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AT656706

MORTGAGE

Jurisdiction NEW SOUTH WALES

Privacy Collection Statement

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Estate and/or interest being mortgaged

FEE SIMPLE

| Land Title Reference | Part Land Affected? | Land Description |
|----------------------|---------------------|------------------|
| 555/1240602 | | |
| 562/1240602 | | |
| 1/1232143 | | |
| 6/1232143 | | |
| 7/1232143 | | |
| 16/1232143 | | |
| 18/1232143 | | |
| 23/1232143 | | |
| 28/1232143 | | |
| 31/1232143 | | |

Mortgagor

Name QARTABA HOMES PTY LTD
ACN 147630948

Mortgagee

Name PACIFIC 8 PTY LTD
ACN 605494184
Tenancy (inc. share) JOINT TENANTS
Name REMAC PROPERTY INVESTMENTS PTY LTD
ACN 164747424

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

(1) The mortgagor covenants with the mortgagee as follows:

(a) The provisions set out in the Summer Lawyers Memorandum of Common Provisions Version 5 ("MCP") are incorporated in this mortgage; and

(b) The mortgagor acknowledges having received a copy of the MCP prior to executing this Mortgage.

(c) The Mortgagor and Mortgagee acknowledge and agree that references to the Lender include the Mortgagee and references to the Grantor in the Memorandum include the Mortgagor.

(2) Finance Offer Schedule to MCP

Facility Term 6 Months from 21 September 2023

Lender Remac Property Investments Pty Ltd ACN 164 747 424 and Pacific 8 Pty Ltd ACN 605 494 184

Borrower Oartaba Homes Pty Ltd ACN 147 630 948

Guarantor Wajahat Ali Khan Rana, Kashif Aziz and Muhammad Khurram Jawaid

Facility Limit \$4,900,000.00

Discounted Interest Rate 14 % per annum

Standard Interest Rate 26 % per annum

Payment type: Interest only. Interest charges for a payment period are due on the first day of the period.

Payment period Monthly in advance

SPECIAL CONDITION: Notwithstanding any clause to the contrary within this mortgage included in the sum secured by this mortgage is the amount of \$4,900,000.00 ("the Principal") plus interest accruing on the Principal at the rate of 26% per annum plus legal and recovery costs incurred by the mortgagee on an indemnity basis ("Secured Sum"). The mortgagor acknowledges that the mortgagee has advanced the Principal on or about the date of this mortgage. The mortgagor must pay the Secured Sum to the mortgagee by not later than 6 Months from the date of this mortgage or within 14 days of written demand by the mortgagee upon the mortgagor, whichever is the earlier date ("Payment Date"). If the Secured Sum is not paid to the mortgagee by the Payment Date the mortgagee may take possession of and sell this land.

ATTACHMENT

See attached Terms and Conditions

Mortgage Execution

The Certifier has retained the evidence supporting this Registry Instrument or Document.

The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents,:

(a) has taken reasonable steps to verify the identity of the mortgagor, or his, her or its administrator or attorney; and

(b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.

The Certifier has taken reasonable steps to verify the identity of the mortgagee or his, her or its administrator or attorney.

The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

| | |
|------------------------------|--------------------------|
| Executed on behalf of | PACIFIC 8 PTY LTD |
| Signer Name | NICHOLAS CHRISP |
| Signer Organisation | SUMMER LAWYERS PTY. LTD. |
| Signer Role | PRACTITIONER CERTIFIER |
| Execution Date | 01/12/2023 |

The Certifier has retained the evidence supporting this Registry Instrument or Document.

The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

The Certifier, or the Certifier is reasonably satisfied that the mortgagee it represents,:

(a) has taken reasonable steps to verify the identity of the mortgagor, or his, her or its administrator or attorney; and

(b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument or Document.

The Certifier has taken reasonable steps to verify the identity of the mortgagee or his, her or its administrator or attorney.

The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

| | |
|------------------------------|------------------------------------|
| Executed on behalf of | REMAC PROPERTY INVESTMENTS PTY LTD |
| Signer Name | NICHOLAS CHRISP |
| Signer Organisation | SUMMER LAWYERS PTY. LTD. |
| Signer Role | PRACTITIONER CERTIFIER |
| Execution Date | 01/12/2023 |

Summer Lawyers Memorandum of Common Provisions Version 5 (LFMCPV5)

Executed by Qartaba Homes Pty Ltd ACN 147 630 948 in accordance with Section 127 of the Corporations Act 2001 by being signed by the person who is authorised to sign for the company:

Name: Wajahat Ali Khan Rana

Position: Director

Signature

x

Date:

Name: Kashif Aziz

Position: Director

Signature

x

Date:

Witness name:

Witness position: Solicitor

Signature

x

Date:

Witness name:

Witness position: Solicitor

Signature

x

Date:

Name: Wajahat Ali Khan Rana

Signature

x

Date:

Witness name:

Witness position: Solicitor

Signature

x

Date:

Name: Kashif Aziz

Signature

x

Date:

Witness name:

Witness position: Solicitor

Signature

x

Date:

Name: Muhammad Khuram Jawaid

Signature

x

Date:

Witness name:

Witness position: Solicitor

Signature

x

Date:

WARNING:

THIS MEMORANDUM OF COMMON PROVISIONS IS NOT SUBJECT TO THE NATIONAL CREDIT CODE

Version: LFMCPV5 or "Security Terms"

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Memorandum of Common Provisions – Version (LFMCPV5 / Security Terms)

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Wajahat Ali Khan Rana

Kashif Aziz

Muhammed Khuram

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About this document

Getting started

This document sets out the agreed terms on which we provide *you* with a facility, the terms of any guarantee we require and the terms of any security we require from *you* or a *guarantor*. This document needs to be read with the *offer* *you* and the *guarantor* sign and any other document *you* or and the *guarantor* enter into with *us* (for example, the *national mortgage form* if we require a mortgage over *land*).

WARNING:

- By signing these documents *you* and each *guarantor* agree to grant security to *us*. If *we* are not repaid, *we* can take enforcement action and *you* or the *guarantor*, as applicable, could lose your property. If that is *your* residence, you could lose your home.
- We strongly recommend you obtain legal advice before signing this or any related document.

The table below sets out how the parts of this document apply to *you* and the *guarantor*. They need to be read with provisions in other parts of this document.

| | Facility | Guarantee | Security |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| Who does this apply to? | The borrower | The <i>guarantor</i> | The borrower or the <i>guarantor</i> if we require security from them |
| Parts of this document that apply | See Part A | See Part F | See Part E |
| | This part will also tell <i>you</i> the other parts of this document that make up the facility. If we provide finance in connection with a building, construction or development <i>project</i> , Part G will also apply. | This part will also tell <i>you</i> the other parts of this document that make up the guarantee and indemnity. | This part will also tell <i>you</i> the other parts of this document that make up the security. |

Definitions of words

The definitions of words printed in italic *like this* and some other key words, as applied in this document are given in Part I ("Definitions and interpretation").

Part A – Your facility

Background

This Part A sets out the terms and conditions that apply to the facility we provide you with.

This Part A needs to be read with Part B ("Payment obligations"), Part C ("General obligations"), Part D ("Default"), Part H ("General") and Part I ("Definitions and Interpretation") which also include terms that form part of your facility.

If we provide finance in connection with a building, construction or development *project*, Part G ("Construction terms") will also apply.

1 How you use the facility

1.1 Purpose

The facility can only be used for the purpose stated in the *offer*.

1.2 Drawdown procedure

If you want to use the facility you must do so in accordance with the drawdown procedures we specify. You can drawdown more than once but only if the *offer* says so.

1.3 Your right to redraw prepaid amounts

You can only redraw amounts you prepay under the facility if it is revolving or if the *offer* says that you can, during the *facility term*. We can cancel your right to redraw by giving notice to you.

1.4 Currency of drawings

You can only make a drawing in the currency we make available to you under the facility (see the *facility limit* in the *offer*). Any *facility limit* is in Australian dollars unless stated otherwise.

2 Conditions to be met before drawdown

We will only provide funds to you or otherwise allow you to use or drawdown under the facility if all of the things listed below are satisfied:

- (a) you have satisfied all of the conditions precedent set out in the *offer*;
- (b) we reasonably believe you will be able to satisfy your obligations to us under each *finance document*;
- (c) your request will not result in the *secured money* exceeding the *facility limit*;
- (d) there is no *event of default*, and any use or drawdown of the facility will not result in a failure to comply with your obligations to us or an *event of default*;
- (e) all *finance documents* are enforceable according to their terms (and neither you nor the *guarantor* has claimed they are not) and each *security document* ranks above other creditors in the order we require;
- (f) we are reasonably satisfied with the results of all searches and enquiries we and our consultants have done in connection with you, the *guarantor* and the facility; and
- (g) all information we have been given (including each confirmation given in a *finance document*) is correct, complete and not misleading.

3 Your payment obligations under the facility

3.1 Facility limit excesses

If the *secured money* exceeds the *facility limit* at any time, you must immediately pay us the amount needed to reduce the *secured money* to the *facility limit* or lower, unless we otherwise agree.

3.2 If you want to prepay early

You can prepay any part of the *secured money* on the facility at any time, subject to any special conditions contained in the *offer*.

3.3 When is the facility payable?

You must make the payments described in the *offer* (or as otherwise agreed in writing). These may include agreed principal and interest payments, or interest only payments.

However, the *secured money* for the facility must be paid at the end of the *facility term*.

3.4 If your payment type is principal and interest

If the *offer* states your payment type is principal and interest, you must pay us each payment amount we require on the last *business day* of each payment period either until the end of the *facility term* or until any earlier date stated in the *offer*.

The *offer* may state that these payments are intended to "amortise" or reduce the *secured money* for the facility:

- (a) to an amount stated in the *offer* by a specific date; or
- (b) to zero by the last day of the *facility term*.

However, even if you make all payments we require, the payment amounts may not be sufficient to reduce the *secured money* to the level required and you will need to pay any shortfall at the end of the *facility term*. This may happen for various reasons, including if the *interest rate* changes.

3.5 If your payment type is "interest only"

If the *offer* states that your payment type is "interest only", you do not need to make any payments of principal during the interest only period. However, you must pay interest charges as set out in this clause 3.5.

If the *offer* does not specify:

- (a) a period for which interest only applies, interest only is payable for the whole of the *facility term*;
- (b) when interest charges are due in each payment period, they are due on the last day of each payment period.

If the *offer* specifies that interest payments are due on the last day of each payment period (in arrears), the following applies.

You must pay the accrued interest charges on the last day of each payment period (unless we otherwise agree).

If the *offer* specifies that interest payments are due on the first day of each payment period (in advance), the following applies.

You must pay the interest charges we calculate for the payment period on the date you make your *first* drawdown and on the first day of any further payment period (unless we agree otherwise).

3.6 If your payment type is "interest capitalises"

If the *offer* states that your payment type is "interest capitalises", you do not need to make any interest payments for the interest capitalisation period stated in the *offer*. However, we add interest charges to the

secured money at the times set out in this clause 3.6, and interest accrues on that amount. This means that *you* pay interest on the accrued interest charges.

If the *offer* states that interest capitalises to a maximum amount or only capitalises for a specified period, we stop capitalisation interest when that amount is reached or that period ends.

If the *offer* specifies that interest capitalises at the end of each payment period, the following applies.

At the end of each payment period, we add accrued interest charges to the *secured money*.

If the *offer* specifies that interest capitalises on the first day of each payment period, the following applies.

On the first day of each payment period, we add the interest charges that we calculate for the payment period to the *secured money*.

3.7 Indicative payment amounts

We are not bound by any indicative payment amounts disclosed to *you* before the loan has settled. These amounts may change, we will tell *you* as soon as possible if this happens.

4 Interest

The *interest rate* for the facility is in the *offer*.

4.1 Interest charges and how we calculate them

- (a) *You* must pay interest to us on the interest payment date.
- (b) At all times *you* must pay interest calculated at the standard *interest rate*.
- (c) If we believe *you* have met all *your* obligations, we will notify *you* in writing that we shall accept interest calculated at the discount *interest rate* for that payment period.
- (d) If we notify *you* in writing that we shall accept the discount *interest rate* for a payment period, we accept the discount *interest rate* for that payment period only.
- (e) Specific interest calculation information is detailed in the special conditions contained in the *offer*.

4.2 When is interest payable?

If the *offer* states that for a payment period *you* must pay interest in advance, *you* must pay interest on the first *business day* of the next payment period, unless we otherwise agree (e.g., if *you* pay interest only in arrears).

If the *offer* states that for a payment period *you* must pay interest in arrears, *you* must pay interest on the last *business day* of the previous payment period, unless we otherwise agree (e.g., if *you* pay interest only in advance).

If no payment period is stated in the *offer*, interest is payable in advance on the first *business day* of the previous next month (unless we agree otherwise).

4.3 Fixed or variable *interest rates*

- (a) We are bound by any fixed *interest rate* set out in the *offer* for the fixed rate period unless we state that it is quoted or indicative.
- (b) We will not agree to a fixed rate period that ends after the *facility term*.
- (c) If the *interest rate* is variable, the details of how that rate varies is set out in the *offer*.

5 Fees and charges

You must pay *us* the fees and charges stated or referred to in the *offer*. Fees and charges are not refundable unless the *offer* says otherwise.

Part B – Payment obligations

6 Payments

6.1 Manner of payment

You and the *guarantor* must make payments (including by way of reimbursement) under this agreement:

- (a) in full without set-off or counterclaim, and without any deduction or withholding in respect of taxes unless prohibited by law; and
- (b) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

If you are required by law to deduct an amount from any payment to *us* (such as withholding tax), you must increase the payment by the amount deducted.

6.2 What happens if an amount is due on a non-business day or at the end of the month?

If an amount is due on a day that

- (a) is not a *business day*; or
- (b) does not exist in that particular month (e.g. the 29th, 30th or 31st),

you and the *guarantor* must pay the amount due on the preceding *business day*.

6.3 Currency indemnity

You and the *guarantor* waive any right you have in any jurisdiction to pay an amount other than in the currency in which it is due. However, if we receive an amount in a currency other than that in which it is due:

- (a) we may convert the amount received into the due currency (even though it may be necessary to convert through a third currency to do so) on the day and at such rates (including spot rate, same day value rate or value tomorrow rate) as we reasonably consider appropriate. We may deduct our usual costs in connection with the conversion; and
- (b) you and the *guarantor* satisfy your obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the costs of the conversion.

If a judgment, order or proof of debt for an amount in connection with this agreement is expressed in a currency other than that in which it is due, then you and the *guarantor* indemnify *us* against, and must reimburse and compensate *us* for, any difference arising from converting the other currency if the rate of exchange used by *us* under this clause is less favourable to *us* than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt.

You and the *guarantor* must pay amounts due under this indemnity on demand from *us*.

6.4 GST

- (a) Unless expressly stated otherwise in this agreement, all amounts payable or consideration to be provided under this agreement are exclusive of GST.
- (b) If GST is payable on any supply made under this agreement, for which the consideration is not expressly stated to include GST, the recipient must pay to the supplier an additional amount equal to the GST at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

- (i) the recipient need not pay the additional amount until the supplier gives the recipient a *tax* invoice or an adjustment note; and
 - (ii) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event, and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
 - (iii) this clause 6.4 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Law.
- (c) If a party is required under this agreement to indemnify another party or pay or reimburse *costs* of another party, the party must pay the relevant amount less any input *tax* credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.
 - (d) A term that has a defined meaning in the GST Law has the same meaning used in this clause 6.4. GST Law has the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth).

7 Not used

8 Costs and indemnities

8.1 Costs

You must pay or reimburse:

- (a) (**transaction costs**) our reasonable *costs* in connection with the preparation, negotiation and execution of this agreement, making searches and enquiries in connection with *you* and *your* assets, taking advice in relation to our rights in connection with *you* and *your* assets and, giving and considering consents, waivers, variations, discharges and releases, and providing documents and other information in connection with this agreement;
- (b) (**other costs**) our and any *attorney's* or *receiver's* *costs* of exercising, enforcing or preserving rights, powers or remedies (or considering doing so) in connection with this agreement or doing anything in connection with any enquiry by an authority involving *you* or any of *your related entities*, *your* assets, this agreement, or anything in connection with them; and
- (c) (**taxes**) all stamp duty, registration fees and similar *taxes* or fees payable or assessed as being payable in connection with this agreement or any other transaction contemplated by this agreement (including any fees, fines, penalties and interest in connection with any of those amounts). However, *you* need not pay or reimburse any fees, fines, penalties or interest to the extent they have been imposed because of our delay.

These amounts must be paid within 3 *business days* of demand. However, this amount does not include liability, loss or *costs* to the extent caused by the mistake, error, fraud, negligence or wilful misconduct of the Lender, our employees, agents or a receiver we appoint.

8.2 Indemnity

You and the *guarantor* must indemnify *us* against, and reimburse and compensate *us* for, any liability or direct loss arising from, and any reasonable *costs* incurred in connection with:

- (a) an *event of default*, *you* or the *guarantor* not complying with any of *your* or their obligations under this agreement or a confirmation, representation, warranty or statement made, or taken to be made, by or on behalf of *you* or the *guarantor* in this agreement being incorrect or misleading (including by omission) when made or taken to be made; or
- (b) *us* exercising, enforcing or preserving rights, powers or remedies in connection with this agreement (or considering doing so); or
- (c) the *collateral* (including any indemnity *we* give a *controller* or administrator of *you*).

The amounts payable under this clause include any liability or loss and any costs of the kind referred to in this indemnity incurred by our officers, employees, agents or contractors or any *attorney*, and any *lessee*, purchaser or occupier of any *collateral*. However, it does not include liability, loss or costs to the extent caused by the mistake, error, fraud, negligence or wilful misconduct of the Lender, our employees, agents or a receiver we appoint.

These amounts must be paid within 3 *business days* of demand.

8.3 Payment for *your* obligations

You and the *guarantor* must pay for anything that *you* must do under this agreement.

9 Application of payments

9.1 Application of money

We must apply money we receive under this agreement towards paying the *secured money* in accordance with the *finance documents* unless we are obliged to pay the money to anyone with a prior claim.

9.2 Order of payment

We may use money received under this agreement towards paying any part of the *secured money* (as applicable) we reasonably choose, including by paying a later instalment before an earlier instalment. This applies even if that part only falls due after we give a notice of demand.

9.3 Remaining money

We must pay any money remaining after the *secured money* is paid either to *you* (which we may do by paying it into an account in *your* name) or to another person entitled to it (such as another person with an *encumbrance* over the *collateral*). In doing so, we do not incur any liability to *you*. We are not required to pay *you* interest on any money remaining after the *secured money* is paid.

9.4 Credit from date of receipt

You are only credited with money from the date we actually receive it (including, where we have appointed a *receiver*, the date the *receiver* pays money to us).

Part C – General obligations

10 Confirmations

10.1 Confirmations

You and each *guarantor* confirm (except in relation to matters disclosed to *us* and accepted by *us* in writing) that:

- (a) (**status**) *you* have been incorporated or formed in accordance with the laws of *your* place of incorporation or formation, are validly existing under those laws and have the power and authority to own *your* assets and carry on *your* business as it is now being conducted; and
- (b) (**power**) *you* have the power to enter into this agreement, comply with *your* obligations under it and to exercise *your* rights under it; and
- (c) (**no contravention**) the entry by *you* into, *your* compliance with *your* obligations under, and the exercise of *your* rights under, this agreement does not and will not conflict with:
 - (i) *your* constituent documents, or cause a limitation on *your* powers or the powers of *your* directors to be exceeded; or
 - (ii) any law binding on or applicable to *you* or the *collateral*; or
 - (iii) any *encumbrance* or document binding on or applicable to *you* or *your* assets, or constitute a review event, *event of default*, termination, cash cover requirement, prepayment or similar

event (each however described) under the *encumbrance* or document where this has had or is likely to have a *material adverse effect*; and

- (d) **(authorisations)** you have in full force and effect each authorisation necessary for you to:
 - (i) enter into this agreement, to comply with *your* obligations and exercise *your* rights under it, and to allow them to be enforced; and
 - (ii) carry on any business you conduct to the extent that failure to obtain, comply with or maintain that authorisation would be likely to have a *material adverse effect*; and
- (e) **(validity of obligations)** your obligations under this agreement are valid and binding and are enforceable against you in accordance with its terms subject to any stamping and registration requirements, applicable equitable principles and laws generally affecting creditors' rights; and
- (f) **(benefit)** you benefit by entering into this agreement; and
- (g) **(event of default)** no *event of default* is continuing; and
- (h) **(interests in property)** you have disclosed in writing to us any interest you have in:
 - (i) any motor vehicle, watercraft or intellectual property that has a value of more than \$20,000;
 - (ii) any deposit account with a financial institution other than us where the total credit balance of the deposit account is or may become more than \$10,000 (and, if there is more than one, the total credit balance of all those deposit accounts is or may become more than \$10,000); or
 - (iii) any shares, stock, stock units, interests in a managed investment scheme or other securities, or negotiable instruments where the total value of all of them is more than \$10,000; and
- (i) **(full disclosure)** you have disclosed in writing to us all documents and other information relating to you, the *collateral*, this agreement and anything in connection with them, that a reasonable person in your position would consider material to our decision to enter into the *finance documents*; and
- (j) **(documents and information)** all documents and information given to us by or on behalf of you in connection with this agreement or any transaction in connection with it are complete and not misleading or deceptive, in any material respect (including by omission) as at the date they are given or as at their stated date; and
- (k) **(not a trustee)**: unless stated in the *offer*, claimed by you at a later date, or where proven otherwise (in each case clause 12.1 will apply), you do not enter into this agreement or hold any asset as trustee; and
- (l) **(no immunity)** neither you nor your assets have immunity from the jurisdiction of a court or from legal process.

10.2 Repetition of confirmations

The confirmations in this agreement are taken to be made on the date of this agreement and also (by reference to the then current circumstances):

- (a) on each date on which you acquire *collateral*; and
- (b) on each date on which financial accommodation is provided under the *finance documents*; and
- (c) every 3 months after the date of this agreement.

Any disclosure against a confirmation does not limit our rights under this agreement (including under clause 14 ("Default")).

10.3 Reliance

You and the *guarantor* acknowledge that we have entered into the *finance documents* to which you and the *guarantor* are a party in reliance on the confirmations, acknowledgments and representations in this agreement.

11 Undertakings

11.1 General undertakings

You and the *guarantor* must:

- (a) **(authorisations)** obtain, comply with and maintain each authorisation necessary for you to:
 - (i) enter into the *finance documents* to which you are a party, to comply with your obligations and exercise your rights under them and to allow them to be enforced; and
 - (ii) carry on your business as it is now being carried on to the extent that failure to do so would be likely to have a *material adverse effect*; and
- (b) **(comply with laws)** comply with all laws binding on, or applicable to, you where failure to comply is likely to have a *material adverse effect*; and
- (c) **(conduct of business)** carry on your business in a proper, orderly and efficient manner and not cease, or significantly change the general nature and/or scope of, your business;
- (d) **(taxes)**
 - (i) pay all rates and taxes due and payable by you, except those that you are contesting in good faith; and
 - (ii) pay all rates and taxes contested in good faith that remain due and payable by you after final determination or settlement of the contest; and
- (e) **(notices or orders)** give us a copy of any notice, order, summons or conviction from, or correspondence with, an authority (such as a local council), or a *governing body*, involving you that has had or is likely to have a *material adverse effect*; and
- (f) **(environment)**
 - (i) implement, maintain and comply in all material respects with an environmental management plan; and
 - (ii) if any non-compliance by you with an *environmental law* occurs that has had or is likely to have a *material adverse effect*, or any circumstance that is likely to give rise to an *environmental event* occurs, use your best endeavours to promptly remedy it; and
 - (iii) if we ask, arrange at your expense an audit of your environmental management plan, your compliance with *environmental law* and any circumstance is likely to give rise to an *environmental event*. We may ask you to do this if we reasonably suspect that you are not complying with paragraph (i) or with an *environmental law*, and that the non-compliance has had or is likely to have a *material adverse effect*; and
- (g) **(notify interests in land and other land)** notify us at least 14 days before you acquire any land or interests in land (such as leases), and
- (h) **(notify interests in other property)** notify us at least 14 days before you:
 - (i) acquire any motor vehicle, watercraft or intellectual property that has a value of more than \$20,000;
 - (ii) open any deposit account with a financial institution other than us where the total credit balance of the deposit account is or may become more than \$10,000 (and, if there is more than one, the total credit balance of all those deposit accounts is or may become more than \$10,000); or
 - (iii) acquire any interest in any shares, stock, stock units, interests in a managed investment scheme or other securities, or negotiable instruments where the total value of all of them is more than \$10,000; and
- (i) **(change of your details)** notify us at least 14 days before:

- (i) *you* change *your* name as recorded in a public register in *your* jurisdiction of incorporation or in *your* constituent documents; and
- (ii) any ACN or ARBN allocated to *you* changes, is cancelled or otherwise ceases to apply to *you* (or if *you* do not have any such applicable number, one is allocated, or otherwise starts to apply, to *you*); and
- (iii) *you* become trustee of a trust, or a partner in a partnership, not stated in the *offer*.
- (j) (**valuations**) provide *us* copies of any external valuations obtained in respect of the land promptly after receipt by *you*.

12 Trustee provisions

This clause applies if *you* or the *guarantor* are signing as trustee of a trust or settlement, or hold any of the *land* or *collateral* on trust, whether or not that trust has been disclosed to *us*.

12.1 Capacity and liability of a trustee

You and the *guarantor* acknowledge that *you* enter into the *finance documents* in *your* capacity as trustee of the trust and except where *we* specifically agree to bind the trust assets only, *you* and/or the *guarantor* are liable both personally and in *your* capacity as trustee.

12.2 Trustee confirmations

References in this clause 12.2 to "*you*" are references to "*you*" and/or the *guarantor* (as applicable).

You confirm (except in relation to matters disclosed to *us* and accepted by *us* in writing) that:

- (a) (**existence**) the trust has been duly established; and
- (b) (**sole trustee**) the trustee disclosed to *us* is the only trustee of the trust; and
- (c) (**appointment and no removal**) *you* have been validly appointed as trustee of the trust and no action has been taken or proposed to remove *you* as trustee of the trust; and
- (d) (**disclosure of terms**) true copies of the trust deed (including any amending documents) have been provided to *us* and they disclose all the terms of the trust; and
- (e) (**power**) *you* have power under the terms of the trust to enter into the *finance documents* to which *you* are a party and comply with *your* obligations under them; and
- (f) (**authorisations**) *you* have in full force and effect the authorisations necessary for *you* to enter into the *finance documents* to which *you* are a party, perform obligations under them and allow them to be enforced (including any authorisation required under the trust deed and its constitution (if any); and
- (g) (**indemnity**) *you* have a right to be fully indemnified out of the trust assets in respect of obligations incurred by *you* under the *finance documents* to which *you* are a party; and
- (h) (**adequacy of trust property**) the trust assets are and will remain sufficient to satisfy that right of indemnity and all other obligations in respect of which *you* have a right to be indemnified out of the trust assets; and
- (i) (**no default**) *you* are not, and never have been, in default under the trust deed; and
- (j) (**no termination**)): no action has been taken or proposed to terminate the trust; and
- (k) (**officers' compliance**) *you* and *your* directors and/or other officers have complied with *your* and/or their obligations in connection with the trust; and
- (l) (**priority**) our rights under the *finance documents* *you* enter into with *us* rank in priority to the interests of the beneficiaries of the trust; and
- (m) (**exercise of powers**) *you* have not exercised *your* powers under the trust deed to release, abandon or restrict any power conferred on *you* by the trust deed; and

- (n) **(benefit)** entry into the *finance documents* to which *you* are a party is a valid exercise of *your* powers under the trust deed for the benefit of the beneficiaries.

The confirmations in this clause 12.2 are also taken to be made (by reference to the then current circumstances) every 3 months after the date of this agreement.

You and each *guarantor* acknowledge that we have entered into the *finance documents* to which *you* are a party in reliance on the confirmations in this clause 12.2.

12.3 Trustee undertakings

You and the *guarantor* must:

- (a) **(exercise right of indemnity)** at our request, exercise *your* right of indemnity from the trust assets in respect of obligations incurred by *you* or the *guarantor* under the *finance documents* to which *you* are a party; and
- (b) **(no encumbrance)** not create an *encumbrance*, or allow one to exist, over *your* or the *guarantor's* right of indemnity from the trust assets; and
- (c) **(comply with trust obligations)** comply with *your* obligations as trustee of the trust.

12.4 Restrictions on trustee

References in this clause 12.4 to "*you*" are references to "*you*" and/or the *guarantor* (as applicable).

Without our consent, *you* must not, and must not agree, attempt or take any step to, do anything that:

- (a) **(retirement, removal, replacement)** effects or facilitates *your* retirement, removal or replacement as trustee of the trust; or
- (b) **(restriction on right of indemnity)** could restrict *your* right of indemnity from the trust assets in respect of obligations incurred by *you* under the *finance documents* to which *you* are a party; or
- (c) **(restrict or impair compliance)** could restrict or impair *your* ability to comply with *your* obligations under the *finance documents* to which *you* are a party; or
- (d) **(termination of trust)** effects or facilitates the termination of the trust; or
- (e) **(variation of trust deed)** effects or facilitates the variation of the trust deed; or
- (f) **(resettlement of trust property)** effects or facilitates the resettlement of the trust assets; or
- (g) **(mixing trust property)** could result in the trust assets being mixed with other property.

13 Partnership provisions

This clause applies if *you* or the *guarantor* are signing as a partner in a partnership.

References in this clause 13 to "*you*" are references to "*you*" and/or the *guarantor* (as applicable).

13.1 Partnership confirmations

You confirm to *us* that:

- (a) *you* have not done or allowed anything that could result in the dissolution of the partnership;
- (b) *you* have told *us* about any changes to the partnership (a partner dies, leaves or joins the partnership); and
- (c) *you* have done everything we have asked to ensure all partners of any existing or new partnership are bound by this agreement.

13.2 Partnership undertakings

You agree:

- (a) to notify *us* if a person ceases to be, or becomes, a partner in the partnership; and

- (b) that each partner is liable individually, and together with the other partners liable jointly, for *your* obligations and liabilities under a *finance document* to which *you* are a party; and
- (c) that each *finance document* will continue to bind each person who is a partner at the date of this agreement and each person who becomes a partner after the date of this agreement, despite changes in the membership of the partnership or the fact that the person is no longer a partner in the partnership.

13.3 Partnership changes

You agree to provide us with a copy of any deed of accession relating to a change in the partners ~~that~~ comprise the partnership as soon practicably possible after such a change occurs.

Part D – Default

This Part explains when there will be an *event of default*. If there is an *event of default*, we can take action against *you* and/or the *guarantor*. An *event of default* may trigger a default under another facility *you* have with us.

14 Default

References in this clause 14 to "*you*" are references to "*you*" and/or the *guarantor* (as applicable).

14.1 Events of default

Each of the following is an *event of default*:

- (a) **(non-compliance with obligations)** *you* or the *guarantor* do not comply with any obligation under this agreement;
- (b) **(non-payment)**: without limiting 14.1 (a) in any way, *you* or the *guarantor* do not pay any amount payable under the *finance documents* when due;
- (c) **(insolvency)** *you* or the *guarantor* are insolvent;
- (d) **(enforcement proceedings)** another creditor takes *enforcement proceedings* against *you* or the *guarantor*;
- (e) **(cross default)** if under a separate financing arrangement *you* have with us:
 - i. repayment is required and remains outstanding; or
 - ii. default based action is taken by *us* against *you* or the *guarantor*, due to an event of default in that separate financing arrangement.
- (f) **(non-compliance with law)** we believe on reasonable grounds that *you* or the *guarantor* has not complied with the law or any requirement of a statutory authority which we on reasonable grounds believe may have a *material adverse effect*;
- (g) **(illegality)** it becomes unlawful because of your conduct for *you* or *us* to continue with the facility;
- (h) **(misrepresentation)** *you* or the *guarantor* give *us* information or make a representation or warranty (including through a confirmation to us) that is materially incomplete, incorrect or misleading (including by omission);
- (i) **(unapproved use of a facility)**: *you* use the facility for a purpose not approved by us in writing;
- (j) **(improper dealing)** *your* or the *guarantor's* assets are dealt with in breach of any *finance document*;
- (k) **(financial information)** *you* or the *guarantor* do not provide financial information in the form, and within the period, *you* or the *guarantor* are required to give it;

- (l) (**licences**) *you* or the *guarantor* do not maintain any *licence* necessary to carry on *your* or the *guarantor's* business, and/or necessary to maintain the value or operation of the *collateral*;
- (m) (**insurance**) *you* or the *guarantor* do not maintain the insurance we require under this agreement;
- (n) (**change of ownership or control**) the legal or beneficial ownership, or management and/or control of *you* or the *guarantor*, changes without our consent;
- (o) (**change in status**) the status, capacity or composition of *you* or the *guarantor* changes without our consent (e.g. without limitation, if *you* are a partnership and it is dissolved or there is a change in partners, *you* are a joint venture partner and the joint venture ends, or *you* are a trustee and there is a change in trustee, or the trust ends);
- (p) (**undertakings**) *you* or the *guarantor* do not comply with any undertaking given to *us* or our solicitors by or on behalf of *you*, a *guarantor* or another person in connection with (but not in) a *finance document* within the period specified in the undertaking or, where no period is specified and the undertaking is not an ongoing undertaking, within 5 *business days* after the date of the undertaking;
- (q) (**liabilities to other creditors**) any of the following occurs under the terms of any liability incurred as a result of the borrowing of money by, or the provision of financial accommodation to *you*, or a *guarantor* for amounts totalling more than \$10,000 (or its equivalent):
 - i. it is not satisfied when due (or by the end of any original grace period); or
 - ii. it is declared, is capable of being declared, or otherwise becomes, due before its stated maturity or expiry as a result of an *event of default* or other similar event (however described); or
 - iii. any commitment of money or financial accommodation to *you* or the *guarantor* is cancelled or suspended as a result of a default or other similar event (however described); or
 - iv. *you* or a *guarantor* are required to provide cash cover for it as a result of an *event of default* or other similar event (however described);
- (r) (**cease business**): *you* or a *guarantor* stop payment, cease to carry on *your* business or a material part of it, or threaten to do either of those things, other than to carry out a reconstruction or amalgamation while solvent on terms approved by us;
- (s) (**voidable, loss of priority, repudiation or unlawful**):
 - i. Other than by reason of *our* conduct;
 - ii. a *finance document* or any transaction in connection with it is or becomes wholly or partly void, voidable or unenforceable; or
 - iii. a *finance document* or any transaction in connection with it does not have the priority that we intended it to have; or
 - iv. it is or becomes unlawful for *you* or a *guarantor* to comply with any of *your* obligations under the *finance documents*;
- (t) (**prior claims**) a person claims in writing that they have a better right or interest than *us* in respect of any *collateral* unless that right, claim and/or interest is withdrawn or waived in writing within 31 days; or.
- (u) (**compulsory acquisition**) a *compulsory acquisition* occurs or a planning instrument affecting the *collateral* is imposed or varied, which in either case means that the use to which the *collateral* is being put must cease or be materially varied, or that a building, structure or improvement on it must be removed or materially altered; or
- (v) (**non-compliance with requisition**) an authority raises a requisition;

- i. relating to a transfer of the *collateral* to you or a *guarantor*; or
 - ii. relating to an *encumbrance* ranking in priority to any *security document*; or
 - iii. relating to the manner or validity of your execution of any *security document*; or
 - iv. requiring the discharge, modification or withdrawal of any other dealing as a prerequisite to the registration of that transfer or *encumbrance* or any *security document*;
 - v. and the requisition has not been complied with to the satisfaction of the authority within 14 days after the date of the requisition; or.
- (w) **(non-production of title deed)** a title deed or instrument that must be produced to an authority as a prerequisite to lodgement or registration of any *security document* is not produced by the controller of that title deed or instrument within 21 days after we request the production (which need not be in writing);
- (x) **(failure to notify a dealing number)** registration of a *security document* depends on this agreement being connected with documents lodged with a prior unregistered dealing and you or a *guarantor* do not notify our solicitors of the dealing number within 7 days after we request that number and we are not able to obtain that information from other sources;
- (y) **(reduction of capital)** without our written consent, you or a *guarantor* take any action to reduce your capital, buy back any of your shares or make any of your shares capable of being called up only in certain circumstances (such as by passing a resolution or calling a meeting to consider such a resolution);
- (z) **(material adverse effect)** an event occurs that has, or is likely to have (or a series of events occur that, together, have or are likely to have) a *material adverse effect*;
- (aa) **(change in group structure)** you or a *guarantor* cease to be a *subsidiary* of the company that is your holding company at the date of this agreement, or a company ceases to be a *subsidiary* of you;
- (bb) **(trustee defaults)** if you or a *guarantor* are signing as trustee of a trust or settlement:
 - i. any step is taken to remove you as trustee of the trust or to appoint another trustee of the trust, in either case without our consent; or
 - ii. an application or order is sought or made in any court for any part of the trust assets to be brought into court or administered by the court or under its control.
- (cc) **(default under another finance document)** an event occurs that is called an "event of default" under any *finance document* (other than this agreement), or any other event occurs that renders enforceable an *encumbrance* granted by you or a *guarantor* under the *finance documents*; or
- (dd) **(extra events of default we agree)** any additional thing the parties to this agreement agree is an *event of default*.

14.2 Application of defaults

- (a) Before we act on an event of default under clause 14.114.1(b), we will allow you 3 business days after the due date, to make the payment before we take enforcement action.
- (b) Other than a default under clause 14.1(b) or (o), we will allow you a reasonable time to remedy the event of default if it is able to be remedied (generally we will give you 14 days). However, we do not have to give you notice if we reasonably believe it is necessary to manage a material and immediate risk.
- (c) We will only act on the event of default (other than a default under clause 14.1(b)), if the default by its nature is material or we reasonably consider the default has had, or is likely to have, a material impact on:

- i. *your* or the *guarantor's* ability to meet *your* or their financial obligations (or our ability to assess this);
- ii. our security risk (or our ability to assess this); or
- iii. our legal or reputation risk.

14.3 Investigation of default

- (a) If we reasonably believe that an *event of default* is, or may be continuing, we may:
 - i. appoint a person to investigate and report to *us* on *your* affairs, financial condition, assets and business; and
 - ii. inspect *your* records assets of *you* during normal business hours; and
 - iii. conduct all searches and enquiries that person considers appropriate in connection with *you* and *your* assets.
- (b) *You* must co-operate with the person and comply with every reasonable request they make (and ensure that *your* officers, employees, agents and *attorneys* do the same). This includes giving them access to all records and assets during normal business hours and giving them any document or other information that they reasonably request.
- (c) *You* must ensure that each of *your* officers, employees, agents and *attorneys* complies with this clause 14.4.
- (d) *You* must, within 3 *business days* of demand, pay or reimburse *us* our reasonable costs in connection with the investigation.

14.4 What can happen if there is a default?

If an *event of default* has occurred and has not been remedied within a 14 day written notice period, or waived in writing by *us*, we may do one or more of the following:

- (a) declare at any time by notice in writing to *you* that the whole of the secured money is immediately due for payment;
- (b) require payment of all or part of the *secured money*, owing to *us* under the *finance documents*;
- (c) take legal action (e.g., sue *you* for unpaid amounts, enforce any *encumbrance* *you* have given *us*, and take any other *enforcement proceedings*);
- (d) use the power of attorney granted to *us*;
- (e) appoint one or more *receivers* to *you* and/or the *guarantor* and/or all or any part of the *collateral*;
- (f) do anything that a *receiver* could do under clause 15.4 ("Receiver's powers") including, but not limited to, taking possession of and selling the *land*.

If a law or code to which we subscribe requires *us* to do so, we will give *you* notice or comply with certain conditions before we require *you* to immediately pay all amounts *you* owe *us* or take *enforcement proceedings* or other action.

14.5 Order of enforcement

We may enforce any *security document* before we enforce other rights or remedies:

- (a) against any other person; or
- (b) under another document, such as another *encumbrance*.

If we have more than one *encumbrance*, we may enforce them in any order we choose.

14.6 No notice required unless mandatory

To the extent the law permits, *you* and the *guarantor* waive:

- (a) *your* rights to receive any notice that is required by:

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- i. any provision of the *PPSA* (including a notice of a verification statement); or
 - ii. any other law before a *secured party* or *receiver* exercises a right, power or remedy; and
- (b) any time period that must otherwise lapse under any law before a *secured party* or *receiver* exercises a right, power or remedy.

If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is 1 day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause prohibits *us* or any *receiver* from giving a notice under the *PPSA* or any other law.

15 Receivers

15.1 Other rights to appoint

In addition to our powers under clause 14.4 ("What can happen if there is a default?"), we may appoint a receiver to *you* or a *guarantor*:

- (a) if you request *us* to do so; or
- (b) if an event under clause 18.3 has occurred.

15.2 Terms of appointment of a receiver

In exercising our power to appoint a *receiver*, we may:

- (a) appoint a *receiver* to all or any part of the *collateral* or its income;
- (b) either before or after we have taken possession of any *collateral*, appoint any one or more persons to be a receiver of the *collateral* or a part of it;
- (c) appoint a different or multiple receivers for different parts of the *collateral*;
- (d) if more than one person is appointed as receiver of any *collateral*, empower them to act jointly or jointly and severally;
- (e) remove the receiver, appoint another in his or her place if the receiver is removed, retires or dies, and reappoint a receiver who has retired or been removed; and
- (f) set a receiver's remuneration at any figure we reasonably determine appropriate.

15.3 Receiver is *your* agent

- (a) Any *receiver* appointed under this agreement is *your* agent unless we notify *you* that the *receiver* is to act as our agent.
- (b) Except to the extent caused by the fraud, negligence or wilful misconduct by *us* or the receiver *you* are solely responsible for anything done, or not done, by a *receiver* and for the *receiver's* remuneration and costs.
- (c) The receiver may execute any document, bring or defend any proceeding, or do any other act or thing in the name of *you* or the guarantors and including execution of any consent judgment for possession of any collateral.

15.4 Receiver's powers

Unless the terms of appointment restrict a *receiver's* powers, the *receiver* may do one or more of the following:

- (a) improve the *collateral*;
- (b) sell, transfer or otherwise dispose of the *collateral* or any interest in it;
- (c) lease or licence the *collateral* or any interest in it, or deal with any existing lease or licence (including allowing a surrender or variation);

- (d) take or give up possession of the *collateral* as often as it chooses;
- (e) sever, remove and sell fixtures attached to the *collateral*;
- (f) obtain registration of the *collateral* in our or our nominee's name;
- (g) collect rent and other income from any *collateral*;
- (h) if *you* or the *guarantor* are not a corporation to which the *Corporations Act* applies, do anything that the law would allow a *receiver* to do if *you* were a corporation incorporated (or deemed to be incorporated) under the *Corporations Act*;
- (i) do anything else the law allows an owner or a *receiver* of the *collateral* to do.

Part E – Security

Background

This Part E applies if *you* or the *guarantor* are required to give *us* security over *collateral*.

References in this Part E to “*you*” are references to “*you*” or the *guarantor* (as applicable).

16 Not Used.

17 Security

17.1 Security interest

- (a) *You* grant a security interest in the *collateral* to *us* to secure payment of the *secured money*.
This security interest is a mortgage of the *land*, *other land* and the *water rights* and a charge over the other *collateral*.
This security interest is also an *encumbrance*.
- (b) *You* grant *us* a power of attorney in accordance with the clause 30 as further security.
- (c) *You* do this as absolute or beneficial owner unless *you* enter into this agreement as trustee of a trust. In that case, *you* grant a security interest in:
 - (i) the *collateral* comprising the trust assets, as sole trustee of the trust; and
 - (ii) any other *collateral*, as beneficial owner.

17.2 Mandatory action

To the extent that any legislation requires that something must be done (such as obtaining consent) before *you* may validly grant a security interest in any of the *collateral*, *you* must do everything necessary to ensure that it is done within 14 days written notice by *us*.

17.3 Consideration

You acknowledge granting this security and incurring obligations and giving rights under this agreement for valuable consideration.

18 Dealings with collateral

18.1 Restricted dealings

You must not do any of the following unless we give *you* our written consent in writing, such consent will not be unreasonably withheld, or *you* are permitted to do so by clause 18.2 (“Permitted dealings”) or by the other *finance documents*:

- (a) create or allow another interest in any *collateral*;
- (b) dispose, or part with possession, of the *land*;

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- (c) lease or licence the *land* or *collateral*, or any interest in it, or deal with any existing lease or licence (including allowing a surrender or variation);
- (d) in the event we have consented to you leasing the *land* together with the use of goods or *collateral*, remove any of the goods or *collateral* (except for their repair or replacement in the ordinary course of business);
- (e) subdivide or consolidate the *land*;
- (f) create, release or vary an easement, covenant or public right that relates to the *land*, or allow one to exist; and
- (g) deal with rights or benefits in connection with the *land* (including rights to air space, plot ratio, floor space ratio or other similar ratio).

18.2 Permitted dealings

You may do any of the following in the ordinary course of your ordinary business unless you are prohibited from doing so by another provision in a *finance document*:

- (a) create or allow another interest in, or dispose or part with possession of, any *collateral* that is:
 - (i) inventory;
 - (ii) a negotiable instrument;
 - (iii) machinery, plant, or equipment that is not inventory and has a value of less than A\$1,000 or its equivalent;
 - (iv) money (including money withdrawn or transferred to a third party from an account you have with a bank or other financial institution); or
- (b) withdraw or transfer money from an account with a bank or other financial institution.

18.3 Revolving assets

You can no longer deal with:

- (a) any *collateral* described in clause 18.2 ("Permitted dealings") if:
 - (i) you breach, or attempt to breach clause 18.1 ("Restricted dealings") in respect of the *collateral* or take any step that would result in you doing so; or
 - (ii) a person takes a step (including signing a notice or direction) that may result in taxes, or an amount owing to an authority, ranking ahead of this security; or
 - (iii) distress is levied or a judgment, order or *encumbrance* is enforced or a creditor takes any step to levy distress or enforce a judgment, order or *encumbrance*, over the *collateral*; or
 - (iv) we give a notice that you cannot deal with the *collateral*. (However, we may only give notice if we reasonably consider that it is necessary to do so to protect our rights under this agreement or if an *event of default* is continuing); or
- (b) all the *collateral* described in clause 18.2 ("Permitted dealings") if:
 - (i) a voluntary administrator, liquidator or provisional liquidator is appointed in respect of you or the winding up of you begins; or
 - (ii) a *controller* is appointed to any of your property; or
 - (iii) something having a substantially similar effect to Paragraph (i) or (ii) happens under any law.

18.4 Where the law allows for creation of encumbrance without consent

If a law entitles you to create another *encumbrance* over the *collateral* without our consent, this Clause 18 does not operate to require you to obtain our consent before creating that other *encumbrance*. However,;

- (a) if you intend to create another *encumbrance*, you must notify us at least 7 days before you propose to do so; and

- (b) if we request an agreement under clause 20.1 ("Priority agreement") and you have not complied with that request by the time the *encumbrance* is created, financial accommodation need not be made available under any *finance document*.

19 All collateral – additional terms

19.1 Confirmations relating to all *collateral*

You confirm (except in relation to matters disclosed to us and accepted by us in writing) that:

- (a) you own the *collateral* or otherwise have sufficient rights to grant an *encumbrance* in it; and
- (b) there is no *compulsory acquisition*, native title, or native title application, determination or *claim* affecting it or any of the *collateral*; and
- (c) no person other than us has an *encumbrance* over the *collateral*; and
- (d) the *collateral* is not subject to any prior ranking or equally ranking *encumbrance*; and
- (e) you have not disposed, or parted with possession, of any *collateral* (or agreed to any of these things); and
- (f) you have complied with all your obligations in connection with the *collateral*;
- (g) to the best of your knowledge (having made due enquiry), no act or omission has occurred that has given rise, or is likely to give rise, to an *environmental event*; and
- (h) there is no current, pending or (to the best of your knowledge, having made due enquiry) threatened proceeding, investigation or claim affecting any *collateral* before a court, authority, commission or arbitrator.

19.2 Undertaking relating to all *collateral*

You must:

- (a) comply with all laws binding on, or applicable to, the *collateral* where failure to comply is likely to have a *material adverse effect* (and to ensure that each person who uses, has possession of, or occupies the *collateral* does the same); and
- (b) maintain the *collateral* in good working order and condition (ordinary wear and tear excepted) and correct any defect to the extent that failure to do so would be likely to have a *material adverse effect*; and
- (c) protect the *collateral* from theft, loss or damage; and
- (d) not do anything, or permit anything to be done, or fail to do anything, that materially lowers or might materially lower the value of the *collateral*; and
- (e) give us a copy of any notice, order, summons or conviction from, or correspondence with, an authority (such as a local council), or a *governing body*, involving the *collateral* (or the shared property if it is part of a *shared scheme*) that has had or is likely to have a *material adverse effect*; and
- (f) obtain our consent and all necessary approvals from authorities (and the *governing body* if the *land* is part of a *shared scheme*) before you conduct works relating to *land* or any fixture, structure or improvement on *land* or fixed to it forming part of the *collateral*, or enter into a contract to carry them out.
- (g) on the occasions that we consider it reasonable to do so, obtain a revaluation of the *land* at your cost, by a valuer nominated or otherwise approved by us. Such valuation(s) must be in a form and manner approved by us.

20 Other encumbrances

20.1 Priority agreement

If we ask, *you* must obtain an agreement acceptable to *us* regulating priority between this security and any other *encumbrance* over the *collateral*.

20.2 Amount secured by other encumbrance

You must ensure that the amount secured under any other *encumbrance* over the *collateral* is not increased without our consent.

20.3 Obligations under other encumbrance

You must comply with all obligations under any other *encumbrance* over the *collateral*.

20.4 Secured party reliance on third-party certificates

We may rely on a certificate from any other person with an *encumbrance* over the *collateral* as to the amount that is owed to that other person.

21 Collection account

21.1 Opening of the collection account

You must:

- (a) if we ask, immediately open the *collection account*; and
- (b) ensure the signatories to the *collection account* are to comprise the *secured party signatories*, and the persons nominated by *you* (which may include *you*). We agree that each *secured party signatory* will be removed when there is no longer any *secured money*.

If a *collection account* has been opened, *you* must, unless we otherwise direct, deposit in the *collection account* any amounts paid to *you* or to *your order* in connection with *your book debts*.

21.2 Operation of collection account

You agree:

- (a) that the *collection account* may only be operated in the following manner:
 - (i) if no *event of default* has occurred, by a signatory nominated by *you* together with a *secured party signatory*; and
 - (ii) if an *event of default* has occurred, by two *secured party signatories* only, without any requirement for signature by, or for, *you*;
- (b) that if an *event of default* occurs, we may notify *you* that *you* are prohibited from making any withdrawals from the *collection account*; and
- (c) if we ask, to:
 - (i) give a *depositee* an executed notice in a form approved by *us* notifying the *depositee* of this security within 5 *business days* after *you* execute this agreement or the opening of the *collection account* (whichever is the later); and
 - (ii) ensure that the *depositee* delivers to *us* a copy of the notice acknowledged by the *depositee* within 5 *business days* after the notice is given to the *depositee*; and
- (d) not without our written consent, to cause or permit the operating procedures of the *collection account* to be varied, repudiated, rescinded, terminated or rendered void, voidable or unenforceable.

21.3 Notice to depositor after an event of default

If an *event of default* has occurred, we may give notice to a *depositor* that we may operate the *collection account* by the signature only of two *secured party signatories* without any requirement for a signature by, or for, *you*. If this notice is given, *you* agree that the *depositor*:

- (a) need not enquire whether we are in fact entitled to give such a notice; and
- (b) is directed by you to act in accordance with the notice without reference to you.

You acknowledge that any direction given under this clause cannot be revoked or varied by you ~~except~~ with our consent.

21.4 Collection of book debts

You must, unless we otherwise direct, ensure the prompt collection of *your book debts* (and we appoint you as our agent for this purpose).

If an *event of default* is continuing, we may notify you that you are prohibited from collecting *your book debts* and that we intend to collect *your book debts*.

If we give notice under this clause, then you agree to:

- (a) us collecting the *book debts* and notifying debtors of our interest in the *book debts*; and
- (b) us preparing and dispatching invoices in connection with the *book debts*, whether or not an invoice has been prepared previously or dispatched in respect of a book or other debt; and
- (c) use *your* best endeavours to assist us in collecting the *book debts*.

22 Income from collateral

22.1 Before an event of default

Until an *event of default* occurs (or the *collateral* is registered in our name or that of our nominee) you are entitled to retain all income in respect of the *collateral*.

22.2 After an event of default

If an *event of default* occurs (or the *collateral* is registered in our name or our nominee's name) then ~~all~~ *your* rights under clause 22.1 ("Before an event of default") immediately cease, and:

- (a) you must ensure that all income in respect of the *collateral* is paid directly to us; and
- (b) if any income in respect of the *collateral* is paid to you instead, you must pay it to us.

In each case, we agree to use the money we receive as set out in clause 9 ("Application of payments").

22.3 No obligation on secured party

We need not:

- (a) do anything to obtain payment of any income in respect of the *collateral*; or
- (b) exercise rights in respect of the *collateral*; or
- (c) sell the *collateral*,

even if you have reason to believe that the value of the *collateral* may fall. We are not responsible for loss as a result of such a failure to act or delay in so acting.

23 Insurance

You agree:

- (a) (**maintain insurance**) to obtain, comply with and maintain insurances over the *collateral* that is of an insurable nature with a reputable and independent insurer in the manner and to the extent that is in accordance with prudent business practice having regard to the nature of the *collateral* (including all insurance required by applicable law); and
- (b) (**terms of insurance**) to ensure that any insurances are on terms customary for the relevant type of insurance (or on terms more favourable) and in *your* name and (if it is customary practice to name secured parties as insureds) in our name for our respective rights and interests; and

- (c) **(fire and usual risks)** in the case of *land* and any *works*, to maintain insurance over the *land* and any *works* against fire and other usual risks; and
- (d) **(shared scheme insurance level)** if the *land* and the *works* are insured by a *governing body* as part of a *shared scheme* anywhere other than Victoria, that the insurance to be taken out by *you* under clause 23 (c) ("Fire and usual risks") must be for the total amount secured by all mortgages and charges over the *land* (sometimes known as a mortgagee's policy); and
- (e) **(shared scheme insurance level – Victoria)** if the *land* is part of a *shared scheme* in Victoria, that the insurance to be taken out by *you* under clause 23 (c) ("Fire and usual risks") must be for the full insurable value of the *land* and any *works* on a replacement and reinstatement basis, unless the *governing body* has insured the *land* and the shared property. In that case, *you* need only take out insurance for any sum by which the *secured money* exceeds the amount of the *governing body* insurance attributable to the *land* and *your* share in the shared property (sometimes known as a mortgagee's policy); and
- (f) **(public liability and other risks)** in the case of *land* and any *works*, to maintain insurance against public liability risk and any other risk we reasonably require; and
- (g) **(the policy)** that each policy under clauses 23(c) ("Fire and usual risks") and 23(f) ("Public liability and other risks") must:
 - (i) be on terms and for an amount satisfactory to us; and
 - (ii) be with an insurer approved by us acting reasonably;
- (h) **(governing body insurance)** if the *land* is part of a *shared scheme*, to use *your* reasonable endeavours to ensure that the *governing body* maintains whatever insurance it is required to by law; and
- (i) **(evidence)** to produce evidence satisfactory to us of current insurance cover (including a certified copy of each policy or a certificate of currency) whenever we ask; and
- (j) **(notifications relating to cover)** to notify us if:
 - (i) any insurance under clauses 23(c) ("Fire and usual risks") or 23(f) ("Public liability and other risks") is reduced or cancelled; or
 - (ii) anything happens that could permit an insurer to refuse an insurance claim; and
- (k) **(application to all insurances)**: that the obligations in clauses 23(i) ("Evidence") and 23(j) ("Notifications relating to cover") apply to insurance taken out by either *you* or a *governing body*; and
- (l) **(notifications relating to claims)** to notify us if anything happens that gives rise, or may give rise, to an insurance claim of \$10,000.00 or more, or if an insurance claim of \$10,000.00 or more is refused either in whole or in part; and
- (m) **(use of claim proceeds)** if *you* receive proceeds from any insurance claim (including a claim by a *governing body* if the *collateral* is part of a *shared scheme*) in respect of loss or theft of, or damage to, assets, to use the proceeds to reinstate, or carry out work on, the affected assets and/or, if we ask, to:
 - (i) pay us (and we must then use them as set out in clause 9 ("Application of payments")); or
 - (ii) hold them as we direct; and
- (n) **(secured party's right to take over claim)** that if an *event of default* is continuing and we notify *you*, we may take over *your* rights to make, pursue or settle an insurance claim. We may exercise those rights in any manner we reasonably determine.

24 Licences

24.1 Licence undertakings

If a *licence* is required for any activity carried out in connection with *land* or *other land* and you are the holder of the *licence*, then you must:

- (a) (**conduct of activity**) when carrying out that activity, do so in a proper, orderly and efficient manner; and
- (b) (**maintain licences**) obtain, comply with and maintain the *licence* (including renewing it on *time* and opposing any application to restrict or cancel the *licence*); and
- (c) (**no dealings with licences**): not, without our consent:
 - (i) create or allow another interest in the *licence*; or
 - (ii) dispose, or part with possession, of the *licence*; or
 - (iii) remove or apply to remove the *licence* from your property; or
 - (iv) surrender or attempt to surrender the *licence*; or
 - (v) amend, or allow any amendment of, the *licence* if that amendment materially lowers or might materially lower the value of the *licence* or the *collateral*; or
 - (vi) do anything that could cause the *licence* to be suspended, forfeited or cancelled without replacement by a similar licence if that materially lowers or might materially lower the value of the *licence* or the *collateral*; and
- (d) (**notices or orders**) give us a copy of each material notice, order, summons or conviction in connection with the *licence*.

24.2 Obligations if licence held by a third party

If you are not the holder of a *licence* that is required for an activity carried out on or in connection with the *collateral*, you must ensure that the holder:

- (a) complies with the obligations set out in clause 24.1 ("Licence undertakings") as if it were you; and
- (b) gives us an authority to apply for information from authorities and a power of *attorney* relating to the *licence*, each in a form satisfactory to us.

24.3 Transfer of licence after default

If an *event of default* is continuing and we ask, you must use your reasonable endeavours to ensure that any *licence* that is required for an activity carried out, on or in connection with the *collateral* is transferred to us or our nominee.

25 Administrative matters

25.1 Deposit of documents

In addition to your obligation to deposit documents under any undertaking in this agreement, you must deposit with us all other documents we request relating to the *collateral*.

25.2 Supply of information

If we ask, you must supply us with any information about or documents affecting:

- (a) the *collateral*; or
- (b) any *works* or any *licence*; or
- (c) the *shared scheme*, if the *land* is part of a *shared scheme*; or
- (d) any lease, tenancy or other arrangement connected with the *land*; or
- (e) the *finance documents*; or

- (f) *your* financial affairs or business.

26 Rights we may exercise at any time

26.1 The secured party may enter

If we reasonably believe that an *event of default* is, or may be, continuing, we may enter *land* and buildings owned or occupied by *you*, any place where the *collateral* is located, *your* places of business, or *your* registered office, to:

- (a) inspect the *collateral* or any *works*; or
- (b) find out whether *you* are complying with this agreement; or
- (c) carry out our rights under this agreement; or
- (d) inspect and copy records relating to *you* or the *collateral*; or
- (e) investigate *your* financial affairs or business.

You must help us enter, such as by obtaining any necessary consent.

26.2 Reasonable notice of entry

Unless there is an emergency, we must give *you* reasonable notice before entering under clause 26.1 ("Secured party may enter").

26.3 We are not a mortgagee in possession.

We do not become a mortgagee in possession because we exercise our rights under clause 26.1 ("Secured party may enter") and clause 57.1 ("Right to rectify").

27 Registration

27.1 We may register

We may, at *your* expense, apply for any registration, or give any notification, in connection with any *security document*. This includes registration of any mortgage, and registration under the *PPSA* for whatever collateral class we think fit. *You* consent to any such registration or notification and agree not to make an amendment demand.

27.2 Registration information

We need to know if:

- (a) *your* name changes;
- (b) *you* become a trustee of a trust with an ABN or ARSN;
- (c) *you* become a partner in a partnership with an ABN;
- (d) where *you* have signed as a trust, the trust gets an ABN or ARSN; or
- (e) where *you* have signed as a partner, the partnership gets an ABN.

You must tell us at least 14 days before any of these things occur. *You* must also tell us as soon as *you* become aware if any ACN, ARBN, ABN or ARSN *you* have given us changes or no longer applies to *you*.

28 Statutory powers and notices

28.1 Exclusion of *PPSA* provisions

All references to a section in this clause are to sections of the *PPSA*. To the extent the law permits and for the purposes of sections 115(1) and 115(7):

- (a) we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4);
- (b) sections 142 and 143 are excluded;
- (c) for the purposes of section 115(7), we need not comply with sections 132 and 137(3);

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- (d) if the *PPSA* is amended after the date of this agreement to permit *you* and *us* to agree to not comply with or to exclude other provisions of the *PPSA*, we may notify *you* that any of these provisions are excluded, or that we need not comply with any of these provisions as notified to *you* by us; and
- (e) *you* must not exercise *your* rights to make any request of *us* under section 275, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

28.2 Exercise of rights by the secured party

If we exercise a right, power or remedy in connection with this agreement, that exercise is taken not to be an exercise of a right, power or remedy under the *PPSA* unless we state otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy that can only be exercised under the *PPSA*.

29 Disposal of the collateral is final

You agree that if *we* or a receiver sell or otherwise dispose of the *collateral*:

- (a) *you* will not challenge the acquirer's right to acquire the *collateral* and *you* will not seek to reclaim that property; and
- (b) the person who acquires the *collateral* need not check whether *we* or the receiver had the right to dispose of the *collateral* or whether *we* or the receiver exercised that right properly.

30 Power of attorney

30.1 Appointment

You irrevocably appoint *us*, each of our *authorised officers*, and each receiver individually as *your attorney* and must ratify anything an *attorney* does under clause 30.2 ("Powers").

30.2 Powers

If an *event of default* is continuing, an *attorney* may:

- (a) do anything that *you* can lawfully authorise an *attorney* to do in connection with this agreement, the *collateral*, or anything the attorney believes is necessary to give effect to any of our or a receiver's rights, powers or remedies things can be done in *your* name or the *attorney's* name);
- (b) delegate their powers (including this power) and revoke a delegation; and
- (c) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.

30.3 Your acknowledgements

You acknowledge that any person, including the Registrar of Titles of Western Australia or any other registration authority in Australia or elsewhere dealing with any *attorney* or a person purporting to be an *attorney* under this power, is

- (a) entitled to rely on execution of any document by that person as conclusive evidence that
 - (i) the person holds the office set out in the power;
 - (ii) the power of attorney has come into effect;
 - (iii) the power of attorney has not been revoked;
 - (iv) the right or power being exercised (or purportedly exercised) is properly exercised and that the circumstances have arisen to authorise the exercise of that right or power; and
- (b) not required to make any enquiries about any of the matters set out in clause (a).

30.4 When we or a receiver are in possession

If we exercise any right, power or remedy in connection with this agreement or at law to enter or take possession of the *collateral*, we:

- (a) have complete and unfettered discretion as to how the *collateral* is dealt with or managed; and
- (b) are liable to account only for rents and profits we actually receive.

The same applies to any *receiver* when acting as our agent.

30.5 Receipts

The receipt of a *receiver*, us or one of our *authorised officers* releases the person paying money to the *receiver* or us in connection with this agreement from:

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

The following clauses 31 to 38 are additional terms that apply to *collateral* that is *land*.

31 Land – additional terms

31.1 Land confirmations

You confirm (except in relation to matters disclosed to us and accepted by us in writing) that:

- (a) (**encroachment**) there is no structure on adjoining *land* that encroaches on the *land* or any structure on the *land* that encroaches on adjoining *land*; and
- (b) (**no contaminants**) there is no *contaminant* on, in or under or migrating to or from, the *land*.

31.2 Land undertakings

You must:

- (a) (**compliance by occupiers**) ensure that each person who uses or occupies the *land* complies with all laws and requirements of authorities and any *governing body* and any other obligations in connection with the *land* to the extent that failure to do so would be likely to have a *material adverse effect*; and
- (b) (**use of land**) obtain our consent before you change the purpose for which the *land* is used; and
- (c) (**caveats, notifications or dealings**) do everything necessary to remove any caveat, notification or dealing placed on the title to the *land* without our consent.

32 Building and other work

32.1 General obligations

You must:

- (a) comply with all laws, requirements of authorities and any *governing body*, easements and covenants that affect any *works*; and
- (b) conduct all *works* actively and continuously; and
- (c) ensure that all *works* are done competently and completed within a reasonable time and in accordance with any plans and specifications approved by us; and
- (d) obtain and give us relevant certificates that we require (such as certificates of satisfactory *completion* or compliance or occupancy permits); and

- (e) ensure that any contract to carry out *works* is not varied without our consent, and perform *your* obligations under any such contract, and promptly notify *us* if any default occurs under any such contract.

32.2 Right to take over works

If we reasonably believe that *you* are not proceeding with *works* satisfactorily, we may take them over, including by varying, demolishing or stopping them as we consider appropriate. If we do so, *you* must pay our *costs* on demand.

32.3 Exclusion of liability

Other than where there has been negligence or wilful misconduct, we are not liable for any loss:

- (a) in connection with *works* (including loss arising out of plans or specifications that we may approve); or
- (b) that arises because we do not finish *works* that we take over.

32.4 No duty of care

If we monitor *works* (such as inspecting or accepting any part of their construction or approving *plans*), we do so for our own purposes. *We* do not owe *you* any duty to exercise care or skill in doing so.¹

33 Shared schemes

If the *land* is part of a *shared scheme* (for example, a townhouse or home unit), *you* must:

- (a) comply with the by-laws, rules, service agreement or articles of the *shared scheme*; and
- (b) vote at any *governing body* meeting following any directions *we* give; and
- (c) use *your* reasonable endeavours to ensure that the *governing body* complies with *your* obligations (such as keeping the shared property in good condition); and
- (d) notify *us* if the *governing body* does not comply with its obligations (including its insurance obligations); and
- (e) use *your* reasonable endeavours to ensure that *your* rights under the *shared scheme* are not varied; and
- (f) notify *us* of any proposal to substitute, terminate or vary the *shared scheme* or its by-laws, rules, service agreement or articles; and
- (g) notify the *governing body* of any changes *you* propose to make to the *land* or any shared property.

34 Crown land

If the *land* is held under law relating to Crown *land*, *you* agree:

- (a) not to allow *your* existing estate or interest in the *land* to change without our consent; and
- (b) to obtain our consent before applying to convert any existing estate or interest; and
- (c) that we may pay any purchase money or other amount payable in connection with the *land* (and if we do this, to reimburse *us* on demand).

35 Rural land

If any of the *land* is used for grazing, farming, horticultural or agricultural purposes, *you* must:

- (a) manage and preserve it properly and efficiently, including by taking reasonable action (such as fencing and reasonable spraying) to keep it free from disease, pests and harmful vegetation; and
- (b) not deal with any quota or contract for producing or selling crops or produce capable of being produced on the *land* or do anything that could cause a quota or contract to be forfeited or cancelled, in each case without our consent.

36 Mining

Unless we consent, you must not:

- (a) mine or consent to mining on the *land*; or
- (b) enter into any compensation agreement in connection with mining on the *land*.

37 Encroachments

37.1 Obligations relating to encroachments

If any part of a structure on the *land* encroaches on adjoining *land*, then, if we ask, you must:

- (a) correct the encroachment; or
- (b) obtain an easement or other permission acceptable to us to allow it to continue; or
- (c) become the owner of the encroached *land*.

37.2 Removal of encroachment

If we ask, you must have any encroachment on the *land* from adjoining *land* removed.

38 Rights such as compensation

38.1 Obligation to notify

You must notify us if you have a right to claim or receive a payment in connection with your ownership of the *land* (such as compensation if there is a *compulsory acquisition*).

38.2 Our right to oversee a claim

You must claim payment in the manner we direct. However, if we notify you, we may take over your rights to make, pursue or settle your claim. We may then exercise those rights in any manner we reasonably choose (including signing releases for the payment in your or our name).

38.3 Payments to us

You must use your reasonable endeavours to ensure that any payments made under this clause 38 are paid to us. If, despite this, they are paid to you, you must pay them to us. In each case, we must then use the payments as set out in clause 9 ("Application of payments").

The following clauses 39 to 41 are additional terms that apply to *collateral that is water rights*.

39 Water rights – additional terms

39.1 Water rights confirmations

You confirm (except in relation to matters disclosed to us and accepted by us in writing) that no other party to any *water rights* has any right, without your consent, that they can exercise or may be able to exercise (e.g., because of a default) to:

- (a) change or end the *water rights*; or
- (b) refuse to comply with any of its obligations under the *water rights*.

39.2 Water rights undertakings

You must:

- (a) notify us about any change to any *water management plan* that relates to the *water rights*;
- (b) object to any condition being imposed by any authority on the *water rights* or any *water management plan* that will have or is likely to have a *material adverse effect*. You also must take any other action we consider necessary (or allow us to do so), and notify us of the action taken by you and the authority; and

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- (c) if you are a member of a *water scheme*, do everything we consider necessary to enable us or someone we nominate to become a member in *your* place of any *water scheme* or give us further security over *your* membership of the *water scheme*; and
- (d) do everything necessary to remove any caveat, notification or dealing placed on the title to the *water rights* without our consent; and
- (e) not do anything (or permit anything to be done or fail to do anything) that may lead to any *water management plan* being changed in a way that adversely affects the *water right*.

39.3 Other rights relating to *associated shares*

If there is an *event of default* (or the *associated shares* are registered in our name or the name of our nominee):

- (a) you agree to follow any direction we give you about your voting rights in respect of the *associated shares* (and we can exercise voting powers);
- (b) you authorise us to do all things necessary to become registered as the holder of the *associated shares* (including through our nominee); and
- (c) we can take up further shares, stock, units or other securities in the issuer of the *associated shares*.

39.4 No obligation on us relating to *associated shares*

We are not obliged to:

- (a) exercise rights in respect of the *associated shares*;
- (b) sell the *associated shares*; or
- (c) vote at any meeting of shareholders or members of an issuer of the *associated shares*,

even if we have reason to believe that the value of the *associated shares* may fall. We are not responsible for loss as a result of such a failure to act or delay in doing so.

40 Rights such as compensation

40.1 Obligation to notify

You must notify us if you have a right to claim or receive a payment in connection with your ownership of the *water rights* (such as compensation if there is a *compulsory acquisition*).

40.2 Our right to oversee claim

You must claim payment in the manner we direct. However, if we notify you, we may take over your rights to make, pursue or settle your claim. We may then exercise those rights in any manner we choose (including signing releases for the payment in your or our name).

40.3 Payments to us

You must use your reasonable endeavours to ensure that any payments made under this clause 40 are paid to us. If, despite this, they are paid to you, you must pay them to us. In each case, we must then use the payments as set out in clause 9 ("Application of payments").

Part F – Guarantee

WARNING - By providing a guarantee you expose yourself to the risk of losing your property in the event of a default.

Background

This Part F applies to each *guarantor*. The *guarantor* gives this guarantee in consideration of us entering into this agreement at the *guarantor's* request.

References in this Part F to the "borrower" are references to "you".

Important information for guarantors

If we ask for a guarantee, each *guarantor* needs to read this agreement.

- The *guarantor* should seek independent legal, financial and tax advice on the effect of this guarantee before it agrees to sign it.
- The *guarantor* can refuse to sign this guarantee.
- There are financial risks involved in signing this guarantee (e.g., it may become necessary for the *guarantor* to sell its assets so that it can pay us).

41 Extent and effect of guarantee

41.1 If limited

If there is a limit set out in the *offer*, that limit is the maximum amount we can recover from the *guarantor* under this guarantee.

41.2 If there is more than one guarantor

If more than one person is named as "*guarantor*", each of them is liable for all the obligations under this guarantee both individually and jointly with any one or more other persons named as "*guarantor*".

41.3 If there is more than one borrower

If there is more than one borrower, this is a separate guarantee by the *guarantor* of each borrower.

42 Guarantee

The *guarantor* unconditionally and irrevocably guarantees, on an unlimited basis, payment to us of the *secured money*.

If the borrower does not pay any of the *secured money* on time and in accordance with any arrangement under which it is expressed to be payable, then the *guarantor* must pay the *secured money* to us promptly when we ask for it (whether or not we have made a demand on the borrower).

The guarantee contained in this clause is independent of, and not in substitution for, or affected by any other security document which we may hold in respect of the *secured money* or any obligations of the *borrower* or *guarantor*, or any other person.

43 Indemnity

The *guarantor* unconditionally and irrevocably indemnifies us against, and must reimburse and compensate us for, any liability, direct loss or reasonable costs we incur if:

- (a) the borrower does not, or is unable to, pay us the *secured money* in accordance with any arrangement under which it is expressed to be payable;
- (b) the *guarantor* is not obliged to, or does not pay us the *secured money* or any other amount the *guarantor* is required to pay under another term of this guarantee; or
- (c) we are required, or we agree, to pay an amount to a trustee in bankruptcy or a liquidator (or an *insolvent person*) in connection with a payment by the *guarantor* or the borrower.

The *guarantor*, must pay us these amounts within 2 *business days* after we ask for them.

44 Not used

45 We can claim against the guarantor first

We can make a claim against the *guarantor* under this guarantee before we exercise any of our rights against the borrower or any other person or under any other document (such as an *encumbrance*).

46 Our rights are protected

The *guarantor's* liability under this guarantee is not affected by anything that might reduce or otherwise affect it if this provision was not in this guarantee, including:

- (a) if we allow the borrower a concession, such as more time to pay, or do not rely on any other right we have;
- (b) if the borrower opens another account with us;
- (c) if we lose the benefit of, do not obtain, or do not register, any *encumbrance*;
- (d) if we do not enforce the obligations of any person who guarantees any of the borrower's obligations;
- (e) if any person who was intended to guarantee any of the borrower's obligations does not do so or does not do so effectively;
- (f) the death, mental or physical disability or *insolvency* of any person including the *guarantor* or the borrower; or
- (g) changes in the membership, name or business of a firm, partnership, committee or association.

This does not apply to actions we take with the specific and express purpose of varying, waiving or ending the *guarantor's* obligations.

47 The guarantor's rights are suspended

As long as any of the *secured money* remains unpaid, the *guarantor* may not, without our consent:

- (a) reduce its liability under this guarantee by claiming that they or the borrower has a claim against us (e.g., a right of set-off);
- (b) claim the benefit of another guarantee or *encumbrance* given to us in connection with the *secured money* (including this guarantee);
- (c) claim an amount from any person under any right to recover money the *guarantor* has paid or is required to pay us; or
- (d) claim an amount in the *insolvency* of the borrower or another *guarantor* of the borrower's obligations under any arrangement under which it is expressed to be payable.

Additional security

This guarantee is in addition to and is not affected by any other guarantee or *encumbrance* given to us in connection with the *secured money*.

Part G – Construction terms

Background

This Part G applies to you if we provide finance to you in connection with a building, construction or development project and the offer says that this applies.



48 Commencement date for construction

You must ensure that the *project* commences within 3 months of the date of the *offer* (or as otherwise agreed).

49 Direct payment of drawings

We may provide a drawing by directly paying any invoice issued by any *builder*, supplier, consultant, subcontractor or authority in connection with the *project*.

50 Shortfall to complete

If the *consultant's certificate* at any time confirms that the unused portion of the *facility limit* is insufficient to allow *completion*, within 14 days after we receive that certificate, you must:

- (a) pay that portion of the *secured money* as is necessary to ensure that the unused portion of the *facility limit* is sufficient to allow *completion*;
- (b) provide additional security acceptable to us; or
- (c) pay the next progress payment claim from *your own funds*.

We will not provide any further drawing until this has been done.

51 Completion

You must:

- (a) ensure that *completion* is achieved by the *estimated practical completion date*; and
- (b) immediately tell us if you become aware of any delay to the *estimated practical completion date*, cost increases or threat to the validity of any pre-sale or lease pre-commitment contract.

52 We are not responsible

We are not responsible for the *completion* of the *project* or the supervision or quality of the *project*, suitability for purpose, or conformance with any *project document*.

53 Additional things you must do

You must:

- (a) comply with the terms and conditions of all *licences* and decisions affecting the *collateral*, the *land* and the *project*;
- (b) ensure that:
 - (i) the *builder* has no right to exclusive access to or possession of the *collateral* or any adjoining property;
 - (ii) the *builder* is not granted any *encumbrance* over the *collateral* (including any caveatable interest); and
 - (iii) the *builder* is given, and acknowledges that it has, satisfactory access to the *land* to construct the *project*;
- (c) obtain our consent before you replace any builder, supplier, consultant or subcontractor we have previously approved for the project, consent in this context will not be unreasonably withheld subject to our satisfaction of the replacement builder, supplier, consultant or subcontractor;
- (d) immediately tell us of anything that is likely to:
 - (i) materially impact the *project documents*;
 - (ii) vary the financial projections and budgets for the *project*; or
 - (iii) delay the commencement of the *project* or *completion*,

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and give *us* details of that event, the expected impact on the *project*, the financial projections and budgets and how any additional costs as a result of the delay are to be funded;

- (e) obtain our consent before *you* vary the *project* or approved plans and specifications for the *project*;
- (f) immediately tell *us* if *you* become aware of any reduction in the specification quality of the *project*;
- (g) give *us* a bank guarantee (or other security acceptable to *us*) to secure the delivery of offsite goods to the *project* at the time *you* pay for those goods;
- (h) if we ask, give *us* information of current sales (in form and substance satisfactory to *us*);
- (i) unless we otherwise agree, ensure each contract of sale for any part of the *land* is:
 - (i) for an amount equal to or greater than the valuation amount provided by a valuer instructed by *us*;
 - (ii) to a purchaser who is at arm's length to each of *you*, any *guarantor* and any of *your related entities*; and
 - (iii) otherwise in a form and substance satisfactory to *us*; and
- (j) do everything necessary to meet the preconditions for settlement of each *qualifying pre-sale contract* as soon as possible after completion. *You* cannot terminate, rescind or vary any *qualifying pre-sale contract* (or agree to do any of these things) without our consent

54 Additional events of default

In addition to the events or circumstances listed in clause 14.1 ("Events of Default"), each of the following is also an *event of default*:

- (a) the *builder*:
 - (i) is or becomes *insolvent*; or
 - (ii) stops acting as *builder* of the *project* for any reason, without our consent; or
 - (iii) ceases work,
 (except if we have agreed in writing that in the particular circumstances it is not an *event of default* (e.g., we may do so if the *builder* is replaced by another *builder* acceptable to *us* on terms, and within a timeframe, we reasonably require)); and/or
- (b) there is a delay in the timetable approved by *us* for construction of the *project*, and in our reasonable opinion this delay is excessive; and/or
- (c) costs for construction of the *project* exceed the cost estimate approved by *us*, and in our reasonable opinion the excess cost is material.

Part H – General

55 Further steps

You and the *guarantor* must do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) that we ask and consider reasonably necessary to:

- (a) provide more effective security over the *collateral* for payment of the *secured money* including assigning or transferring by way of security to *us* any *collateral*; or
- (b) ensure that each *finance document* is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
- (c) ensure that any *security document* has the priority required by *us*; or
- (d) enable *us* to exercise our rights in connection with the *collateral*; or

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- (e) bind *you* and any other person intended to be bound under the *finance documents*; or
- (f) enable *us* to obtain the consent to this agreement of any other person; or
- (g) enable *us* to register the power of attorney in clause 30 ("Power of attorney") or a similar power; or
- (h) show whether *you* are complying with the *finance documents*.

56 Sanctions and other regulatory obligations

If as a result of anything other than our own conduct, we consider it may be necessary in order to meet our regulatory and compliance, Australian or international law or sanctions, we may delay, block, terminate or refuse to provide any facility or other service or if drawn down, demand you repay any facility within a reasonable period, being no less than 30 days.

We are not liable to *you*, the *guarantor* or any other person for any loss or damage of any kind that may arise as a result of *us* exercising these rights. We need not (and may not be allowed to) give *you* notice before we exercise these rights.

57 Extra things we can do

57.1 Right to rectify

We may do anything that *you* or the *guarantor* should have done under this agreement but that *you* or the *guarantor* either have not done, or, in our opinion, have not done properly.

57.2 Complete blanks

- (a) *You* and the *guarantor* agree that we may complete and fill in any blanks in this agreement or a document connected with it (such as financing statements, financing change statements or transfers of the collateral) with any information that has been agreed by the parties affected.
- (b) *You* and the *guarantor* agree and authorise *us* to make fully effective any instrument or document relating in any way to financial accommodation provided by *us* to *you*, including:
 - (i) dating any such instrument or document with the date of settlement or such other date *we* reasonably consider appropriate;
 - (ii) correcting any typographical, grammatical or other manifest errors in any document or instrument; and
 - (iii) inserting any outstanding information in such instrument or document.

58 Reinstatement of rights

Under law relating to *insolvency*, a person may claim that a transaction (including a payment) in connection with the *secured money* or the *secured money* is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (c) *we* are immediately entitled as against *you* to the rights in respect of the *secured money* (and the *guarantor* to the rights in respect of the *secured money*) to which *we* were entitled immediately before the transaction; and
- (d) on request from *us*, *you* and the *guarantor* must do anything (including signing any document) to restore to *us* any *encumbrance* (including under any *security document*) *we* held from *you* immediately before the transaction.

Your and the *guarantor's* obligations under this clause are continuing obligations, independent of *your* other obligations under this agreement, and they continue after this agreement ends.

59 Notices and other communications

59.1 Form – all communications

Unless otherwise agreed, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement:

- (a) must be in writing; and
- (b) if from *you* or the *guarantor*, must be signed by *you* (or one of *your authorised officers*).

All communications (other than email communications) must also be marked for the attention of the person referred to in the *offer* if one is specified (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

59.2 Delivery

Communications must be:

- (a) left at the address referred to in the *offer*; or
- (b) sent by prepaid ordinary post (airmail, if appropriate) to the address referred to in the *offer*; or
- (c) sent by email to the address referred to in the *offer*; or
- (d) given in any other way permitted by law.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

Ensuring *your* contact details are up to date

It is important that the contact details *you* and the *guarantor* have given *us* are up to date. If *you* or the *guarantor's* contact details change or if any means of electronically communicating (e.g., fax or email) with *you* or the *guarantor* is not working, *you* must promptly tell *us*.

59.3 Ensuring *your* contact details are up to date

It is important that the contact details *you* and the *guarantor* have given *us* are up to date. If *you* or the *guarantor's* contact details change or if any means of electronically communicating (e.g., fax or email) with *you* or the *guarantor* is not working, *you* must promptly tell *us*.

59.4 When effective

Communications take effect from the time they are received or taken to be received under clause 59.5 ("When taken to be received") (whichever happens first) unless a later time is specified in the communication.

59.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 *business days* after posting (or 10 days after posting if sent from one country to another); or
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever happens first.

59.6 Receipt outside business hours

Despite anything else in this clause 59, if communications are received or taken to be received under clause 59.4 after 5.00 pm on a *business day* or on a *non-business day*, they are taken to be received at 9.00 am on the next *business day*. For the purposes of this clause, the place in the definition of *business day* is taken to be the place referred to in the *offer* as the address of the recipient, and the time of receipt is the time in that place.

Risks with electronic communications

Communicating electronically may not be as secure as other forms of communication (e.g., there is a risk that the communication may be unauthorised or given by an unauthorised person). *You and the guarantor accept the risks and acknowledge that you and the guarantor are bound by, and we may act in any way we reasonably consider appropriate on, any electronic communication that we reasonably believe is from you or the guarantor.*

For example, *we may act in accordance with the communication, we need not act at all, or we may defer acting until we get confirmation we consider appropriate.*

Any specific rules for using an electronic service or portal we make available to you prevail to the extent that they are inconsistent with this agreement.

59.7 When taken to be received

We are not responsible for any loss arising in connection with:

- (a) any communication that we reasonably believe is from *you* or the *guarantor*; or
- (b) our refusal to act or delay in acting on any communication we do not reasonably believe is from *you* or the *guarantor*,

except to the extent caused by the fraud, negligence or wilful misconduct of us, our related entities or our, or our related entities', employees or agents.

60 Transfer or other dealings

You and the guarantor cannot transfer or otherwise deal with your rights or obligations under this agreement or allow any interest in it to arise without our consent. We can do any of these things without your consent (and we often need to as part of our ordinary business).

61 General

61.1 Prompt performance

If this agreement specifies when a party must perform an obligation, the party must perform it by the time specified. Each party must perform all other obligations promptly.

Time is of the essence in this agreement in respect of an obligation of *you* or a *guarantor* to pay money.

61.2 Certificates

We may rely on certificates provided by any other person with an *encumbrance* in the *collateral* as to the amount that is owed to them.

61.3 Set-off

If an *event of default* is continuing, we may set off any amount payable by *us* to *you* or a *guarantor* (whether or not due for payment) against any amount due for payment by *you* or the *guarantor* to *us* in connection with this agreement.

We may do anything necessary to effect any set-off under this clause. This clause applies despite any other agreement between *you* and *us* or the *guarantor* or *us*.

A security interest created by this agreement over any account with *us* into which money is credited is subject to our rights under this clause. This clause also applies despite any other agreement between *you* and *us* or the *guarantor* or *us*.

61.4 We can pay and receive commissions

We can give or receive monetary and non-monetary rewards to or from any person in connection with this agreement.

These may be paid upfront or over time (or both) and may be based on the volume and value of introductions we or the person gives.

If *you* are introduced to *us* by anyone (e.g., a broker, referral agent or dealer), *you* agree to *us* paying monetary and non-monetary (e.g., commission) to that person.

We can pass the cost of these rewards to *you* directly (e.g., by including the cost in determining the payments *you* have to make under this agreement) or we can fund the cost out of any amount we receive from *you* under this agreement.

61.5 How we can exercise rights

Our rights, power and remedies under this agreement are in addition to other rights, powers or remedies given by law, and:

- (a) we can exercise them in any way we consider appropriate (including by imposing conditions on any consent, approval or waiver);
- (b) if we do not exercise them fully or at a certain time, we can exercise them later;
- (c) we can exercise them even if it involves a conflict of duty or we have a personal interest in their exercise; and
- (d) any person we authorise as our representative can exercise them (including any of our employees).

The same applies when a *receiver* exercises rights, powers or remedies under this agreement.

Neither we nor any *receiver* is responsible for any loss arising in connection with *us* exercising (or not exercising) our rights, powers or remedies, except to the extent caused by the fraud, negligence or wilful misconduct of *us*, our related entities or our or related entities' agents or the *receiver*.

61.6 Other encumbrances or judgments

This document does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any *encumbrance* or other right, power or remedy to which we are entitled; or
- (b) a judgment that we obtain against *you* or a *guarantor* in connection with the *secured money*.

We may still exercise our rights, powers or remedies under this agreement as well as under the judgment, other *encumbrance* or the right, power or remedy.

61.7 Continuing security

Any *encumbrance* given to *us* in the *collateral* is a continuing security despite any intervening payment, settlement or other thing until we release all of the *collateral* from the *encumbrance*.

61.8 Indemnities and reimbursement obligations

Any indemnity, reimbursement, payment or similar obligation in this agreement given by *you* or a *guarantor*:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this agreement, any settlement or any other thing; and
- (b) is independent of *your* or the *guarantor's* other obligations under this agreement or any other document;

- (c) is effective despite any invalidity, illegality, unenforceability, irregularity or frustration of all or any part of *your* or the *guarantor's* obligations under this agreement; and
- (d) continues after this agreement, or any obligation arising under it, ends.

61.9 Rights and obligations are unaffected

Unless prohibited by law, our or a *receiver's* rights, powers and remedies and *your* or a *guarantor's* obligations in connection with this agreement are not affected by anything that might otherwise affect them at law.

61.10 Supervening law

Any present or future law that operates to vary *your* or a *guarantor's* obligations in connection with this agreement with the result that our rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

61.11 Variation and waiver

A provision of this agreement, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party or parties to be bound.

61.12 Confidentiality

Each party agrees not to disclose information provided by any other party (including the existence or contents of any *finance document*), except:

- (a) information that is publicly available;
- (b) to any person in connection with an exercise of rights or a dealing with rights or obligations under this agreement in connection with preparatory steps such as negotiating with any potential transferee of our rights or any other person who is considering contracting with *us* or a *receiver* in connection with this agreement; or
- (c) to officers, employees, agents, contractors, legal and other advisers and auditors of *you*, the *guarantor*, *us* or a *receiver*; or
- (d) to any party to this agreement or any *related entity* of any of them, provided the recipient must act consistently with this clause 61.12;
- (e) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (f) any disclosure the disclosing party reasonably believes is required by any law, stock exchange or rating agency (except that this paragraph does not permit *us* to disclose any information under section 275(4) of the *PPSA* unless section 275(7) of the *PPSA* applies).

Each party consents to disclosures made in accordance with this clause 61.12.

61.13 Assignment

We may at any time assign, novate or otherwise deal with our rights and obligations under this agreement, any security, and any document or agreement entered into or provided under or in connection with this agreement. You must sign anything and do anything we reasonably require to enable any dealing with this agreement, any security, and any document or agreement entered into or provided under or in connection with this agreement. Any dealing with our rights does not change your obligations under this agreement in any way

61.14 No immunity

You and the *guarantor* irrevocably waive any right to set-off, or claim immunity from suit or execution for *yourself* or any of *your* assets for any reason where any proceedings may be brought or enforced in relation to any *event of default* under this agreement.

61.15 Each signatory bound

When *you* or the *guarantor* sign the *offer*:

- (a) *you* and the *guarantor* are bound by this agreement even if another person who was intended to sign the *offer* does not sign it or is not bound by this agreement; and
- (b) *you* and the *guarantor* must comply with this agreement regardless of whether another person who is bound by it has complied.

61.16 Identification information

On request by us, you must provide us with any information we reasonably require about you or anyone authorised to operate your loan account and, if you are a company or trustee, information about beneficial owners of you.

61.17 Anti-money laundering and counter-terrorism financing

- (a) You must not use your loan for the purposes of money laundering or terrorism financing. You indemnify us from and against any loss which we incur as a result of your breach of this obligation, except where such loss arises from the mistake, error, fraud, negligence or wilful misconduct of us, our employees, our agents or a receiver we appoint, or is otherwise recovered by us.
- (b) The amount you owe us may become payable if we reasonably believe that continuing with your loan contract would cause us to breach an applicable law or would represent an unacceptable level of risk for us because:
 - i. we reasonably believe that you have migrated to a country that we determine is 'high risk' given our obligations under anti-money laundering and counter-terrorism financing laws in respect of the services we provide;
 - ii. you fail to provide any information or document to us that we have requested for the purpose of our compliance with applicable laws (including any details necessary for us to verify your nationality in accordance with anti-money laundering and counter-terrorism financing laws); or
 - iii. we reasonably believe that you are 'high risk' given our obligations under anti-money laundering and counter-terrorism financing laws.
- (c) If any of the events in clause 61.17(b) occur, we will endeavour to give you not less than 90 days notice to repay the amount you owe us.
- (d) We may delay, block, freeze or refuse a transaction from your loan account if we have reasonable grounds to believe that the transaction breaches Australian anti-money laundering and counter-terrorism financing laws, other laws or sanctions (or the law or sanctions of any other country). If transactions are delayed, blocked, frozen or refused, we are not liable to any loss you suffer in connection with your use of your loan account.

61.18 Counterparts

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document.

61.19 Governing law and jurisdiction

The law in force in *your state* governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

61.20 Deed

The *offer* and the *national mortgage form* incorporating this document is a deed and each *obligor* acknowledges that they have executed them as a deed and they shall not contend:

- (a) in any court of law;
- (b) in any tribunal; or

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(c) to any Government Authority,

that this mortgage is not a deed or that it has not been executed as a deed.

61.21 Serving documents

Any document in an action in connection with this agreement may be served on *you* or the *guarantor* by being delivered or left at *your* or the *guarantor's* address on the finance offer schedule, and/or by sending an email to the email address on the finance offer schedule, and/or at *your* or the *guarantor's* address last notified. This does not prevent other methods of service.

Part I – Definitions and interpretation

62 Definitions

| Definition | Meaning |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>all personal assets</i> | <p>for a <i>grantor</i>, all their present and after-acquired personal property and/or assets wherever located and however described including, without limitation, all personal property and anything in respect of which they have at any time a sufficient right, interest or power to grant a security interest.</p> <p>If they are an individual, it includes all the present and after-acquired personal property that at any time is, or has been, used in connection with, or forms part of, their business.</p> <p>If the <i>offer</i> sets out details of a partnership or joint venture, the <i>collateral</i> includes the present and after-acquired personal property of the partnership or joint venture and each partner's or participant's interest in the partnership or joint venture</p> |
| <i>associated shares</i> | <p>(a) any shares issued to <i>you</i> by an authority in connection with any <i>water rights</i>;</p> <p>(b) <i>your</i> membership rights in any <i>water scheme</i> described in the <i>offer</i>;</p> <p>(c) any other shares described in the <i>offer</i></p> |
| <i>attorney</i> | each attorney appointed under clause 30 ("Power of <i>attorney</i> ") |
| <i>authorised officer</i> | in the case of <i>you</i> or a <i>guarantor</i> , a director or secretary of <i>you</i> or the <i>guarantor</i> or any other person specified by <i>you</i> or the <i>guarantor</i> as an <i>authorised officer</i> for the purposes of this agreement by a notice to <i>us</i> accompanied by a copy of the person's signature certified by a director or secretary of <i>you</i> or the <i>guarantor</i> (and in respect of which we have not received notice of revocation of the appointment) |
| <i>Bankruptcy Act</i> | the <i>Bankruptcy Act</i> 1966 (Cth) and any related regulations and each amendment or replacement. |
| <i>book debts</i> | all book debts, whether or not entered into a book |
| <i>builder</i> | the builder we approve to construct the <i>project</i> |
| <i>business day</i> | a day on which banks are open for general banking business in Sydney, Australia (not being a Saturday, Sunday or public holiday in that place) |
| <i>collateral</i> | <p>the following property:</p> <p>(a) if the <i>grantor</i> has signed the <i>offer</i> and is required to give <i>us</i> security over all their personal assets – <i>all personal assets</i>; and</p> <p>(b) if the <i>grantor</i> has signed a <i>national mortgage form</i> – <i>the land</i>; and</p> <p>(c) If the <i>grantor</i> has signed the <i>offer</i> and is required to give <i>us</i> security over future real property – <i>other land</i>; and</p> <p>(d) If the <i>grantor</i> has signed the <i>offer</i> and is required to give <i>us</i> security over specific assets – <i>specific assets</i>; and</p> |

| Definition | Meaning |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | (e) if the <i>grantor</i> has signed the <i>offer</i> and is required to give <i>us</i> security over <i>water rights – the water rights</i> . |
| <i>collection account</i> | any account opened: <ul style="list-style-type: none"> (a) with <i>us</i> in a <i>grantor's</i> name (if we are an authorised deposit-taking institution); or (b) with another authorised deposit-taking institution, in our name, designated by <i>us</i> as the <i>collection account</i> for the purposes of this agreement. If there is a change of authorised deposit-taking institution at which the relevant account is held, it includes any account into which money credited to the <i>collection account</i> is transferred |
| <i>completion</i> | the date of issue of a certificate of practical completion by a consultant we appoint or approve for the <i>project</i> |
| <i>compulsory acquisition</i> | an actual or proposed compulsory acquisition, resumption, appropriation or confiscation of, or freezing, restraining or forfeiture order in connection with, assets at law, including a restriction or order under which compensation is payable in connection with assets |
| <i>consultant's certificate</i> | a certificate addressed to <i>us</i> prepared by a consultant (such as a quantity surveyor or valuer) acceptable to <i>us</i> , certifying, for a drawing: <ul style="list-style-type: none"> (a) the amount of the proposed drawing; (b) that the <i>project</i> carried out to the date of the request is within the boundaries of the <i>land</i>; (c) the total value and percentage of the <i>project</i> completed up to the date of the request; (d) that all claims for payment by any <i>builder</i> or sub-contractor engaged for the purpose of the <i>project</i> have been paid up to the date of the request; (e) that there have been no significant variations to the <i>project documents</i> other than those we have approved; (f) that the unused portion of the <i>facility limit</i> is sufficient to allow <i>completion</i> (including contingencies, council contributions and professional fees); (g) that <i>completion</i> will occur within the time period set out in the building contract or such other period as the consultant and we approve; (h) that the work completed to date for the <i>project</i> has been done in a proper and workmanlike manner and in accordance with the plans and specifications and requirements of all authorities; and (i) anything else we reasonably require |
| <i>contaminant</i> | anything (including a liquid, solid, gas, odour, temperature, sound, vibration or radiation) that presents or could present a risk of harm to human health or the environment |
| <i>controller</i> | this has the meaning it has in the <i>Corporations Act</i> |
| <i>Corporations Act</i> | the <i>Corporations Act 2001</i> (Cth) |

| Definition | Meaning |
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| costs | any reference to “costs” includes costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis |
| depositee | in respect of the <i>collection account</i> , the institution (other than us) at which the account is held |
| encumbrance | <p>any:</p> <ul style="list-style-type: none"> (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or (2) of the <i>PPSA</i>; or (b) right, interest or arrangement that has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or (c) right that a person (other than the owner) has to remove something from <i>land</i> (known as a <i>profit à prendre</i>), easement, public right of way, restrictive or positive covenant, lease, or <i>licence</i> to use or occupy; or (d) third-party right or interest or any right arising as a consequence of the enforcement of a judgment, <p>or any agreement to create any of them or allow them to exist</p> |
| enforcement proceeding | <p>a person:</p> <ul style="list-style-type: none"> (a) starting proceedings in a court to satisfy a liability of \$10,000 or more or to recover possession of <i>collateral</i> subject to an <i>encumbrance</i>; (b) otherwise enforcing an <i>encumbrance</i> by taking possession of <i>collateral</i> (or taking steps to do so) or exercising a power of sale or appointing <i>receivers</i> or voluntary administrators; (c) applying to a court to appoint a provisional liquidator or a trustee in bankruptcy; or (d) enforcing a judgment of \$10,000 or more against another person or their assets. |
| Environmental event | <ul style="list-style-type: none"> (a) a proceeding, investigation or claim against a <i>grantor</i>; (b) a requirement that a <i>grantor</i> incurs expenditure; or (c) a requirement that a <i>grantor</i> ceases or changes an activity carried on by it, in connection with an <i>environmental law</i> where that proceeding, investigation or claim, expenditure or requirement has had or is likely to have a <i>material adverse effect</i> |
| environmental law | any law in connection with planning or the protection of the environment, heritage, health or safety (including any authorisation issued in connection with such a law) |
| estimated practical completion date | the practical <i>completion</i> date in the timetable approved by us for the <i>project</i> (or such other date we and our consultants approve) |

| Definition | Meaning |
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| <i>event of default</i> | an event or circumstance so described in clause 14.1 ("Events of Default") or clause 54 ("Additional events of default") |
| <i>facility limit</i> | <p>for a facility, the facility limit stated in the <i>offer</i> (as may be reduced during the term of the facility) whether or not that amount has been advanced to <i>you</i> or at <i>your</i> request or whether or not that amount is found to be owing to <i>us</i> as a matter of contract.</p> <p>If no amount is specified as the facility limit in the <i>offer</i>, "facility limit" means instead the amount we have advanced in connection with the mortgage granted to <i>us</i> by way of security under this agreement (whether or not that amount has been advanced to <i>you</i> or at <i>your</i> request or whether or not that amount is found to be owing to <i>us</i> as a matter of contract)</p> |
| <i>facility term</i> | for a facility, the facility term stated in the <i>offer</i> |
| <i>finance documents</i> | <ul style="list-style-type: none"> (a) this agreement; (b) the <i>offer</i>; (c) each <i>security document</i>; (d) any document that <i>you</i> and <i>we</i> agree in writing is a <i>finance document</i> for the purposes of this definition; and (e) any document entered into for the purpose of varying, novating, supplementing, extending, replacing or restating any of the above |
| <i>governing body</i> | each entity that manages or administers any <i>shared scheme</i> of which the <i>collateral</i> is part |
| <i>grantor</i> | <ul style="list-style-type: none"> (a) if <i>you</i> are required to give <i>us</i> security over <i>all personal assets, land</i> or <i>other land</i> – <i>you</i> (b) if the <i>guarantor</i> is required to give <i>us</i> security over <i>all personal assets, land</i> or <i>other land</i> – the guarantor |
| <i>guarantor</i> | each person named in the <i>offer</i> as a <i>guarantor</i> in its own or personal capacity and in its capacity as a trustee of any trust (whether or not the trust is known to <i>us</i>) and any other person who guarantees <i>your</i> obligations under this agreement. If there is more than one <i>guarantor</i> , " guarantor " means each of them separately and every 2 or more of them jointly |
| <i>insolvent</i> | <p>a person is insolvent if:</p> <ul style="list-style-type: none"> (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the <i>Corporations Act</i>); (b) it is in liquidation, in provisional liquidation, under administration or wound up, or has had a controller appointed to its property; (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by <i>us</i>); |

| Definition | Meaning |
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| | <p>(d) an application or order has been made (and, in the case of an application that is disputed by the person, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, in respect of any of the above paragraphs;</p> <p>(e) it is taken (under section 459F(1) of the <i>Corporations Act</i>) to have failed to comply with a statutory demand;</p> <p>(f) it is the subject of an event described in section 459C(2)(b) or section 585 of the <i>Corporations Act</i> (or it makes a statement from which we reasonably deduce it is so subject);</p> <p>(g) it is otherwise unable to pay its debts when they fall due;</p> <p>(h) the person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;</p> <p>(i) a <i>personal insolvency event</i> occurs; or</p> <p>(j) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.</p> |
| interest rate | the interest rate(s) set out in the <i>offer</i> . |
| land | <p>each one or more of the following that the context allows:</p> <p>(a) the real property described in the <i>offer</i>;</p> <p>(b) the <i>land</i> described in the <i>national mortgage form</i>; and</p> <p>(c) the <i>grantor's</i> estate and interest in the <i>land</i></p> |
| licence | any licence, permit, entitlement or authorisation (including to sell liquor, to discharge hazardous waste, to draw water or manage <i>water rights</i> , to keep gaming or poker machines or to develop and use property) issued by any authority or other person that allows activity to be carried out, on or in connection with the <i>land</i> |
| material adverse effect | <p>a material adverse effect on:</p> <p>(a) the ability of <i>you</i> or a <i>guarantor</i> to comply with your obligations under the <i>finance documents</i>;</p> <p>(b) our rights and remedies under the <i>finance documents</i>;</p> <p>(c) the business, operation, property, condition (financial or otherwise), cashflows or prospects of <i>you</i> or a <i>guarantor</i> (taken as a whole);</p> <p>(d) the effectiveness or priority of any <i>encumbrance</i> granted by <i>you</i> or a <i>guarantor</i> in connection with any <i>finance document</i> or the value of the <i>collateral</i>; or</p> <p>(e) the validity or enforceability of any <i>finance document</i></p> |
| national mortgage form | The mortgage form that details the <i>land</i> . |
| offer | the document headed "Finance Offer Schedule" provided together with (or about the same time as) this deed. If no such "Finance Offer Schedule" exists, then |

| Definition | Meaning |
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| | "offer" instead means the most recent finance offer issued by <i>us</i> in connection with the finance to be provided under this deed |
| <i>other land</i> | for a <i>grantor</i> , all their present and after-acquired real and leasehold property (other than the <i>land</i>) wherever located and however described including, without limitation, all land and leasehold property of which they have at any time a sufficient right, interest or power to grant a security interest. |
| <i>Overriding intent</i> | the intent that we will be able to recover from <i>you</i> and/or the <i>guarantor</i> , the <i>collateral</i> and <i>property</i> all money that <i>you</i> and/or the <i>guarantor</i> owe <i>us</i> and our <i>related entities</i> (however described) including the <i>secured money</i> |
| <i>personal insolvency event</i> | <p>the happening of any one or more of the following events in relation to a natural person:</p> <ul style="list-style-type: none"> (a) the person commits an act of bankruptcy within the meaning of that expression in the <i>Bankruptcy Act</i>; (b) a bankruptcy notice is issued against the person; (c) a receiver or a trustee for creditors is appointed to any of the person's property or assets; (d) a garnishee notice, or a notice under s 120 of the <i>PPSA</i>, is given to: <ul style="list-style-type: none"> (i) the debtor of a person; or (ii) any other person that otherwise owes or may owe money at any time to the person in paragraph (i) above, in connection with any money that the person (in paragraph (i) above) is said to owe; (e) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors; (f) the person proposes or effects a moratorium involving any of his or her creditors; (g) the person is unable to pay all of their debts as and when they fall due or is presumed to be insolvent under any applicable law; (h) the person dies, is imprisoned or becomes incapable of administering his or her own affairs; and (i) anything to a substantially similar effect as any of the matters set out in paragraphs (a) to (i) of this definition happens in respect of the natural person. |
| <i>PPSA</i> | the <i>Personal Property Securities Act 2009</i> (Cth) |
| <i>project</i> | <p>any building, construction or development project:</p> <ul style="list-style-type: none"> (a) described in the <i>offer</i>; or (b) on any <i>collateral</i>, we approve. <p>The <i>project</i> includes all work done or to be done to complete the project as contemplated by the <i>project documents</i> and includes all work required to comply with all <i>licences</i> and other approvals, permits, consents and certificates</p> |
| <i>project document</i> | each document relating to the <i>project</i> including any building contract, building permit, construction certificate, development approval, planning and building |

Definition

Meaning

approvals, plans and specifications, design documentation, subcontract, letting program, trade packages, supplies program, construction program, marketing program, sales agreement, management agreement and consulting agreement

qualifying pre-sale contract

an exchanged sale contract for a building (including a unit or land) at the *land*, for the relevant property type, satisfies all of the things listed below (unless otherwise agreed).

Requirements for all properties

For all properties:

- (a) it is to a purchaser who is at arm's length to each of *you*, any *guarantor* and any of *your related entities*;
- (b) it has no right of rescission for purchasers if the vendor becomes *insolvent*;
- (c) if the purchaser is a foreign investor, the purchaser has obtained Foreign Investment Review Board approval;
- (d) to the extent the law allows, it provides for a sunset date that is:
 - (i) 6 months or greater (where the construction timetable is up to 18 months);
 - (ii) 9 months or greater (where the construction timetable is greater than 18 months but less than 24 months); or
 - (iii) 12 months or greater (where the construction timetable is greater than 24 months,

from the *estimated practical completion date*. To the extent the law allows, the sunset provisions must allow for extensions for delays in obtaining statutory approvals in the commencement of construction (or during construction), extensions of time during building, and delay for any other circumstance beyond *your control*;

- (e) it allows for minor variation in size, dimensions, design, finishes or layout of any building, the common property, or dwelling or unit entitlements forming part of the *land*;
- (f) there are no side arrangements entered into between the vendor or any other person;
- (g) it complies with law, is complete in form and content and is enforceable; and
- (h) it is otherwise in form and substance acceptable to us.

Additional requirements for residential properties:

For residential properties:

- (i) requires a minimum of 10%:

| Definition | Meaning |
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| | <p>(i) non-refundable cash deposits;</p> <p>(ii) bank guarantees for deposits from an issuer acceptable to us; or</p> <p>(iii) deposit bonds from an issuer acceptable to us. However, deposit bonds cannot make up more than 10% of all qualifying pre-sale deposits.</p> <p>If the deposit is a cash deposit, this deposit must be held in a trust account with us or another trust account approved by us.</p> <p>If a deposit bond is provided, it cannot expire earlier than 1 month after the relevant sale contract sunset date. If the <i>estimated practical completion date</i> is extended, we may require the deposit bond to be replaced and it cannot expire earlier than 1 month after the extended sales contract sunset date.</p> <p>If a bank guarantee is provided, it cannot have an expiry date.</p> <p>(j) it is to a purchaser who has acquired no more than 2 units at the <i>land</i>, unless we otherwise approve;</p> <p>(k) it is sold for an amount that is not less than the individual house, unit or lot value estimated by our panel valuer for that house, unit or lot;</p> <p>(l) if the purchaser is a foreign investor, the purchase price for that pre-sale contract when aggregated with the total purchase prices for all other qualifying pre-sale contracts entered into by foreign domiciled persons, does not exceed 15% of the total estimated value of the qualifying pre-sales for the <i>land</i>;</p> <p>(m) if the purchaser is purchasing for a self-managed superannuation fund, the purchase price for that pre-sale contract when aggregated with the total purchase prices for all other <i>qualifying pre-sale contracts</i> entered into by entities purchasing for self-managed superannuation funds, does not exceed 15% of the total estimated value of the qualifying pre-sales for the <i>land</i>;</p> <p>(n) if the purchaser is a corporation, the performance of the obligations of the corporation under the pre-sale contract and payment of the purchase price by the corporation are guaranteed by the directors of the corporation.</p> <p>Additional requirements for non-residential properties:</p> <p>For non-residential properties:</p> <p>(o) it requires a minimum of 10%:</p> <p>(i) non-refundable cash deposits; or</p> <p>(ii) bank guarantees for deposits from an issuer acceptable to us.</p> <p>If the deposit is a cash deposit, it must be held in a trust account with us or another trust account approved by us.</p> <p>If a bank guarantee is provided, it cannot have an expiry date</p> <p>(p) it is sold for an amount acceptable to us.</p> |
| Receiver | a receiver or receiver and manager |
| related entity | this has the meaning it has in the <i>Corporations Act</i> |

| Definition | Meaning |
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| <i>schedule of sales</i> | a report on all current sales for the <i>project</i> in form and substance satisfactory to us. It is to include a description of the building, unit or lot, details of the purchaser (including details of Foreign Investment Review Board approval, if a foreign investor, and details of any self-managed superannuation fund) any <i>guarantor</i> , sale price, deposit details (including the form and where held), date of exchange and any sunset date |
| <i>secured money</i> | <p>(a) the <i>facility limit</i>; and</p> <p>(b) interest payable by <i>you</i> or the <i>guarantor</i> under this agreement; and</p> <p>(c) all money that <i>you</i> (either alone or with another person) or the <i>guarantor</i> (either alone or with another person) owes or may in the future owe <i>us</i> for any reason.</p> <p>This includes:</p> <p>(i) money that <i>you</i> or the <i>guarantor</i> are only required to pay if a condition is satisfied;</p> <p>(ii) liabilities that <i>you</i> or the <i>guarantor</i> may not have contemplated when they signed the <i>offer</i>;</p> <p>(iii) damages for default or breach of any obligation.</p> <p>If <i>you</i> or the <i>guarantor</i> are a trustee, this definition applies whether or not they have a right of indemnity from the trust assets.</p> <p>The secured money includes the <i>facility limit</i> and any interest payable by <i>you</i> or the <i>guarantor</i> under this agreement, even if, by reason of fraud or otherwise, this agreement is void, voidable or unenforceable or the funds intended to be advanced to <i>you</i> or at <i>your</i> request were actually paid to another person</p> |
| <i>secured party signatory</i> | a person nominated by <i>us</i> as a signatory to an account |
| <i>security document</i> | <p>(a) each document given to <i>us</i> that creates, or states that it creates an <i>encumbrance</i> in our favour as security for the facility;</p> <p>(b) each guarantee given to <i>us</i> in connection with the facility;</p> <p>(c) each other document given to <i>us</i> to support any of the above; and</p> <p>(d) any other document the parties to this agreement agree is security for the facility (including any security listed in the <i>offer</i>)</p> |
| <i>shared scheme</i> | each scheme or plan regulated by a <i>shared scheme</i> law that affects the <i>collateral</i> . Examples of properties that are often part of a shared scheme are strata title home units and town houses, and properties in integrated developments |
| <i>shared scheme law</i> | <p>any legislation that provides for the:</p> <p>(a) subdivision and development of <i>land</i> with shared property; or</p> <p>(b) subdivision of buildings; or</p> <p>(c) management of <i>land</i> that is subdivided and has shared property; or</p> <p>(d) management of subdivided buildings</p> |

| Definition | Meaning |
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| <i>small business</i> | means a person to which the unfair contract terms laws in Part 2 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth) apply. |
| <i>specific assets</i> | for a <i>grantor</i> , means the specific property or assets set out in the <i>offer</i> . |
| <i>special condition</i> | a term set out in the <i>offer</i> under the heading 'Special Conditions'. |
| <i>taxes</i> | taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or assessed as being payable by any authority together with any fines, penalties and interest in connection with them |
| <i>use entitlement</i> | <p>a <i>licence</i> that gives the holder the right to do either or both of the following:</p> <ul style="list-style-type: none"> (a) to take or hold water on a specific parcel of <i>land</i>; and/or (b) to use water on a specific parcel of <i>land</i> for a particular purpose |
| <i>water access entitlement</i> | <p>a right (however described) that entitles the holder to any or all of the following:</p> <ul style="list-style-type: none"> (a) a specified share in a body of water, catchment area or other area defined in a water management plan; and/or (b) a right to take water in specified circumstances. <p>It includes a "water access <i>licence</i>" in New South Wales, a "water share" in Victoria and a "water <i>allocation</i>" in Queensland</p> |
| <i>water allocation</i> | in respect of a <i>water access entitlement</i> described in the details, the quantity of water allocated to the <i>water access entitlement</i> for a specified period (whether or not transferrable) and the volume of the water allocation remaining beyond the specified period |
| <i>water rights</i> | <p>at any time, any right, title or interest you have in any:</p> <ul style="list-style-type: none"> (a) <i>water access entitlement</i> described in the <i>offer</i>; (b) <i>water allocation</i>; (c) <i>use entitlement</i> in connection with a <i>water access entitlement</i> described in the <i>offer</i>; (d) water sold or agreed to be sold to you by an authority; (e) <i>water delivery contract</i> described in the <i>offer</i> or other contractual right associated with any <i>water access entitlement</i> described in the <i>offer</i>; (f) <i>associated shares</i> (including any rights derived from or attached to them); (g) <i>rights</i> that you later advise us in writing are secured by a <i>security document</i>; (h) <i>other licence</i> or right described in the <i>offer</i> as water rights; (i) right to use <i>works</i>, access rights, diversion or drainage rights or rights of easement over the property of another person or other rights for the purpose of delivery of water in connection with any of the rights described above; or (j) increases in, variations or replacements of, those rights, <p>including the proceeds of the disposal of any of those rights</p> |

| Definition | Meaning |
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| <i>water scheme</i> | any scheme, association, partnership, company or statutory body the membership of which permits the use of pumps, motors, channels, pipes and other <i>works</i> and structures for the purpose of taking and delivering water |
| <i>we</i> | the person named in the <i>offer</i> as the lender. If there is more than one, "we" means each of them separately and every 2 or more of them jointly. "We" includes our successors and assigns |
| <i>works</i> | building work, excavation or earthworks on the <i>collateral</i> , work demolishing, removing or altering any part of the <i>collateral</i> , or any building or development work required by an authority in connection with the <i>collateral</i> |
| <i>you</i> | each person named in the <i>offer</i> as borrower in its own or personal capacity and in its capacity as a trustee of any trust (whether or not the trust is known to us). If there is more than one, "you" means each of them separately and every 2 or more of them jointly |
| <i>your state</i> | in the case of: <ul style="list-style-type: none"> (a) a mortgage of <i>land</i> – the law in force in the State or Territory where the <i>land</i> is situated; and (b) any other <i>finance document</i> – the law in force the State or Territory of <i>your</i> contact details in the <i>offer</i> or, if those contact details are outside Australia or do not specify a State or Territory or <i>your</i> contact details are not in the <i>offer</i>, New South Wales |

63 General interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears in this deed:

- (a) labels used for definitions are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (d) a reference to a document also includes any agreed variation, replacement or novation of it;
- (e) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions;
- (f) a reference to "person" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association or an authority, or any other entity or organisation;
- (g) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taken by novation) and assigns;
- (h) a reference to a time of day is a reference to Sydney time;
- (i) a reference to, dollars, \$ or A\$ is a reference to the currency of Australia (Australian dollars);
- (j) a reference to "law" includes common law, principles of equity and legislation (including regulations);
- (k) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (m) an agreement, confirmation, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (n) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (o) a reference to any thing (including an amount) is a reference to the whole and each part of it;

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- (p) a reference to accounting standards is a reference to accounting standards, principles and practices generally accepted in the relevant place, consistently applied;
- (q) a reference to an accounting term in an accounting context is a reference to that term as it is used in relevant accounting standards;
- (r) an event of default is "continuing" if it has occurred and has not been waived in writing by us, or remedied to our satisfaction;
- (s) a reference to "property" or "asset" includes any present or future, real or personal, tangible or intangible property, asset or undertaking and any right, interest or benefit under or arising from it;
- (t) a reference to "control" includes control as defined in the *PPSA*;
- (u) a reference to "possession" includes possession as defined in the *PPSA*;
- (v) a reference to "this agreement" is a reference to the *offer* and the provisions of this document and each is to be binding as a deed;
- (w) a reference to "this security" is a reference to the security interests created by this agreement;
- (x) a reference to "insolvency" is a reference to a situation where a person becomes *insolvent*; and
- (y) a reference to a "guarantee" includes an indemnity and a reference to "this guarantee" is a reference to the guarantee and indemnity terms that are set out in Part F.
- (z) to the extent of any inconsistency, a *special condition* overrides a term of this memorandum of common provisions, save to the extent that the special condition is not in accordance with the *overriding intent* which is that we will be able to recover the *secured money* from *all assets* of the *grantor*.
- (aa) no rule of construction applies to the disadvantage of *us* because we were responsible for the preparation of this document;
- (bb) this agreement and each of its terms shall be construed in accordance with and to give full effect to the overriding intent.

Wajahat Ali Khan Rang

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Kashif Aziz

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Muhammad Khuram Jawaid

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