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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document:

Attorney means an attorney appointed under clause 24.

Authorisation means any consent, registration, certificate, licence, approval, permit, authority or exemption from, by or with a Government Authority;

Borrower means the borrower (however described) in the Principal Agreement.

Business Day means a day on which banks are open for retail banking, other than a Saturday, Sunday or public holiday, in Brisbane, Australia.

Claim means claim, action, proceeding, investigation or prosecution.

Collateral Security means any present or future Guarantee or Security Interest taken by the Mortgagee or given by a Transaction Party or any other person as security for the payment of the Secured Moneys.

Encumbrance means any:

- (a) Security Interest;
- (b) easement, restrictive covenant or right of access;
- (c) caveat;
- (d) restriction on dealing with or using property;
- (e) profit a prendre or right to remove something from land;
- (f) lease, licence or right to occupy or use;
- (g) right in connection with enforcement of a judgment; or
- (h) agreement or option to create any thing in (a) to (f),

whether registered, unregistered or statutory.

Event of Default means:

- (a) **failure to pay:** a Transaction Party fails to pay or repay any amount due under a Transaction Document;
- (b) **failure to comply with other terms:** subject to paragraph (c), a Transaction Party fails to comply with any other term of a Transaction Document;
- (c) **remediable failure:** for a failure in paragraph (b) which the Mortgagee considers to be remediable, the Transaction Party does not remedy the failure within the timeframe specified in a notice from the Mortgagee;
- (d) **authorisations:** a Transaction Party fails to obtain and maintain any Authorisation required:

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- (i) under a Transaction Document;
 - (ii) by Law in relation to the a Transaction Document, the Mortgaged Property, or any business conducted at the Mortgaged Property;
- (e) **misrepresentation:** a warranty, representation or statement by a Transaction Party is incorrect or misleading;
- (f) **insolvency:** an Insolvency Event occurs in relation a Transaction Party;
- (g) **deregistration:** where a Transaction Party is a company or body corporate, a step is taken to deregister the Transaction Party;
- (h) **incapacity:** where a Transaction Party is an individual, the Transaction Party dies or becomes incapable of managing his or her affairs for a period exceeding three months;
- (i) **suspension of payment:** a Transaction Party becomes unable to pay its debts or suspends payment of its debts generally;
- (j) **ceasing business:** a Transaction Party ceases or threatens to cease to carry on business;
- (k) **investigation:** a person is appointed by a Government Authority to investigate the affairs of a Transaction Party;
- (l) **vitiation of Transaction Documents:**
 - (i) all or any part of any provision of a Transaction Document is or becomes illegal, void, voidable, unenforceable or otherwise of limited force or effect;
 - (ii) any person becomes entitled to terminate, rescind or avoid all or any material part or material provision of a Transaction Document;
 - (iii) the execution or performance of a Transaction Document by a Transaction Party contravenes any Law or Authorisation;
- (m) **adverse change:** any thing occurs which may have a material adverse effect on:
 - (i) the value of the Mortgaged Property;
 - (ii) the Mortgagee's rights under a Transaction Document; or
 - (iii) a Transaction Party's ability to observe its obligations under a Transaction Document;
- (n) **change in ownership:** the Mortgagor ceases to be the legal owner of the Mortgaged Property or does anything whatsoever that may reduce its interest in or the value of its interest in the Mortgaged Property;
- (o) **acceleration of payments:** a Transaction Party does anything which causes or enables:
 - (i) the acceleration of any payment to be made under any Transaction Document; or
 - (ii) the enforcement, termination or rescission of any Transaction Document;

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- (p) **enforcement against assets:** a judgment, or order of a Government Authority, becomes enforceable, or is enforced, against the Mortgaged Property or any property of a Transaction Party;
- (q) **compulsory acquisition:** a Government Authority:
 - (i) compulsorily acquires the Mortgaged Property or gives notice indicating an intention to compulsorily acquire the Mortgaged Property; or
 - (ii) requires that an Improvement be demolished or removed from the Mortgaged Property;
- (r) **Security Interest:** a Security Interest over property of a Transaction Party is enforced or becomes enforceable;
- (s) **cross default:** an event of default occurs under any Transaction Document.

Government Authority means:

- (a) a local, state or federal government;
- (b) a minister, department or agency of any government in (a);
- (c) a corporation, authority or body that is constituted under statute or regulation for a public purpose;
- (d) a holder of a statutory office for a public purpose, or a person charged with the administration of a law; or
- (e) a court, tribunal or commission constituted under statute or regulation.

GST has the meaning given by the GST Law.

GST Law has the meaning given to “GST law” in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantee means any undertaking or obligation to:

- (a) pay money owed by;
- (b) perform obligations of;
- (c) indemnify against the consequences of default by; or
- (d) be responsible for the obligations, indebtedness or liability of, another person.

Guarantor means the person named as guarantor in a Guarantee which is a Collateral Security.

Improvements means all improvements, buildings, fences, structures, fixtures and fittings which are now or in the future on the Mortgaged Property.

Insolvency Event means:

- (a) if the party is an individual, the party:

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- (i) signs an authority under section 188 of the *Bankruptcy Act 1966* (Cth);
 - (ii) becomes a party to a personal insolvency agreement as debtor;
 - (iii) gives a written proposal for a debt agreement under s 185C of the *Bankruptcy Act 1966* (Cth);
 - (iv) becomes a party to a debt agreement as debtor;
 - (v) has a creditor's petition presented against him or her;
 - (vi) has a sequestration order made against his or her estate;
 - (vii) presents a debtor's petition; or
 - (viii) becomes bankrupt;
- (b) if the party is a company or body corporate, the party
- (i) has an application made against it for an order that it be wound up;
 - (ii) has an order made against it that it be wound up;
 - (iii) resolves that it be wound up voluntarily;
 - (iv) has an administrator appointed or executes a deed of company arrangement;
 - (v) enters into a compromise or arrangement with its creditors; or
 - (vi) has a controller, managing controller, receiver or receiver and manager appointed in respect of any of its assets.

Law means any:

- (a) statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or local; and
- (b) requirement, notice, order, judgment or direction given by a Government Authority.

Loss means loss, damage, cost, expense or liability.

Mortgage means the security created by this document.

Mortgagee means the person named as mortgagee in this document.

Mortgagor means the person named as mortgagor in this document.

Mortgaged Property means:

- (a) the land described in this document;
- (b) where the context permits, any interest in any land acquired by the Mortgagor which in the opinion of the Mortgagee is to be used or held in conjunction with the Mortgaged Property;
- (c) the Improvements; and

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- (d) all easements, paths, ways, waters, watercourses, mines, minerals, quarries, trees and timber and other benefits on or used or enjoyed in conjunction with the Mortgaged Property.

Notice means notice, demand, certificate, consent, approval, waiver or communication given under this document.

Officer means:

- (a) in relation to the Mortgagor, a director or a secretary of the Mortgagor;
- (b) in relation to the Mortgagee, each director, secretary and chief executive officer of the Mortgagee, and each employee of the Mortgagee whose title includes the word 'Manager'.

Power means any right, power, authority, discretion or remedy conferred on the Mortgagee, Receiver or Attorney by any Transaction Document or any Law, including any power given to the Mortgagee under clause 20.

Principal Agreement means the loan agreement between the Borrower and Mortgagee dated on or about the date of this document.

Priority Encumbrance means any Encumbrance in respect of the Mortgaged Property which, with the written agreement of the Mortgagee, ranks in priority to this document.

Receiver means a receiver or receiver and manager appointed under this document.

Scheme means a community or strata titles scheme.

Secured Moneys means all debts and monetary liabilities of each Transaction Party to the Mortgagee (under any Transaction Document or otherwise) irrespective of whether the debts or liabilities:

- (a) are present or future;
- (b) are actual, prospective, contingent or otherwise;
- (c) are at any time ascertained or unascertained;
- (d) are owed or incurred by or on account of the Transaction Party alone, or severally or jointly with any other person;
- (e) are owed to the Mortgagee alone, or severally or jointly with any other person;
- (f) are owed to any other person as agent (whether disclosed or not) for or on behalf of the Mortgagee;
- (g) are owed or incurred as principal, interest, fees, charges, Taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;
- (h) are owed to the Mortgagee directly or as a result of:
- (i) the assignment to the Mortgagee of any debt or liability of a Transaction Party; or
- (ii) any other dealing with any such debt or liability;

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- (i) are owed to the Mortgagee before or after the date of this document, or before or after the date of any assignment of this document to the Mortgagee by any other person; or
- (j) comprise any combination of the above.

Security Interest means any:

- (a) mortgage, charge, pledge, lien or security interest;
- (b) retention of title arrangement;
- (c) right or power given as security for payment of money or performance of any obligation, including a right of recourse against property to satisfy a claim;
- (d) a right, interest or arrangement which has the effect of giving a person a preference over other creditors in recovering money owing; or
- (e) agreement or option to create any arrangement referred to in paragraphs (a) to (d).

Security Trust means the The FMVL Super Property Trust between the Borrower (as trustee of the VLFM Superannuation Fund) and the Mortgagor (as custodian).

Tax means:

- (a) any present or future tax, levy, impost, fee, charge, duty or withholding; and
- (b) any interest or penalty in respect of any thing in paragraph (a),
imposed by a Government Authority.

Transaction Document means:

- (a) this document;
- (b) each Collateral Security;
- (c) the Principal Agreement;
- (d) any document or agreement entered into or given under any of the above; and
- (e) any other document the parties agree is a Transaction Document.

Transaction Party means:

- (a) the Mortgagor;
- (b) the Borrower; and
- (c) the Guarantor.

Works means building or construction work, demolition work, earthworks, renovation, alteration, improvement or extension.

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1.2 Interpretation

This clause 1.2 specifies the rules for interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) The Background and headings are for convenience only and do not affect the interpretation of this document.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document), or a provision of a document (including a provision of this document), is to that document or provision as amended or replaced;
 - (iii) a party to this document, or a party to any other document or agreement, includes that party's executors, administrators, permitted substitutes and permitted assigns;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) anything (including a right, obligation or concept) includes each part of it;
 - (vi) property includes real, personal and intangible property;
 - (vii) any body or agency, if that body or agency ceases to exist, is renamed, reconstituted, replaced or has its powers or functions removed (**Defunct Body**), means the agency or body which succeeds to the Defunct Body's powers or functions, or performs most closely the functions of the Defunct Body;
 - (viii) AUD\$, A\$, \$A, dollar or \$ is to Australian currency; or
 - (ix) a clause, schedule or annexure is to a clause of, or schedule or annexure to, this document.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes any other genders.
- (e) If a word is defined, another part of speech or grammatical form of that word has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) An obligation on, warranty by, or right of:
 - (i) two or more persons; or
 - (ii) a party that comprises two or more persons,is the obligation, warranty or right (as the case may be) of those persons jointly and severally.

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- (h) Time is reckoned as follows:
- (i) A reference to the date or time of day, is a reference to that date or that time of day in Queensland, Australia.
 - (ii) If a period expressed in days, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated by:
 - (A) excluding the day, or the day of the act or event; and
 - (B) including the day on which the purpose is to be fulfilled.
 - (iii) If a period expressed in weeks, months or years, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated from:
 - (A) the day, or the day of the act or event; until
 - (B) the corresponding day in the next appropriate week, calendar month or year.
 - (iv) If there is no corresponding day for the purposes of clause 1.2(h)(iii)(B), because of the differing number of days in calendar months, the corresponding day is taken to be the last day of the relevant calendar month.
 - (v) If something is to be done on a particular day, it must be done by 5.00pm on that day.
 - (vi) If something is to be done on a day which is not a Business Day then that thing must be done on the next Business Day.
- (i) Terms defined in the GST Law have the same meaning in this document unless the context makes it clear that a different meaning is intended.

1.3 Incorporated definitions

A word or phrase (other than one defined in clause 1.1) defined in the Principal Agreement has the same meaning in this document.

2. CONSIDERATION

- (a) The Mortgagor grants the Mortgage to the Mortgagee in consideration of the Mortgagee advancing money to the Borrower under the Principal Agreement.
- (b) The Mortgagor acknowledges that the Mortgagee enters into the Principal Agreement in reliance upon the Mortgagor granting, and on the condition that the Mortgagor grants, the Mortgage.

3. MORTGAGE

3.1 Mortgage

The Mortgagor as legal owner mortgages all of its interest in the Mortgaged Property to the Mortgagee as security for:

- (a) payment of the Secured Moneys;

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- (b) performance of the Borrower's obligations under the Principal Agreement; and
- (c) performance of the Mortgagor's obligations under this document.

3.2 Priority

The parties intend that the Mortgage take priority over all other Encumbrances affecting the Mortgaged Property except a Priority Encumbrance.

3.3 Continuing security

- (a) The Mortgage is a continuing security until discharged under clause 4.
- (b) The Mortgage and the obligations of the Mortgagor under this document are not, unless the Mortgagee expressly consents or agrees, released, discharged or otherwise affected by anything which but for this provision might have that effect, including:
 - (i) the grant to any Transaction Party or any other person of any time, waiver or indulgence;
 - (ii) the release of any Transaction Party from a Transaction Document;
 - (iii) the partial release of Mortgaged Property from the Mortgage;
 - (iv) an Insolvency Event occurring in relation to a Transaction Party;
 - (v) any arrangement, composition or compromise entered into by the Mortgagee or any Transaction Party;
 - (vi) any Transaction Document being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
 - (vii) any alteration, amendment, variation, supplement, renewal or replacement of any Transaction Document;
 - (viii) an increase or variation in financial accommodation provided under a Transaction Document;
 - (ix) the Mortgagee, Receiver or Attorney delaying or refraining from exercising any Power;
 - (x) the Mortgagee obtaining a judgment against any Transaction Party for the payment of any of the Secured Moneys;
 - (xi) a failure to give notice to any Transaction Party of a default under any Transaction Document;
 - (xii) the incapacity or death of any Transaction Party;
 - (xiii) the acceptance of the repudiation of, or termination of, any Transaction Document; or
 - (xiv) any Secured Moneys being irrecoverable for any reason.

4. DISCHARGE OF MORTGAGE

- (a) Subject to clause 4(b), the Mortgagee must, at the written request of the Mortgagor, discharge the Mortgage if:

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- (i) the Secured Moneys have been paid in full and each Transaction Party has fully observed and performed its obligations under each Transaction Document; or
- (ii) required by the terms of the Principal Agreement.
- (b) The Mortgagee is not obliged to discharge the Mortgage under clause 4(a) if, at the time the requirements of clause 4(a) are satisfied, the Mortgagee is of the opinion that any amount may subsequently become owing to the Mortgagee or fall within the definition of Secured Moneys.
- (c) Without limiting the matters the Mortgagee may consider in forming its opinion under clause 4(b), the Mortgagee may consider the possibility that a payment in reduction of the Secured Moneys might be repayable or void under a law relating to insolvency.

5. WARRANTIES AND ACNOWLEDGMENTS

5.1 General

The Mortgagor warrants that:

- (a) it has free and unqualified capacity and power to enter into and perform its obligations under this document;
- (b) execution of and performance of its obligations under this document do not contravene any Law applying to the Mortgagor;
- (c) it is the legal owner, or is in the process of becoming the legal owner, of the Mortgaged Property; and
- (d) the Mortgaged Property is free of Encumbrances other than those the Mortgagee has consented to.

5.2 Individual

Where the Mortgagor is an individual, the Mortgagor warrants that:

- (a) it is not under a legal disability which affects its capacity to enter into and perform its obligations under this document;
- (b) it is not a bankrupt;
- (c) it has not signed an authority under section 188 of the *Bankruptcy Act 1966* (Cth); and
- (d) it has not given a written proposal for a debt agreement under s 185C of the *Bankruptcy Act 1966* (Cth).

5.3 Company

Where the Mortgagor is a company, the Mortgagor warrants that:

- (a) it is properly incorporated in accordance with the laws in its place of incorporation, and presently exists;
- (b) entry into and performance of its obligations under this document do not contravene the party's constituent documents or governing rules;

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- (c) it has taken all necessary steps to authorise the execution of this document; and
- (d) an administrator, receiver, receiver and manager, liquidator or provisional liquidator has not been appointed in respect of the Mortgagor or any of its assets.

5.4 Security Trust

The Mortgagee acknowledges that the Mortgagor holds legal title to the Mortgaged Property on behalf of the Borrower under the terms of the Security Trust.

6. MORTGAGOR TO ENSURE NO DEFAULT

The Mortgagor must ensure that:

- (a) the Borrower performs its obligations under the Principal Agreement;
- (b) the Secured Moneys are paid or repaid to the Mortgagee as required by the Transaction Documents; and
- (c) an Event of Default does not occur.

7. ADMINISTRATIVE MATTERS

7.1 Registration of Mortgage

- (a) The Mortgagee may register the Mortgage on the title of the Mortgaged Property.
- (b) The Mortgagor must do or cause to be done all things necessary to ensure registration of the Mortgage, including:
 - (i) signing any document;
 - (ii) producing any document or certificate or title; and
 - (iii) answering any requisition of the relevant Government Authority.
- (c) To the extent permissible by Law, it is the intention of the parties that this Mortgage is enforceable according to its terms regardless of whether it is registered on the title to the Mortgaged Property.

7.2 Deposit of documents

The Mortgagor must deposit with the Mortgagee:

- (a) the certificate of title for the Mortgaged Property (if there is a certificate of title); and
- (b) if requested by the Mortgagee, any Encumbrance affecting the Mortgaged Property.

7.3 Completing blanks

The Mortgagee may complete this document and any other Transaction Document by filling in any blank details which cannot be ascertained at the date of execution or which were inadvertently omitted.

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8. PAYMENTS

All payments to be made by the Mortgagor under this document must be made:

- (a) to or as directed by the Mortgagee at the place or into the account from time to time notified by the Mortgagee to the Mortgagor;
- (b) free of any set-off or counterclaim;
- (c) free of and without deduction for or on account of any present or future Taxes;
- (d) in immediately available funds;
- (e) in Australian currency; and
- (f) if no time for payment is specified, on demand by the Mortgagee.

9. DEALINGS

9.1 Restricted dealings

The Mortgagor must not without the consent of the Mortgagee:

- (a) sell, transfer or dispose of the Mortgaged Property;
- (b) grant or create an Encumbrance, or allow an Encumbrance to exist, in respect of the Mortgaged Property;
- (c) deal with, change, terminate or surrender an Encumbrance in respect of the Mortgaged Property;
- (d) part with possession of the Mortgaged Property;
- (e) subdivide or consolidate the Mortgaged Property; or
- (f) deal in any other way with the Mortgaged Property, or create or allow to be created any other interest in the Mortgaged Property.

9.2 Statutory exceptions

- (a) If a Law allows the Mortgagor to create an Encumbrance in respect of the Mortgaged Property without the consent of the Mortgagee, the Mortgagor is not obliged to obtain the Mortgagee's consent in respect of that Encumbrance but must:
 - (i) give notice to the Mortgagee that the Encumbrance will be created at least seven days before it is created; and
 - (ii) if requested by the Mortgagee, enter into an agreement under clause 10(b) in respect of the Encumbrance.
- (b) If an Encumbrance exists in respect of the Mortgaged Property:
 - (i) by operation of any Law; and
 - (ii) regardless of whether the Mortgagor consents to the existence of the Encumbrance,

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the Mortgagor is not obliged to obtain the Mortgagee's consent in respect of that Encumbrance.

10. OTHER ENCUMBRANCES

- (a) The Mortgagor must comply with all obligations of the Mortgagor under any present or future Encumbrance affecting the Mortgaged Property.
- (b) If the Mortgagee asks, the Mortgagor agrees to obtain an agreement acceptable to the Mortgagee regulating the priority between the Mortgage and any other Encumbrance affecting the Mortgaged Property.
- (c) If:
 - (i) the Mortgage ranks after another Encumbrance affecting the Mortgaged Property; and
 - (ii) an Event of Default occurs; or
 - (iii) a default occurs under that other Encumbrance,the Mortgagee may, but is not obliged to:
 - (iv) pay to a holder of that other Encumbrance all or part of the moneys secured by that other Encumbrance; and
 - (v) seek and obtain a transfer to the Mortgagee, or a release, of that other Encumbrance.
- (d) A payment by the Mortgagee under clause 10(c)(iv) plus any costs, expenses or fees paid by the Mortgagee in connection with the negotiation, preparation, stamping and registration of any document referred to in clause 10(c)(v) will become part of the Secured Moneys.

11. MAINTAINING THE MORTGAGED PROPERTY

The Mortgagor must:

- (a) keep the Mortgaged Property in good condition and repair;
- (b) not remove any Improvements from the Mortgaged Property;
- (c) not do anything that may lower the value of the Mortgaged Property; and
- (d) if a business is conducted at the Mortgaged Property, ensure that the business is conducted in a proper, professional and lawful manner.

12. COMPLIANCE WITH LAWS

The Mortgagor must:

- (a) comply with all Laws affecting the Mortgaged Property; and
- (b) pay on time all Taxes in respect of the Mortgaged Property.

13. NOTIFY MORTGAGEE

The Mortgagor must promptly notify the Mortgagee of:

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- (a) any notice or order received from a Government Authority in respect of the Mortgaged Property;
- (b) any damage to the Mortgaged Property;
- (c) any event which may give rise to any insurance claim in respect of the Mortgaged Property; and
- (d) any Claim against a Transaction Party or in respect of the Mortgaged Property.

14. WORKS

- (a) The Mortgagor:
 - (i) must not carry out any Works at the Mortgaged Property without the Mortgagee's consent;
 - (ii) must provide the Mortgagee with plans and specifications of the Works if requested by the Mortgagee;
 - (iii) must carry out the Works in accordance with all relevant Laws; and
 - (iv) must give the Mortgagee a copy of all Authorisations issued in respect of the Works.
- (b) If the Mortgagee thinks the Mortgagor is not proceeding with the Works satisfactorily, the Mortgagee may take them over at the Mortgagor's cost, including by varying, demolishing or stopping them as the Mortgagee sees fit.

15. INSURANCE

15.1 Mortgagor to insure

- (a) The Mortgagor must:
 - (i) insure and keep insured all Improvements against loss or damage by fire, storm and other risks specified by the Mortgagee from time to time to their full insurable value; and
 - (ii) insure for public liability at the Mortgaged Property,
with an insurer approved by the Mortgagee acting reasonably.
- (b) If the Mortgagee does not specify any other risks for the purposes of clause 15.1(a)(i), the Mortgagor must insure for the usual risks that a prudent and reasonable person would insure against.
- (c) For insurance under clause 15.1(a)(i):
 - (i) the Mortgagor's interest must be noted on the policy; or
 - (ii) if required by the Mortgagee, the policy must be taken out in the joint names of the Mortgagor and the Mortgagee.

15.2 Evidence of insurance

- (a) The Mortgagor must give the Mortgagee on demand:
 - (i) a copy of each insurance policy;

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- (ii) a certificate of currency for each insurance policy; and
 - (iii) evidence of payment of the premium for each insurance policy.
- (b) If the Mortgagor does not pay a premium due for an insurance policy by the due date the Mortgagee may pay the premium and the amount paid is payable by the Mortgagor to the Mortgagee on demand.

15.3 Mortgagor not to vitiate insurance

The Mortgagor must not do, or allow to be done, anything which may:

- (a) reduce the amount the insurer is obliged to pay under an insurance policy;
- (b) prejudice the Mortgagor's or Mortgagee's right to make a claim under an insurance policy; or
- (c) cause an insurance policy to be cancelled or rendered void or voidable.

15.4 Application of insurance monies

- (a) If the Mortgagor or any person on the Mortgagor's behalf receives any monies paid under an insurance policy referred to in clause 15.1(a)(i), the monies must be, at the Mortgagee's election:
 - (i) used to reinstate the Improvements; or
 - (ii) paid to the Mortgagee.
- (b) If the Mortgagee or any person on the Mortgagee's behalf receives any monies paid under an insurance policy referred to in clause 15.1(a)(i), the monies may be, at the Mortgagee's election:
 - (i) used to reinstate the Improvements; or
 - (ii) applied towards repayment of the Secured Moneys.

15.5 Mortgagee may take over claim

If the Mortgagee notifies the Mortgagor, the Mortgagee may take over the Mortgagor's rights to make, pursue or settle an insurance claim. The Mortgagee may exercise those rights in any manner the Mortgagee chooses.

16. RIGHT OF ENTRY

The Mortgagee or any person authorised by the Mortgagee may enter upon the Mortgaged Property at all reasonable times upon giving reasonable notice to:

- (a) inspect the state and condition of the Mortgaged Property;
- (b) inspect any Works;
- (c) determine whether the Mortgagor is complying with this document; or
- (d) exercise any Power,

except that notice is not required if an Event of Default has occurred.

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17. RIGHT TO RECTIFY EVENT OF DEFAULT

If the Mortgagor fails to do any thing it is required to do under this document, the Mortgagee may do that thing and the cost of doing so is payable by the Mortgagor to the Mortgagee on demand.

18. SET OFF BY MORTGAGEE

The Mortgagee may elect to set off any amount owed by the Mortgagee to the Mortgagor under this document or otherwise against the Secured Moneys.

19. ENFORCEMENT

19.1 When enforceable

Upon the occurrence of an Event of Default:

- (a) the Mortgage and each Collateral Security are immediately enforceable; and
- (b) the Secured Moneys are immediately due and payable by the Mortgagor to the Mortgagee, without the need for any demand or notice to be given to the Mortgagor or any other person.

19.2 Order of enforcement

The Mortgagee is not obliged to enforce any other Transaction Document before enforcing the Mortgage.

19.3 Assistance in realisation

After the Mortgage has become enforceable the Mortgagor must take all action required by the Mortgagee, Receiver or Attorney to assist any of them in the realisation of the Mortgaged Property and the exercise of any Power including, but not limited to:

- (a) executing all transfers and assignments of any of the Mortgaged Property;
- (b) executing transfers, or doing other things necessary, to ensure that any Authorisation in relation to the Mortgaged Property is transferred to the Mortgagee or the Mortgagee's nominee;
- (c) producing documents;
- (d) giving notices and executing consents; and
- (e) producing keys and entry codes to the Mortgaged Property.

20. POWERS OF MORTGAGEE ON EVENT OF DEFAULT

20.1 General powers

After an Event of Default the Mortgagee may:

- (a) exercise all powers conferred on a mortgagee by Law; and
- (b) do all things in relation to the Mortgaged Property which an absolute owner could do.

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20.2 Specific powers

Without limiting clause 20.1, after an Event of Default the Mortgagee may do any one or more of the following:

- (a) take possession of the Mortgaged Property;
- (b) manage and control the Mortgaged Property;
- (c) receive the rents and profits of the Mortgaged Property;
- (d) appoint a receiver, or receiver and manager, of the Mortgaged Property;
- (e) sell the Mortgaged Property;
- (f) carry on any business conducted by the Mortgagor at the Mortgaged Property;
- (g) create, vary, renew, surrender or terminate any Encumbrance affecting the Mortgaged Property;
- (h) carry out Works at the Mortgaged Property;
- (i) maintain or repair the Mortgaged Property;
- (j) subdivide or consolidated the Mortgaged Property;
- (k) sever fixtures from the Mortgaged Property;
- (l) apply for Authorisations in respect of the Mortgaged Property;
- (m) take out insurance in respect of the Mortgaged Property, and make or settle any insurance claims;
- (n) do anything necessary to recover or protect the Mortgaged Property;
- (o) commence, continue, defend, discontinue or compromise any proceeding in relation to the Mortgaged Property;
- (p) perform, enforce, vary or terminate any contract or arrangement relating to, forming part of, or attaching to the Mortgaged Property;
- (q) exercise any right relating to, forming part of, or attaching to the Mortgaged Property; or
- (r) deal with the Mortgagor's chattels in accordance with clause 22.

20.3 Incidental powers

The Mortgagee may:

- (a) employ, engage or appoint any professional adviser, consultant, contractor, agent or auctioneer in connection with exercising any Power, at remuneration determined by the Mortgagee;
- (b) execute documents on behalf of the Mortgagor in connection with the Mortgaged Property, or in connection with the exercise of any Power;
- (c) give receipts for any money or property it receives in exercising any Power;

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- (d) delegate any Power to any person; and
- (e) do all other things incidental to the exercise of any Power, or which the Mortgagee considers necessary to give effect to any Power.

21. RECEIVER

21.1 Appointment of Receiver

If the Mortgagee exercises its power to appoint a receiver, the Mortgagee may:

- (a) appoint one or more persons to be receiver, and where more than one is appointed specify whether they are to act jointly, severally or jointly and severally;
- (b) appoint a receiver to all or any part of the Secured Property or its income;
- (c) remove a Receiver and on the removal, retirement or death of a Receiver, appoint another receiver; and
- (d) fix the remuneration of the Receiver at an amount determined by the Mortgagee.

21.2 Agency of Receiver

- (a) Every Receiver is the agent of the Mortgagor unless:
 - (i) the Mortgagee notifies the Mortgagor that the Receiver acts as the Mortgagee's agent; or
 - (ii) by Law the Receiver is not, or cannot be, the agent of the Mortgagor.
- (b) The Mortgagor is responsible for the acts and omissions of the Receiver unless clauses 21.2(a)(i) or 21.2(a)(ii) apply.
- (c) The Mortgagor is responsible for the remuneration of the Receiver.

21.3 Powers of the Receiver

Subject to any express exclusion by the terms of the Receiver's appointment, the Receiver has:

- (a) the powers given by Law to receivers; and
- (b) the Powers of the Mortgagee under this document, except the power to appoint a receiver.

22. MORTGAGOR'S CHATTELS

- (a) After an Event of Default has occurred the Mortgagee may:
 - (i) require the Mortgagor by notice to remove from the Mortgaged Property all chattels which are not encumbered by the Mortgage;
 - (ii) if the Mortgagor does not remove those chattels in the time specified in the notice, remove those chattels and store them in the name, at the cost and at the risk of the Mortgagor with any person, including the Mortgagee, for any period determined by the Mortgagee;

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- (iii) unless the Mortgagor collects the chattels and pays for their storage within 10 Business Days of being notified of their removal (in which case the Mortgagee may treat them as having been abandoned), sell the chattels for a price and on terms as the Mortgagee determines or otherwise dispose of them in any way it decides; and
- (iv) apply the proceeds of sale against the Secured Moneys.
- (b) The Mortgagee is not liable for conversion of, or for any loss or damage to, any chattel dealt with under this clause.

23. APPLICATION AND RECEIPTS OF MONEY

23.1 Order of application

- (a) All money received by the Mortgagee, Receiver or Attorney under the Mortgage or any Collateral Security may be applied towards the Secured Moneys in any order that the Mortgagee, Receiver or Attorney determines.
- (b) Failing a determination under clause 23.1(a) the money will be applied in the following manner and order:
 - (i) first, in payment of all amounts which have priority by Law over the payments specified in the remainder of this clause 23.1(b);
 - (ii) second, in payment of all costs under clause 28 or under any Transaction Document;
 - (iii) third, in payment and discharge, in order of their priority, of any Encumbrances affecting the Mortgaged Property of which the Mortgagee, Receiver or Attorney is aware and which have priority to the Mortgage;
 - (iv) fourth, in payment to the Mortgagee towards the Secured Moneys and applied first against interest and then against principal;
 - (v) fifth, in payment and only to the extent required by Law, in order of their priority, of other Encumbrances affecting the Mortgaged Property of which the Mortgagee, Receiver or Attorney is aware and which are due and payable in accordance with their terms; and
 - (vi) sixth, in payment of the surplus, if any, without interest to the Mortgagor or any Transaction Party nominated by the Mortgagor in writing.
- (c) Despite anything in this clause 23.1, money received by the Mortgagee under an insurance policy relating to the Mortgaged Property may be used to reinstate the Mortgaged Property.

23.2 Money actually received

The Mortgagor is only credited with money from the date the Mortgagee actually receives it (including, where the Mortgagee has appointed a Receiver, the date the Receiver pays money to the Mortgagee).

23.3 Mortgagee's statement of indebtedness

A certificate signed by the Mortgagee or an Officer of the Mortgagee stating the amount of the Secured Moneys due and payable at a particular time is prima facie evidence of those matters stated in the certificate.

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24. POWER OF ATTORNEY

24.1 Appointment of Attorney

The Mortgagor irrevocably appoints the Mortgagee, each Officer of the Mortgagee and each Receiver severally its attorney for the purposes set out in clause 24.2.

24.2 Purposes of appointment

The Attorney may, in its name or in the name of the Mortgagor, at any time after the occurrence of an Event of Default do any of the following:

- (a) any thing which the Mortgagor is obliged or permitted to do under this document;
- (b) any thing which the Mortgagor may do in relation to the Mortgaged Property;
- (c) any thing which, in the opinion of the Attorney:
 - (i) gives effect to, or facilitates the exercise of, any Power;
 - (ii) is necessary or expedient for giving effect to, enforcing or perfecting the Mortgage and any Collateral Security;
 - (iii) is necessary or expedient for securing payment or repayment of the Secured Moneys,including executing any documents for those purposes.

24.3 Delegation

An Attorney may delegate its powers to any person for any period and may revoke the delegation.

25. LIABILITY OF MORTGAGEE

- (a) The Mortgagee, Receiver and Attorney are not liable to any Transaction Party for any loss, damage or expense arising directly or indirectly from:
 - (i) the exercise or non exercise of any Power; or
 - (ii) a delay, omission or irregularity in exercising any Power,except where the loss, damage or expense was caused by the fraud, negligence or wilful misconduct of the Mortgagee, Receiver or Attorney (as the case may be).
- (b) The Mortgagee, Receiver or Attorney is not by reason of entering the Mortgaged Property:
 - (i) answerable for any act or omission for which a mortgagee in possession might be liable; or
 - (ii) liable to account for anything except actual receipts.

26. PROTECTION OF THIRD PARTIES

26.1 Protection of third parties

No person dealing with the Mortgagee, Receiver or Attorney is bound to enquire whether:

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- (a) the Mortgage has become enforceable;
- (b) the Receiver or Attorney is duly appointed; or
- (c) any Power has been properly exercised,

and except in the case where that person has received actual notice of impropriety, that person may assume the dealing is valid and proper.

27. INDEMNITIES

27.1 Indemnity against loss caused by Mortgagor

The Mortgagor indemnifies the Mortgagee against, and will compensate the Mortgagee for, all Loss incurred by the Mortgagee as a direct or indirect result of:

- (a) an Event of Default;
- (b) any act or omission of the Mortgagor or its Officers, employees or agents;
- (c) the negligence of the Mortgagor or its Officers, employees or agents;
- (d) a warranty of the Mortgagor contained in this document being false; or
- (e) a breach of any Law by the Mortgagor or its Officers, employees or agents.

27.2 Indemnity against third party Claims

- (a) Subject to clause 27.2(b), the Mortgagor indemnifies the Mortgagee against, and will compensate the Mortgagee for, all Loss incurred by the Mortgagee as a direct or indirect result of any Claim against the Mortgagee by a person who is not a party to this document.
- (b) Clause 27.2(a) applies where the Claim arises because of or relates to:
 - (i) an Event of Default;
 - (ii) an act or omission of the Mortgagor or its Officers, employees or agents;
 - (iii) the negligence of the Mortgagor or its Officers, employees or agents;
 - (iv) a warranty of the Mortgagor contained in this document being false;
 - (v) a breach of any law by the Mortgagor or its Officers, employees or agents;
 - (vi) the exercise by the Mortgagee, Receiver or Attorney of any Power; or
 - (vii) any thing done or not done at or in relation to the Mortgaged Property.

27.3 Reduction in liability

A liability of the Mortgagor to indemnify or compensate the Mortgagee under this clause 27 will be reduced to the extent that the Loss incurred by the Mortgagee was caused by the Mortgagee's fraud, negligence or wilful misconduct.

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27.4 No payment required

For the purposes of this clause 27, the Mortgagee does not need to make a payment in order to establish that Loss has been incurred. It is sufficient if:

- (a) a liability has arisen;
- (b) an amount has become payable;
- (c) an amount would be payable if Mortgagee elected to rectify, repair or replace the Loss; or
- (d) Loss has been suffered in any other way.

27.5 Continuing indemnities

Each indemnity of the Mortgagor continues until the Secured Moneys have been paid in full and the Mortgage is discharged under clause 4.

28. COSTS

The Mortgagor must pay all costs, expenses and Taxes incurred or payable by the Mortgagee, Receiver or Attorney in relation to:

- (a) the preparation, negotiation, execution, stamping and registration of this document;
- (b) any amendment to this document;
- (c) any consent given under this document;
- (d) the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this document;
- (e) the exercise of any Power;
- (f) the release of any Mortgaged Property from the Mortgage; and
- (g) the discharge of the Mortgage,

including amounts paid by the Mortgagee, Receiver or Attorney to any professional adviser, consultant, contractor, agent or auctioneer in connection with the Mortgage.

29. INTEREST ON OVERDUE AMOUNTS

If any amount payable by the Mortgagor under this document is not paid in full on the due date, interest is payable on the overdue amount at the same rate and in the same manner as interest is payable on overdue amounts under the Principal Agreement.

30. AVOIDANCE OF PAYMENTS

If any transaction (including a payment) in connection with the Secured Moneys is at any time avoided for any reason including, but not limited to, the incapacity or insolvency of the Mortgagor:

- (a) the liability of the Mortgagor under this document is the same as if the transaction had not occurred;

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- (b) the Mortgagee is immediately entitled as against the Mortgagor to the rights in respect of the Secured Money to which it was entitled immediately before the transaction;
- (c) the Mortgagor must do anything requested by the Mortgagee to restore any Collateral Security held by the Mortgagee immediately before the transaction; and
- (d) the Mortgagor as an additional and independent obligation, indemnifies the Mortgagee against Loss resulting from avoidance of that transaction.

31. NO COMPETITION

Until the Secured Moneys have been fully paid and the Mortgage has been finally discharged under clause 4, the Mortgagor must not:

- (a) claim any amount in the liquidation, administration, bankruptcy or insolvency of a Transaction Party;
- (b) make a claim or exercise or enforce any right, power or remedy (including, under a Security Interest or Guarantee or by way of contribution or indemnity) against any Transaction Party
- (c) accept, procure the grant of, or allow to exist any Security Interest or Guarantee in favour of the Mortgagor from any Transaction Party; or
- (d) exercise or attempt to exercise any right of set off or counterclaim against the Mortgagee.

32. COMMUNITY TITLE OR STRATA TITLE SCHEME

If the Mortgaged Property now or in the future comprises a lot in a Scheme the Mortgagor:

- (a) must promptly pay all contributions and any other moneys which at any time become payable in respect of the Mortgaged Property to the body corporate for the Scheme;
- (b) must promptly comply with and observe the provisions of the Law and any by laws or other rules applicable to the Scheme;
- (c) must use its best endeavours to cause any building of which the Mortgaged Property forms part to be insured for its full insurable value against fire, storm and other risks a prudent and reasonable person would consider appropriate;
- (d) must ensure if an Event of Default occurs that the Mortgagee is entitled in its absolute discretion to exercise the voting rights of the Mortgagor at meetings of the body corporate for the Scheme;
- (e) must procure the entry of the interest of the Mortgagee in the Mortgaged Property on the roll for the Scheme;
- (f) must notify the Mortgagee if anything occurs in relation to the Scheme or the body corporate for the Scheme that is likely to materially prejudice the Powers of the Mortgagee or reduce the value of the Mortgaged Property;
- (g) must, if requested by the Mortgagee, give the Mortgagee a copy of any notice of meeting received from the body corporate for the Scheme; and

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- (h) irrevocably authorises the Mortgagee at any time to obtain from the body corporate for the Scheme all information which the Mortgagee may require with respect to the body corporate, the Scheme or the Mortgaged Property.

33. NOTICES

33.1 Service of Notice

A Notice must be:

- (a) in writing, in English and signed by the party giving it, or by their agent; and
- (b) delivered or sent by prepaid post or fax to the party's address specified in the Details of Parties on page 1, or any other address notified by a party to the other party as its address for service.

33.2 Effective Service

- (a) A Notice given in accordance with clause 33.1 takes effect when received, or at a later time specified in it.
- (b) A Notice is taken to be received at the time specified below:
 - (i) if hand delivered – when delivered;
 - (ii) if sent by prepaid post – on the second Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to, or from, a place outside Australia);
 - (iii) if sent by fax – when the sender's fax system generates a message confirming successful transmission of the entire document.
- (c) However, if the time at which a Notice is taken to be received is not on a Business Day, or is after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

33.3 Ineffective Service

A Notice is taken not to be received if:

- (a) in the case of service by post, the Notice is returned to sender because the postal service was unable to deliver it;
- (b) in the case of service by fax, the sender's fax system generates a message stating that transmission was unsuccessful, or the Notice is not received in full and legible form.

34. GST

34.1 GST Exclusive Amounts

All amounts payable under or in connection with this document are exclusive of GST.

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34.2 Payment of GST

- (a) A recipient of a taxable supply under or in connection with this document must pay to the supplier, in addition to the GST exclusive consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (**GST Amount**).
- (b) The recipient must pay the GST Amount to the supplier when the GST exclusive consideration or part of it is provided, except that the recipient need not pay the GST Amount unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.

34.3 Reimbursements

Where a supplier incurs a cost or expense for which it may claim payment, reimbursement or indemnity from another party under or in connection with this document, the amount to be paid or credited to the supplier is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient as calculated under clause 34.2.

35. MISCELLANEOUS

35.1 Mortgagee's rights in addition to other rights

The Powers of the Mortgagee under this document are in addition to the rights, powers and remedies given to the mortgagee by Law.

35.2 No notice unless expressly required

The Mortgagee is not required to give notice to the Mortgagor before exercising any Power unless notice is:

- (a) required by a term of this document; or
- (b) required by Law.

35.3 Consent of Mortgagee

Where under this document the consent of the Mortgagee is required to the doing of any thing, the consent:

- (a) must be obtained before the doing of the thing;
- (b) must be in writing; and
- (c) may be refused in the Mortgagee's discretion, or given on terms determined by the Mortgagee.

35.4 Assignment

- (a) The Mortgagee may assign its rights under this document and each Collateral Security without the consent of the Mortgagor.
- (b) The Mortgagor may not assign any of its rights under this document or any Collateral Security without the consent of the Mortgagee.

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35.5 Exclusion of Contrary Legislation

Any Law that diminishes an obligation of the Mortgagor under this document, or adversely affects the exercise by the Mortgagee of a Power, is excluded to the full extent permitted by law.

35.6 Amendment

This document can only be amended, supplemented, novated or replaced by another document signed by the parties.

35.7 Waiver

A right under this document can only be waived by notice signed by the party or parties waiving the right. A party does not waive its rights under this document because it grants an extension or forbearance to any other party. A waiver of a right on one or more occasions does not operate as a waiver of that right if that right arises again. The exercise of a right does not prevent any further exercise of that right or of any other right. If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

35.8 No Merger

The Mortgage does not merge with:

- (a) any other Security Interest or Guarantee the Mortgagee may hold at any time; or
- (b) any judgment the Mortgagee obtains against a Transaction Party,

and the Mortgagee may still enforce the Mortgage independently of those other rights.

35.9 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document.

35.10 Severability

If the whole, or any part, of a provision of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this document has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance materially alters the nature or intended effect of this document.

35.11 Conflict of interest

The Mortgagee, Receiver and Attorney may exercise any of their Powers even if this involves a conflict of interest or the Mortgagee, Receiver or Attorney has a personal interest in their exercise.

35.12 Time of the Essence

Time is of the essence with respect to all provisions of this document that specify a time for performance.

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35.13 Governing law and jurisdiction

This document is governed by the law in force in Queensland, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, and any court that may hear appeals from any of those courts for any proceeding in connection with this document, and waives any right it may have to claim that those courts are an inconvenient forum.