encumbrance affecting the Mortgaged Property (if any) with priority over this mortgage; and
- (b) **(Restrictions and easements)** comply with all restrictions, covenants, easements and notifications to which the Mortgaged Property is subject now or at any time after the date of this mortgage.

Nothing in this clause 4.2 will affect the obligations imposed on the Mortgagor under clause 4.1.

Title Reference [insert]

4.3 Repair

- (a) The Mortgagor must maintain the Mortgaged Property, keeping it in good and tenantable repair and condition in accordance with the Transaction Documents. Works
- (b) The Mortgagor must not carry out any Works except in accordance with the Transaction Documents.

5. Events of Default

5.1 Events of Default

Each of the events set out in this clause 5.1 is an Event of Default whether or not the cause is beyond the control of the Mortgagor or any other person:

- (a) **(Termination)** the Master Agreement is terminated by the Mortgagee;
- (b) **(Default under Transaction Document)** any event occurs (whether or not the cause is beyond the control of the Mortgagor or any other person) that entitles the Mortgagee to terminate any Transaction Document or makes any Transaction Document capable of termination by the Mortgagee;
- (c) **(Untrue warranty)** any representation, warranty or statement made, repeated or taken to be made or repeated in any Transaction Document or in any document, of any nature, issued under any Transaction Document is proved to be untrue in any material respect when made or repeated or taken to be made or repeated as the case may be (a **Misrepresentation**) and if the circumstances causing the Misrepresentation are capable of remedy those circumstances have not been remedied within 20 Business Days of the occurrence of the Misrepresentation;
- (d) **(Breach of undertaking)** the Mortgagor breaches any undertaking given at any time to the Mortgagee or fails to comply with any condition imposed by the Mortgagee in agreeing to any matter (including any waiver);
- (e) **(Event of Insolvency)** an Event of Insolvency occurs in relation to the Mortgagor;
- (f) **(Void or voidable)** any Transaction Document is, becomes or is claimed by the Mortgagor to be invalid, void, voidable, unenforceable, or of limited force and effect, either in whole or in part;
- (g) **(Mortgage)** this mortgage does not create the Encumbrance it purports to create or that Encumbrance ceases to have the priority it purports to have;
- (h) **(Repudiation)** the Mortgagor repudiates, or evidences an intention to repudiate, any Transaction Document;
- (i) **(Illegality)** at any time it is unlawful for the Mortgagor to perform any of its obligations under any Transaction Document;
- (j) **(Reduction in capital)** the Mortgagor takes action to reduce its share capital;
- (k) **(Housing Act)** any circumstance arises that results in section 159 or section 162 of the Housing Act applying to (or being applied against) the Mortgagor.

5.2 Rights on an Event of Default

If any Event of Default occurs then, during the period it subsists, at the option of the Mortgagee and despite any delay or previous waiver of the right to exercise that option:

- (a) the Secured Money becomes immediately due and payable on demand from the Mortgagee; and

Title Reference [insert]

- (b) all Powers not previously exercisable become exercisable.

6. Mortgagee's Powers

6.1 Mortgagee's Powers

If any Event of Default occurs then, during the period it subsists, the Mortgagee will (subject to the rights of the Mortgagor's tenants) be entitled to exercise all or any of the following powers:

- (a) **(Sell Mortgaged Property)** whether or not in possession, to dispose of the Mortgaged Property in such manner and on such terms as the Mortgagee thinks fit;
- (b) **(Take possession)** to take possession or control of or make use of the Mortgaged Property or relinquish possession or control;
- (c) **(Foreclose)** to foreclose on the Mortgaged Property and to procure the registration of the Mortgaged Property in the name of the Mortgagee for its own use and benefit absolutely free from all adverse estates, interests and rights;
- (d) **(Collect rents)** to receive rents, profits and income of or in respect of the Mortgaged Property;
- (e) **(Lease)** to lease or licence the Mortgaged Property in the name of the Mortgagor or otherwise, for any period and on any terms or to vary or terminate a lease or licence;
- (f) **(Accept surrenders)** to accept surrenders of and to terminate any lease of or licence of the Mortgaged Property on any terms;
- (g) **(Manage)** to manage the Mortgaged Property and do any other thing that the Mortgagee in its absolute discretion thinks fit to efficiently utilise the Mortgaged Property or to obtain income from it;
- (h) **(Sell etc other Mortgaged Property)**
 - (i) to exercise its power of sale, lease or licence in relation to the Mortgaged Property in conjunction with the exercise of any similar power in relation to any other real or personal property of the Mortgagor which is subject to an Encumbrance in favour of the Mortgagee, by one contract and at one price or at one rent or fee or in any other manner that the Mortgagee thinks fit and with full power to apportion all costs, expenses, purchase money, rent and fees between the properties so dealt with;
 - (ii) to transfer the Mortgaged Property to any competent Government Authority;
- (i) **(Carry on business)** to carry on or concur in carrying on any business then conducted from the Mortgaged Property and to effect all Insurances and do all acts which the Mortgagor might do in the ordinary conduct of business for the protection or improvement of the Mortgaged Property;
- (j) **(Borrow or raise money)** to borrow or raise from the Mortgagee or any other person any money which may be required for any purposes and, if the Mortgagee thinks fit, to secure any money borrowed or raised by the grant of any Encumbrance over the Mortgaged Property (whether in the name of the Mortgagor or otherwise) so that the Encumbrance ranks in priority to, *pari passu* with or after this mortgage. The Mortgagee will not be bound to inquire as to the necessity or propriety of any Financial Liability nor be responsible for the misapplication or non application of any money so borrowed or raised;
- (k) **(Engage)** to engage consultants, contractors, professional advisors, agents and employees at such salaries or remuneration as the Mortgagee thinks fit and the Mortgagee may act on any advice given by any person so engaged;

Title Reference [insert]

- (l) **(Conduct works)** to repair, renew, replace, renovate or clean the Mortgaged Property, to erect any new Buildings or make any improvements to any land forming part of the Mortgaged Property and to demolish, alter, rebuild or extend any existing Buildings on the Mortgaged Property;
- (m) **(Subdivide etc)** to strata, subdivide, consolidate, develop or rezone any land forming part of the Mortgaged Property;
- (n) **(Easements and restrictive covenants)** to obtain or grant any easement or restrictive covenant over or in relation to the Mortgaged Property;
- (o) **(Sever and sell fixtures)** to sever fixtures belonging to the Mortgagor and to sell them separately from any other part of the Mortgaged Property;
- (p) **(Remove chattels)** to remove, give away, dispose of and store with any party (including the Mortgagee), all chattels which are located on but are not part of the Mortgaged Property or subject to any Encumbrance in favour of the Mortgagee, without any liability to the Mortgagor or any third party;
- (q) **(Invest proceeds against contingencies)** if any of the Secured Money is contingent, to invest, deposit or hold the Mortgaged Property or the proceeds from the sale, lease or other dealing with the Mortgaged Property in a form or mode of investment for the time being as the Mortgagee thinks fit, with like power to vary, transpose or re-invest the investments or deposits from time to time until that part of the Secured Money ceases to be contingent;
- (r) **(Enter into contracts)** to enter into any contract or arrangement with any person for any purpose connected with this mortgage or the Mortgaged Property or in furtherance of any Power, on any terms and conditions as the Mortgagee in its absolute discretion thinks fit, including granting or conferring options to, in favour of or exercisable by any person for the purpose of or in connection with the sale, purchase, leasing, hiring or other dealing with the Mortgaged Property;
- (s) **(Perform contracts)** to perform, observe, carry out, enforce specific performance of, exercise or refrain from exercising, the Mortgagor's rights and powers under, obtain the benefit of, and vary or rescind all contracts and rights forming part of the Mortgaged Property or entered into in the exercise of any Power;
- (t) **(Take proceedings)** to institute, conduct or defend any proceedings in law or bankruptcy and to submit to arbitration, mediation or conciliation, in the name of the Mortgagor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Mortgaged Property or otherwise;
- (u) **(Compromise)** to make any settlement, arrangement or compromise regarding any action, proceeding or dispute arising in connection with the Mortgaged Property, to grant to any person involved time or other indulgence and to execute all related releases or discharges as the Mortgagee thinks expedient in the interests of the Mortgagee;
- (v) **(Appeal)** to appeal against or to enforce any judgment or order in respect of the Mortgaged Property;
- (w) **(Bankrupt debtors and wind up bodies corporate)** to make debtors bankrupt and to wind up bodies corporate and to do all things in connection with any bankruptcy or winding up which the Mortgagee thinks necessary for the recovery or protection of the Mortgaged Property or for the security or other benefit of the Mortgagee;
- (x) **(Insurance claims)** to make, enforce, compromise and settle all claims in respect of insurance over or affecting the Mortgaged Property;
- (y) **(Delegate)** to delegate to any person for any time, any of the Powers including this power of delegation;

Title Reference [insert]

- (z) **(File)** to file all certificates, registrations and other documents and to take any and all action on behalf of the Mortgagor which the Mortgagee believes is necessary to protect, preserve or improve any or all of the Mortgaged Property and the rights of the Mortgagor and the Mortgagee in respect of any agreement for sale and to obtain for the Mortgagee all of the benefits of this mortgage and any other Transaction Document;
- (aa) **(Operate bank accounts)** to open or operate any bank account in connection with the Mortgaged Property in the name of the Mortgagor (whether alone or jointly with any other person) to the exclusion of the Mortgagor and to deposit or withdraw any money standing to the credit of that account and to sign and endorse or to authorise others to sign and endorse in the name of the Mortgagor cheques, promissory notes, bills of exchange and other negotiable instruments, provided that the Mortgagee may only operate a bank account other than a bank account that has been opened by the Mortgagee under this clause, in relation to the funds in that account that are income or proceeds of the Mortgaged Property or dealings with the Mortgaged Property;
- (bb) **(Do all other things)** to do all things the law allows an owner of any interest in the Mortgaged Property, or any Controller of the Mortgaged Property, to do; and
- (cc) **(Do all things as are expedient)** to do all other acts and things without limitation as the Mortgagee thinks expedient.

6.2 Mortgagor's right to enter

The Mortgagee will be at liberty to access (subject to the rights of the Mortgagor's tenants) the Mortgaged Property:

- (a) in accordance with the terms of the Transaction Documents; and
- (b) at all times while an Event of Default or Potential Event of Default to exercise any Power which may in accordance with this mortgage be exercised at that time.

6.3 Mortgagee may make good default

If the Mortgagor defaults in satisfying any of the Obligations, the Mortgagee may, without prejudice to any other Power, do all things and pay all money necessary or expedient in the opinion of the Mortgagee to make good or to attempt to make good that default to the satisfaction of the Mortgagee. The Mortgagor must take all steps which the Mortgagee, acting reasonably, requests to facilitate the exercise by the Mortgagee of its rights under this clause 6.3. If the Mortgagee is obliged to pay any money under this clause, that money will become part of the Secured Money. The Mortgagee will not be a mortgagee or chargee in possession simply as a result of the exercise of its rights under this clause 6.3.

6.4 Notice for exercise of Powers

- (a) The Powers may be exercised by the Mortgagee and any Receiver at any time during the period any Event of Default subsists, without any notice, demand or lapse of time being necessary unless required by a law which cannot be excluded.
- (b) Subject to clause 6.4(c), if required by any law that cannot be excluded, one day is fixed as the period for which:
 - (i) default must continue in the satisfaction of the whole or any part of the Obligations or in the payment of any part of the Secured Money before the Mortgagee may give any notice or demand as required by any law affecting the Powers; and
 - (ii) default in the satisfaction of the whole or any part of the Obligations or in the payment of any part of the Secured Money must continue after the giving of any notice or demand before any Power may be exercised.

Title Reference [insert]

- (c) If any law which cannot be excluded provides that a specific period of notice or lapse of time is mandatorily required before any Power may be exercised by the Mortgagee or any Receiver, that period of notice must be given or time must elapse before that Power may be exercised.

7. Receivers: appointment and Powers

7.1 Appointment of Receiver

If any Event of Default occurs then, during the period it subsists, the Mortgagee will be entitled to, without the need for any notice to the Mortgagor or any other person:

- (a) appoint any person or persons to be a receiver or receiver and manager of the Mortgaged Property;
- (b) terminate the appointment of any Receiver; and
- (c) in the case of the removal, retirement or death of any Receiver, appoint another person in the place of that Receiver.

7.2 Powers of Receiver

Without the need for any consent from the Mortgagor or any other person, each Receiver will have all of the powers conferred on the Mortgagee by this mortgage as if they had been expressly conferred on that Receiver and any further powers as the Mortgagee confers on that Receiver by notice in writing to that Receiver.

7.3 Joint Receivers

If more than one person is appointed as a Receiver, the Mortgagee may at its option specify whether the appointment and the Powers of each appointee will be joint or joint and several. If no specification is made, the appointment and the Powers of each appointee will be joint and several.

7.4 Remuneration of Receiver

The Mortgagee may fix the rate of remuneration of each Receiver, which will not exceed the standard hourly rate from time to time charged by the firm of which that Receiver is a member for work of the level carried out by that Receiver.

7.5 Agent of the Mortgagor

Every Receiver will be the agent of the Mortgagor. The Mortgagor must be solely responsible for all acts and omissions by, and the remuneration of, each Receiver.

7.6 Indemnity

The Mortgagee may give any indemnities to any Receiver concerning the performance of that Receiver's duties as are permitted by law. If the Mortgagee is obliged to pay any money under any indemnity, that money will become part of the Secured Money.

8. Further Powers of Mortgagee and Receiver

8.1 Appoint agents

Without limiting clause 6.1 or 7.1, if any Event of Default occurs then, during the period it subsists the Mortgagee will be entitled to, without the need for any notice to the Mortgagor or any other person, appoint an agent or agents (whether severally, jointly or jointly and severally) and delegate the Powers (or any of them) to the agent or agents (in which case clauses 7.1, 7.4, 7.6, 11.2, 11.3 and 11.4 will apply as if the agent or agents were each appointed as a Receiver).

Title Reference [insert]

8.2 Act jointly

The Mortgagee and each Receiver may exercise any of the Powers in conjunction with the exercise of similar powers by the holder of any other Encumbrance over the Mortgaged Property or by any receiver or receiver and manager appointed by that other holder, and may enter into and give effect to agreements and arrangements with that other holder, receiver or receiver and manager as the Mortgagee or the relevant Receiver thinks fit.

8.3 Power of attorney

- (a) In consideration of the Mortgagee entering into the Transaction Documents, the Mortgagor irrevocably appoints the Mortgagee and the Director-General, Department of Housing and authorised delegates of the Director-General from time to time and each Receiver, severally, as an attorney of the Mortgagor, with power:
- (i) at any time:
 - A. to take further action and to execute further instruments which are, or are in the opinion of the Mortgagee, the relevant Receiver or any other attorney appointed under this clause 8.3 necessary or desirable to secure more satisfactorily the performance of the Obligations or the payment of the Secured Money or to sell or otherwise deal with the Mortgaged Property;
 - B. to appoint (and remove at will) at any time any person as a substitute for an attorney;
 - C. to do all acts which ought to be done by the Mortgagor under any Transaction Document;
 - D. to do everything which in the Mortgagee's opinion is necessary or expedient to enable the exercise of any right of the Mortgagee in relation to any Transaction Document; and
 - E. if the Mortgaged Property is or is proposed to be the subject of any dealing or other thing which may have or is likely to have a Material Adverse Effect, do anything in relation to the Mortgaged Property to prevent or delay that Material Adverse Effect;
 - (ii) at any time an Event of Default or Potential Event of Default has occurred and is subsisting:
 - A. to do all acts to exercise or give effect to any Power; and
 - B. to demand, sue for, recover and receive the Mortgaged Property from any person, in the name of the Mortgagor or in the name of the Mortgagee, the relevant Receiver or any other attorney appointed under this clause 8.3;
- (b) The Mortgagor:
- (i) agrees that each attorney may exercise powers under this power of attorney notwithstanding that the exercise may or will involve or result in a conflict between the duty of that attorney to the Mortgagor and either the interests of that attorney or a Related Party of that attorney or another duty of that attorney; and
 - (ii) ratifies and confirms now and for the future all actions undertaken by or on behalf of any attorney under this power of attorney, including any action which may or will involve or result in a conflict of the type referred to in clause 8.3(b)(i) or in respect of which that attorney has a personal interest.

Title Reference [insert]

For the purposes of this clause 8.3(b) a "**Related Party**" of any attorney is any Related Body Corporate of that attorney or, in the case of any attorney that is an individual, any person that is related to or has any personal or professional relationship, of any nature, with that attorney.

- (c) The Mortgagor declares that this power of attorney will continue in force until all actions taken under it have been completed, despite the discharge of this mortgage.
- (d) The Mortgagor must do anything requested by the Mortgagee, acting reasonably, to enable the Mortgagee to register this power of attorney in the manner and within any time limits prescribed by law to ensure the efficacy of this power of attorney.

9. Application of money

9.1 Priority of payments

All money received by the Mortgagee or by any Receiver as a result of the exercise of the Powers and all other proceeds of enforcement under this mortgage will be applied in the following order (unless, in the case of any money received which represents the proceeds of any insurance claim, the Transaction Documents permit or require that money to be applied in another manner):

- (a) **(Incidental to exercise of Powers)** in payment of all Costs incurred in or incidental to the exercise or attempted exercise of any of the Powers;
- (b) **(Outgoings)** in payment of any other outgoings as any Receiver or the Mortgagee thinks fit;
- (c) **(Payment of Encumbrances having priority)** in payment of all amounts secured by any other Encumbrances of which the Mortgagee is aware which have priority to this mortgage, in the order of their priority;
- (d) **(Payment of Secured Money)** in payment of the balance of the Secured Money then owing or contingently or prospectively owing, whether or not due and payable;
- (e) **(Subsequent Encumbrances)** if the Mortgagee determines to do so, in payment of all amounts secured by any subsequent Encumbrances of which the Mortgagee is aware in the order of their priority; and
- (f) **(Surplus)** the surplus (if any) belongs to the Mortgagor but does not carry interest. The Mortgagee or relevant Receiver, as applicable, will pay this amount to the Mortgagor by paying this amount into an account in the name of the Mortgagor.

9.2 Money received

In applying any money towards satisfaction of the Secured Money in the manner contemplated by clause 9.1, the Mortgagor will be credited only with as much of the money available for that purpose as is actually received by the Mortgagee or any Receiver and is not required to be disgorged. Any credit will date from the time of receipt.

9.3 Application of money

The Mortgagee and each Receiver has an absolute discretion to apply any money received as a result of the exercise of any Power or which is the proceeds of enforcement of this mortgage (and which is to be applied in payment of the Secured Money) in reduction of any part or parts of the Secured Money, whenever and on whatever account it became secured, despite any principle or presumption of law to the contrary or any direction given at the time of receipt and without the need to communicate its election to any person.

Title Reference [insert]

9.4 Reliance on certificate

In making any payment to the holder of any other Encumbrance as contemplated by clause 9.1, the Mortgagee and each Receiver may rely on a certificate from that holder as to the amount secured by the relevant Encumbrance and is not bound to inquire as to the accuracy of the certificate or whether the amount referred to is validly secured by the Encumbrance.

10. Liability and release

10.1 Continuing obligation

This mortgage constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing.

10.2 Settlement conditional

If:

- (a) (i) the Mortgagee has at any time released or discharged:
 - A. the Mortgagor from its obligations under this mortgage; or
 - B. any assets of the Mortgagor from this mortgage,in either case in reliance on a payment, receipt or other transaction to or in favour of the Mortgagee; or
- (ii) any payment, receipt or other transaction to or in favour of the Mortgagee has the effect of releasing or discharging:
 - A. the Mortgagor from its obligations under this mortgage; or
 - B. any assets of the Mortgagor from this mortgage; and
- (b) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under any other law; and
- (c) that claim is upheld or is conceded or compromised by the Mortgagee,

then:

- (i) the Mortgagee will immediately become entitled against the Mortgagor to all rights as it had immediately before that release or discharge;
- (ii) the Mortgagor must, to the extent permitted by law:
 - A. immediately do all things and execute all documents as the Mortgagee, acting reasonably, may require to restore to the Mortgagee all those rights; and
 - B. indemnify the Mortgagee against all Costs, damages, claims, demands and actions suffered or incurred by it in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

Title Reference [insert]

10.3 Mortgagor's liability not affected

This mortgage and the liability of the Mortgagor under this mortgage will not be affected or discharged by any of the following:

- (a) **(Indulgence)** the granting to the Mortgagor or to any other person of any time or other indulgence or consideration;
- (b) **(Transaction Documents)** the Mortgagee failing or neglecting to recover by the realisation of any Transaction Document or any other Encumbrance or otherwise any of the Secured Money;
- (c) **(Laches)** any other laches, acquiescence, delay, act, omission or mistake on the part of the Mortgagee or any other person;
- (d) **(Release)** the release, discharge, abandonment or transfer, whether wholly or partially and with or without consideration, of any Transaction Document, other Encumbrance, judgment or negotiable instrument held from time to time or recovered by the Mortgagee from or against the Mortgagor or any other person (other than an express release or discharge of the Mortgagor from all of its liabilities under this mortgage); or
- (e) **(Any other thing)** any other matter or thing.

10.4 Claim on the Mortgagor

The Mortgagee is not required to:

- (a) make any claim or demand on any other person;
- (b) enforce any other Transaction Document or other Encumbrance; or
- (c) enforce any other Power,

in any case, before making any demand on the Mortgagor under this mortgage or otherwise enforcing this mortgage.

11. Protection and indemnity

11.1 Waiver by Mortgagor

The Mortgagor waives in favour of the Mortgagee:

- (a) all rights against the Mortgagee and any other person, estate or assets as far as is necessary to give effect to any provision of this mortgage;
- (b) promptness and diligence on the part of the Mortgagee other than where the Mortgagee has failed to endeavour to act promptly or diligently; and
- (c) all rights inconsistent with the provisions of this mortgage.

11.2 No liability for loss

Neither the Mortgagee nor any Receiver will be liable or otherwise accountable for any act, omission, delay, mistake, loss or irregularity in or concerning the exercise, attempted exercise, non-exercise or purported exercise of any Power, except for its own gross negligence, fraud or wilful misconduct.

Title Reference [insert]

11.3 No liability to account

Neither the Mortgagee nor any Receiver will, by reason of the Mortgagee or that Receiver entering into possession of the Mortgaged Property, be liable to account as mortgagee or chargee in possession, for any loss on realisation or for any default, omission, delay or mistake for which a mortgagee or chargee in possession might be liable. The liability of the Mortgagee and of each Receiver will be for actual receipts only.

11.4 No conflict

The Mortgagee and each Receiver may exercise any Power, even though the exercise of that Power involves a conflict between any duty owed to the Mortgagor by the Mortgagee or that Receiver and any duty owed by the Mortgagee or that Receiver to any other person or the interests of the Mortgagee or that Receiver. No contract will be void or voidable by virtue of that conflict of duty or interest nor will the Mortgagee or any Receiver be liable to account to the Mortgagor or any other person for any money or property as a result of that conflict.

11.5 No notice or enforcement

The Mortgagee need not:

- (a) give any notice of this mortgage to any debtor of the Mortgagor, to any purchaser or to any other person;
- (b) enforce payment of any money payable to the Mortgagor; or
- (c) realise the Mortgaged Property or take any steps or proceedings for that purpose.

11.6 Indemnity

The Mortgagor must on demand indemnify and keep the Mortgagee indemnified in respect of all Costs and Taxes incurred by the Mortgagee or any Receiver:

- (a) in the exercise, attempted exercise or non-exercise of any Power, including those resulting from any mistake, oversight, error of judgment or want of prudence on the part of the Mortgagee or any Receiver, unless the same is due to its own gross negligence, fraud or wilful misconduct;
- (b) as a consequence of the occurrence or subsistence of any Event of Default;
- (c) by reason of this mortgage;
- (d) in respect of any act or omission for which the Mortgagee or any Receiver is exonerated by this mortgage; and
- (e) by reason of the Mortgagee redeeming or taking a transfer of any Encumbrance ranking in priority to or pari passu with this mortgage,

and the Mortgagor must defend all actions, proceedings, claims or demands brought by any person in relation to any matter the subject of this indemnity.

11.7 Protection of persons dealing with the Mortgagee or Receiver

No person acquiring any money or asset from or paying or handing over any money or asset to or otherwise dealing with the Mortgagee, any Receiver or any Delegate, or to whom is tendered for registration an instrument executed by the Mortgagee, any Receiver or any Delegate, will be:

- (a) bound to inquire:
 - (i) whether the Mortgagee or the relevant Receiver or Delegate has the right to dispose of any money or asset;

Title Reference [insert]

- (ii) whether any Event of Default has occurred or is subsisting;
 - (iii) whether any of the Secured Money is owing or payable;
 - (iv) whether the relevant Receiver or Delegate has been properly appointed;
 - (v) as to the propriety or regularity of the exercise or purported exercise of any Power; or
 - (vi) as to any other matter or thing;
- (b) affected by actual or constructive notice that any transaction, document or other dealing is unnecessary or improper; or
- (c) concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication, and:
- (i) in the case of any person paying or handing over any money or asset, that person will be discharged from any further liability to pay or hand over that money or asset; and
 - (ii) the irregular, improper or unnecessary exercise of any Power and any other dealing of any nature with the Mortgagee, any Receiver or any Delegate will be, as regards the protection of any such person, deemed to be authorised by the Mortgagor and valid.

12. Payments

12.1 Money repayable as agreed or on demand

The Mortgagor must pay the Secured Money to the Mortgagee in dollars or any other currency specified in the relevant Transaction Document in immediately available funds not later than 11.00 am in the place of payment on the due date (or if no due date is specified, on the date of demand by the Mortgagee) and in compliance with any other requirements of the Transaction Documents.

12.2 No credit for other money owing

In determining the amount of the Secured Money, no credit need be allowed for any money owing by the Mortgagee to the Mortgagor.

12.3 Payment of interest on Unpaid Sums

- (a) The Mortgagor must pay interest on all Unpaid Sums in accordance with any other applicable Transaction Document or if there is no relevant provision in any other Transaction Document, default interest will accrue on all Unpaid Sums from day to day:
- (i) from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment; and
 - (ii) at an interest rate (calculated as an aggregate of a Base Rate for successive one month periods (each an **Interest Period**) plus 2% per annum) commencing on the date the Unpaid Sum was due.
- (b) Default interest accruing under this clause 12.3 will be immediately payable by the Mortgagor on demand. Default interest (if unpaid) arising on any Unpaid Sum will be compounded with that Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.
- (c) The Mortgagee will promptly notify the Mortgagor of each rate of interest determined under this clause 12.3.

Title Reference [insert]

12.4 No set-off or counterclaim

All payments of Secured Money by the Mortgagor under the Transaction Documents will be without any set-off or counterclaim.

12.5 Merger

If the liability of the Mortgagor to pay any of the Secured Money becomes merged in any judgment or order, the Mortgagor must as an independent obligation pay, in accordance with the Transaction Documents, interest at the rate which is the higher of that payable under the Transaction Documents and that fixed by or payable under the judgment or order.

12.6 No deduction for Taxes

- (a) All payments of Secured Money by the Mortgagor under the Transaction Documents will be without deduction or withholding for any present or future Taxes unless the Mortgagor is compelled by law to deduct or withhold the same.
- (b) If:
- (i) the Mortgagor is compelled by law to make any deduction or withholding from any payment under any Transaction Document on account of Taxes (other than Excluded Taxes); or
 - (ii) the Mortgagee is obliged to pay any Taxes (other than Excluded Taxes) in respect of a payment made or to be made by the Mortgagor under the Transaction Documents,
- then:
- (iii) the Mortgagor must promptly notify the Mortgagee if it becomes aware of any event referred to in clause 12.6(b)(i) or 12.6(b)(ii);
 - (iv) the Mortgagor must, on demand by the Mortgagee, pay to the Mortgagee any additional amounts necessary to ensure that the Mortgagee receives (after all deductions and withholdings for Taxes other than Excluded Taxes) a net amount equal to the full amount which it would have been entitled to receive and retain had the deduction or withholding not been made or had the Mortgagee not been obliged to pay Taxes (other than Excluded Taxes) in respect of the payment; and
 - (v) where clause 12.6(b)(i) applies the Mortgagor must:
 - A. pay to the appropriate Government Authority any amount deducted or withheld in respect of Taxes within the time allowed and in the minimum amount required by law; and
 - B. within 20 Business Days after making the deduction or withholding, provide to the Mortgagee evidence satisfactory to the Mortgagee of that payment having been made.

12.7 Set-off

- (a) The Mortgagor authorises the Mortgagee, at any time after an Event of Default has occurred and is subsisting, to apply without prior notice any credit balance (whether or not then due) to which the Mortgagor is at any time entitled on any account and in any currency at any office of the Mortgagee in or towards satisfaction of any sum then due and unpaid from the Mortgagor to the Mortgagee under any Transaction Document.
- (b) The Mortgagor further authorises the Mortgagee, at any time after an Event of Default has occurred and is subsisting, to set-off without prior notice any amount owing (whether present or future, actual,

Title Reference [insert]

contingent or prospective and on any account) by the Mortgagor to the Mortgagee under any Transaction Document against any liability (whether present, future, actual, contingent or prospective) of the Mortgagee to the Mortgagor under any Transaction Document or on any other account.

- (c) The Mortgagee will not be obliged to exercise any of its rights under this clause 12.7, which will be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by operation of law, contract or otherwise).

12.8 Suspense account

- (a) The Mortgagor acknowledges and agrees that the Mortgagee may deposit into a suspense account any amount it or any Receiver receives as a result of the exercise of any Power for such time as it considers appropriate without the Mortgagee being obliged to apply any such amount towards payment or repayment of the Secured Money.
- (b) If the Mortgagee deposits any amount into a suspense account as contemplated by clause 12.8(a) and the Mortgagee determines this is required in order to preserve rights to prove in the bankruptcy or liquidation of a person, that amount will not be treated as an amount received as a result of the exercise of any Power until such time as the amount is withdrawn from the suspense account.

13. Expenses, stamp duties and GST

13.1 Expenses

- (a) The Mortgagor must reimburse the Mortgagee on demand for, and indemnifies the Mortgagee against, all Costs, including legal fees, costs and disbursements (on a full indemnity basis and determined without taxation, assessment or similar process) incurred by the Mortgagee in connection with:
- (i) **(Enforcement)** exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, any Power including any expenses incurred in the evaluation of any matter of material concern to the Mortgagee or the investigation of any matter which the Mortgagee determines, acting reasonably, may be an Event of Default or Potential Event of Default.
- (b) The Mortgagor must bear the cost of its compliance with this mortgage.

13.2 Stamp duties

The Mortgagor:

- (a) must promptly pay all stamp duty, transaction, registration and similar Taxes, including fines and penalties which may be payable to, or required to be paid by, any appropriate Government Authority or determined to be payable in connection with the execution, delivery, performance or enforcement of this mortgage or any payment, receipt or other transaction contemplated by this mortgage; and
- (b) indemnifies the Mortgagee against any loss or liability incurred or suffered by it as a result of the delay or failure by the Mortgagor to pay any Taxes as required in accordance with clause 13.2(a).

13.3 GST

- (a) Any reimbursement required to be made by the Mortgagor under this mortgage for a Cost or other amount paid or incurred by the Mortgagee will be limited to the total Cost or other amount less the amount of any input tax credit to which the Mortgagee is entitled for the acquisition to which the Cost or other amount relates.

Title Reference [insert]

- (b) If GST is payable in respect of any supply made by or through the Mortgagee under, pursuant to, or in connection with this mortgage (GST Liability), then:
- (i) where consideration is provided by the Mortgagor in relation to that supply, the Mortgagor must pay an additional amount to the Mortgagee equal to the full amount of the GST Liability; and
 - (ii) except where clause 13.3(b)(i) applies, the Mortgagor must indemnify and keep the Mortgagee indemnified for the full amount of the GST Liability.

The Mortgagee will provide to the Mortgagor a tax invoice complying with the relevant law relating to any payment made to it in accordance with this clause 13.3(b).

14. Governing law and jurisdiction

14.1 Governing law

This mortgage is governed by the law applying in Queensland.

14.2 Jurisdiction

The Mortgagor irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this mortgage; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 14.2(a).

15. Notices

15.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this mortgage:

- (a) must be given to a party:
 - (i) using one of the following methods (and no other method) namely, hand delivery, courier service, prepaid express post or email; and
 - (ii) using the address or other details for the parties set out in the Master Agreement (or as otherwise notified by a party to the other party) from time to time;
- (b) must be in legible writing and in English;
- (c) (in the case of communications other than email) must be signed by the sender or on the sender's behalf by a director, company secretary, attorney or authorised agent or officer of the sender; and
- (d) (in the case of email) must:
 - (i) state the name of the sending party or a person duly authorised by the sending party and state that the email is a communication under or in connection with this mortgage; and

Title Reference [insert]

- (ii) if the email contains attachments, ensure the attachments are in PDF or other non-modifiable format the receiving party can open, view and download at no additional cost, and communications sent by email are taken to be signed by the named sender.

15.2 When notice is taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this mortgage is taken to be given by the sender and received by the recipient:

- (a) (in the case of delivery by hand or courier service) on delivery;
- (b) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
- (c) (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting; and
- (d) (in the case of email whether or not containing attachments) the first to occur of:
 - (i) receipt by the sender of an electronic acknowledgement from the recipient's information system showing confirmation of delivery to the recipient's email address; and
 - (ii) 4 hours after the time sent (as recorded on the sender's information system) unless the party sending the email receives an automated message that the email has not been delivered,

provided that:

- (e) the communication will be taken to be so given by the sender and received by the recipient regardless of whether:
 - (i) the recipient is absent from the place at which the communication is delivered or sent;
 - (ii) the communication is returned unclaimed; and
 - (iii) (in the case of email) the email or any of its attachments is opened by the recipient;
- (f) if the communication specifies a later time as the time of delivery then that later time will be taken to be the time of delivery of the communication; and
- (g) if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is delivered or sent).

15.3 Notices sent by more than one method of communication

If a communication delivered or sent under this clause 15 is delivered or sent by more than one method, the communication is taken to be given by the sender and received by the recipient whenever it is taken to be first received in accordance with clause 15.1

16. Miscellaneous

16.1 Certificate of Mortgagee

A certificate or determination in writing signed by the Mortgagee or a director, company secretary or attorney of the Mortgagee certifying:

Title Reference [insert]

- (a) an exchange rate, a rate of interest or an amount payable by the Mortgagor under any Transaction Document is sufficient evidence of the matters to which it relates; and
- (b) any other act, matter or thing relating to any Transaction Document, is sufficient evidence of those matters unless the contrary is proved.

16.2 Further acts and documents

The Mortgagor must, and must procure that all persons having or claiming any estate or interest in the Mortgaged Property from time to time after the date of this mortgage will, on demand by the Mortgagee (and at the entire cost and expense of the Mortgagor) perform all acts and execute and deliver all further documents as the Mortgagee, acting reasonably, requires:

- (a) for more satisfactorily securing to the Mortgagee the payment of the Secured Money;
- (b) to perfect the Encumbrance created by this mortgage; or
- (c) for facilitating the exercise of any Power.

16.3 Severance

If at any time a provision of this mortgage is or becomes illegal, invalid, void or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability:

- (a) in that jurisdiction of any other provision of this mortgage; or
- (b) under the law of any other jurisdiction of that or any other provision of this mortgage.

16.4 Powers cumulative

Each Power is cumulative and in addition to each other Power available to the Mortgagee or any Receiver.

16.5 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, any Power does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other Power.
- (b) A waiver or consent given by the Mortgagee under this mortgage is only effective and binding on the Mortgagee if it is:
 - (i) given or confirmed in writing by the Mortgagee; and
 - (ii) given by the Director-General, Department of Housing or an authorised delegate of the Director-General.
- (c) No waiver of a breach of a term of this mortgage operates as a waiver of another breach of that term or of a breach of any other term of this mortgage.

16.6 Consents

A consent required under this mortgage from the Mortgagee may be given or withheld, or may be given subject to any conditions, as the Mortgagee (in its absolute discretion) thinks fit, unless this mortgage expressly provides otherwise.

Title Reference [insert]

16.7 Indemnities

- (a) Each indemnity in this mortgage is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion, expiration or release of this mortgage.
- (b) It is not necessary for the Mortgagee to incur any expense or to make any payment before enforcing a right of indemnity conferred by this mortgage.
- (c) The Mortgagor must pay on demand any amount it must pay under an indemnity in this mortgage.

16.8 Time of essence

Time is of the essence in respect of the Mortgagor's obligations under this mortgage.

16.9 Moratorium legislation

To the fullest extent permitted by law, all laws which at any time operate directly or indirectly to:

- (a) lessen or affect in favour of the Mortgagor any obligation under this mortgage; or
 - (b) delay or otherwise prevent or prejudicially affect the exercise of any Power,
- are expressly waived.

16.10 Binding on each signatory

This mortgage binds and is enforceable against the Mortgagor despite:

- (a) any other person not executing this mortgage or its execution being defective in any way; or
- (b) any obligation or liability of any other party under this mortgage not being binding or enforceable against that party for any reason.

16.11 Counterparts

This mortgage may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

16.12 Registration

The Mortgagee may register this mortgage in the manner and within any time limits prescribed by law to ensure the full efficacy of this mortgage as an Encumbrance to the Mortgagee. The Mortgagor must take all steps which the Mortgagee, acting reasonably, requests to facilitate the exercise by the Mortgagee of its rights under this clause 16.12, including by providing to the Mortgagee any information required to identify the Mortgagor.

16.13 Assignment

- (a) (i) The Mortgagee may at any time assign or otherwise transfer all or any part of its rights under this mortgage and may disclose to a proposed assignee or transferee any information in the Mortgagee's possession relating to the Mortgagor.
- (ii) If the Mortgagee assigns or otherwise transfers all or any part of its rights under this mortgage as permitted in accordance with this clause 16.13(a) the Mortgagor may not claim against any assignee or transferee any right of set-off or any other rights the Mortgagor has against the assigning or transferring Mortgagee.

Title Reference [insert]

- (b) The Mortgagor cannot assign, novate or otherwise transfer any of its rights or obligations under this mortgage without the prior written consent of the Mortgagee.

16.14 No merger

This mortgage and the Powers are in addition to and do not merge with, postpone, lessen or otherwise prejudicially affect any other Transaction Document or any other right, power, authority, discretion, remedy or privilege of the Mortgagee.

16.15 Blanks

The Mortgagor authorises the Mortgagee to complete any blanks in this mortgage or any document, of any nature, entered into or executed by the Mortgagor in connection with this mortgage.

16.16 Variations

This mortgage cannot be altered in any way without the prior written approval of the Director-General, Department of Housing or an authorised delegate of the Director-General.

17. No representation by or reliance

The Mortgagor acknowledges that:

- (a) the Mortgagee does not have any duty to supply it with information in relation to or affecting the Mortgagor or the Mortgagee before the date of this mortgage or during the currency of this mortgage;
- (b) it has relied on its own inquiries as to the nature and extent of the entire relationship between each of them and the Mortgagee (whether or not recorded in the Transaction Documents) and the nature and effect of the Transaction Documents; and
- (c) it does not enter into this mortgage in reliance on any representation, promise, statement, conduct or inducement by or on behalf of the Mortgagee, except for any inducement expressly set out in the Transaction Documents.