



## Agreement/Ground Lease

Project: ###

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**###Embedded Instruction: Will be in registrable form on acceptance of EOI Proposal and agreeing to the terms.###**

Date:

**Director of Housing**  
(Director)

and

**####**  
(Housing Provider)

**[Important note: This document is a draft only and does not state any official position on the part of the Tasmanian Government. The document has been prepared for the purposes of facilitating negotiations following the EOI, and does not constitute an offer by the Director or the Crown which is capable of acceptance by the Provider. The Director reserves all rights in relation to the subject matter of this document. No legally enforceable rights or obligations are to arise in relation to the subject matter of this document until the parties enter (if at all) into a formal agreement concerning its subject matter. The document has not been quality checked. All time limits, notice periods and monetary amounts are for discussion only.]**

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## DETAILS AND RECITALS

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### Date:

### Parties:

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Name	<b>Director of Housing</b> constituted a corporation sole by section 6A of the <i>Homes Act 1935</i> (Tas)
Short form name	<b>Director</b>
Notice details	C/- Housing Tasmania, Level 5, 22 Elizabeth Street, Hobart 7000 Telephone: (03) 6166 3662 Email: peter.white@communities.tas.gov.au Attention: Deputy Secretary - Peter White

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Name	[##insert name##]
ACN/ARBN/ABN	
Short form name	<b>Housing Provider</b>
Notice details	[##insert address##] Facsimile: [(##) #####]##### Email: [##] Attention: [##insert name or position##]

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### Recitals:

- A. In accordance with Part IVC of the Act, the Director may grant, from the funds of the Director, money to a housing provider.
- B. In accordance with Part IIIA of the Act, the Director may lease dwellings to a housing provider for the purposes of leases to eligible persons and provide housing support services.
- C. The Housing Provider is a 'housing provider' as defined by section 3 of the Act.
- D. The Housing Provider and the Director have agreed to:
1. provide the Director's Financial Contribution to the Housing Provider;
  2. appoint the Housing Provider to deliver the Development and
  3. to provide accommodation to Eligible Persons for the Approved Use.
- E. The Director and the Housing Provider have agreed to enter into this Agreement to regulate the basis on which:
1. the Housing Provider will carry out the Development
  2. the Director will provide the Director's Financial Contributions to the Housing Provider; and
  3. the Housing Provider will use the Leased Premises for the Approved Use.



# Agreed terms and conditions

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The parties agree as follows:

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## 1 Definitions and interpretation

### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

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

- (a) is solvent;
- (b) has not been wound up and is not being wound up;
- (c) is not the subject of an extant notice of intent to cancel registration; and
- (d) is registered as a community housing provider in accordance with the *Housing Providers National Law (Tasmania) Act 2013* (Tas) and any related regulations, and any other law or regulations declared to be community housing legislation by the law of Tasmania;

and which, at the relevant time, the Director has not notified the Housing Provider that the registered community housing provider is not acceptable to the Director.

**Act** means the *Homes Act 1935* (Tas).

**Agreement** or **this Agreement** means this agreement and includes all its annexures, appendices, attachments and schedules (if any).

**Approved Use** means the use of the Leased Premises for:

- (a) the Development; and
- (b) the use of the Dwellings for providing Social Housing to Tenants; and
- (c) uses that are reasonably ancillary thereto.

**Asbestos** includes 'asbestos', 'asbestos containing material (ACM)' and 'asbestos-contaminated dust or debris (ACD)', in each case, as defined in the *Work Health and Safety Regulations 2012* (Tas).

**Australian Standards** means standards published by Australian Standards.

**Authorisation** means a licence, permit, authority or authorisation issued by or on behalf of a Government Body pursuant to or under any legislative provision.

**Blackout Period** means each of the following periods:

- (a) the period from 22 December to 5 January next occurring but if 5 January is not a Business Day, the next Business Day occurring after that date; and
- (b) the period of seven days commencing on Good Friday.

**Building Legislation** means any applicable law relating to the design, construction, use or occupation of a building and for the time being includes:

- (a) the *Building Act 2016* (Tas);

- (b) the *Building Regulations 2016* (Tas); and
- (c) the Building Code of Australia.

**Business Day** means a day that is not a Saturday, a Sunday, Easter Tuesday or a statutory holiday (as defined in the *Statutory Holidays Act 2000* (Tas)) generally observed in Hobart.

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

**Commencement Date** means the date of this Agreement.

**Commonwealth Rent Assistance** means the non-taxable supplement of that name that is payable by the Australian Government and which is added on to the pension, allowance or benefit of eligible income support customers who rent in the private rental market and this term will also include a reference to any replacement of that supplement from time to time.

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

**Crown** means the Crown in Right of Tasmania.

**Date of Development Practical Completion** as defined in Schedule A

**Date of Substantial Commencement** as defined in Schedule A

**Deal** means to sell, transfer, mortgage, charge, encumber, lease, licence or otherwise dispose of or deal with any interest in all or part of the Leased Premises and **Dealing** has a corresponding meaning.

**Default Interest Rate** means the rate of interest expressed as a percentage rate per annum which is from time to time 3 per cent per annum in excess of the interest rate set by a bank nominated in writing by the Director from time to time as a reference or base rate for the calculation of interest on overdraft accommodation for amounts exceeding \$100,000. A bank nominated by the Director must be a bank lawfully permitted to carry on the business of banking in Australia or part of Australia.

**Details** mean the details and recitals set out above.

**Development** means the construction of the Dwellings by the Housing Provider on the Leased Premises in accordance with the Project Schedule and this Agreement.

**Development Practical Completion** means the stage in the Development when a certificate of Practical Completion has been issued for the Development as defined in Schedule A.

**Development Works** has the same meaning in Schedule A.

**Director** means the Director of Housing.

**Director's Agents** means:

- (a) each officer and employee of the Director or the Crown; and
- (b) each agent and contractor of the Director or the Crown engaged in any activity related to the Director' obligations under this Agreement,

and **Director's Agent** means any of them. For the avoidance of doubt, a Director's Agent does not include the Housing Provider or any of the Housing Provider's Agents.

**Director's Financial Contribution** means the sum of \$### of which sum shown in the Project Schedule. A reference to the 'instalment of the Director's Financial Contribution' refers to the instalment applicable to each payment as set out in the 'Stage Payments' section of the Project Schedule.

**Dwellings** mean the ### new residential dwellings, all with ### bedroom, to be constructed by the Housing Provider on the Leased Premises as part of the Development and leased by the Housing Provider for the Approved Use. **Dwelling** or **Dwellings** means any one or more of the Dwellings as the context permits. **###Embedded Instruction: to be completed following acceptance of an EOI Proposal###**

**Eligible Person** or **Eligible Persons** has the meaning of 'eligible person' set out in section 3 of the Act.

**Environmental Law** means any Law relating to the environment, including laws relating to land use, development, pollution, waste disposal, toxic and hazardous substances, conservation and/or resources.

**Environmental Liability** means any actual, contingent or prospective liability, obligation, expense, penalty or fine arising out of a breach of an Environmental Law which could be imposed upon the Director or any of its successors in title as a result of the activities of the Housing Provider and/or any Housing Provider's Agent.

**Expiry Date** means 40 years from the Date of Development Practical Completion.

**Government Body** includes a body politic, a government (federal, state or local), a governmental, judicial or administrative body, a tribunal, a commission, a department or agency of any government, and a statutory authority or instrumentality.

**GST** means any goods and services tax or similar tax imposed by the Commonwealth of Australia (but excluding any penalty, fine, interest or similar payment).

**GST Laws** means applicable Laws relating to GST.

**Hazardous Material** includes:

- (a) Asbestos;
- (c) anything that contains Asbestos;
- (d) any solid, liquid, gas, odour, heat, sound, vibration, radiation, material, substance or contamination, of any kind on, in or under land or water, which:
- (e) constitutes a pollutant or contaminant for the purposes of any Law;
- (f) makes or may make land or water unsafe, unfit or harmful for habitation, use or occupation by any person or animal;
- (g) creates or may be a risk to the health or safety of any person; or
- (h) is such that any land or water does not satisfy any relevant criteria or standards published or adopted by the Environment Protection Authority (Tas) from time to time.

**Household** means all members of an Eligible Person's household including the Eligible Person and any other person residing in the Dwelling on an ongoing basis (including on a full time or pro rata basis).

**Housing Provider** means that entity set out in the Details.

**Housing Provider's Agents** means:

- (a) each employee, consultant, contractor and agent of the Housing Provider;
- (b) each consultant engaged by the Housing Provider in relation to the Development;
- (c) each employee, subcontractor and agent of any of the above; and
- (d) the employees and agents of any such subcontractor,

who are involved in any activity related to the Development, Approved Use or the Housing Provider's obligations under this Agreement, and Housing Provider's Agent means any of them. For the avoidance of doubt, Housing Provider's Agents do not include the Director, the Crown or the Director's Agents.

**Housing Provider's Improvements** means all buildings, infrastructure, fixtures and other improvements from time to time constructed, installed or built by or for the Housing Provider on the Leased Premises including the Dwellings.

**Housing Provider's Property** means any chattels belonging to the Housing Provider on the Leased Premises.

**Housing Register** means the Director's waitlist of Eligible Persons available to the Housing Provider.

**Income** means all earned income including asset income, workers compensation, imputed income, interest, superannuation and wages) child support payments and other statutory income (including family tax benefit, pensions, benefits and allowances) but excludes any Commonwealth Rent Assistance, in respect of the Dwelling.

**Interest Rate** means Commonwealth Bank of Australia interest rate for corporate clients for loan facilities in excess of \$100,000.00 plus two percent.

**Key Performance Indicators** means the performance indicators and targets identified in 'Attachment: Key Performance Indicators' to be used to measure the performance by the Provider of its obligations under this Agreement.

**Law** includes:

- (a) principles of law or equity established by decisions of courts;
- (b) legislation and subordinate legislation; and
- (c) requirements, approvals (including conditions) and guidelines of any Government Body that have force of law.

**Leased Premises** means the Leased Premises situated at ##### where the Dwellings are to be constructed (as the same are shown on the Plan) together with all of the Housing Provider's Improvements. **##Embedded Instruction: to be completed following acceptance of an EOI Proposal##**

**Loss** means any loss, cost, expense, damage, liability, damages or exposure of any type and however arising incurred by a party including legal costs and expenses on a full indemnity basis, direct, indirect or consequential loss, liability to third parties, loss of revenue and loss of profit.

**Market Rent** means the market value rent for the relevant Dwelling if rented on the open market.

**Maximum Rent** means the lesser of:

- (a) the total Commonwealth Rent Assistance in respect of the Dwelling and the sum not exceeding 25% of the Income of the Household of the Eligible Housing Provider; and
- (b) 75% of the Market Rent.

**month** means calendar month.

**Notice** includes a notice, consent, instrument or demand.

**Practical Completion** has the same meaning in Schedule A.

**Priority Applicants** means those Eligible Persons for Social Housing on the Housing Register assessed as being in greatest need, including applicants assessed as highest priority and standard priority.

**Project Document** means [##*Embedded Instruction: this definition of Project Document is to include any other documentation required as a result of the EOI process and may include, but not limited to the RMA, the Sale and Development Agreement, any Director funding agreement, any agreement that may be necessary to replace the existing Sale and Development Agreement, and any other agreements with the Provider that may become relevant.*##]

**Project Schedule** means the schedule for the Development:

- (a) specifying the timing for critical activities related to the Development including milestones and stage payments as applicable;
- (b) specifying a start date for the Development; and
- (c) specifying a Date for Development Practical Completion for the Development, as set out in 'Attachment: Project Schedule.

**Quarter** means a period of three months ending on 31 March, 30 June, 30 September and 31 December.

**Rates** means rates, taxes, charges, fees and/or duties of any Government Body that are assessed, charged or imposed:

- (a) on the Leased Premises;
- (b) on the Housing Provider's Improvements;
- (c) on the Director in respect of the Director's ownership of the Leased Premises;
- (d) on the Housing Provider in respect of:
  - (i) the leasehold estate created by this Agreement; or
  - (ii) the Housing Provider's occupation and use of the Leased Premises,

but does not include any income tax, goods and services tax, capital gains tax or similar tax.

**Rent** means the amount of \$1.00 per annum, if demanded.

**repair** includes repainting and renewal.

**Residential Tenancy Act** means the *Residential Tenancy Act 1997* (Tas).

**Right** includes a right, a power, a remedy, a discretion or an authority.

**Security Interest** means:

- (a) a security interest for the purposes of the *Personal Properties Securities Act 2009* (Cwlth)
- (b) any mortgage, charge, bill of sale, pledge, deposit, lien, hypothecation, arrangement for the retention of title and any other interest or power given by way of security for any debt, monetary liability or other obligation,

and includes any agreement to grant or create any of the foregoing.

**Social Housing** means the use of the Dwellings to house Eligible Persons from the Date of Development Practical Completion, until the Expiry Date, at rents not exceeding the Maximum Rent.

**Tenant** mean a person accommodated as a tenant of a Dwelling and as the context requires, may refer to all Tenants collectively or each Tenant individually.

**Term** means the period from the Commencement Date until the Expiry Date, and where the context requires includes any period of renewal, extension or holding over.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include all genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (d) a reference to a thing (including property or an amount) includes a reference to the whole and each part of that thing;
- (e) a reference to a group of persons includes a reference to any one or more of those persons;
- (f) a reference to an annexure, an appendix, an attachment, a schedule, a party, a clause or a part is a reference to an annexure, an appendix, an attachment, a schedule or a part to, or a clause or a part of, this Agreement;
- (g) a reference to any legislation or legislative provision includes subordinate legislation made under it and any amendment to, or replacement for, any of them;
- (h) writing includes marks, figures, symbols, images or perforations having a meaning for persons qualified to interpret them;
- (i) a reference to a document includes:
  - (i) any thing on which there is writing;
  - (ii) any thing from which sounds, images or writings can be reproduced with or without the aid of any thing else;
  - (iii) an amendment or supplement to, or replacement or novation of, that document; or
  - (iv) a map, plan, drawing or photograph;

- (j) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (k) a reference to a 'person' includes a natural person, a partnership, a body corporate, a corporation sole, an association, a Government Body, or any other entity;
- (l) a reference to a party includes that party's executors, administrators, successors and permitted assigns and substitutes;
- (m) a reference to a Director includes, as applicable, that Director's predecessors and successors in office;
- (n) a reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or functions of which have been substantially transferred, is taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred;
- (o) a reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office;
- (p) mentioning any thing after the words 'includes', 'included' or 'including' does not limit the meaning of any thing mentioned before those words;
- (q) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later;
- (r) reference to a time or date in connection with the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere; and
- (s) references to '\$' and 'dollars' are to Australian dollars.

### **1.3 Headings**

Headings are included for convenience only and do not affect the interpretation of this Agreement.

### **1.4 Capacity of Director**

- (a) Unless otherwise stated in this Agreement, a reference to the Director means the Director as a contracting party under this Agreement.
- (b) The Director's Rights under this Agreement are in addition to his prerogatives and Rights under legislation or at common law. Nothing in this Agreement, limits or prevents the Director or the Crown from exercising any such prerogative or Right or otherwise requires the Director or the Crown to exercise, or to refrain from exercising or procure the exercise or the refraining from exercising of any such prerogative or Right in a particular way or at all.

### **1.5 Housing Provider's Agents**

The Housing Provider must procure that each Housing Provider's Agent:

- (a) where the context requires, complies with the relevant provisions of this Agreement in the same manner as the Housing Provider is required to do so;

- (b) not act in a way which would result in the Housing Provider being in breach of this Agreement or which, if the action was undertaken by the Housing Provider, would result in the Housing Provider being in breach of this Agreement.

#### **1.6 Capacity and role of Housing Provider's Agents**

- (a) The performance by any of the Housing Provider's Agents in whole or in part of the obligations of the Housing Provider under this Agreement will not limit or affect the Housing Provider's obligations or liabilities under this Agreement.
- (b) An agreement, consent, approval, waiver or Notice made or given by a Housing Provider's Agent for the purposes of this Agreement is taken to also have been made or given by the Housing Provider.
- (c) An act or omission of any Housing Provider's Agent in connection with any activity relating to the Approved Use, including negligent act and omissions, is taken to be an act or omission of the Housing Provider for the purposes of this Agreement.

#### **1.7 No rule of construction applies to disadvantage party**

In relation to the interpretation of this Agreement, no rule of construction is to apply to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

#### **1.8 Construction of Housing Provider's obligations**

- (a) If the Housing Provider is prohibited from doing any thing under this Agreement the Housing Provider must not allow any Housing Provider's Agent or any other person to do that thing.
- (b) Anything that the Housing Provider is required to do under or in accordance with this Agreement is to be done at the Housing Provider's cost.

#### **1.9 Director's right of entry**

If the Director is authorised to enter onto the Leased Premises for any purpose:

- (a) the Director may also enter the Leased Premises with its employees, agents, professional advisers, contractors, workers and others for that purpose; and
- (b) persons authorised by the Director may enter the Leased Premises for that purpose without the Director being present.

#### **1.10 Exclusion of statutory provisions**

No statutory provisions are implied in this Agreement unless the relevant provisions cannot be excluded by agreement.

#### **1.11 Agreement not to derogate**

The Housing Provider's obligations and liabilities under or in connection with this Agreement are in addition to, and do not affect, limit, replace or exclude, the Housing Provider's obligations and liabilities under or in connection with:

- (a) any existing or future Law; or



- (b) any Authorisation relating to the Leased Premises and the Development (including any Authorisation from time to time applicable to the design, construction, use and/or operation of the Development).

## 1.12 Non application of the *Residential Tenancy Act*

The parties acknowledge and agree that:

- (a) whilst this Agreement provides for use of the Premises by the Housing Provider for residential accommodation:
  - (i) the Housing Provider is a 'social housing provider' within the meaning of the Act; and
  - (ii) as a social housing provider, the Housing Provider is permitted to sublease in accordance with section 49(1AA) of the *Residential Tenancy Act*;
- (b) notwithstanding clause 1.12(a), the *Residential Tenancy Act* does not apply to this Agreement:
  - (i) by virtue of section 6(1)(d) of the *Residential Tenancy Act*, as this Agreement will be registered under the *Land Titles Act 1980* (Tas);
  - (ii) by virtue of section 6(1)(da) of the *Residential Tenancy Act*, as this Agreement is a lease of residential premises by the Director to a social housing provider for the purposes of the *Residential Tenancy Act*;
  - (iii) by virtue of section 6(1)(db) of the *Residential Tenancy Act*, as this Agreement is a lease of residential premises which are intended to be sub-leased to an Eligible Person.

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## 2 Conditions subsequent

### 2.1 Conditions subsequent

This Agreement is made subject to the following conditions subsequent:

- (a) **Development Approval:** [##Embedded Instruction: to be completed following acceptance of an EOI Proposal##]
  - All of the following having occurred on or before #### or such later date (if any) as the Director in his or her absolute discretion approves in writing:
    - (i) The ### Council (the **Council**) issuing a Development Approval to the Housing Provider to carry out the Development on the Land.
    - (ii) The Development Approval having taken effect. For the purposes of this clause 2.1(a), the Development Approval (obtained by the Housing Provider) will be treated as having taken effect on the last of the following dates:
      - (A) the date on which the Development Approval has taken effect for the purposes of section 53 of the *Land Use Planning Approvals Act 1993* (Tas); and
      - (B) where the decision of the Council to grant the Development Approval is the subject of an appeal to the Resource Management and Planning Appeal Tribunal (the **Tribunal**):

- (I) if there is no appeal to the Supreme Court from the decision of the Tribunal within the time permitted by section 25 of the *Resource Management and Planning Appeal Tribunal Act 1993* (Tas), the day after the date on which the time for lodging an appeal to the Supreme Court against the decision of the Tribunal expired; and
  - (II) if there is such an appeal to the Supreme Court and the decision to grant the Development Approval is not overturned by the Supreme Court, the date upon which the appeal to the Supreme Court is finally determined.
- (iii) The Housing Provider notifying the Director in writing that the Development Approval is on terms and conditions satisfactory to the Housing Provider, acting reasonably.
  - (iv) The Director notifying the Housing Provider in writing that the Development Approval is on terms and conditions satisfactory to the Director in his or her absolute discretion.
- (b) **Insurance:** The Housing Provider providing evidence to the Director's satisfaction, that, with the exception of the dwelling insurance required in clause 11, the insurances required under clause 11 have been taken out.
  - (c) **Approvals:** The Housing Provider providing evidence to the Director's reasonable satisfaction that all Approvals necessary for the Development in accordance with this Agreement have been obtained.
  - (d) **Achievement of substantial commencement:**  
The Housing Provider substantially commencing construction of the Development Works on the Leased Premises by no later than the Date for Substantial Commencement (or such later date, if any, as the Director in his or her absolute discretion approves in writing).
  - (e) **Achievement of Practical Completion:**  
The Housing Provider achieving Practical Completion by no later than the Date for Development Practical Completion (or such later date, if any, as the Director in his or her absolute discretion approves in writing).

## 2.2 Director's right of termination

The Director may terminate this Agreement by notice in writing to the Housing Provider if any condition subsequent in clause 2.1 is not satisfied by the required date for the satisfaction of that condition subsequent.

## 2.3 Consequences of termination

If the Director terminates this Agreement in accordance with clause 2.2, then:

- (a) no compensation may be claimed by the Housing Provider from the Director or the Crown;
- (b) except to the extent that the Director has any Claim against the Housing Provider for a breach of clause 2.4:

- (i) no party will be responsible for any Loss incurred by the other party in relation to the Development or this Agreement, or incurred in connection with or arising out of the termination of this Agreement; and
- (ii) no party will be entitled to bring any Claim against the other party in relation to the Development or this Agreement.

## **2.4 Housing Provider to use reasonable endeavours**

The Housing Provider must use its reasonable endeavours to satisfy the conditions subsequent in clause 2.1 including taking all necessary actions, making all necessary applications, supplying all requested information, and diligently prosecuting the application and any appeals or objections.

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## **3 Grant of lease, holding over and related matters**

### **3.1 Grant clause**

Subject to this Agreement, the Director leases to the Housing Provider for the Term, and the Housing Provider takes on a lease from the Director of the Leased Premises for the Approved Use commencing on the Commencement Date.

### **3.2 Holding over**

- (a) If the Housing Provider remains in occupation of the Leased Premises after the expiry of the Term, the Housing Provider (in the absence of any agreement in writing to the contrary) holds the Leased Premises as a monthly tenant at a monthly rent.
- (b) The monthly tenancy may be terminated by the Director or the Housing Provider on giving one month's notice to the other of them ending on any day.
- (c) Subject to this clause 3.2, the monthly tenancy are on the same terms and conditions as this Agreement (with any necessary changes):
  - (i) to the extent that, in relation to the Leased Premises, the provisions of this Agreement are capable of application to a monthly tenancy; and
  - (ii) except for any further terms or conditions which the Director requires as a condition of giving approval to the holding over.

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## **4 Director's reservations**

- (a) The Director reserves the right to enter the Leased Premises for any one or more of the following purposes:
  - (i) in connection with the Director discharging any function, obligation or duty under any applicable Law (including the Act and the *Residential Tenancy Act*);
  - (ii) in connection with the Director complying with any applicable Law (including Laws relating to the Development or the Leased Premises);
  - (iii) to view the Leased Premises;

- (iv) to determine whether the Housing Provider is complying with its obligations under this Agreement;
  - (v) to ensure the Housing Provider is complying with its obligations under the *Residential Tenancy Act*;
  - (vi) enabling the Director to comply with his or her obligations under this Agreement;
  - (vii) enabling the Director to exercise any Right;
  - (viii) enabling the Director to deal with or assist in any real or threatened emergency situation perceived as such by the Director (with the Director to be the sole judge of whether there is a real or threatened emergency).
- (b) Subject to 4(c), the Housing Provider must allow the Director to exercise the Director's Rights under clause 4(a) at any reasonable time and on reasonable notice.
- (c) In the case of any real or threatened emergency or where there is a need to do so to comply with any Law, the Director may exercise the Director's Rights under clause 4(a) at any time without notice.
- (d) In exercising the Director's Rights under clause 4(a), the Director must:
- (i) make good any damage to the Leased Premises and the Housing Provider's Property arising out of any of the activities and things that the Director is allowed to do (except to the extent that the Director by Law is not required to make good any such damage); and
  - (ii) cause as little disruption to the Housing Provider's use of the Leased Premises as is reasonably possible in the circumstances.

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## **5 Rent**

The Housing Provider must pay the Rent to the Director annually in advance, if demanded.

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## **6 Other costs payable by Housing Provider**

### **6.1 Housing Provider must pay Rates**

- (a) The Housing Provider must punctually pay all Rates that are separately assessed, charged or imposed in respect of the Leased Premises. If so separately assessed, the Housing Provider is only required to pay land tax assessed in respect of the Leased Premises (calculated as if the Leased Premises are only land owned by the Director).
- (b) If any Rate is included in an assessment or charge which relates to or includes any other property, the Housing Provider must pay to or reimburse the Director for a pro rata share of that Rate.
- (c) For the purposes of this clause 6.1(b), a pro rata share is that amount which bears the same proportion to the total Rate included in the assessment or charge as the assessed annual value of the Leased Premises bears to the total assessed annual values of all premises included in the charge or assessment.

- (d) In this clause 6.1, 'assessed annual value' has the meaning in *Valuation of Land Act 2001* (Tas).

## **6.2 Rent**

All rent paid for the lease of the Dwellings pursuant to a Residential Tenancy Agreement by Tenants in respect of the Term received by the Housing Provider belongs to the Housing Provider. Commonwealth Rent Assistance, if any, paid with respect to the occupancy of the Dwellings, also belongs to the Housing Provider.

## **6.3 Services**

The Housing Provider must pay all charges for all (if any) utilities and services connected to or used on the Leased Premises during the Term.

## **6.4 Costs in connection with the preparation of this Agreement**

Each party must pay its own legal costs in connection with the negotiation and preparation of this Agreement.

## **6.5 Costs of notices of re-entry and consents**

The Housing Provider must pay all reasonable legal costs (as between lawyer and client) and all other costs and expenses incurred by the Director for any of the following:

- (a) the lawful termination of this Agreement;
- (b) the lawful exercise or lawfully attempted exercise by the Director of any Right in connection with this Agreement;
- (c) any Dealing by the Housing Provider with its interest in this Agreement;
- (d) any proceedings brought by the Director to enforce the performance by the Housing Provider of its obligations under or arising out of this Agreement; and
- (e) the granting of any approval or consent by the Director in connection with this Agreement including costs incurred by the Director in receiving advice and assistance from third parties in respect of such approvals and consent and in ensuring any relevant conditions are fulfilled (but not in connection with an approval or consent pursuant to an application made under legislation by the Housing Provider to the Director).

## **6.6 Legal costs indemnity**

If:

- (a) the Director is made a party to any litigation (other than litigation between the Director and the Housing Provider) commenced by or against the Housing Provider;
- (b) the litigation is in connection with the Housing Provider's occupancy or use of the Leased Premises and/or the carrying out of the Development; and
- (c) no judgment is entered against the Director in respect of that litigation,

the Housing Provider must pay to the Director on demand all legal fees and disbursements (as between lawyer and client) incurred by the Director in connection with that litigation but only to the extent that the Director is unable to actually recover those legal fees and disbursements from any third party.

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## **7 Payment requirements**

### **7.1 Payments to be made free of deductions**

The Housing Provider must make payments under this Agreement to the Director without set-off, counterclaim, withholding or deduction (except to the extent that it may expressly be permitted by this Agreement). If because of any mandatory Law the Housing Provider must withhold any amount from a payment and pay the amount withheld to a Government Body, the Housing Provider must provide evidence to the Director of the payment to the Government Body as soon as practicable.

### **7.2 Place for payment of moneys payable by the Housing Provider**

The Housing Provider must pay moneys due to the Director at a place reasonably determined by the Director or direct to a bank account in Australia nominated by the Director.

### **7.3 GST**

- (a) Unless otherwise stated in this Agreement, all amounts payable by one party to another party are exclusive of GST.
- (b) If GST is imposed or payable on any supply made by a party under this Agreement, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.
- (c) A party that makes a taxable supply under this Agreement must provide a valid tax invoice to the recipient of the supply.
- (d) A party's right to payment under clause 7.3(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- (e) If the consideration for a supply under this Agreement is a payment or reimbursement for, or contribution to, any expense or liability incurred by the supplier to a third party, the amount to be paid, reimbursed or contributed in respect of the expense or liability will be the amount of the expense or liability net of any input tax credit to which the supplier is entitled in respect of the expense or liability.
- (f) Where any amount payable under this Agreement is paid by being set-off against another amount, each amount must be calculated in accordance with this clause 7.3 as if it were an actual payment made pursuant to this Agreement.
- (g) Unless the context otherwise requires, expressions used in this clause 7.3 that are defined in the GST Laws have the meanings given to those expressions in the GST Laws.

### **7.4 Interest**

The Housing Provider must pay interest at the Default Interest Rate to the Director on any money (including Rent) payable by the Housing Provider to the Director which is not paid within seven days of the due date for payment of that money. Interest is payable from the due date for payment until payment of the money. Interest payable under this clause accrues on a daily basis and is payable monthly in arrears and on the date that the payment is made in respect of which interest is payable. If the Housing Provider's

obligation to pay any moneys to the Director is merged in a judgment, the Housing Provider must pay interest on those moneys from the date of judgment until payment at the rate of interest applicable to those moneys immediately before judgment.

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## **8 Carrying out of Development**

The provisions in Schedule A apply in relation to the carrying out of the Development. This clause does not limit the operation or application of any part of this Agreement to the Development (including the generality or scope of the Rights and obligations created by Schedule A).

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## **9 Leased Premises**

The provisions in Schedule B apply in relation to the use, maintenance and repair of the Leased Premises. This clause does not limit the operation or application of any part of this Agreement (including the generality or scope of the Rights and obligations created by Schedule B).

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## **10 Housing Provider's general obligations**

### **10.1 Status of Housing Provider**

On and from the Commencement Date, and at all times during the Term, the Housing Provider must hold and maintain registration under the National Regulatory System for Community Housing Providers.

### **10.2 Compliance with Law**

- (a) The Housing Provider must comply with all applicable Laws affecting or relating to the following matters:
  - (i) the use and occupation of the Leased Premises including the Dwellings;
  - (ii) the design construction, maintenance and repair of the Leased Premises and the Dwellings;
  - (iii) the Development;
  - (iv) the remediation of the Leased Premises;
  - (v) the exercise of the Housing Provider's Rights, and the performance of its obligations, under this Agreement.
- (b) For the purposes of clause 10.2(a) and to avoid doubt, applicable Laws include the Act and Environmental Laws.

### **10.3 Compliance with notices issued by Government Bodies**

- (a) The Housing Provider must punctually comply with all notices, orders and directions issued in the exercise of any statutory function or power by, or on behalf of, any Government Body (including the Director) to the Housing Provider:
  - (i) concerning a matter referred to in clause 10.2(a); or

- (ii) requiring the doing of any works by the Housing Provider in relation to the Housing Provider's Improvements.
- (b) The Housing Provider must, as soon as reasonably practicable, give the Director a copy of any such notice, order or direction (except notices, orders and directions issued by the Director).

#### **10.4 Notices by Housing Provider to Director**

- (a) Subject to clause 10.4(b), the Housing Provider must, as soon as reasonably practicable, give notice in writing to the Director of:
  - (i) any accidents or incidents arising out of the carrying out of the Development where first aid (other than of a minor or trivial nature) is required by any person;
  - (ii) any damage, defect, hazard or want of repair in relation to the Housing Provider's Improvements including the Dwellings;
  - (iii) any Security Interest created or entered into by the Housing Provider affecting this Agreement or the Leased Premises;
  - (iv) any litigation, arbitration, tax claim, dispute or administrative proceedings commenced or threatened in writing which may have a material effect on the capacity of the Housing Provider to perform its obligations under this Agreement;
  - (v) any writ (or other originating process), summons, complaint, notice, hearing, order or determination in relation to the Development or the Approved Use;
  - (vi) any refusal to grant or to renew any Authorisation required for:
    - (A) the use and occupation of the Leased Premises;
    - (B) the design construction, use, maintenance and repair of the Leased Premises;
    - (C) the Development;
  - (vii) any expiry, cancellation, revocation, termination or suspension of an Authorisation of a kind referred to in clause 10.4(vi) or the occurrence any circumstances, events, matters or things which would justify the cancellation, revocation, termination or suspension of any such Authorisation.

#### **10.5 Authorisations for the ongoing use of Housing Provider's Improvements**

- (a) The Housing Provider must obtain and maintain each Authorisation which is required in connection with (or which in the opinion of the Director is desirable for) any of the following:
  - (i) the use and occupation of the Leased Premises;
  - (ii) the design construction, use, maintenance and repair of the Leased Premises including the Dwellings;
  - (iii) the Development; and
  - (iv) any combination of the above.



- (b) The Housing Provider must provide copies of each Authorisation if requested by the Director.
- (c) The Housing Provider must do all things necessary or desirable to keep each Authorisation in full force and effect, including by:
  - (i) complying with each applicable Law;
  - (ii) complying with the terms and conditions attaching to an Authorisation;
  - (iii) complying with the lawful requirements and orders of any Government Body (including the Director) that has jurisdiction in relation to a Authorisation or the Development; and
  - (iv) paying or causing to be paid all fees, taxes, duties and other imposts payable in relation to each Authorisation.
- (d) The Housing Provider must not without the prior written consent of the Director:
  - (i) do anything that prejudices or adversely affects the renewal or continuation of any Authorisation;
  - (ii) do anything that may or would cause any Authorisation to be cancelled, revoked, suspended or terminated;
  - (iii) surrender or attempt to surrender any Authorisation; or
  - (iv) transfer, assign, dispose of or otherwise deal with or part with the possession of any Authorisation.
- (e) The Housing Provider irrevocably authorises the Director to obtain from any Government Body any information and copies of any documents relating to a Authorisation. The Housing Provider agrees that this clause may be relied upon by a Government Body as sufficient authority to provide any information or copies of any documents.
- (f) The failure of the Housing Provider to obtain any Authorisation does not discharge or affect the Housing Provider's obligations or liabilities under this Agreement.

## **10.6 Services**

The Housing Provider is responsible for making all arrangements necessary, and must pay all costs and expenses, for the connection and supply of any service to the Leased Premises and the Dwellings including the connection of a supply of electricity.

## **10.7 Environmental Liability**

The Housing Provider must not do, or permit a Housing Provider's Agent to do, anything on the Leased Premises, or bring, or permit a Housing Provider's Agent to bring, anything (including any Hazardous Material) onto the Leased Premises which results (or may result in the opinion of the Director) in an Environmental Liability.

## **10.8 Disease**

If an outbreak of any infectious disease occurs on the Leased Premises:

- (a) inform the Director of the outbreak of that disease;

- (b) comply with all applicable Laws and directions of the Director in relation to the outbreak of that disease; and
- (c) take whatever steps are necessary to control or eliminate that outbreak.

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## **11 Housing Provider's obligation relating to insurance**

### **11.1 Works insurance**

Before commencing the Development, the Housing Provider must effect and maintain a contract works insurance policy in respect of the Approved Use (including the Development).

- (a) The policy must:
  - (i) be in the joint names of the Director (on behalf of the Crown), the Housing Provider, the Housing Provider's Agents and all subcontractors (together 'the **Insured**') for their respective rights and interests;
  - (ii) cover liabilities (including each Insured's respective liability to the other Insured) in respect of loss, destruction or damage to the Development for the full reinstatement and replacement cost;
  - (iii) include cover in respect of the following:
    - (A) claim contingencies covering removal of debris/demolition costs, professional fees and expediting expenses;
    - (B) materials associated with the Development whilst in storage off-site and in transit to the Director's Land; and
    - (C) damage to existing property and improvements;
- (b) be with an insurer, and otherwise on terms and conditions, approved in writing by the Director; and
- (c) be maintained for the duration of the Development.

### **11.2 Obligation to insure for public liability**

- (a) Before commencing the Development, the Housing Provider must effect and maintain a public liability policy.
- (b) The policy must:
  - (i) be in the joint names of the Director (on behalf of the Crown), the Housing Provider, the Housing Provider's Agents and all subcontractors (together 'the **Insured**') for their respective rights and interests;
  - (ii) cover liabilities (including the Insured's respective liability to the other Insured) in respect of:
    - (A) personal injury to, or the death of any person (excluding a person who at the time of the injury or death is defined as a worker of the Insured under any statute relating to workers' or accident compensation insurance); and

- (B) loss, destruction or damage to any property (other than the Development),  
arising out of or is caused by the execution of the Approved Use;
- (iii) provide insurance cover for an amount in respect of any one occurrence of not less than \$20,000,000.00 or such other amount as the Director may reasonable require;
- (iv) include liability arising from the use of registered vehicles when being used as a tool of trade;
- (v) be with an insurer, and otherwise on terms and conditions, approved in writing by the Director; and
- (vi) be maintained for the duration of the Term.

### **11.3 Obligation to insure Dwellings**

- (a) After the Date of Practical Completion, the Housing Provider must effect and maintain an insurance policy in respect of the Leased Premises (including the Dwellings).
- (b) The policy must:
  - (i) be in the joint names of the Director (on behalf of the Crown), the Housing Provider, the Housing Provider's Agents and all subcontractors (together 'the **Insured**') for their respective rights and interests;
  - (ii) cover liabilities (including each Insured's respective liability to the other Insured) in respect of loss, destruction or damage to the Leased Premises (including the Dwellings) for the full reinstatement and replacement cost;
  - (iii) include cover in respect of damage to existing property and improvements;
  - (iv) be with an insurer, and otherwise on terms and conditions, approved in writing by the Director; and
  - (v) be maintained for the duration of the Term.

### **11.4 Obligation to insure for workers' compensation**

- (a) Before commencing the Development, the Housing Provider must effect and maintain workers' compensation insurance covering:
  - (i) any liability, loss, claim or proceeding whatsoever, whether arising by virtue of any statute relating to workers' compensation insurance, accident compensation legislation, employer's liability, or at common law, by any person employed for the purpose of executing the Development; and
  - (ii) unless otherwise limited by statute, the liability provided by this insurance must be for an unlimited amount.
- (b) The policy must be maintained for the duration of the Term.
- (c) The Housing Provider must ensure that all subcontractors involved in the Approved Use have similar insurance.

## 11.5 Obligation to insure against professional negligence

- (a) In this clause 11.5:
- Housing Provider's Consultant** means a Housing Provider's Agent engaged by the Housing Provider in relation to the design and/or supervision of the Approved Use and/or the Development.
- (b) The Housing Provider must ensure that each of the Housing Provider's Agents, whilst acting in their professional capacity in relation to the Approved Use, takes out and maintains professional indemnity insurance, indemnifying the Housing Provider's Agents and the Housing Provider for a breach of professional duty, whether owed in contract, tort or otherwise, in connection with the Approved Use.
- (c) The insurance must be maintained for a period of at least seven years after Date for Development Practical Completion.
- (d) The policy must include an automatic reinstatement clause.
- (e) The Housing Provider must promptly inform the Director if any of the Housing Provider's Consultant fails to maintain the required professional indemnity insurance required by this clause 11.5, the Housing Provider must effect that insurance on behalf of the Housing Provider's Consultant.

## 11.6 Cross liability

- (a) Where insurance is effected in joint names, the policy must provide that all conditions, agreements and endorsements (with the exception of limits of liability or indemnity) operate as if there was a separate policy of insurance, covering each of the insured.
- (b) Each policy must provide that:
- (i) the insurer waives all Rights, remedies or relief to which it might become entitled by way of subrogation against any of the parties comprising the insured; and
- (ii) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured.

## 11.7 Policy documents

The Housing Provider must give to the Director:

- (a) a copy of each insurance policy;
- (b) evidence of the currency of each insurance policy at the time each policy is renewed and at any other time upon demand by the Director; and
- (c) a copy of each document issued by an insurer in relation to an insurance policy.

## 11.8 Protection of insurances

The Housing Provider must:

- (a) immediately notify the Director in writing of any event (of which the Housing Provider is aware) which gives rise or might give rise to a claim under any insurance policy related to the Development;

- (b) immediately notify the Director in writing of the cancellation of any insurance policy for any reason;
- (c) comply with the requirements of each insurance policy;
- (d) not do anything which may result in:
  - (i) the cancellation of any insurance policy;
  - (ii) the refusal by an insurer to renew any insurance policy; or
  - (iii) the loss of any right to claim under an insurance policy;
- (e) not without the prior written consent of the Director vary, rescind, cancel or terminate any insurance policy; and
- (f) do everything that is necessary or desirable to recover any moneys that are or may be due in respect of any claim or potential claim under an insurance policy, including lodging a claim and providing to the insurer or its agents any documents, information or evidence required by the insurer or its agents.

### **11.9 Director may insure**

If the Housing Provider fails to take out, effect or renew an insurance policy which it is required to take out, effect or renew by this clause 11, then without being obliged to do so, the Director may:

- (a) take out or renew any such insurance policy that the Housing Provider has not taken out, effected or renewed;
- (b) pay any unpaid premium; and
- (c) recover the cost of doing so from the Housing Provider.

### **11.10 Housing Provider's obligations not limited**

The Housing Provider's obligations and liabilities under this Agreement are not limited because of any thing in this clause 11.

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## **12 Releases and indemnities**

### **12.1 Releases given by Housing Provider**

The Housing Provider releases the Director from, and agrees that the Director is not liable for, any Loss incurred, paid or payable by the Housing Provider in connection with or arising out of any, or any combination, of the following:

- (a) the carrying out of the Development;
- (b) any thing that the Director is permitted to do under this Agreement and which the Director does not do negligently;
- (c) the exercise, attempted exercise, enforcement or attempted enforcement of any of the Director's Rights under this Agreement;
- (d) any damage, loss, injury or death from any cause (including heat, fire, electricity, vermin, explosion, tempest, bursting pipes, the entry of water from any source and/or the operation of any fire equipment) except to the extent that it is caused

or contributed to by the negligence of the Director or by the negligence of an employee or agent of the Director for whom the Director is legally responsible;

- (e) any risk referred to in clause 13;
- (f) any thing that occurred before the date of this Agreement, including any representation, warranty or statement made by or on behalf of the Director before the date of this Agreement; or
- (g) any theft or loss of property from the Leased Premises.

## **12.2 Indemnities by Housing Provider**

The Housing Provider must indemnify and hold indemnified the Director against, and must pay to the Director on demand, the amount of all Loss incurred, paid or payable by the Director in connection with or arising out of any, or any combination, of the following:

- (a) damage, loss, injury or death caused or contributed to by:
  - (i) any act, negligence or default of the Housing Provider or any Housing Provider's Agent;
  - (ii) any dangerous condition or state of affairs on the Leased Premises created by the Housing Provider or any Housing Provider's Agent (whether or not known to the Director);
  - (iii) the negligent use or misuse by the Housing Provider or any Housing Provider's Agent of any service or facility on the Leased Premises;
- (b) the Director doing in a reasonable manner any thing which the Housing Provider must do under this Agreement but which the Housing Provider has not done or has not done properly;
- (c) any breach of this Agreement by the Housing Provider;
- (d) the occupation and use of the Leased Premises by the Housing Provider;
- (e) the carrying out of the Development;
- (f) the use of the Leased Premises for the Approved Use; or
- (g) the condition of the Leased Premises.

## **12.3 Independence and survival of indemnities**

The release in clause 12.1 and each indemnity in clause 12.2 survives the expiration or sooner determination of this Agreement and is separate from the other obligations of the Housing Provider under this Agreement. An indemnity may be enforced before the Director incurs a loss or makes a payment. An indemnity in this Agreement is not to be limited by reference to any other indemnity.

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## **13 Risks associated with Leased Premises**

### **13.1 All risks accepted by Housing Provider**

The Housing Provider accepts all risks in connection with the carrying out of the Development, (including its design, construction, use, operation, management,

maintenance and repair) and the conduct of the Approved Use including in respect of any of the following:

- (a) the cost of constructing the Development and conducting of the Approved Use being more than the amounts estimated;
- (b) the suitability of the Leased Premises for the purposes of the Development and/or the Approved Use including geo-technical conditions;
- (c) the suitability of the Leased Premises generally for the purposes of the Approved Use;
- (d) technical obsolescence occurring in relation to the Development;
- (e) any present or future Law affecting the nature or extent of the Director's Rights or obligations under this Agreement;
- (f) any present or future Law affecting the nature or extent of the Housing Provider's Rights or obligations under this Agreement or its ability to exercise those Rights or to perform those obligations;
- (g) the risk of industrial action resulting in delays, increased costs or decreased revenue;
- (h) the risk of loss or damage to the Leases Premises, the Housing Provider's Improvements or the Housing Provider's Property from any cause (other than as a result of the wilful or negligent act or omission of the Director or any employee of the Director in the course of the employee's duties as an employee);
- (i) third party claims for:
  - (i) loss, destruction or damage to real or personal property;
  - (ii) injury to, or disease or death of persons; or
  - (iii) economic loss,arising out of the design, construction or state of repair or disrepair of the Development, the conduct of the Approved Use (except to the extent caused by a wilful or negligent act or omission of the Director or any employee of the Director in the course of his or her duties as an employee);
- (j) inclement weather resulting in delays, increased costs or decreased revenue;
- (k) the availability, unavailability, adequacy or interruption of any service (including water, drainage and/or sewerage);
- (l) any delay in obtaining any Authorisation or the requirements of any Government Body in connection with obtaining any Authorisation resulting in delays, increased costs or decreased revenue;
- (m) the exercise by the Director of, or its refusal to exercise, any Right.

### **13.2 Limitation of Rights**

The Housing Provider is not entitled to terminate this Agreement;

- (a) unless expressly provided for otherwise elsewhere in this Agreement, stop or reduce the payments (including Rent) made or to be made by the Housing Provider under this Agreement; or

- (b) make any Claim against the Director (including any claim for damages or payment of any compensation),

in connection with any of the matters mentioned in clause 13.1.

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## 14 No warranties

### 14.1 Director does not give any warranties

The Director does not give (and nor has any person on his or her behalf given) any representation or warranty to the Housing Provider in relation to the following matters:

- (a) the condition of the Leased Premises;
- (b) that the Leased Premises are suitable for the Approved Use;
- (c) in connection with any of the matters mentioned in clause 13.1.

### 14.2 Housing Provider not to rely on warranties

If the Director, or any person on behalf of the Director, has made any representation or warranty which is not contained in this Agreement in relation to any thing concerning the Leased Premises or this Agreement, the Housing Provider has not relied and will not rely on that representation or warranty in connection with this Agreement.

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## 15 Dealing

### 15.1 No dealing

The Housing Provider must not Deal with this Agreement or its estate or interest in the Leased Premises without the prior written consent of the Director.

### 15.2 Assignment

Despite clause 15.1, the Housing Provider may assign its estate and interest in the Leased Premises and in this Agreement with the prior written consent of the Director if:

- (a) the Housing Provider gives to the Director not less than **### months notice** **[##Embedded Instruction: to be completed following acceptance of an EOI Proposal. Any time frame must not be less than 3 months##]** in writing of its wish to assign this Agreement but any such notice cannot be given by the Housing Provider during a Blackout Period;
- (b) the Housing Provider is not at the time of giving that notice in breach of any of its obligations under this Agreement;
- (c) the proposed assignee:
  - (i) is an Acceptable CHP and at the relevant time, the Director has not notified the Housing Provider, that the entity is not an Acceptable CHP;
  - (ii) will on and from the date of the assignment hold all Authorisations necessary for the lawful operation of the Leased Premises;
- (d) the terms and conditions of the assignment are fully disclosed in writing to the Director;



- (e) the proposed Acceptable CHP enters into a deed of assignment with the Director (in a form and substance reasonably required by the Director) pursuant to which the proposed assignee agrees with the Director that the assignee will duly perform and discharge the Housing Provider's obligations under this Agreement at all times after the assignment;
- (f) the Director is provided with such financial information and other data in relation to the proposed assignee, as the Director may reasonably require; and
- (g) the Housing Provider pays to the Director its proper and reasonable expenses, costs and disbursements in respect of the above matters.

### **15.3 Acceptance of Rent**

The acceptance of Rent or other payments under this Agreement by the Director from a person who is not the Housing Provider does not constitute consent to a Dealing with this Agreement in breach of clause 15.1.

### **15.4 First offer to Director**

Despite anything else in this Agreement, the Director will not be required to consent to an assignment of this Agreement to an Acceptable CHP unless, in relation to that assignment:

- (a) the Housing Provider has made a written offer to surrender this Agreement to the Director on the same terms and conditions (with any necessary changes) as the Housing Provider is bona fide prepared to accept for the assignment of this Agreement to an Acceptable CHP but any such notice cannot be given by the Housing Provider during a Blackout Period; and
- (b) the Director has not accepted the offer made pursuant to clause 15.4(a) within 90 Business Days of receiving the offer from the Housing Provider.

### **15.5 No assignment before Date of Development Practical Completion**

Despite any thing in clause 15 above, the Housing Provider is not permitted to assign this Agreement at any time before the Date of Development Practical Completion, unless otherwise agreed in writing by the Director.

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## **16 Director's obligation**

Subject to the Housing Provider paying the Rent and observing and performing its obligations under this Agreement the Director (in his or her capacity as lessor under the Act) will permit the Housing Provider to quietly and exclusively use and enjoy the Leased Premises during the Term without any undue disturbance by the Director (in his or her capacity as the lessor under the Act).

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## **17 Termination and related matters**

### **17.1 Director may give Default Notice**

The Director may give a notice (a **Default Notice**) to the Housing Provider if the Housing Provider breaches any of its obligations under this Agreement. A Default

Notice is not required to be given by the Director in relation to any of the events or matters specified in clauses 17.6.

## **17.2 Default Notice requirements**

A Default Notice must:

- (a) state that it is Default Notice for the purposes of clause 17.1 and, if applicable, that it also operates as a notice for the purposes of section 15(1) of the *Conveyancing and Law of Property Act 1884* (Tas);
- (b) specify the particulars of the breach;
- (c) if the breach is capable of being remedied, state:
  - (i) what the Housing Provider must do to remedy the breach; and
  - (ii) a reasonable period within which the breach must be remedied (being a period of not less than ## Business Days from the date the Default Notice is given to the Housing Provider); and
- (d) if the breach is not capable of being remedied, state the amount (if any) which the Director requires the Housing Provider to pay to the Director as reasonable compensation for the breach.

## **17.3 Disputes in relation to whether a breach exists or as to compensation**

- (a) The Housing Provider may dispute whether a breach specified in Default Notice exists, or the amount of any compensation specified by the Director in a Default Notice, by giving a notice (**Dispute Notice**) to the Director not later than 15 Business Days after receiving the Default Notice.
- (b) If the Housing Provider does not give a Dispute Notice within the time permitted by clause 17.3(a) in respect of Default Notice, the Housing Provider:
  - (i) loses the right to give a Dispute Notice in relation to the matters specified in that Default Notice; and
  - (ii) is taken to have admitted the breaches specified in, and agreed to the payment of any compensation required by, that Default Notice.

## **17.4 Dispute Notice requirements**

A Dispute Notice must:

- (a) state that it is a Dispute Notice; and
- (b) specify the basis upon which the Housing Provider disputes the existence of the breach or amount of compensation stated in the Default Notice (as the case may be).

## **17.5 Disputes when Housing Provider gives Breach Dispute Notice**

If the Housing Provider gives a Breach Dispute Notice, and the Housing Provider and the Director do not agree the matters in dispute within 45 Business Days of the date on which the Housing Provider gives its Breach Dispute Notice, the matters in dispute will be determined in accordance with clause 20 of this Agreement.

## 17.6 Termination Notice

- (a) The Director may give a notice (**Termination Notice**) to the Housing Provider:
- (i) (**non-compliance with Default Notice**): subject to clause 17.6(a)(ii), if the Housing Provider;
    - (A) does not comply with requirements of a Default Notice;
    - (B) continues to be in breach of this Agreement as identified in a Default Notice
  - (ii) (**repeated breaches**): the Provider commits three breaches of its obligations under this Agreement in any 24 month period whether or not the Director has given the Provider notice of such breaches and whether or not the Provider has rectified such breaches
  - (ii) (**non-compliance with agreement**): in the case of a Default Notice in respect of which the Housing Provider has given a Dispute Notice, if the Housing Provider does not comply with any agreement made between the Housing Provider and the Director;
  - (iii) (**non payment of Rent or other money**): if the Housing Provider does not pay any instalment of Rent or other money payable by the Housing Provider to the Director in connection with this Agreement within 21 days of the due date for payment (whether formally demanded or not);
  - (iv) (**Authorisations**): any Authorisation required for the lawful use or operation of the Leased Premises by the Housing Provider is invalid, revoked, terminated, cancelled or not renewed;
  - (v) (**repudiation**): if the Housing Provider repudiates this Agreement, and in the Termination Notice, the Director elects to accept that repudiation;
  - (vi) (**corporate events**): if the Housing Provider (being a company) becomes an externally administered body corporate (as defined in section 9 of the *Corporations Act 2001*) or a person becomes a controller (as defined in section 9 of the *Corporations Act 2001*) of any of any substantial part of its property;
  - (vii) (**insolvency**): if the Housing Provider becomes an insolvent under administration (as defined in section 9 of the *Corporations Act 2001*); or
  - (viii) (**cross default**): if the Provider commits an act of default under any Project Documentation.
- (b) A Termination Notice must state that it is a Termination Notice for the purposes of this clause 17.6 and the grounds on which the Termination Notice is given.

## 17.7 Effect of Termination Notice

- (a) A Termination Notice operates to terminate this Agreement on the date which is ## months [##**Embedded Instruction: to be completed following acceptance of an EOI Proposal. The Director (subject to approval understands there will be a transition time##**] after the date on which the notice was given. In connection with the termination, the Director may re-enter the Leased Premises and eject the Housing Provider and all Housing Provider's Agents and repossess the Leased Premises.

- (b) A Termination Notice does not operate to terminate this Agreement, and is taken never to have been given, if:
- (i) the Termination Notice is withdrawn by the Director before the date on which it would otherwise expire;
  - (ii) in the case of a Termination Notice given pursuant to clause 17.6(a)(i), the Housing Provider complies with the Default Notice within 1 month after the date on which the Termination Notice was given (or such longer period as the Director agrees in writing);
  - (iii) in the case of a Termination Notice given pursuant to clause 17.6(a)(ii), the Housing Provider complies with the agreement or the award of the arbitrator (as the case may be) within 1 month after the date on which the Termination Notice was given (or such longer period as the Director agrees in writing);
  - (iv) in the case of a Termination Notice given pursuant to clause 17.6(a)(iii), the Housing Provider pays the instalment of Rent or other money 5 Business Days after the date on which the Termination Notice was given (or such longer period as the Director agrees in writing);
  - (v) in the case of a Termination Notice given pursuant to clause 17.6(a)(iv), the Authorisation is renewed or replaced to the satisfaction of the Director within 1 after the Termination Notice was given (or such longer period as the Director agrees in writing)
  - (vi) in the case of a Termination Notice given pursuant to clause 17.6(a)(vi), the Housing Provider ceases to be an externally administered body corporate, or the controller retires, within 3 months after the date on which the Termination Notice was given (or such longer period as the Director agrees in writing);
  - (vii) in the case of a Termination Notice given pursuant to clause 17.6(a)(vii), the Housing Provider ceases to be an insolvent under administration within 3 months after the date on which the Termination Notice was given (or such longer period as the Director agrees in writing);
  - (viii) in the case of a Termination Notice given pursuant to clause 17.6(a)(viii), the Housing Provider rectifies a breach under a Project Document within 1 month after the date on which the Termination Notice was given (or such longer period as the Director agrees in writing);
  - (ix) the Termination Notice is set aside by a court of competent jurisdiction; or
  - (x) before the date on which the Agreement Term would have otherwise ended as a result of the Termination Notice, the Housing Provider (or an appointed controller of the Housing Provider) completes a sale of the Housing Provider's business on the Leased Premises (including this Agreement) to an Acceptable CHP who takes an assignment of this Agreement in accordance with clause 15.2 of this Agreement.

## **17.8 Dwellings on termination**

- (a) If this Agreement is terminated by the Director in accordance with this clause 17, the Housing Provider must, prior to the date of termination, ensure that all Dwelling on the Leased Premises are in a condition consistent with this

Agreement including in respect of all repair and maintenance required under Schedule B of this Agreement.

- (b) If the Housing Provider fails to comply with clause 17.8(a) within the time allowed for doing so the Director may:
  - (i) arrange for the works to be rectified by a builder or other appropriate contractor, selected by the Director; and
  - (ii) recover the costs of such works from the Housing Provider.

### **17.9 Director may rectify Housing Provider's breach**

If the Housing Provider breaches any of its obligations under this Agreement, the Director may (without prejudice to any power), do all things necessary or desirable in the opinion of the Director to rectify that breach. If the Director rectifies or attempts to rectify a breach of this Agreement by the Housing Provider, the Housing Provider must compensate the Director for all Loss incurred, paid or payable by the Director in connection with rectifying, or attempting to rectify, the breach.

### **17.10 Interpretation**

Nothing in this clause 17 limits the generality of any thing else in it.

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## **18 Rights and obligations at end Term**

### **18.1 Obligation to make good**

On the Expiry Date the Housing Provider must:

- (a) Unless otherwise notified by the Director, leave the Housing Provider Improvements in situ on the Leased Premises;
- (b) yield up the Leased Premises in accordance with the Housing Provider's obligation to maintain and repair in particular clause 18.2;
- (c) remove all of the Housing Provider's Property from the Leased Premises and make good any damage to the Leased Premises caused by the removal;
- (d) if required by the Director, give to the Director all keys, security devices and security codes for the Leased Premises; and
- (e) if required by the Director, transfer to the Director (or a person nominated by the Director) any Authorisation relating to the Approved Use (if any).
- (f) No compensation of any kind is payable by the Director to the Housing Provider for the Housing Provider's Improvements.
- (g) In removing anything in accordance with clause 18.1, the Housing Provider must make good any damage caused by such removal, including carrying out any remediation works required by the Director.
- (h) If the Housing Provider defaults in any of its obligations under this clause 18.1, the Director may perform the required work and recover the cost from the Housing Provider.

## 18.2 Obligation to refurbish

- (a) At least 12 months prior to the Expiry Date of this Agreement, the Housing Provider must provide the Director, in a form and substance satisfactory to the Director, a program of works for refurbishment of the Dwellings (**Refurbishment Works Schedule**).
- (b) On the Expiry Date the Housing Provider must ensure that all the Dwellings are refurbished in accordance with the Refurbishment Works Schedule.
- (c) When the Housing Provider is of the opinion that the Dwellings have been refurbished in accordance with the Refurbishment Works Schedule (being a date no later than 2 months prior to the Expiry Date), the Housing Provider must give the Director written notice (**Notice of Refurbishment**).
- (d) A Notice of Refurbishment is not evidence that the Housing Provider has completed the refurbishment of the Dwellings to the satisfaction of the Director or in accordance with the Refurbishment Works Schedule or this Agreement.
- (e) If the Director considers that the refurbishment has been completed the Director will provide a notice to the Housing Provider of approval of the works.
- (f) If the Director does not give a notice of approval the Director will provide a notice (**Notice of Refurbishment Works**) specifying the outstanding refurbishment works and the Housing Provider must promptly rectify any outstanding refurbishment works identified by the Director by no later than the date specified in the Notice of Refurbishment Works.
- (g) If the Housing Provider fails to rectify those works identified in the Notice of Refurbishment Works within the time allowed for doing so the Director may:
  - (i) arrange for the works to be rectified by a builder or other appropriate contractor, selected by the Director; and
  - (ii) recover the costs of such works from the Housing Provider.

## 18.3 Abandoned property

Without limiting the operation of anything else in this clause 18, any Housing Provider's Property not removed by the Housing Provider within 20 Business Days of the expiry or determination of the Term will be taken to be abandoned by the Housing Provider and may be appropriated or disposed of in such manner as the Director thinks fit. Any costs of disposal incurred by the Director must be reimbursed by the Housing Provider to the Director.

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## 19 Protection of personal information

### 19.1 Application of clause

This clause applies only where the Housing Provider deals with Personal Information when, and for the purpose of, carrying out the Approved Use.

### 19.2 Interpretation

In this clause '**Personal Information**' and '**Personal Information Custodian**' have the same meaning as in the *Personal Information Protection Act 2004* (Tas) (**PIP Act**).

### **19.3 Personal information obligations**

If the Housing Provider is a Personal Information Custodian then Housing Provider must:

- (a) notify the Director immediately if the Housing Provider becomes aware of a breach of the PIP Act by the Housing Provider or the Housing Provider's Agents, employees or subcontractors; and
- (b) ensure that the Housing Provider's Agents, employees or subcontractors who are required to deal with Personal Information in the course of undertaking the Approved Use are aware of, and comply with the Housing Provider's obligations under this clause; and
- (c) take steps to ensure that the person providing the Personal Information is aware that the Personal Information may be disclosed to the Director for purposes connected with this Agreement and that the person consents to any such use or disclosure.

### **19.4 Breach**

A breach of the PIP Act by Housing Provider is a breach of the Agreement that entitles the Director to terminate it under clause 16 (Default Event).

### **19.5 Survival**

The operation of this clause 19 survives the expiration or earlier termination of this Agreement.

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## **20 Dispute resolution**

### **20.1 Application**

This clause 19 does not apply to any dispute or difference between the parties concerning the exercise by any party of any Right under legislation nor as may be expressly provided for in Schedule A.

### **20.2 Negotiation**

If a party gives written notice to each other party of a dispute or difference concerning this Agreement, the parties must undertake negotiations with a view to resolving the dispute or difference.

### **20.3 Status of negotiations**

- (a) Unless otherwise agreed in writing by the parties and subject to applicable Laws, other than the fact of occurrence, all aspects of negotiations for the purpose of clause 20.2 will be without prejudice and treated as confidential including:
  - (i) any settlement proposal made to, or considered by, a party;
  - (ii) the willingness of a party to consider a settlement proposal;
  - (iii) any statement made by, or on behalf of, a party during the negotiations; and
  - (iv) any document prepared for the purposes of the negotiations.

- (b) Nothing in clause 20.3(a):
  - (i) prevents a party from enforcing any signed settlement agreement made by the parties in relation to the dispute or difference;
  - (ii) prevents an agent or instrumentality of the Crown (that is a separate legal entity) from disclosing any matter to the Crown; or
  - (iii) prevents a Director of the Crown from making a statement to Parliament or exercising any Right.

#### **20.4 Further action**

If, after 30 Business Days following receipt by a party of a notice under clause 20.2, the parties are unable to resolve the dispute or difference by negotiation, a party may take any lawful action as that party sees fit (including commencing legal proceedings) in relation to the dispute or difference.

#### **20.5 Continuation of performance**

Despite the existence of any dispute or difference, unless this Agreement has been terminated, each party must continue to perform its obligations in accordance with this Agreement.

#### **20.6 Injunctive and other discretionary relief**

Nothing in this clause 19 prevents a party from commencing legal proceedings to seek an injunction (whether interim or permanent), a writ of specific performance, declaratory relief, or any urgent or other interlocutory relief.

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## **21 Notices**

### **21.1 Notice requirements**

- (a) A notice, certificate, consent, application, waiver or other communication (each a **Notice**) under this Agreement must be:
  - (i) in legible writing in the English language;
  - (ii) subject to clauses 21.1(b) and 21.1(c), signed by or on behalf of the sender or by a lawyer for the sender;
  - (iii) marked for the attention of the person or position (if any) specified in the Details applicable to the intended recipient of the Notice or, if the intended recipient has notified otherwise, marked for attention in the way last notified; and
  - (iv) left or sent in accordance with clause 21.2.
- (b) A printed or copy signature is sufficient for the purposes of sending any Notice by facsimile.
- (c) A Notice sent by email is taken to have been signed by the sender.
- (d) A Notice must not be given orally.



## **21.2 Method and address for delivery**

- (a) Subject to clause 21.2(b), a Notice must be:
  - (i) left at the intended recipient's address set out in the Details;
  - (ii) sent by prepaid ordinary mail (or prepaid airmail, if from one country to another country) to the intended recipient's address set out in the Details;
  - (iii) sent by facsimile to the intended recipient's facsimile number (if any) set out in the Details; or
  - (iv) sent by email to the intended recipient's email address (if any) set out in the Details.
- (b) If the intended recipient of a Notice has notified the sender of another address, facsimile number or email address for the purposes of receiving Notices, then subsequent Notices to that intended recipient must be left at or sent to the address, facsimile number or email address (as applicable) last notified by that intended recipient.

## **21.3 Time of receipt**

- (a) Subject to clause 21.3(b), a Notice is taken to have been received by the intended recipient:
  - (i) if left at the intended recipient's address, at the time of delivery;
  - (ii) if sent by prepaid ordinary mail, on the sixth Business Day after the day of posting, or if sent by prepaid airmail from one country to another country, on the tenth Business Day after the day of posting;
  - (iii) if sent by facsimile, at the time shown in the transmission report as the time when the whole Notice was sent; and
  - (i) if sent by email, four hours after the time the email was sent (as recorded by the device from which the email was sent) provided that the sender has not received an automated message that the email has not been delivered.
- (b) If a Notice is received by a recipient on a day that is not a Business Day or after 4.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- (c) A Notice is effective from the time it is taken to have been received in accordance with clauses 21.3(a) and 21.3(b) (unless a later time is specified in the Notice, in which case the notice takes effect from that time).

## **21.4 Other modes or places of service**

Nothing in this Agreement limits or excludes any other mode or place of service required by an applicable Law.

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## **22 Miscellaneous**

### **22.1 Governing law**

This Agreement is governed by the Laws applying in Tasmania.

## **22.2 Dispute jurisdiction**

The parties submit to the non-exclusive jurisdiction of courts with jurisdiction in Tasmania, and any courts that may hear appeals from those courts, in respect of any proceedings in connection with this Agreement.

## **22.3 Liability**

An obligation of, or a representation, a warranty or an indemnity by, two or more parties (including where two or more persons are included in the same defined term) under or in respect of this Agreement, binds them jointly and each of them severally.

## **22.4 Benefit**

An obligation, a representation, a warranty or an indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and each of them severally.

## **22.5 Compliance with obligations**

- (a) A party must ensure that its officers, employees, volunteers, authorised contractors, agents and advisers involved in the performance by that party of its obligations under this Agreement:
  - (i) comply with the provisions of this Agreement related to that performance; and
  - (ii) do not conduct themselves in a way that would result in the party being in breach of this Agreement or that, if the conduct was undertaken by the party, would result in the party being in breach of this Agreement.
- (b) If a party is prohibited from doing anything under this Agreement, that party must not knowingly assist, authorise or allow any other person to do that thing.

## **22.6 Severance**

If a provision of this Agreement is or at any time becomes illegal, prohibited, void or unenforceable for any reason, that provision is to be read down if capable of being read down so as to no longer be illegal, prohibited, void or unenforceable and if it is not so capable of being read down, it is to be severed from this Agreement and the remaining provisions of this Agreement:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this Agreement.

## **22.7 Further assurance**

The parties agree to do or cause to be done all such acts, matters and things (including, as applicable, passing resolutions and executing documents) as are necessary or reasonably required to give full force and effect to this Agreement.

## **22.8 Business Days**

If the day on or by which an act, matter or thing is to be done under this Agreement is not a Business Day, that act, matter or thing must be done by no later than the next Business Day.

## **22.9 No partnership or agency**

Unless stated to the contrary in this Agreement:

- (a) nothing contained or implied in this Agreement will:
  - (i) constitute, or be taken to constitute, a party to be the partner, agent or legal representative of another party for any purpose;
  - (ii) create, or be taken to create, a partnership or joint venture; or
  - (iii) create, or be taken to create, an agency or trust; and
- (b) a party must not represent or hold itself out to be a partner, joint venturer, agent or representative of another party.

## **22.10 Amendment**

This Agreement may only be amended or supplemented in writing signed by the parties.

## **22.11 Waiver**

- (a) A failure or delay in exercising a Right does not operate as a waiver of that Right.
- (b) A single or partial exercise of a Right does not preclude any other exercise of that Right or the exercise of any other Right.
- (c) A Right may only be waived in writing, signed by the party to be bound by the waiver. Unless expressly stated otherwise, a waiver of a Right is effective only in the specific instance and for the specific purpose for which it was given.

## **22.12 Successors and assigns**

This Agreement is binding on and benefits each party and, unless repugnant to the sense or context, their respective administrators, personal representatives, successors and permitted assigns.

## **22.13 Exercise of powers**

- (a) The Director may exercise any Rights through authorised officers or any other person appointed for that purpose.
- (b) Unless expressly stated otherwise, if the Director's consent or approval is required under this Agreement, the Director may give (conditionally or unconditionally) or withhold such consent or approval at the Director's absolute discretion.
- (c) Where the Director is required or entitled to form or hold an opinion or view under or in relation to this Agreement, that opinion or view may be formed or held by an authorised officer on behalf of the Director. This clause does not limit any other way in which a party may otherwise form or hold an opinion or view under or in relation to this Agreement.

## **22.14 Rights cumulative**

Each Right provided for in this Agreement:

- (a) operates independently of any other Right provided for in this Agreement; and

- (b) is cumulative with, and does not exclude or limit, any other Right, whether at Law or pursuant to any other agreement, deed or document.

#### **22.15 Disclosure**

- (a) Despite any confidentiality or intellectual property right subsisting in this Agreement, a party may publish all or any part of this Agreement without reference to another party.
- (b) Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

#### **22.16 Doctrine of merger**

The doctrine or principle of merger does not apply to this Agreement or to anything done under or in connection with this Agreement. Accordingly, no Right or obligation of a party is merged in any thing done pursuant to this Agreement.

#### **22.17 Effect of termination**

The termination of this Agreement or the expiry of the Term does not affect any Claim that any party has against any other party in respect of any prior breach of this Agreement.

#### **22.18 Director or State of Tasmania expressed to be party**

If a Director or the Crown is expressed to be a party to this Agreement, then unless an applicable Law provides otherwise:

- (a) the Director enters into this Agreement on behalf of the Crown;
- (b) the Rights, obligations and liabilities expressed to be those of the Director are Rights, obligations and liabilities of the Crown; and
- (c) each reference in this Agreement to the Director will be taken to include a reference to the Crown.

#### **22.19 No interference with executive duties or powers**

Nothing in this Agreement is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Director of the Crown, of any duties or authorities of his or her office. Any provision of this Agreement that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

#### **Executed as a deed**

# Schedule A: Provisions relating to Development

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## A1 Definitions and interpretation

### A1.1 Additional definitions that apply in relation to Schedule A

In this Schedule A, unless the context otherwise requires:

**Adjudicator** means a person appointed as an Adjudicator pursuant to clause A8.2 in relation to a dispute which this Schedule A provides is to be decided by an Adjudicator or in respect of which a party, being entitled to give a Dispute Notice under a provision in this Schedule A, gives a Dispute Notice.

**Approved Design Documents** means Preliminary Design Documents that the Director has approved in accordance with this Schedule A.

**Date for Development Practical Completion** means the date on or before which the Development Works must reach Practical Completion being #####, or such later date as determined pursuant to clause A6. **##Embedded Instruction: to be completed following acceptance of an EOI Proposal##**

**Date of Development Practical Completion** means the date on or by which the Development Works reach the stage of Practical Completion as determined in accordance with clause A5.3.

**Date for Substantial Commencement** means the date on or by which the Housing Provider must have substantially commenced construction of the Development Works on the Leased Premises being #####, or such later date as determined pursuant to clause A6. **##Embedded Instruction: to be completed following acceptance of an EOI Proposal##**

**Defect** means a defect or omission in the design or construction of any Development Works.

**Development Approval** means the Approval to complete the Development Works.

**Development Approval Design Documents** has the meaning in clause A2.1(a).

**Development Works** means all of the works which are required to complete the Development in accordance with the Approved Design Documents and all applicable Authorisations (including the Development Approval).

**Director's Mortgage** means a real property mortgage in registrable form over the Leased Premises in the form set out in 'Attachment: Director's Mortgage'.

**Dispute Notice** means a notice given, or taken to be given, by a party to the other party specifying that a dispute exists in relation to a matter in respect of which this Schedule A provides that the first party may give a Dispute Notice.

**Good Design and Construction Practices** means practices followed when work is undertaken:

- (a) in a sound and workmanlike manner;
- (b) with due care and skill in applying appropriate, building design, engineering, construction and management practices, standards and procedures;
- (c) with due expedition and without unnecessary or unreasonable delays;

- (d) in a manner which allows the Development Works to be efficiently performed;  
and
- (e) using materials of merchantable quality which are fit for their intended purpose.

**Milestone Date** means, as applicable, the Date for Development Practical Completion or the Date for Substantial Commencement, or both of those dates.

**Notice of Practical Completion** means a notice issued by the Housing Provider to the Director stating that in the opinion of the Housing Provider the Development Works have reached the stage of Practical Completion.

**Plans and Specifications** has the meaning in clause A2.1, and where the context admits or requires, means the plans and specifications for the construction of the Development Works as approved by the Lessor (as a contracting party under this Agreement) or an Adjudicator.

**Practical Completion** means in relation to the Development Works that stage when:

- (a) the Housing Provider has:
  - (i) obtained all certificates and permits required to lawfully use and occupy the Development Works;
  - (ii) delivered copies of those certificates and permits to the Director; and
  - (iii) removed from the Premises all construction waste and debris relating to the carrying out of the Development Works;
- (b) there are no outstanding breaches of this Agreement by the Housing Provider, including breaches in relation to the carrying out of the Development Works; and
- (c) the Development Works are complete in accordance with this Agreement, and fit for immediate use and occupation, except for minor omissions or defects:
  - (i) the immediate making good of which are not reasonably practicable;
  - (ii) the existence of which or the making good of which do not significantly inconvenience the use and occupation of the accommodation facilities constructed as part of the Development taking into account the use or intended use of the items concerned and of the areas in which they occur; and
  - (iii) which do not cause any legal impediment to the use or occupation of the Development Works.

## **A1.2 Interpretation**

Unless otherwise stated in this Schedule A, a reference to a clause is a reference to a clause in this Schedule A.

## **A2 Completion of design**

### **A2.1 Design Documents**

- (a) The Housing Provider must in consultation with the Director complete the design of the Development and prepare detailed working plans and detailed specifications (**Plans and Specifications**) for the construction of the Development and the Development Works.

## **A2.2 Design requirements**

**[[Embedded Instruction: these are examples only and will be completed following acceptance of an EOI Proposal]]** The Housing Provider must ensure that the design for the Development incorporated in the Plans and Specifications meets the following design principles and requirements:

- (a) achieve and must obtain for each Dwelling a 6 Star Rating under the *Nationwide House Energy Rating Scheme*;
- (b) The design and construction of the Dwellings must comply with all applicable Laws and the requirements of all Government Bodies having jurisdiction in relation to the Leased Premises, the Development Works and/or the operation of the completed Development including:
  - (i) all relevant Australian Standards;
  - (ii) the Platinum Level of Livable Housing Design Guidelines
  - (iii) Design Policy for Social Housing; and
  - (iv) the Housing Tasmania's 'Housing Design – Standards for Social Housing (Revision)';
- (c) The design must be fit for purpose, economically maintainable and allow for the operation of the Development in accordance with the requirements of this Agreement and all Authorisations.
- (d) The design must be prepared in accordance with sound and accepted architectural, engineering, and environmental practices and principles.

## **A2.3 Housing Provider to seek Director's approval**

The Housing Provider must submit the Plans and Specifications for the Director's approval.

## **A2.4 Notification of Director's decision**

- (a) The Director must notify the Housing Provider in writing of his or her approval or rejection of the Plans and Specifications submitted to the Director by the Housing Provider.
- (b) Plans and Specifications approved by the Director in accordance with this Agreement become Approved Design Documents for the purposes of this Agreement.

## **A2.5 Conditions**

- (a) The Director may impose conditions in connection with the giving of his or her approval of any Plans and Specifications.
- (b) The Housing Provider must comply with those conditions.

## **A2.6 Application for Authorisations**

- (a) The Housing Provider must not lodge any application for any Authorisation in respect of the Development and the Development Works in clause 2.1 except:
  - (i) in respect of the Approved Design Documents ; and
  - (ii) in accordance with any permission given in writing by the Director.

- (b) Subject to the Director approving the Approved Design Documents, the Housing Provider must apply for all Authorisations necessary for the lawful construction of the works contemplated by the Approved Design Documents.
- (c) The Housing Provider must keep the Director informed as to the Housing Provider's progress in obtaining all such Authorisations.

#### **A2.7 What happens when Government Body refuses to give Authorisation**

- (a) If any Government Body refuses to give an Authorisation for any works required by the Approved Design Documents, the Director and the Housing Provider must consult with each other with a view to amending the Approved Design Documents so as to enable the necessary Authorisations to be given.
- (b) The Housing Provider must not amend the Approved Design Documents except to the extent that the Director agrees in writing.

#### **A2.8 Obligations of Housing Provider unaffected**

- (a) The liabilities, obligations and responsibilities of the Housing Provider under this Agreement are not affected by any permission to use, comments upon, review or acceptance of, approval, consent to proceed with, consent to, request to vary, or refusal to give permission to use, any Design Documents by the Director.
- (b) The Director (in his or her capacity as a contracting party under this Agreement) does not owe a duty of care to the Housing Provider to review any Design Documents for defects, errors, omissions or compliance with applicable Laws.

#### **A2.9 Housing Provider to give Approved Design Documents and as constructed drawings**

The Housing Provider must give to the Director:

- (a) no later than the date on which the Housing Provider commences construction of the Development Works, a complete set of the Approved Design Documents as finally approved by each Government Body having jurisdiction over the construction of the Development Works and whose Authorisation is required; and
- (b) not later than 30 days after the Date of Development Practical Completion, a complete set of as constructed drawings showing the Development Works as constructed.

### **A3 Construction of Development Works**

#### **A3.1 Commencement of Development Works**

The Housing Provider must substantially commence construction of the Development Works as soon as possible after obtaining all necessary Authorisations in respect of those works, and in any event by no later than the Date for Substantial Commencement.

#### **A3.2 Carrying out of Development Works**

The Housing Provider must cause to be carried out and completed at its own cost and expense all Development Works:

- (a) in conformity, and to ensure compliance, with:
  - (i) this Agreement;
  - (ii) the Approved Design Documents;



- (iii) all Authorisations (including the Development Approval);
  - (iv) all applicable Laws;
  - (v) relevant Australian Standards; and
  - (vi) each lawful notice, direction, order and Authorisation of any Government Body having jurisdiction over or in respect of the Development Works (including the Director pursuant to the Act);
- (b) using Good Design and Construction Practices; and
  - (c) so that, upon Practical Completion, the Development Works can be safely used, and are fit for their intended purpose.

### **A3.3 Materials and standards of workmanship**

- (a) All materials and standards of workmanship used or applied in the construction of the Development Works must be in conformity with the Approved Design Documents.
- (b) The Housing Provider may from time to time substitute materials of a different nature to those specified in the Approved Design Documents if:
  - (i) the substituted materials are of no lesser quality than those originally specified in the Approved Design Documents;
  - (ii) the use of the substituted materials complies with all applicable Laws;
  - (iii) the substituted materials will not adversely affect the future operation of the Development; and
  - (iv) the substitution is approved in writing by the Director.
- (c) The Housing Provider must seek the Director's written approval for the substitution before making the substitution. The Director is to notify the Housing Provider of its approval or rejection of the substitution not later than 15 Business Days after the date on which the Housing Provider seeks approval for the substitution.

### **A3.4 Time for completion of Development Works**

The Housing Provider must ensure that the Development Works reach the stage of Practical Completion on or before the Date for Development Practical Completion.

### **A3.5 Inspection**

The Housing Provider must permit the Director at reasonable times and on reasonable notice to inspect the Development Works.

### **A3.6 Rectification of Defects identified during construction**

- (a) The Housing Provider must at its cost and expense and in a proper and workmanlike manner promptly (and in any event within a reasonable time) rectify any Defects in the Development Works which are notified by the Director to the Housing Provider in writing before the Date of Development Practical Completion.
- (b) If there is a dispute between the Housing Provider and the Director in relation to the rectification of any Defects in the Development Works (including any dispute

as to what constitutes a reasonable time to rectify a Defect), either of them may give to the other a Dispute Notice.

- (c) If the Housing Provider or the Director gives a Dispute Notice and the matters in dispute are not resolved by agreement within the period of 10 Business Days after the giving of the Dispute Notice, the matters in dispute in relation to the rectification of any Defects will be determined by an Adjudicator.

## **A4 Amendment of Approved Design Documents**

### **A4.1 Director's to consent to amendment**

The Housing Provider must not amend the Approved Design Documents without first submitting the amendment to the Director, and the Director giving his or her written consent to the amendment.

### **A4.2 Grounds upon which Director may refuse consent to amendment**

Nothing in clause A4.1 requires the Director to give his or her consent to an amendment to the Approved Design Documents if it would result in the design of the Development Works (as constructed) failing to satisfy all of the design and other requirements specified in clause A2.2.

### **A4.3 Time for approval or rejection of amendments**

The Director must notify the Housing Provider in writing of the Director's approval or rejection of any proposed amendment to the Approved Design Documents submitted to it by the Housing Provider under clause A4.1 within 20 Business Days of the receipt of the amendment from the Housing Provider.

### **A4.4 Approval of amendment**

If the Director approves of an amendment to the Approved Design Documents, the Housing Provider must obtain any Authorisations that are required to give effect to the amendment (on terms and conditions acceptable to the Director). Subject to the Housing Provider obtaining such Authorisations (and the Director confirming in writing that those Authorisations on terms and conditions acceptable to the Director), the Approved Design Documents will be varied in accordance with the amendment approved by the Director.

### **A4.5 Conditions**

- (a) The Director may impose conditions in connection with the giving of his or her approval to any amendments to Approved Design Documents.
- (b) The Housing Provider must comply with those conditions.

## **A5 Director's Financial Contribution**

### **A5.1 Agreement to provide Director's Financial Contribution**

Subject to the terms of this Agreement, the Director will provide to the Housing Provider the Director's Financial Contribution for use by the Housing Provider for the Development in accordance with this Agreement.

### **A5.2 Payment method of Director's Financial Contribution for Development**

Subject to clause A5.1, the Director will pay the relevant instalment of the Director's Financial Contribution for the Development to the Housing Provider in instalments as set out in the 'Stage Payments' section of the Project Schedule.

### **A5.3 Financial records**

- (a) The Housing Provider must keep and maintain proper accounts, records and financial statements showing, the receipt, use and expenditure of the Director's Financial Contribution for the carrying out of the Development.
- (b) The Housing Provider's financial statements must show, as separate items, the receipt, use and expenditure of the Director's Financial Contribution.
- (c) The Housing Provider must allow the Auditor-General of Tasmania (or his or her nominee) to audit, inspect, and to take copies of, the Housing Provider's accounts, records and financial statements relating to the receipt, use and expenditure of the Director's Financial Contribution.

### **A5.4 Application**

- (a) The Housing Provider must only use the Director's Financial Contribution to undertake the Development.
- (b) The Housing Provider must not change the Development without the prior written approval of the Director, which approval may be given or withheld in the Director's absolute discretion.

### **A5.5 Acknowledgments**

The Housing Provider acknowledges and agrees that:

- (a) the Director's financial assistance to the Housing Provider in respect of the Development is limited to the Director's Financial Contribution;
- (b) nothing in this Agreement requires the Director to provide any further financial assistance to the Housing Provider in respect of the Development; and
- (c) the Director is not responsible for any liabilities incurred by the Housing Provider, or any obligations entered into by the Housing Provider, as a result of or arising out of, the Housing Provider's obligations under this Agreement or in respect of the Development.

### **A5.6 Director's Mortgage**

The Housing Provider must not commence construction of the Development Works and the Director will not make any payment of the Director's Financial Contribution, or an instalment of the Director's Financial Contribution, until the Housing Provider grants to the Director the Director's Mortgage to secure:

- (a) the performance by the Housing Provider of its obligation under this Agreement prior to the Date of Development Practical Completion;
- (b) the amount shown or determined as set out in Attachment : Amortisation Schedule as being applicable to a relevant year of the Term.;
- (c) the obligation of the Housing Provider to perform and complete the Approved Use in accordance with this Agreement; and
- (d) any other moneys and obligations which the parties agree should be secured by the Director's Mortgage.

## **A6 Completion of Development Works**

### **A6.1 Housing Provider to give Notice of Practical Completion**

When the Housing Provider is of the opinion that the Development Works have reached the stage of Practical Completion the Housing Provider must give to the Director a Notice of Practical Completion.

### **A6.2 Director may give notice disputing Notice of Practical Completion**

- (a) If the Director considers that the Development Works have not reached Practical Completion by the date on which the Housing Provider gives the Notice of Practical Completion, the Director may give to the Housing Provider a Dispute Notice.
- (b) If, within 15 Business Days of date on which the Director receives the Notice of Practical Completion, the Director does not give a notice to the Housing Provider stating that the Director does not object to the Housing Provider's Notice of Practical Completion, the Director will be taken to have given a Dispute Notice disputing the Notice of Practical Completion.
- (c) A notice that the Director does not object to the Housing Provider's Notice of Practical Completion does not prevent the Director from disputing whether the Housing Provider has complied with its obligations under this Agreement.

### **A6.3 Date of Practical Completion if no Dispute Notice is given**

Subject to clauses A6.2, A6.4 and A5.5, the Date of Practical Completion is the date on which the Housing Provider gives a Notice of Practical Completion to the Director.

### **A6.4 Date of Practical Completion disputed by Director and then agreed**

If the Director gives, or is taken to have given, a Dispute Notice under clause A6.2 and within the period of 15 Business Days after the Director gives, or is taken to have given, that notice the Housing Provider and the Director resolve the matters in dispute and they agree in writing the Date of Development Practical Completion, the date so agreed is the Date of Development Practical Completion.

### **A6.5 Determination of Date of Development Practical Completion by Adjudicator**

- (a) If the Director gives, or is taken to give, a Dispute Notice under clause A6.2 and the matters in dispute are not resolved by agreement within the period of 15 Business Days after the Director gives, or is taken to have given, the Dispute Notice, the Date of Development Practical Completion will be determined by an Adjudicator.
- (b) If an Adjudicator decides that the Development Works had reached Practical Completion at the time when the Housing Provider gave the Notice of Practical Completion, the Date of Development Practical Completion will be taken to be date on which the Notice of Practical Completion was given.
- (c) If an Adjudicator decides that the Development Works had not reached Practical Completion at the time when the Housing Provider gave the Notice of Practical Completion then the following provisions will apply:
  - (i) If the Adjudicator determines that the Development Works reached Practical Completion prior to the decision of the Adjudicator, the Date of Development Practical Completion will be the date on which the Director receives the decision of the Adjudicator.

- (ii) If the Adjudicator determines that the Development Works have not reached Practical Completion, the Date of Development Practical Completion will be the date on which the Adjudicator certifies that the Development Works reached Practical Completion following the doing of such further things as are necessary to bring the Development Works to Practical Completion.

#### **A6.6 Date of Practical Completion not to limit Housing Provider's obligations**

- (a) The determination of the Date of Development Practical Completion does not limit, exclude or affect the Housing Provider's obligations under this Agreement in relation to the design, construction and operation of the Development Works.
- (b) A Notice of Practical Completion is not evidence that the Housing Provider has achieved Practical Completion or complied with its obligations under this Agreement.
- (c) The Housing Provider must as soon as practicable following the Date of Development Practical Completion rectify any omissions or defects in the Development Works which were considered not to prevent the achievement of Practical Completion.

### **A7 Delays and extensions of time**

#### **A7.1 Housing Provider's entitlement to claim extension**

Subject to this clause A7, the Housing Provider is entitled to claim an extension to:

- (a) the Date for Substantial Commencement if the substantial commencement of the construction of the Development Works is or will be delayed by any matter, cause or thing beyond the reasonable control of the Housing Provider; and
- (b) the Date for Development Practical Completion if the achievement of Practical Completion is or will be delayed by any matter, cause or thing beyond the reasonable control of the Housing Provider.

#### **A7.2 Matters in respect of which no extension may be claimed**

The Housing Provider is not entitled to an extension to a Milestone Date for a delay:

- (a) attributable to any lack of, or inability to source, financial, design, technical or construction resources in connection with the Development Works;
- (b) attributable to any delay in the issue of an Authorisation required for the Development Works which arises because of any delay on the part of the Housing Provider or any of its consultants;
- (c) attributable to the expiry, cancellation, revocation, termination or suspension of any Authorisation for the construction of Development Works; or
- (d) in the progress of the Development Works which would not have occurred if the Housing Provider had complied with its obligations under this Agreement.

#### **A7.3 Claiming an extension**

- (a) The Housing Provider must give notice in writing to the Director if the substantial commencement of construction of the Development Works, or the achievement of Practical Completion, is or will be delayed. The notice must be given as soon as reasonably practicable following the commencement of the delay and in any event no later than five Business Days after the earlier of the

date on which the Housing Provider became aware or the date on which the Housing Provider ought reasonably have become aware of the commencement of the cause of delay. The Housing Provider loses the right to claim an extension of time in respect of a delay if does not comply with this time limit.

- (b) If the Housing Provider is entitled to an extension of time in respect of the delay and if it is practicable to do so, the notice must also include a claim by the Housing Provider for an extension to each Milestone Date (as applicable).
- (c) If the Housing Provider is unable to calculate its claim for an extension to a Milestone Date at the time of giving notice of the delay, the Housing Provider must give a further notice to the Director specifying the Housing Provider's claim for an extension of time as soon as reasonably practicable.

#### **A7.4 Extension of Milestone Date**

Unless the Director within 15 Business Days after the receipt of the Housing Provider's claim for an extension of time agrees to the extension by notice in writing to the Housing Provider, the Director will be taken to have issued a Dispute Notice to the Housing Provider disputing the extension claimed by the Housing Provider. The Housing Provider's claim for an extension to the Milestone Date will then be determined by an Adjudicator. If the Director agrees in writing to the extension in accordance with this clause A7.4, the relevant Milestone Date will be extended in accordance with that agreement.

#### **A7.5 Limit on extension of Milestone Date**

Despite any thing else in this Schedule A, the Date for Development Practical Completion is not to be extended beyond 30 April 2018.

### **A8 Settlement of disputes**

#### **A8.1 Application**

This clause A8 applies to each dispute between the Director and the Housing Provider which this Schedule A provides is to be decided by an Adjudicator.

#### **A8.2 Appointment of Adjudicator**

- (a) If the Housing Provider and the Director are able to agree on the person to be appointed as an Adjudicator, the Adjudicator will be appointed jointly by the Housing Provider and the Director.
- (b) If the parties are unable to agree on the appointment of an Adjudicator within the period of five Business Days after the issue of a Dispute Notice, either party may after the end of that period request the President of the Law Society of Tasmania to appoint a person an Adjudicator to decide the matters in dispute.
- (c) The person appointed as an Adjudicator must be a member of at least 10 years standing of The Royal Australian Institute of Architects and experienced in the design and construction of eco-tourism facilities.
- (d) If an Adjudicator is unavailable, refuses to act, dies before making a decision or is unable to decide the matters in dispute, either the Housing Provider or the Director may request President of the Law Society of Tasmania to appoint another Adjudicator to decide the matters in dispute.

- (e) An Adjudicator must hold professional indemnity insurance which covers the Adjudicator for claims arising out of any dispute in relation to any determination made by the Adjudicator.

### **A8.3 Dispute resolution procedures to be followed by Adjudicator**

An Adjudicator must:

- (a) give both the Housing Provider and the Director a reasonable opportunity to make submissions and to put before the Adjudicator any material which may be relevant to determining the matters in dispute; and
- (b) give written reasons for the Adjudicator's decision.

### **A8.4 Powers of Adjudicator**

An Adjudicator has the power:

- (a) subject to clause A8.3, to proceed to the resolution of a dispute or difference in such manner and subject to such rules as the Adjudicator and the parties agree or failing agreement as the Adjudicator in his or her absolute discretion determines is suitable for the nature of the dispute or difference; and
- (b) to engage and consult with any advisers, legal or technical, as he or she may see fit.

### **A8.5 Adjudicator to act as expert**

In making his or her decision an Adjudicator acts as an expert and not as an arbitrator.

### **A8.6 Adjudicator's costs**

- (a) Immediately following the appointment of an Adjudicator the parties must request an estimate of the fees, costs and expenses of the Adjudicator.
- (b) Each party must pay to the trust account of a solicitor acting for the Adjudicator an amount equivalent to 50 per cent of the estimate.
- (c) If a party fails to pay an amount under clause A8.6(b) payable by that party and the Adjudicator will not proceed to determine the matter in dispute unless the estimate is prepaid, the other party may pay that amount which amount will then be a debt, payable on demand, owed by the party failing to make that payment to the other party making the payment.
- (d) The parties must pay an Adjudicator's costs (including the costs of engaging and consulting advisers pursuant to clause A8.4(b)) in the proportions decided by the Adjudicator. If an Adjudicator gives no decision as to the payment of costs, the parties must pay those costs equally.

### **A8.7 Decision of Adjudicator**

The decision of an Adjudicator will be final and binding on the parties in respect of the matters to be decided by the Adjudicator.

# Schedule B: Leased Premises

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## **B1 Definitions and interpretation**

### **B1.1 Additional definitions that apply in relation to Schedule B**

In addition to the Definitions in clause 1.1 of this Agreement, in this Schedule B, unless the context otherwise requires:

**Asset Management Plan** means the Asset Management Plan set out in 'Attachment: Asset Management Plan' which details, among other things:

- (a) what maintenance works will be undertaken by the Housing Provider to the Leased Premises during each Financial Year of the Term; and
- (b) the Housing Provider's strategy to reduce the Deferred Maintenance Liability for the Leased Premises.

**Deferred Maintenance Liability** means the estimated cost of postponing repairs and maintenance on the Leased Premises for each Financial Year during the Term.

**Design Policy for Social Housing** means the Department's policy direction for the design and construction of Social Housing in Tasmania, as set out in 'Attachment: Design Policy for Social Housing'.

**Financial Year** means:

- (a) each period of 12 months during the Term ending on 30 June;
- (b) if the period from the Commencement Date to 30 June referred to in paragraph (a) is not 12 months, the period commencing on and including the Commencement Date and ending on 30 June next occurring after the Commencement Date; and
- (c) if the Term ends on a date that is not the end of a period referred to in paragraph (a), the period from the end of the last Financial Year for the purposes of paragraph (a) and ending on the date on which the Term ends.

**Key Performance Indicators** means the performance indicators and targets identified in 'Attachment: Key Performance Indicators' to be used to measure the performance by the Provider of its obligations under this Agreement.

**Minimum Annual Maintenance Expenditure** means at least 75% of the Total Annual Maintenance Expenditure spent by the Housing Provider in each Financial Year of the Term.

**Policies** means, as the context requires, each or any combination of the following:

- (a) Design Policy for Social Housing; and
- (b) Social Housing Policy.

**Relevant Matter** means any matter or thing related to any of the following:

- (a) the performance by the Housing Provider of its obligations under this Agreement;
- (b) any report provided, or to be provided, by the Housing Provider to the Director in accordance with this Agreement;
- (c) any breach of this Agreement by the Housing Provider;



- (d) the occurrence, or possible occurrence, of any Default Event.

**Reporting Obligations** means the reporting obligations set out in:

- (a) 'Attachment: Reporting Obligations'; or
- (b) such other reporting obligations required by the Director in accordance with clause B8.3 from time to time.

**Social Housing Policy** means the Department's policy direction for the management of Social Housing in Tasmania as set out in 'Attachment: Social Housing Policy'.

**Specified Personnel** means the list of specified personnel set out in 'Attachment: Specified Personnel'.

**Tenancy Support** means the provision of additional support to Tenants and their families and the provision of intervention practices and referrals to appropriate support services with the aim of helping tenancies that are at risk from being terminated as set out in the Social Housing Policy.

**Total Annual Maintenance Expenditure** means the amount budgeted to be expended on maintenance during each Financial Year of the Term as set out in 'Attachment: Maintenance Expenditure' which may be amended from time to time to the satisfaction of the Director.

**Residential Tenancy Agreement** means a residential tenancy agreement entered into between the Housing Provider and a Tenant for a Dwelling pursuant to the *Residential Tenancy Act*.

## **B2 Use of Dwellings and Eligible Persons**

### **B2.1 Use of Dwellings**

The Housing Provider must, subject to this Agreement, only manage and lease the Leased Premises from the Date of Practical Completion:

- (a) in accordance with the *Residential Tenancy Act*; and
- (b) to Eligible Persons for Social Housing.

### **B2.2 Eligible Persons**

The Housing Provider must where applicable:

- (a) allocate vacant Leased Premises in priority as follows:
- (i) to Priority Applicants;
- (ii) to other applicants from the Housing Register if no offers by Priority Applicants have been accepted;
- (b) enter into a Residential Tenancy Agreement with the Eligible Person selected in accordance with clause B2.1(a) in the form of the Residential Tenancy Agreement;
- (c) ensure that rental for a Dwelling is no more than the Maximum Rent;
- (d) not enter into a Residential Tenancy Agreement or any other arrangement with a Tenant which permits the Tenant to occupy a Dwelling for a term that expires after the Expiry Date of this Agreement or any period of holding over as permitted in clause 3.2.

## **B3 Housing Provider's tenancy obligations**

### **B3.1 Tenancy obligations**

The Housing Provider must manage and operate the Leased Premises in accordance with this Agreement, the Policies, and must without limitation undertake the following property and tenancy management tasks:

- (a) manage all Residential Tenancy Agreements in accordance with this Agreement and the provisions of those agreements;
- (b) show the Leased Premises and the Dwellings to prospective Tenants;
- (c) procure and investigate references from any prospective Tenant (if applicable);
- (d) enter into a Residential Tenancy Agreement with the selected Tenant;
- (e) collect rents from Tenants and manage arrears;
- (f) manage each Residential Tenancy Agreement in accordance with this Agreement and the *Residential Tenancy Act* including:
  - (i) dealing with security deposits payable in accordance with the *Residential Tenancy Act*;
  - (ii) conducting inspections on the termination of a Residential Tenancy Agreement to assess, return, or otherwise of security deposits to Tenants under Residential Tenancy Agreements;
- (g) prepare statements, demand, collect, receive and give receipts for rent, service charges and other payments at any time due from any Tenant or other person in respect of any Leased Premises;
- (h) prepare a property condition report and provide copies to the Tenant in accordance with the *Residential Tenancy Act*;
- (i) inspect the Leased Premises regularly and ensure compliance with the provisions of the Residential Tenancy Agreement relating to the Leased Premises and determine any repair and maintenance requirements;
- (j) negotiate:
  - (i) rent reviews, lease renewals; and
  - (ii) the reletting of any Premise which is, or becomes vacant,  
it being acknowledged and agreed by the Housing Provider, that rent for a Dwelling must not exceed the Maximum Rent;
- (k) serve notices for rent reviews or terminating any Residential Tenancy Agreement;
- (l) manage issues relating to Tenants as required, including, but not limited to, Tenant participation meetings, grievance procedures and maintenance requirements;
- (m) manage eviction procedures as required;
- (n) deal directly with all Tenants and prospective tenants and arbitrate in any dispute between them;

- (o) consult with any relevant resident, Tenant, Body Corporate or community association;
- (p) take all reasonable steps to obtain any evidence necessary to reasonably satisfy itself as to the Income of the Household of a Tenant; and
- (q) take all reasonable steps to enforce the provisions of any Residential Tenancy Agreement and the *Residential Tenancy Act*, including recovering any amount payable by a Tenant under a Residential Tenancy Agreement;
- (r) work with the Director following any amendments made to the *Residential Tenancy Act* during the Term of this Agreement to improve processes and to ensure compliance with the *Residential Tenancy Act* at all times.

### **B3.2 Complaint processes**

In order to deal with any dispute, or potential dispute that may arise between the Housing Provider and a Tenant or an Eligible Person, the Housing Provider must work with the Director to set up an independent housing review committee for all Tenants and Eligible Persons in need of Social Housing, as a mechanism for dealing with complaints or disputes made against the Housing Provider.

### **B3.3 Consistent occupation during Term**

The Housing Provider must use its best endeavours to ensure that the Dwellings are consistently occupied during the Term by Eligible Persons and not left vacant.

### **B3.4 Performance by Housing Provider**

In carrying out its obligation to manage the Leased Premises, the Housing Provider must:

- (a) exercise due care, skill and judgement;
- (b) perform its obligations and manage the Leased Premises in accordance with the Policies;
- (c) perform those obligations in a timely manner;
- (d) without limiting the generality of this or any other clause of this Agreement, comply with all Laws; and
- (e) act in good faith.

### **B3.5 Warranties unaffected**

The Housing Provider acknowledges the Housing Provider's obligations and warranties under this Agreement remain unaffected notwithstanding:

- (a) any receipt, review, comment or direction of any aspect of the letting of the Leased Premises by the Director; or
- (b) any failure by the Director to do any of the things referred to in clause B3.5(a).

### **B3.6 Tenancy information to Tenants**

- (a) The Housing Provider must provide each Tenant with information that includes at a minimum:
  - (i) contact and general details of the Housing Provider;
  - (ii) the Housing Provider's housing policies and procedures;

- (iii) any changes to tenancy and property management arising out of this Agreement;
  - (iv) information sessions planned by the Housing Provider; and
  - (v) Tenancy Support provided by the Housing Provider.
- (b) The information in clause B3.6(a) must be:
- (i) provided by the Housing Provider to the Tenant directly; and
  - (ii) publicly available on the Housing Provider's website.

### **B3.7 Tenancy Support**

- (a) The Housing Provider must employ the Specified Personnel to provide Tenancy Support to the Tenants.
- (b) Notwithstanding anything else in this Agreement, the Director may;
  - (i) nominate Tenants who require Tenancy Support; and
  - (ii) direct the Housing Provider to use all reasonable endeavours to provide Tenancy Support to those Tenants as nominated by the Director.
- (a) The Housing Provider must keep and provide on demand to the Director, a record showing how many Tenants are receiving Tenancy Support and from which Specified Personnel.

## **B4 Director's tenancy obligations**

### **B4.1 Wait list of Eligible Persons**

The Director must:

- (a) maintain the Housing Register; and
- (b) provide the Housing Provider with access to the Housing Register to enable the Housing Provider to comply with the Housing Provider's obligations in clause B2.1.

### **B4.2 Policies**

The Director must notify the Housing Provider in writing if changes are made to the Policies.

## **B5 Housing Provider's maintenance obligations**

### **B5.1 Maintenance**

- (a) The Housing Provider must, at its cost, ensure that the Leased Premises are maintained in good repair, order and condition at all times during the Term including carrying out all maintenance required to keep the Leased Premises in a proper condition for leasing as a residential premises in accordance with all Laws, but excludes repair or maintenance required in connection with a breach of this Agreement by the Director.
- (b) Any obligation under this clause B5.1 is subject to the maintenance expenditure as set out in clause B5.5.

- (c) The Housing Provider must at its cost carry out all maintenance in accordance with:
  - (i) this Agreement including the Asset Management Plan;
  - (ii) all relevant Authorisations;
  - (iii) Good Design and Construction Practice;
  - (iv) all Laws, including the Building Legislation;
  - (v) all relevant Australian Standards; and
  - (vi) to the reasonable satisfaction of the Director.
- (d) The Housing Provider must effect any necessary maintenance within the time periods prescribed by the relevant Laws.

#### **B5.2 Failure to carry out repairs and maintenance**

In the event that the Housing Provider fails to carry out its maintenance obligations under this Agreement, and as a result, the Director is required to carry out alterations, repairs or maintenance to the Leased Premises during the Term whether as a result of Laws or otherwise, then the Housing Provider must pay to the Director on demand the reasonable costs (together with interest at the Interest Rate from the date of expenditure by the Director to the date of payment by the Housing Provider) incurred by the Director in carrying out those alterations, repairs or maintenance including the cost of obtaining any approvals required, consultancy fees and building costs.

#### **B5.3 Notice to repair**

Upon receipt of notice from the Director or relevant Government Body, the Housing Provider must repair, or otherwise make good, all defects and lack of repair that are the Housing Provider's responsibility under this Agreement within a reasonable time to be specified in the notice (which shall be a period of at least 20 Business Days unless relevant Laws or the relevant Government Body specifies a shorter period).

#### **B5.4 Director may repair in certain circumstances**

If the Housing Provider fails to comply with a notice given under clause B5.3, then the Director, or the Director's agents, may, but are not bound to, undertake the required repairs and the Director may recover the costs of such repairs in accordance with clause B5.2.

#### **B5.5 Expenditure on maintenance**

- (a) The Housing Provider must during each Financial Year of the Term, expend on, or set aside for maintenance of the Leased Premises:
  - (i) the Total Annual Maintenance Budget; or
  - (ii) at a minimum, the Minimum Annual Maintenance Expenditure.
- (b) The Housing Provider may, but is not obliged to, spend more than the Total Annual Maintenance Budget on maintenance of the Leased Premises.
- (c) If the Housing Provider spends more than the Total Annual Maintenance Budget on the Leased Premises during the relevant Financial Year, any amount over and above the Total Annual Maintenance Budget for that relevant Financial Year may be deducted from the Total Annual Maintenance Budget applicable to the following Financial Year.

- (d) If the Housing Provider spends less than the Total Annual Maintenance Budget on the Leased Premises during the relevant Financial Year, any unexpended amount must be:
  - (i) added to the Total Annual Maintenance Budget applicable to the following Financial Year; and
  - (ii) spent by the Housing Provider in addition to the Total Annual Maintenance Budget for that relevant Financial Year.
- (e) For the avoidance of doubt, the parties acknowledge and agree, that the Director is not responsible for contributing to any maintenance required to occur after the expenditure of the Total Annual Maintenance Budget by the Housing Provider on maintenance of the Leased Premises.
- (f) By the Expiry Date, the Housing Provider must have spent at least 95% of the total sum of the Total Annual Maintenance Budget for the Term.

## **B6 Asset Management Plan**

- (a) The Housing Provider must comply with the Asset Management Plan.
- (b) The Asset Management Plan:
  - (i) must be reviewed each Financial Year during the Term; and
  - (ii) may be amended from time to time to the satisfaction of the Director.

## **B7 General obligations**

### **B7.1 Notices and orders**

The Housing Provider must immediately:

- (a) notify the Director of the receipt of a notice or order received from a Government Body relating to:
  - (i) a serious and/or material health or safety issue in respect of the Leased Premises;
  - (ii) the Housing Provider's management of the Leased Premises;
- (b) notify the Director of any serious concerns or queries raised by any Government Body, or any non-Government Body with an interest in the welfare of any persons who may occupy or frequent the Leased Premises;
- (c) notify the Director of any damage or defect to the Leased Premises caused or arising as a result of the Housing Provider exercising any of its rights conferred under this Agreement; and
- (d) comply with the requirements of any notice or order received from a Government Body in respect of the Leased Premises and/or the Housing Provider's management of the Leased Premises;
- (e) comply with all reasonable notices issued by the Director to the Housing Provider relating to the Housing Provider's obligations under this Agreement.

## **B7.2 Authorisations**

The Housing Provider must obtain, keep current and comply with all Authorisation required (if any) to undertake the Housing Provider's obligations under this Agreement.

## **B7.3 Damage to Leased Premises**

The Housing Provider must:

- (a) not damage the Leased Premises in any way;
- (b) use its best endeavours to ensure that any Housing Provider's Agents and Tenants do not damage the Leased Premises in any way; and
- (c) give the Director prompt written notice of any material damage or Defect to the Leased Premises or anything likely to be a material risk to the Leased Premises or to any person; and
- (d) repair any damage to glass including plate glass and exterior windows with glass on the Leased Premises regardless of how such damage occurred.

## **B7.4 Compliance with Laws and Policies, etc**

The Housing Provider must comply with:

- (a) all applicable Laws, Authorisations and any other requirements of a Government Body that affect the Leased Premises including Laws relating to workers compensation and workplace health and safety where applicable;
- (b) the Policies;
- (c) the Director's reasonable directions about the use and management of the Leased Premises; and
- (d) all notices received from the Director or any Government Body concerning:
  - (i) the Leased Premises; and
  - (ii) the management of the Leased Premises.

## **B7.5 Security**

The Housing Provider must:

- (a) secure the Leased Premises when the Leased Premises are not occupied; and
- (b) indemnify and promptly pay to the Director on request any cost incurred by the Director as a result of the Housing Provider or Tenants damaging or losing any key or security device provided by the Director.

## **B7.6 Nuisance**

The Housing Provider must not, without the Director's consent, do anything, and must take reasonable steps to ensure that a Tenant does not do anything, in or near the Leased Premises which in the Director's reasonable opinion is noxious, dangerous, offensive or a nuisance.

## **B7.7 Unauthorised activity**

The Housing Provider must:

- (a) not permit any activity to occur on the Leased Premises that is not authorised under this Agreement, without first obtaining the Director's prior written consent;

- (b) ensure that the Leased Premises are not used for any illegal activities or improper use.

#### **B7.8 Hazardous Substances**

The Housing Provider must not store Hazardous Substances on or about the Leased Premises except such substances that would reasonably be required to be stored on the Leased Premises for cleaning.

#### **B7.9 Fire protection and safety**

The Housing Provider must have an emergency control plan and procedure that meet AS3745-2010, Planning for Emergencies and Facilities - Standards Australia for the Leased Premises Category 1.

#### **B7.10 Endanger Leased Premises**

The Housing Provider must not do or permit anything to be done in connection with the Leased Premises which, in the reasonable opinion of the Director, may endanger the Leased Premises or be a risk to any person or property.

#### **B7.11 Housing Provider's Agents**

The Housing Provider must use all reasonable endeavours to ensure that the Housing Provider's Agents and any Tenants observe and comply with the Housing Provider's obligations under this Agreement, where appropriate.

#### **B7.12 Signs and advertising**

The Housing Provider must not, without the prior written consent of the Director, erect any display, sign or advertisement to the exterior of the Leased Premises.

#### **B7.13 Director entry on notice**

Upon receipt of reasonable notice from the Director (which notice must be sufficient for the Housing Provider to comply with all relevant residential tenancy legislation) the Housing Provider must permit the Director or the Director's agents, with or without workmen or contractors or others, at all reasonable times to enter upon the Leased Premises or a Dwelling and to view the condition and the state of repair of the Leased Premises.

#### **B7.14 No delegation without Director consent**

The Housing Provider must not delegate any duties or obligations under this Agreement except as may be expressly permitted under this Agreement or with the Director's prior written consent.

#### **B7.15 Records**

Any records in respect of Leased Premises, including tenancy of Leased Premises, provided by the Director to the Housing Provider, including all intellectual property in the records, remain the property of the Director and the Housing Provider must:

- (a) treat them as though they are State records (as that term is defined for the purposes of the *Archives Act 1983* (Tas));
- (b) in respect of them take reasonable steps to comply with any guidelines issued by the State Archivist in relation to the making and keeping of State records;
- (c) on request supply a copy of such records to the Director;
- (d) otherwise comply with the obligations of the *Archives Act 1983* (Tas);



- (e) on cessation of this Agreement return all records to the Director.

#### **B7.16 Tenancy and property information**

- (a) On and from the Commencement Date, the Housing Provider must collect tenancy and property information, including property condition data in respect of this Agreement (the **Information**), and make the Information available to the Director as requested by the Director from time to time, in a form and substance satisfactory to the Director.
- (b) The Housing Provider must ensure that the Information is timely and reflects up-to-date information to inform decision-making and accurate reporting.
- (c) The Housing Provider must ensure that the accuracy of the Information is correct and free from error, mistakes or faults.
- (d) Within six months of the Commencement Date, the Housing Provider must record the Information in a system that ensures that the Director has immediate and electronic access to the Information (including real time accurate data) as may be required by the Director from time to time.

#### **B7.17 National Social Housing Survey**

The Housing Provider must:

- (a) participate in the National Social Housing Survey;
- (b) encourage Tenants to participate in the National Social Housing Survey; and
- (c) provide reporting requirements to the Director in accordance with clause B8.

#### **B7.18 Key Performance Indicators**

- (a) The Housing Provider must consistently meet or exceed the Key Performance Indicators during the Term.
- (b) To meet its obligations under clause B7.18(a), the Housing Provider must not fall below 90% of each target against each performance indicator set out in the Key Performance Indicators for more than a period of three consecutive months at any time during the Term.
- (c) In the event that a target in the Key Performance Indicators is not met, the Housing Provider must report to the Director on the reasons why it may not have been achieved under the Reporting Obligations.

### **B8 Reporting Obligations**

#### **B8.1 Review, monitoring or audit of Relevant Matters**

- (a) The Director may from time to time review, monitor or audit any Relevant Matter.
- (b) The Housing Provider must in connection with any such review, monitoring or audit by the Director:
  - (v) assist and co-operate with the Director;
  - (vi) meet with the Director at such times, and in such manner, as the Director reasonably determines;
  - (vii) promptly answer all questions put by the Director.

- (c) In this clause, each reference to the 'Director ' includes a reference to a person authorised in writing by the Director.

## **B8.2 Specific reporting obligations**

- (a) Before 30 June in each year of this Agreement, if the Director requests it to do so the Housing Provider must:
  - (i) prepare and submit to the Director a budget of expenses for such periods as the Director stipulates, with details of all maintenance expenditure, tenancies and rent reviews and a forecast of rental and occupancy changes;
  - (ii) provide to the Director up to date, accurate reports about:
    - (A) activities and referrals provided for Tenants;
    - (B) any standards, policies and procedures referred to in this Agreement;
    - (C) service quality and service outputs under this Agreement; and
    - (D) Tenant outcomes and other Tenant information as are requested.
- (b) The Director cannot require the Housing Provider to provide the information in clauses B8.2(a) any more than twice in any twelve month period.
- (c) Any reports from the Provider must be in a form and substance satisfactory to the Director.

## **B8.3 Reporting Obligations**

- (a) In addition to the specific reporting obligations in clause B8.2, the Housing Provider must provide the Director with the reports and other documents set out in the Reporting Obligations and must deliver all reports and other documents to the Director in a format as specified by the Director.
- (b) Unless otherwise stated in the Reporting Obligations, nothing in the Reporting Obligations limits the reports or frequency of reports that the Director may require under this clause B8 or prevents the Director from updating or changing the Reporting Obligations of the Housing Provider provided that the Director provides the Housing Provider with 30 days' notice of the changes or updates the Reporting Obligations.
- (c) The Housing Provider gives to the Director an irrevocable, non-exclusive, world-wide, perpetual and royalty-free, licence (including the right to grant sub-licences) to use, reproduce, modify and adapt the whole or any part of any report or document given by the Housing Provider to the Director in accordance with this clause B8.3. The Housing Provider must ensure that it obtains from any third party holding moral rights (within the meaning of the *Copyright Act 1968* (Cwlth)) in any such report or document consent to any infringement of their moral rights by the Director.

## **B9 Damage to Leased Premises**

### **B9.1 Reinstatement**

If any of the Dwellings are wholly or partly damaged or destroyed and as a result of that damage or destruction the Housing Provider is unable to use the Dwelling for the Approved Use, the Housing Provider must:

- (a) subject to allowing reasonable time for inspection by any insurers, take immediate steps to clear any debris and begin initial repair work;
- (b) diligently pursue the repair and reinstatement of the Dwelling and reinstate the Dwelling within 12 months from the date of the damage or destruction, such works must be in accordance with:
  - (i) Good Design and Construction Practice;
  - (ii) all Laws;
  - (iii) Design Policy for Social Housing; and
  - (iv) all Approvals;
- (c) keep the Director fully informed of the progress of the repair and reinstatement of the Dwelling;
- (d) apply any proceeds of insurance received as a result of damage or destruction, in or towards satisfaction of the costs of repair and reinstatement of the Dwelling.

For the avoidance of doubt, the Housing Provider's obligation to repair or reinstate the Development is not limited by the amount of any insurance proceeds (if any) received by the Housing Provider.

# Signing

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## Signing by Director

The official seal of **The Director of Housing** was hereunto affixed in the presence of:

Director of  
Housing  
signature:  
→

\*Print  
name:

Seal:  
→

\*Use BLOCK LETTERS

---

## Signing by Housing Provider

**##Embedded Instruction: to be completed following acceptance of an EOI Proposal##**

**##Embedded Instruction:** *The following are examples of Attachments that will be included in the final document. The final Attachments will be agreed on following acceptance of an EOI Proposal##*

Attachment: Project Schedule

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## Attachment: Reporting Obligations

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# Attachment: Asset Management Plan

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## Attachment: Design Policy for Social Housing

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## Attachment: Director's Mortgage

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The Mortgagor covenants and agrees with the Mortgagee as follows:

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# 1 Definitions and interpretation

## 1.1 Definitions

In this Mortgage, unless the context otherwise requires:

**Asbestos** includes 'asbestos', 'asbestos containing material (ACM)' and 'asbestos-contaminated dust or debris (ACD)', in each case, as defined in the *Work Health and Safety Regulations 2012* (Tas).

**Attorney** means an attorney appointed pursuant to any Transaction Document and any delegate of an attorney.

**Authorisation** includes any consent, authorisation, registration, filing, lodgment, document, certificate, permission, Licence, approval, authority or exemption prescribed by law or required by any Government Body.

**Authorised Representative** means:

- (a) for the Mortgagee, his/her nominee appointed for the Project; and
- (b) for the Mortgagor, its Chief Executive Officer or other equivalent person authorised by the Board of the Mortgagor,

or any other person nominated by, or on behalf of, a party, as an Authorised Representative.

**Business Day** means a day on which banks are generally open for business in Hobart but excluding any such day which is a Saturday, Sunday or a public holiday generally observed in Hobart.

**Collateral Security** means any present or future Security Interest (other than this Mortgage) granted or agreed to be granted by any person to secure, or otherwise provide for the payment or repayment of, any of the Secured Moneys.

**Conveyancing Act** means the *Conveyancing and Law of Property Act 1884* (Tas).

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

**Default Event** means any of the events specified in clause 9.1.

**Development Agreement** means the Development Agreement dated on or about the date of this Mortgage between the Mortgagor and the Mortgagee.

**Encumbrance** means any Security Interest, easement, profit a prendre, restrictive covenant, equity, interest, writ of execution, judgment, right of set-off, assignment of income or monetary claim and includes any agreement to grant or create any of the foregoing.

**Environmental Law** means any law relating to the environment, including, laws relating to land use, development, heritage protection, pollution, waste disposal, toxic and hazardous substances, conservation or resources.

**Environmental Liability** means any actual, contingent or prospective liability, obligation, expense, penalty or fine arising out of a breach of an Environmental Law that could be imposed upon the Mortgagor, any of its successors in title or the Mortgagee.

**Financier** means any entity that provides, or agrees to provide, any form of financial accommodation to the Mortgagor for the purpose of financing the Project.

Signed by the Attorneys  
of the Mortgagor .....

**Government Body** includes a body politic, a government (federal, state or local), a governmental, judicial or administrative body, a tribunal, a commission, a department or agency of any government, and a statutory authority or instrumentality.

**GST** means any goods and services tax or similar tax imposed by the Commonwealth of Australia (but excluding any penalty, fine, interest or similar payment).

**GST Laws** means applicable Laws relating to GST.

**Guarantee** means any guarantee, indemnity, letter of credit, letter of comfort, put option or other obligation given by a person:

- (a) to secure or to otherwise be responsible for the performance of any obligation by another person including an obligation to pay any debt or monetary liability; or
- (b) to indemnify a person against the consequences of a default by another person in the performance of an obligation by that other person.

**Hazardous Substance** includes:

- (a) Asbestos;
- (b) anything that contains Asbestos;
- (c) any solid, liquid, gas, odour, heat, sound, vibration, radiation, material, substance or contamination, of any kind on, in or under land or water, which:
- (d) constitutes a pollutant or contaminant for the purposes of any Law;
- (e) makes or may make land or water unsafe, unfit or harmful for habitation, use or occupation by any person or animal;
- (f) creates or may be a risk to the health or safety of any person; or
- (g) is such that any land or water does not satisfy any relevant criteria or standards published or adopted by the Environment Protection Authority (Tas) from time to time.

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (b) legislation and subordinate legislation; and
- (c) requirements, approvals (including conditions) and guidelines of any Government Body that have force of law.

**Lease** means any lease, agreement for lease, tenancy, occupancy or licence (whether registered under the *Land Titles Act 1980* (Tas) or not) affecting the Mortgaged Property.

**month** means calendar month.

**this Mortgage** means this mortgage.

**Mortgaged Property** means:

- (a) the land mortgaged by this Mortgage; and
  - (i) without limiting paragraph (a), includes:
  - (ii) all fixtures, buildings, improvements, erections and structures on or affixed to that land; and

Signed by the Attorneys  
of the Mortgagor .....

- (b) all paths, passages, ways, waters, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals, quarries, trees and timber and other benefits on, of or used or enjoyed in conjunction with that land.

**Permitted Security Interest** means:

- (a) a Permitted Security Interest as defined in the Development Agreement;
- (b) a deemed security interest under section 12(3) of the PPSA which does not secure payment or performance of an obligation;
- (c) an Encumbrance:
  - (i) approved in writing by the Mortgagee; or
  - (ii) notified in writing to the Mortgagee prior to the Mortgagee executing this Mortgage; and
- (d) any lien or charge which arises by operation of an applicable Law to secure an obligation for the payment of taxes or moneys for services in relation to the Mortgaged Property before the due date for payment.

**Potential Default** means any event, thing or circumstance which likely would become a Default Event with the giving of notice, the making of a determination or the passage of time (or any combination of those things).

**PPSA** means the *Personal Property Securities Act 2009* (Cwlth).

**PPSA Security Interest** has the meaning given to the term 'security interest' in the PPSA.

**Project** means:

- (a) the planning, design, development, construction, completion and commissioning of all works required to deliver the Development (as defined in the Development Agreement) as required by the Development Agreement and the Project Documents (as defined in the Development Agreement);
- (b) the sale of the Mortgaged Property to the Mortgagor; and
- (c) the use of the Mortgaged Property by the Mortgagor for the Project as defined in the Development Agreement.

**Receiver** means a receiver or receiver and manager appointed by the Mortgagee in relation to the Mortgaged Property.

**Right** includes a right, a power, a remedy, a discretion or an authority.

**Secured Moneys** means:

- (a) all amounts, debts and monetary liabilities payable by the Mortgagor to the Mortgagee under the Development Agreement; or
- (b) all amounts, debts and monetary liabilities at any time and from time to time incurred, paid or payable by the Mortgagee, the Crown, or a Receiver, in connection with the exercise, or attempted exercise, of any of the Mortgagee's Rights under the Development Agreement; or
- (c) all amounts, debts and monetary liabilities payable (including, without limitation, the costs of enforcing or exercising any Right under this Mortgage or a Collateral Security) by the Mortgagor to the Mortgagee, the Crown or a Receiver, under this Mortgage or any Collateral Security; and

- (d) all interest payable by the Mortgagor to the Mortgagee or the Crown on those amounts, debts and monetary liabilities in accordance with the Development Agreement, this Mortgage or any Collateral Security.

**Security Interest** means:

- (a) a PPSA Security Interest;
- (b) any mortgage, charge, bill of sale, pledge, deposit, lien, hypothecation, arrangement for the retention of title and any other interest or power given by way of security for any debt, monetary liability or other obligation,

and includes any agreement to grant or create any of the foregoing.

**Security Provider** means any person in any capacity who at any time:

- (a) has granted any Collateral Security; or
- (b) has given any Guarantee for the payment of any of the Secured Moneys.

**Specified Currency** means the currency in which a payment is required to be made, and unless expressly stated to be another currency is Australian dollars.

**Strata Act** means the *Strata Titles Act 1998* (Tas).

**Titles Act** means the *Land Titles Act 1980* (Tas).

**Transaction Documents** means:

- (a) this Mortgage;
- (b) each Collateral Security;
- (c) the Development Agreement;
- (d) the Project Documents and the Notification on Title, terms of which as defined in the Development Agreement; and
- (e) any document expressed to be a Transaction Document or which is a Transaction Document for the purposes of any other Transaction Document,

and **Transaction Document** means any of such documents.

**Transaction Parties** means:

- (a) the Mortgagor; and
- (b) each Security Provider,

and **Transaction Party** means any of them.

**Works** means building works, demolition works or earthworks on or affecting the Mortgaged Property (including works altering or extending any building or structure on the Mortgaged Property or changing the external coating or colour of any such building or structure and the works as required under the Development Agreement).

## 1.2 Development Agreement definitions

A term defined in the Development Agreement has the same meaning when used in this Mortgage unless:

- (a) the term is separately defined in this Mortgage; or
- (b) the context otherwise requires.

### 1.3 Interpretation

In this Mortgage, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include all genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Mortgage have a corresponding meaning;
- (d) a reference to a thing (including property or an amount) is a reference to the whole and each part of that thing;
- (e) a reference to a group of persons includes a reference to any one or more of those persons;
- (f) a reference to an annexure, an appendix, an attachment, a schedule, a party, a clause or a part is a reference to an annexure, an appendix, an attachment, a schedule or a party to, or a clause or a part of, this Mortgage;
- (g) a reference to any legislation or legislative provision includes subordinate legislation made under it and any amendment to, or replacement for, any of them;
- (h) writing includes marks, figures, symbols, images or perforations having a meaning for persons qualified to interpret them;
- (i) a reference to a document includes:
  - (i) anything on which there is writing;
  - (ii) anything from which sounds, images or writings can be reproduced with or without the aid of anything else;
  - (iii) an amendment or supplement to, or replacement or novation of, that document; or
  - (iv) a map, plan, drawing or photograph;
- (j) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (k) a reference to a 'person' includes a natural person, a partnership, a body corporate, a corporation sole, an association, a Government Body, or any other entity;
- (l) a reference to a party includes that party's executors, administrators, successors and permitted assigns and substitutes;
- (m) a reference to the Mortgagee includes, as applicable, that Mortgagee's predecessors and successors in office;
- (n) a reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or functions of which have been substantially transferred, is taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred;
- (o) a reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office;
- (p) mentioning any thing after the words 'includes', 'included' or 'including' does not limit the meaning of any thing mentioned before those words;

- (q) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later;
- (r) reference to a time or date in connection with the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere; and
- (s) references to '\$' and 'dollars' are to Australian dollars.
- (t) a reference to this Mortgage, or any document referred to in this Mortgage or another instrument, includes any variation or replacement of any of them;
- (u) a covenant prohibiting a person from doing anything also prohibits that person from authorising it to be done by another person;
- (v) a Default Event or Potential Default subsists and/or continues until either:
  - (i) it is remedied to the Mortgagee's satisfaction before any Rights relating to that Default Event or Potential Default are exercised; or
  - (ii) waived by the Mortgagee in writing in accordance with this Mortgage.

**1.4 Headings**

Headings are included for convenience only and do not affect the interpretation of this Mortgage.

**1.5 No rule of construction applies to disadvantage party**

In relation to the interpretation of this Mortgage, no rule of construction is to apply to the disadvantage of a party because that party was responsible for the preparation of this Mortgage or any part of it.

**1.6 Capacity of Mortgagee**

- (a) Unless otherwise stated in this Mortgage, a reference to the Mortgagor means the Mortgagor as a contracting party under this Mortgage.
- (b) The Mortgagor's Rights under this Mortgage are in addition to his prerogatives and Rights under legislation or at common law. Nothing in this Mortgage, limits or prevents the Mortgagor or the Crown from exercising any such prerogative or Right or otherwise requires the Mortgagee or the Crown to exercise, or to refrain from exercising or procure the exercise or the refraining from exercising of any such prerogative or Right in a particular way or at all.

**1.7 Director's Security**

This Mortgage is a Director's Security for the purposes of the Development Agreement.

**1.8 Implied covenants**

The covenants and provisos implied by the Conveyancing Act by the use of any words in this Mortgage are taken to be fully set out in this Mortgage.

**2 Mortgage and title documents**

**2.1 Mortgage**

The Mortgagor mortgages the Mortgaged Property to the Mortgagee to secure:

- (a) the payment of the Secured Moneys;

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- (b) the performance by the Mortgagor of its obligation to perform and complete the Project (as defined in the Development Agreement) in accordance with the Development Agreement; and
- (c) the performance of all of the Mortgagor's obligations to the Mortgagee under this Mortgage and each Collateral Security.

**2.2 Priority**

This Mortgage is intended to take priority over all other Security Interest affecting the Mortgaged Property other than:

- (a) any Permitted Security Interest which ranks in priority to this Mortgage;
- (b) an Encumbrance (which is not a Security Interest which ranks in priority to this Mortgage) disclosed by the title to the Mortgaged Property as registered under the Titles Act; or
- (c) a Security Interest created by a Transaction Document to which the Mortgagee is a party.

**2.3 Further assurance**

- (a) The Mortgagor must whenever requested by the Mortgagee, execute any document and perform any act which the Mortgagee may require for the purposes of:
  - (i) further or more effectually securing to the Mortgagee the Mortgaged Property for payment of the Secured Moneys;
  - (ii) protecting or enabling the exercise of any Right;
  - (iii) giving to the Mortgagee those Rights and the benefit of those obligations which it was intended or contemplated that the Mortgagee would have under, in relation to, or because of, this Mortgage; or
  - (iv) procuring the registration of this Mortgage in accordance with the Titles Act.
- (b) The Mortgagee, at the Mortgagor's cost and in the name of the Mortgagor:
  - (i) may apply for and obtain amendments to the title to the Mortgaged Property; and
  - (ii) may do any act, matter or thing which the Mortgagee considers necessary;
  - (iii) to perfect the title of the Mortgagor to the Mortgaged Property or the Mortgagee's interest in the Mortgaged Property;
  - (iv) to make the Mortgaged Property more saleable; or
  - (v) to procure the registration of this Mortgage.

**2.4 Title documents**

Subject to the rights of any prior mortgagee, until the discharge of this Mortgage, the Mortgagee is entitled to have and retain possession of:

- (a) the grant or certificate of title to the Mortgaged Property and of any certificate of title which is issued in substitution or replacement;
- (b) if required by the Mortgagee, the Mortgagor's counterpart of each Lease; and
- (c) any other document of title relating to the Mortgaged Property.

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### 3 Discharge

#### 3.1 Discharge obligation

The Mortgagee must, at the request of the Mortgagor in writing and at the cost of the Mortgagor discharge this Mortgage:

- (a) on the later to occur of:
  - (i) the completion of the Project (as defined in the Development Agreement); and
  - (ii) the date on which the Secured Moneys have been paid in full (including any moneys owing or payable on a contingent basis);and
- (b) if no payment of any Secured Moneys is, or is likely to be declared, void, voidable, repayable or refundable under or pursuant to any law.

#### 3.2 Secured Moneys

For the avoidance of doubt, the reference to the Secured Moneys in clause 3.1 includes all of the Secured Moneys including moneys owing or payable contingently and regardless of whether any Secured Moneys are actually due and payable.

#### 3.3 Payment of Secured Moneys

The payment of the Secured Moneys for the time being secured by this Mortgage does not discharge the Security Interest created this Mortgage.

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## 4 Representations and warranties

#### 4.1 Warranties

The Mortgagor represents and warrants to the Mortgagee that:

- (a) **(title)**: the Mortgagor has or is entitled to an absolute and indefeasible title to the Mortgaged Property under the provisions of the Titles Act for the estate and interest described in this Mortgage;
- (b) **(Mortgagor does not act as trustee)**: except as previously disclosed in writing by the Mortgagor to the Mortgagee prior to the date of this Mortgage, the Mortgagor does not enter into this Mortgage and does not hold the Mortgaged Property as trustee of any trust or for the benefit of any other person;
- (c) **(Encumbrances)**: there are no Encumbrances affecting the Mortgaged Property which rank in priority to or equally with this Mortgage other than a Permitted Security Interest or an Encumbrance disclosed by the title (as registered under the Titles Act) to the Mortgaged Property;
- (d) **(possession)**: except as previously disclosed in writing by the Mortgagor to the Mortgagee prior to the date of this Mortgage, as at the date of this Mortgage:
  - (i) the Mortgagor is in exclusive possession and occupation of the Mortgaged Property; and
  - (ii) the Mortgaged Property is not subject to any Lease;
- (e) **(no disputes)**: except as previously disclosed in writing by the Mortgagor to the Mortgagee prior to the date of this Mortgage, there are no actions or proceedings commenced or threatened affecting the Mortgaged Property which may have a material adverse effect on

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the ability or capacity of the Mortgagor to perform any of its obligations under the Transaction Documents;

- (f) **(works)**: each building, improvement, erection or structure on or forming part of the Mortgaged Property has been completed in accordance with all applicable Laws and there is no impediment to its use or occupation;
- (g) **(transaction permitted)**: the execution, delivery and performance of each Transaction Document to which it is a party will not breach in any respect any provision of:
  - (i) any applicable Law or any order or ruling of a Government Body ;
  - (ii) any Encumbrance relating to the Mortgaged Property;
  - (iii) any agreement binding on the Mortgagor;
  - (iv) if the Mortgagor is a corporation, the Mortgagor's constitution;
- (h) **(incorporation)**: if the Mortgagor is a corporation, it is a corporation duly incorporated and existing under the Law of its place of incorporation and has the corporate power to enter into and perform its obligations under this Mortgage;
- (i) **(authorisations)**: all necessary action has been taken by the Mortgagor to authorise the execution, performance and delivery of, and its obligations under, each Transaction Document to which it is a party;
- (j) **(power)**: it has full power and authority to enter into and perform its obligations under each Transaction Document to which it is a party and is not subject to any legal disability or incapacity;
- (k) **(benefit)**: it benefits by executing each Transaction Document to which it is a party;
- (l) **(binding obligation)**: each Transaction Document to which it is a party:
  - (i) constitutes a valid legal and binding obligation on the part of the Mortgagor;
  - (ii) is enforceable in accordance with its terms subject to any necessary stamping or registration;
  - (iii) is not void or voidable; and
  - (iv) has the priority which it purports to have in accordance with the Transaction Documents or any priority agreement entered into by the Mortgagor;
- (m) **(information)**: all information given, and each statement made, to the Mortgagee or its agents by the Mortgagor or its agents concerning:
  - (i) any application to the Mortgagee for any facility, loan or financial accommodation secured by this Mortgage;
  - (ii) the status, financial position, commitments and assets of any Transaction Party;
  - (iii) the Transaction Documents;
  - (iv) the insurance policies held by the Mortgagor;
  - (v) the transactions contemplated by the Transaction Documents; or
  - (vi) the Mortgaged Property (including any answers to requisitions),is true, correct and not misleading in any way;

- (n) **(disclosure)**: it has fully disclosed in writing to the Mortgagee all information relating to the matters which are material to the assessment, and nature, of the risks accepted, or to be accepted, by the Mortgagee pursuant to each of the Transaction Documents; and
- (o) **(Default Event)**: except as previously disclosed in writing by the Mortgagor to the Mortgagee prior to the date of this Mortgage, no Default Event has occurred or is continuing.

**4.2 Survival and repetition of representations and warranties**

Each representation and warranty in clause 4.1:

- (a) survives the execution of this Mortgage; and
- (b) is taken to be repeated with reference to the facts and circumstances then existing on each day until this Mortgage is released.

**4.3 Reliance by Mortgagee**

The Mortgagor acknowledges that each time the Mortgagee enters into and continues to perform its obligations under the Transaction Document, the Mortgagee does so in reliance on each of the representations and warranties in clause 4.1.

**4.4 No reliance by Mortgagor**

The Mortgagor acknowledges that it has not entered into any Transaction Document to which it is a party in reliance on any representation, warranty, promise, statement or undertaking made by the Mortgagee or any person on behalf of the Mortgagee.

**5 Payments by Mortgagor**

**5.1 Payment of the Secured Moneys**

- (a) The Mortgagor must pay each amount included in the Secured Moneys to the Mortgagee:
  - (i) if the date for payment of the amount is specified in a Transaction Document or any other written agreement made between the Mortgagee and any other Transaction Party, on the date that is so specified for payment; and
  - (ii) if no date for payment is so specified, on demand in writing by the Mortgagee.
- (b) Nothing in clause 5.1(a) affects any Right of the Mortgagee or any obligation of the Mortgagor to pay or repay any moneys at any earlier time pursuant to any Transaction Document or any applicable Law.

**5.2 Appropriation**

The Mortgagee may appropriate to the payment or repayment of any part of the Secured Moneys any payment received by the Mortgagee from the Mortgagor. An appropriation made by the Mortgagee overrides any appropriation by the Mortgagor.

**5.3 Manner of payment**

The Mortgagor must make each payment that it is required to make under a Transaction Document:

- (a) at a time and place reasonably determined by the Mortgagee; and
- (b) by a bank cheque or in other immediately available funds or in any other manner approved in writing by the Mortgagee.

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#### 5.4 Currency of payment

- (a) Except to the extent that a Transaction Document otherwise provides, the Mortgagor must pay each amount that it is required to pay under a Transaction Document in the Specified Currency.
- (b) If the Mortgagee accepts a payment in a currency other than the Specified Currency that payment in the other currency (**payment currency**) will not satisfy the amount payable except to the extent that the Mortgagee can in the ordinary course of business purchase the Specified Currency with the payment currency (and if necessary through intermediate currencies) at the time of or within a reasonable time after the receipt of the payment currency and after deducting from the amount of the Specified Currency which is purchased all costs associated with its purchase.

#### 5.5 Payments in gross

The Mortgagor must make each payment which it is required to make under a Transaction Document without any set-off, counter-claim, condition or abatement, or unless required by an applicable Law (which is not negated or excluded by pursuant to clause 15.5), any deduction or withholding.

#### 5.6 Notification of withholding

If the Mortgagor is required to make a deduction or withholding from a payment under this Mortgage pursuant to an applicable Law, the Mortgagor must:

- (a) make the deduction or withholding and pay it in accordance with the applicable Law;
- (b) notify the Mortgagee in writing of the deduction or withholding; and
- (c) obtain and give to the Mortgagee a receipt or other evidence of the payment of the deduction or withholding.

#### 5.7 Certificate as to Secured Moneys

A certificate signed by an Authorised Representative of the Mortgagee stating (any one or more of):

- (a) the amount of the Secured Moneys;
- (b) the amount of the Secured Moneys due and payable at any time;
- (c) the rate of interest payable at any time in relation to any amount of the Secured Moneys;
- (d) that an amount is due or payable to the Mortgagee by the Mortgagor; or
- (e) that the Mortgagee is entitled to payment of any of the above on demand,

is prima facie evidence as to its contents without the Mortgagee being required to produce any document to verify the certificate unless it is proved to be incorrect.

#### 5.8 GST

- (a) Unless otherwise stated in this Mortgage, all amounts payable by one party to another party are exclusive of GST.
- (b) If GST is imposed or payable on any supply made by a party under this Mortgage, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.
- (c) A party that makes a taxable supply under this Mortgage must provide a valid tax invoice to the recipient of the supply.

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- (d) A party's right to payment under clause 5.8(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- (e) If the consideration for a supply under this Mortgage is a payment or reimbursement for, or contribution to, any expense or liability incurred by the supplier to a third party, the amount to be paid, reimbursed or contributed in respect of the expense or liability will be the amount of the expense or liability net of any input tax credit to which the supplier is entitled in respect of the expense or liability.
- (f) Where any amount payable under this Mortgage is paid by being set-off against another amount, each amount must be calculated in accordance with this clause 5.8 as if it were an actual payment made pursuant to this Mortgage.
- (g) Unless the context otherwise requires, expressions used in this clause 5.8 that are defined in the GST Laws have the meanings given to those expressions in the GST Laws.

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## **6 Restrictions on dealing with Mortgaged Property**

### **6.1 Negative pledge**

The Mortgagor must not without the prior written consent of the Mortgagee grant or agree to grant or permit to come into existence any Security Interest over or in respect of the Mortgaged Property, other than a Security Interest in favour of the Mortgagee or a Permitted Security Interest.

### **6.2 Disposal restrictions**

Except as permitted by the Development Agreement, the Mortgagor must not without the prior written consent of the Mortgagee:

- (a) convey, transfer, sell, assign or surrender, or otherwise dispose of:
  - (i) the Mortgaged Property; or
  - (ii) any rights or benefits which attach or relate to the Mortgaged Property; or
- (b) grant, agree to grant, create, release, vary, consent to, or seek the cancellation of any easement, profit a prendre, restrictive covenant or any other estate, interest or right affecting or which benefits the Mortgaged Property.

### **6.3 Caveats**

The Mortgagor must:

- (a) not lodge, or allow to be lodged or exist, any caveat in relation to the Mortgaged Property (other than a caveat lodged by the Mortgagee); and
- (b) promptly take all steps it can to cause the removal of any caveat in relation to the Mortgaged Property (other than a caveat lodged by the Mortgagee).

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## **7 Mortgagor's general undertakings relating to Mortgaged Property**

### **7.1 Payment of outgoings**

- (a) Subject to the Transaction Documents, the Mortgagor must duly and punctually pay or cause to be paid all rates, rents, taxes, duties, charges, expenses and outgoings payable in respect of the Mortgaged Property as and when the same respectively become due and payable, except any of which may be contested in good faith without having any prejudicial effect on the Mortgaged Property.

- (b) At the request of the Mortgagee, the Mortgagor must give to the Mortgagee all receipts and other documents evidencing the payments that the Mortgagor is required to make in accordance with this clause.

## 7.2 Repair, maintenance and protection of Mortgaged Property

The Mortgagor must:

- (a) **(repair obligations):** maintain and protect the Mortgaged Property and carry out in a proper and workmanlike manner all works, repairs, painting, cleaning and preventative maintenance necessary or desirable to keep the Mortgaged Property in a good and substantial state of repair, order and condition;
- (b) **(notice to repair):** repair every defect in the state or condition of the Mortgaged Property of which notice in writing is given by the Mortgagee to the Mortgagor;
- (c) **(protection):** protect the Mortgaged Property from theft, loss or damage;
- (d) **(legal action):** take or defend all such legal proceedings or other actions as the Mortgagee may think necessary or advisable for the preservation, protection or recovery of the Mortgaged Property;
- (e) **(forfeiture):** not do or suffer any act, omission or thing which could or may cause the Mortgaged Property to be liable to surrender, forfeiture, cancellation, seizure or prejudice in any manner;
- (f) **(fixtures):** not remove, sell, sever, dispose of, alter or separately grant an Security Interest over any fixture forming part of the Mortgaged Property or agree to do any of those things without the prior written consent of the Mortgagee;
- (g) **(title defects):** take all such action as the Mortgagee considers necessary to rectify any defect that exists or may arise in relation to the Mortgagor's title to the Mortgaged Property.

## 7.3 Environmental protection and related matters

- (a) **Contamination:** The Mortgagor must keep the Mortgaged Property free from any direct or indirect contamination or pollution by anything (including toxic or Hazardous Substances) which:
  - (i) lessens or may lessen the value of the Mortgaged Property;
  - (ii) if the Mortgaged Property is rural, agricultural, horticultural or pastoral land, makes or may make the Mortgaged Property unsafe or unfit for any rural, agricultural, horticultural or pastoral use; or
  - (iii) makes or may make the Mortgaged Property unsafe or unfit for humans or animals.
- (b) **Noxious activities:** The Mortgagor must not carry on or permit to be carried on upon the Mortgaged Property any noxious or offensive act, art, trade, business or occupation.
- (c) **Nuisances affecting neighbouring property:** The Mortgagor must not cause, contribute to or permit any nuisance to or disturbance of the owners, occupiers or users of any neighbouring or adjoining property.
- (d) **Nuisances affecting the Mortgaged Property:** The Mortgagor must not permit or allow the creation or continuation of any nuisance on or affecting the Mortgaged Property, including any noxious growths, smells, noises, vibrations or the overflow or escape of any substance or thing.
- (e) **Compliance with Environmental Laws:** The Mortgagor must comply with all Environmental Laws that affect the Mortgaged Property or any activity on the Mortgaged Property.

- (f) **Environmental Liabilities:** The Mortgagor must not do or permit any person to do anything on the Mortgaged Property or bring or permit any person to bring anything onto the Mortgaged Property that results or may result in an Environmental Liability.
- (g) **Notice:** The Mortgagor must immediately give to the Mortgagee a copy of each notice, order or direction relating to the Mortgaged Property given to the Mortgagor by a Government Body under any Environmental Law.
- (h) **Environmental assessment report:** The Mortgagor must when reasonably required by the Mortgagee obtain or permit the Mortgagee to obtain an environmental assessment report from a person approved by the Mortgagee. The Mortgagor must promptly comply with any reasonable recommendation contained in any environmental assessment report relating to compliance with any Environmental Law.

**7.4 Use of Mortgaged Property**

The Mortgagor must:

- (a) not use the Mortgaged Property or permit it to be used in a manner which is inconsistent with the use for which the Mortgaged Property was designed or intended;
- (b) not discontinue or change the use of the Mortgaged Property;
- (c) only use the Mortgaged Property in accordance with the Development Agreement.

**7.5 Mortgagor not to reduce value or security**

The Mortgagor must not do any thing which reduces the value of the Mortgaged Property or which reduces the value or effectiveness of this Mortgage as security.

**7.6 Compliance with easements**

The Mortgagor must comply with all easements affecting the Mortgaged Property.

**7.7 Compliance with Laws and agreements**

The Mortgagor must comply in all material respects with its obligations in relation to the Mortgaged Property, including:

- (a) under any Encumbrance in respect of the Mortgaged Property;
- (b) the Notification on Title (as defined by the Development Agreement);
- (c) any Law binding on it or affecting it;
- (d) any Authorisation applicable to the Mortgaged Property;
- (e) any requirements of any Government Body binding on it or its business, that, if it failed to comply, will or might reasonably be expected to materially impair its ability to perform its obligations under the Transaction Documents.

**7.8 Mortgagee's right of entry**

The Mortgagor must permit the Mortgagee, each Authorised Representative of the Mortgagee and any person nominated by the Mortgagee or any of them at any time to enter on the Mortgaged Property for any purpose that is related to this Mortgage, including for the purposes of enabling the Mortgagee:

- (a) to inspect the state and condition of the Mortgaged Property;
- (b) to determine whether the Mortgagor is complying with its obligations under this Mortgage;  
or
- (c) to exercise any Right.

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## 7.9 Works affecting Mortgaged Property

The Mortgagor must not carry out any Works on or in relation to the Mortgaged Property except with the prior written consent of the Mortgagee or in accordance with the Development Agreement and the other Transaction Documents.

## 7.10 Insurance

- (a) **Obligation to insure:** The Mortgagor must comply with its obligations under clause 22 of the Development Agreement in relation to insurance.
- (b) **Mortgagor to assist in claims:** The Mortgagor must do everything that is necessary or desirable to recover any moneys that are or may be due in respect of any claim or potential claim under an insurance policy required by the Development Agreement including:
  - (i) lodging a claim;
  - (ii) providing to the insurer or its agents any documents, information or evidence required by the insurer or its agents; and
  - (iii) subject to clause 7.10(c), instituting and maintaining any necessary or desirable proceedings to enforce recovery.
- (c) **Mortgagee to control claims:**
  - (i) The Mortgagee has full power to make, enforce, sue for, recover, settle, compromise and give discharges for all claims and moneys that are payable in respect of any claim relating to the Mortgaged Property or any claim to compensation relating to any injury to any employee of the Mortgagee or any Receiver or Attorney suffered in the exercise or attempted exercise of any Right.
  - (ii) The Mortgagee is not obliged to exercise its rights under clause 7.10(c)(i). If the Mortgagee does exercise its rights under that clause, the Mortgagee may do so to the exclusion of the Mortgagor.
  - (iii) The Mortgagee's rights under clause 7.10(c)(i) may be exercised irrespective of whether the insurance policy covers the Mortgaged Property alone or includes other property or the insurance policy includes the Mortgagee as one of the insured.
- (d) **Application of insurance proceeds:**
  - (i) At the option of the Mortgagee all moneys received in relation to any insurance policy on account of any claim may:
    - (A) be applied in and towards the payment or repayment of the Secured Moneys which are outstanding at that time whether or not then due or payable;
    - (B) be used to the extent necessary for the replacement, repair, reinstatement or rebuilding of the Mortgaged Property; or
    - (C) be retained by the Mortgagee and paid to the Mortgagor on a progressive basis as needed by the Mortgagor in connection with the replacement, repair, reinstatement or rebuilding of the Mortgaged Property.
  - (ii) If there are any surplus proceeds of insurance remaining in the hands of the Mortgagee after the application of the insurance proceeds in accordance with clause 7.10(d)(i), the Mortgagee must pay those surplus proceeds to the Mortgagor or the person otherwise entitled.
- (e) **Interpretation:** A reference in this clause 7.10 to an **insurance policy** means, as the context requires, an insurance policy which the Mortgagor is required to effect or has



effected in relation to a risk (or which includes a risk) against which the Mortgagor must insure pursuant to the Development Agreement.

## **7.11 Encroachments**

- (a) If any part of any improvement on the Mortgaged Property encroaches on any adjoining land the Mortgagor must, at the request of the Mortgagee:
  - (i) rectify the encroachment;
  - (ii) obtain an easement to authorise the continued existence of the encroachment; or
  - (iii) obtain title to the land affected by the encroachment.
- (b) If any improvement on any adjoining land encroaches on the Mortgaged Property the Mortgagor must, at the request of the Mortgagee, remove that encroachment.
- (c) The Mortgagor must not without the prior written consent of the Mortgagee:
  - (i) acknowledge that any part of any improvement on the Mortgaged Property constitutes an encroachment on any adjoining land; or
  - (ii) consent to, or grant any easement or licence for, the continued existence of any encroachment upon the Mortgaged Property.

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## **8 Mortgagor's general undertakings**

### **8.1 Transaction Documents**

The Mortgagor must duly and punctually observe and perform all of its obligations and liabilities under or pursuant to each Transaction Document to which it is a party.

### **8.2 Notices to Mortgagee**

The Mortgagor must notify the Mortgagee in writing as soon as is practicable if any of the following events, matters, things or circumstances occur or exist:

- (a) any Default Event;
- (b) any Potential Default of which it becomes aware;
- (c) except as to a Permitted Security Interest, any Security Interest created or entered into by the Mortgagor affecting the Mortgaged Property;
- (d) any proposed compulsory acquisition by a Government Body of the Mortgaged Property or any estate or interest in it;
- (e) any material breach of any Lease;
- (f) any proposal to enter, or the entering of, any Mortgaged Property in any heritage register or environmental register maintained by a Government Body; or
- (g) any notice given or order made by a Government Body in respect of the condition or use of any Mortgaged Property or requiring the doing of any work in relation to any Mortgaged Property.

### **8.3 Term of undertakings**

Except where the Mortgagee otherwise agrees in writing, each of the undertakings given by the Mortgagor in this Mortgage must be complied with or observed by the Mortgagor until:

- (a) the payment or repayment of the Secured Moneys in full including any moneys payable on a contingent basis;

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- (b) the performance by the Mortgagor of its obligation to perform and complete the Project in accordance with the Development Agreement; and
- (c) the discharge of the Security Interest created by this Mortgage.

## 9 Default Events

### 9.1 Events

It is a Default Event whether or not within the control of the Mortgagor if:

- (a) **(non-payment)**: the Mortgagor fails to pay or repay any part of the Secured Moneys within five Business Days of the date when due and payable by the Mortgagor, other than where such failure is cured within five Business Days of the date when due for payment;
- (b) **(purpose)**: the Mortgagor applies any part of the Secured Moneys advanced to the Mortgagor for any purpose other than for the specified purpose (if any) for which it was advanced;
- (c) **(default)**: the Mortgagor fails to satisfy any conditions, or perform or observe any of its obligations, under any Transaction Document (other than an obligation referred to in paragraph (a) or (b) above) and, if the failure is capable of remedy within 10 Business Days, it continues unremedied for 10 Business Days (or such longer period agreed in writing by the Mortgagee) after the Mortgagee has given written notice to the Mortgagor specifying the failure;
- (d) **(representation)**: any representation or warranty contained in any Transaction Document is, in a material respect, untrue, false or misleading when made or repeated;
- (e) **(Transaction Documents)**: all or any part of any Transaction Document is or becomes void, voidable, illegal, invalid, unenforceable or of limited or reduced force or effect or is claimed to be so by any Transaction Party;
- (f) **(priority and attachment)**: other than by any act of the Mortgagee, any Transaction Document:
  - (i) ceases to have the priority that it purports to have under this Mortgage or any other Transaction Document;
  - (ii) for the purposes of the PPSA, ceases or fails to attach to any collateral that is intended to be the subject of that Transaction Document; or
  - (iii) ceases to secure the payment of the money or the performance of the obligations that it purports to secure;
- (g) **(registration)**:
  - (i) this Mortgage cannot be registered or is refused registration under the Titles Act;
  - (ii) a requisition is issued by or on behalf of the Recorder of Titles which affects (directly or indirectly) the registration of this Mortgage in accordance with the Titles Act and that requisition is not withdrawn or satisfied within five Business Days of the Mortgagee notifying the Mortgagor of the requisition; or
  - (iii) a Transaction Document (that the Mortgagee requires to be registered, and is capable of being registered) cannot be registered in accordance with, or is refused registration under, any applicable Law relating to the registration of Transaction Documents of that type;

- (h) **(distress/execution)**: any distress or execution for an amount exceeding \$50,000 or its equivalent in another currency is levied or enforced upon or against any assets of any Transaction Party and that distress or execution is not withdrawn or satisfied within five Business Days of its levy or issue;
- (i) **(judgment)**: a final judgment in an amount exceeding \$50,000 or its equivalent in another currency is obtained against any Transaction Party and is not satisfied within five Business Days of it becoming final;
- (j) **(cross default)**:
  - (i) any Default Event (however described) occurs under any Transaction Document and is not remedied in accordance with that Transaction Document;
  - (ii) any obligation of any Transaction Party for the payment or repayment of any present or future debt or monetary liability:
    - (A) becomes due and payable, or capable of being declared due and payable, prior to the due date for payment or repayment owing to default; or
    - (B) is not paid or repaid on the due date for payment or repayment;
  - (iii) any Security Interest is enforced, or becomes capable of being enforced, against any property of any Transaction Party;
  - (iv) any Transaction Party fails to make a required payment under any Guarantee that is or becomes enforceable against that Transaction Party;
  - (v) any default event occurs under the Development Agreement;
- (k) **(damage)**: any substantial part of the Mortgaged Property is damaged or destroyed.

## 9.2 Interpretation

- (a) Nothing in clause 9.1 limits the generality of any thing else in it.
- (b) A Default Event or Potential Default subsists or continues until either:
  - (i) it is remedied to the Mortgagee's satisfaction before any Rights relating to that Default Event or Potential Default are exercised; or
  - (ii) it is waived by the Mortgagee in writing in accordance with this Mortgage.

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# 10 Enforcement by Mortgagee

## 10.1 General

At any time a Default Event is subsisting, the Mortgagee may (despite any delay or previous waiver) do all or any of the following things:

- (a) declare the Secured Moneys to be immediately due and payable (including any moneys contingently due or payable) at which time the Secured Moneys become immediately due and payable;
- (b) exercise all or any of:
  - (i) the Rights conferred on the Mortgagee pursuant to this Mortgage;
  - (ii) the Rights conferred on the Mortgagee under the Development Agreement;
  - (iii) the Rights conferred on the Mortgagee under any applicable Law.

## 10.2 Statutory powers

- (a) The Mortgagee may exercise the power of sale conferred by section 78 of the Titles Act.
- (b) The Mortgagor and the Mortgagee agree that seven days is expressly limited as the period of time for which the default mentioned in section 77 of the Titles Act must be continued prior to the service of the notice mentioned in that section and that seven days is also limited as the period for which the default must continue after the date of the notice mentioned in section 77 before the power of sale conferred by section 78 of the Titles Act can be exercised.
- (c) An extended power of sale may be exercised.
- (d) The Mortgagee when in possession shall have extended powers of leasing and granting options.

## 10.3 Additional Rights

At any time a Default Event is subsisting the Mortgagee has the power to do any of the following things:

- (a) **(take possession)**: to enter into possession of the Mortgaged Property and enter into receipt of the rents and profits of the Mortgaged Property;
- (b) **(manage)**: to manage the Mortgaged Property;
- (c) **(maintain or improve Mortgaged Property)**: to do anything which in the opinion of the Mortgagee is necessary or appropriate to maintain, protect, improve or make the Mortgaged Property more saleable, including:
  - (i) demolishing, rebuilding, altering, adding to, repairing, painting or cleaning any building, improvement, erections or structure on or forming part of the Mortgaged Property;
  - (ii) erecting, constructing or completing any works or earthworks on the Mortgaged Property whether or not in accordance with any existing design;
- (d) **(obtain income)**: to do anything which in the opinion of the Mortgagee is necessary or appropriate to obtain income from the Mortgaged Property;
- (e) **(Lease)**: to:
  - (i) enforce any Lease;
  - (ii) perform the obligations of and discharge the liabilities of the Mortgagor under any Lease;
  - (iii) to surrender any Lease;
  - (iv) to vary, amend, renew or extend any Lease;
  - (v) grant any sub-lease or enter into any agreement for lease, tenancy or licence in relation to the Mortgaged Property or renew any Lease:
  - (vi) on any terms and conditions that the Mortgagee thinks fit;
  - (vii) for any period of time;
  - (viii) for such rent or fee as the Mortgagee thinks fit;
  - (ix) in connection with the sale, lease or licence of any other property by any person;
- (f) **(sale)**: to sell the Mortgaged Property;

- (i) to any person;
  - (ii) by private treaty, public auction, tender or otherwise, and if by public auction or tender, subject to a reserve price determined by the Mortgagee;
  - (iii) on such terms and conditions as the Mortgagee thinks fit;
  - (iv) with or without any special conditions or stipulations as to title or any other matter;
  - (v) for a consideration:
  - (vi) payable in cash in any currency;
  - (vii) consisting of or including something other than money; or
  - (viii) the payment of which is deferred in whole or in part, either with or without interest and either secured or unsecured;
  - (ix) in one lot or in separate parcels;
  - (x) together with the sale of any other property by any other person;
- (g) **(buy in)**: to buy in, rescind or vary any agreement for the sale of the Mortgaged Property and to resell the Mortgaged Property without being responsible for any loss;
- (h) **(grant options)**: to grant to any person options and rights of first refusal to purchase the Mortgaged Property on any terms that the Mortgagee thinks fit;
- (i) **(business)**: to:
- (i) carry on or concur in carrying on or cease to carry on any business on or from the Mortgaged Property;
  - (ii) commence to carry on any business on or from the Mortgaged Property, including any business not previously carried on by the Mortgagor;
- (j) **(more saleable)**: to do anything which in the opinion of the Mortgagee is necessary or desirable to make the Mortgaged Property more saleable;
- (k) **(borrowings and security)**: to:
- (i) borrow any money or otherwise raise any financial accommodation in its name or in the name of the Mortgagor or on behalf of the Mortgagor from any person which in the opinion of the Mortgagee is required or desirable to facilitate the exercise or attempted exercise of any Right by the Mortgagee or any Receiver or Attorney;
  - (ii) secure any moneys or financial accommodation obtained pursuant to clause 10.3(k)(i) by a Security Interest over the Mortgaged Property ranking in priority to, concurrently with or after this Mortgage;
- (l) **(fixtures)**: to sever fixtures belonging to the Mortgagor and comprising any part of the Mortgaged Property and sell those fixtures separately from any other part of the Mortgaged Property;
- (m) **(personal property)**: in relation to any personal property on the Mortgaged Property which is not subject to this Mortgage, to:
- (i) remove the personal property from the Mortgaged Property and store it with any person, including the Mortgagee, at the cost of and in the name of the Mortgagor for such period as the Mortgagee thinks fit; and
  - (ii) upon seven days notice in writing to the Mortgagor sell that personal property in the name of and on behalf of the Mortgagor on and subject to such terms and

conditions as the Mortgagee thinks fit and set the proceeds of sale off against the Secured Moneys;

- (n) **(insure)**: to insure the Mortgaged Property;
- (o) **(compromises)**: to make or accept any compromise or arrangement with any person;
- (p) **(Encumbrances)**: to grant, create, release, vary or seek the cancellation of any Encumbrance affecting the Mortgaged Property;
- (q) **(surrender)**: to surrender or transfer any Mortgaged Property to any Government Body for any purpose and with or without compensation;
- (r) **(exchange)**: to exchange the Mortgaged Property with any person for any other estate or interest in any land:
  - (i) whether or not of equal value;
  - (ii) with or without receiving or giving any other consideration for the purpose of equalising the value of the exchange;
- (s) **(additional property)**: to acquire in the name of the Mortgagor and on its behalf or in the name of the Mortgagee any property or any estate or interest in any property (including land) which:
  - (i) on its acquisition forms part of the Mortgaged Property;
  - (ii) in the case of personal property, is intended to be attached to the Mortgaged Property as a fixture; or
  - (iii) which is necessary or desirable in the opinion of the Mortgagee to make the Mortgaged Property more saleable;
- (t) **(Security Interest)**: in relation to any land acquired in the name of the Mortgagor pursuant to the exercise of any Right, to grant to the Mortgagee a Security Interest over that land in a form and substance satisfactory to the Mortgagee for the purposes of securing the payment or repayment of the Secured Moneys;
- (u) **(subdivision)**: to subdivide, consolidate or otherwise develop the Mortgaged Property and for that purpose:
  - (i) procure the preparation, approval or registration of any plan of subdivision (including a stratum plan) or consolidation;
  - (ii) design and construct any works or earthworks (including roads) and install or connect any services;
  - (iii) dedicate any part of the Mortgaged Property for any public purpose or make contributions in lieu of a dedication;
  - (iv) grant, create, release, vary or seek the cancellation of any Encumbrance affecting the Mortgaged Property;
  - (v) do all such acts and things, including signing any document on behalf of the Mortgagor, which is necessary for such subdivision, consolidation or development to be effected;
- (v) **(agreements)**: to vary, replace, rescind or terminate any agreement relating to the Mortgaged Property to which it or the Mortgagor is a party;
- (w) **(employ)**: to employ, engage or discharge any person for the purpose of exercising any of the Mortgagee's Rights;

- (x) **(receipts)**: to give effectual receipts for any moneys or property;
- (y) **(conduct legal proceedings)**: to commence, defend, prosecute, settle, discontinue or compromise any litigation, administrative or arbitral proceedings relating to:
  - (i) the Mortgaged Property; or
  - (ii) any act or transaction relating to the exercise or attempted exercise of any Right;
- (z) **(Mortgagor's ability)**: to do anything that the Mortgagor:
  - (i) could do in respect of the Mortgaged Property;
  - (ii) is obliged to do under or pursuant to this Mortgage;
- (aa) **(delegate)**: to delegate to any person any Right;
- (bb) **(incidental)**: to do anything that is incidental or conducive to the exercise of any Right.

#### 10.4 Discharge of prior Security Interests

- (a) **Power**: At any time a Default Event is subsisting the Mortgagee may discharge by payment or take a transfer of any Security Interest over the Mortgaged Property that ranks in priority to this Mortgage.
- (b) **No enquiry**:
  - (i) The Mortgagee is not bound to enquire whether the moneys claimed to be owing or payable under any prior Security Interest are actually owing or payable.
  - (ii) The holder of any prior Security Interest is not bound to enquire whether any moneys are secured by this Mortgage.
- (c) **Information**: The Mortgagor irrevocably authorises the holder of any prior Security Interest to provide any information to the Mortgagee that the Mortgagee requires in relation to any prior Security Interest.
- (d) **Secured Moneys**: Any amounts paid by the Mortgagee to discharge any prior Security Interest shall form part of the Secured Moneys.

#### 10.5 Interpretation of Mortgagee's Rights

The interpretation of any of the Mortgagee's Rights in this Mortgage is not to be limited by reference to any other Right of the Mortgagee in this Mortgage or any other Right at law.

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## 11 Receiver - appointment and powers

### 11.1 Appointment of Receiver

- (a) **Power to appoint**: At any time a Default Event is subsisting the Mortgagee may appoint any person or persons (and if more than one then either jointly or jointly and severally) to be a receiver or receiver and manager of the whole, any part or any different parts of the Mortgaged Property.
- (b) **Replacement**: The Mortgagee may remove any Receiver and in the case of removal, disqualification, retirement or death of a Receiver, appoint another in his or her place.
- (c) **Remuneration**: The Mortgagee may fix or vary the remuneration of a Receiver.

### 11.2 Termination

The Mortgagee may at any time terminate the appointment of a Receiver.

### 11.3 Agency

- (a) Subject to clause 11.3(b), every Receiver is the agent of the Mortgagor.
- (b) A Receiver is the agent of the Mortgagee if:
  - (i) the Mortgagee determines that a Receiver is to act as the agent of the Mortgagee; or
  - (ii) by operation of law a Receiver cannot act or continue to act as the agent of the Mortgagor.
- (c) The Mortgagor is responsible for the acts, omissions, defaults and remuneration of a Receiver.

### 11.4 Rights

Subject to any specific exclusions contained in the terms of appointment, a Receiver has power to do all or any of the following things:

- (a) **(law)**: to exercise any of the Rights conferred upon receivers and receivers and managers pursuant to any applicable Law including the Corporations Act;
- (b) **(Mortgagee's Rights)**: to exercise any of the Rights of the Mortgagee under or in relation to this Mortgage (except the right to demand repayment of the Secured Moneys or appoint a Receiver); and
- (c) **(further powers)**: to exercise any other power which the Mortgagor confers on the Receiver by the term's
- (d) **(Mortgagor's ability)**: to do anything that the Mortgagor:
  - (i) could do in respect of the Mortgaged Property;
  - (ii) is obliged to do under or pursuant to this Mortgage;
  - (iii) is obliged to do under the Development Agreement;
- (e) **(Project)**: carry out and/or complete the Project;
- (f) **(delegate)**: to delegate to any person any Right of the Receiver;
- (g) **(incidental)**: to do anything that is incidental or conducive to the exercise of any Right of the Receiver.

### 11.5 Interpretation of Receiver's powers

Clause 10.5 (with any necessary changes) also applies to the interpretation of a Receiver's Rights.

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## 12 Application and receipts of money

### 12.1 Application of money

Subject to any applicable Law to the contrary, all moneys received by the Mortgagee, a Receiver or an Attorney on the enforcement of the Security Interests created by this Mortgage must be applied (after satisfaction of any claims taking priority to this Mortgage) in the following order:

- (a) firstly, towards payment of that part of the Secured Moneys being any costs, charges, outgoings and expenses incurred in or incidental to the exercise or performance or attempted exercise or performance of any Right of the Mortgagee, a Receiver or an Attorney;
- (b) secondly, towards payment of that part of the Secured Moneys being the remuneration payable to a Receiver;

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- (c) thirdly, towards payment of the balance of the Secured Moneys and appropriated as between different parts of the Secured Moneys as determined by the Mortgagee; and
- (d) fourthly, to the extent not otherwise applied, to the Mortgagor or any other person entitled to receive them.

**12.2 Money actually received**

In applying any moneys toward satisfaction of the Secured Moneys, the Mortgagor is to be credited with only so much of those moneys as are actually received by the Mortgagee. The credit dates from the time of receipt.

**12.3 Contingent debts**

- (a) If at the time any moneys are available for distribution in accordance with clause 12.1 any part of the Secured Moneys is contingently owing or payable to the Mortgagee, the Mortgagee or a Receiver may retain an amount equal to the amount contingently owing or payable or any part of it to secure payment of the contingent amount should it become actually due and payable.
- (b) The Mortgagee or a Receiver must place any amount retained pursuant to clause 12.3(a) on short term interest bearing deposit with a bank until that amount is dealt with in accordance with clauses 12.3(c) and 12.3(d).
- (c) An amount retained under clause 12.3(a) together with any accrued interest must be paid to the Mortgagee to the extent necessary to satisfy any contingent amount owing to the Mortgagee which forms part of the Secured Moneys and which subsequently becomes actually due and payable.
- (d) If:
  - (i) a surplus remains after applying a retained amount in accordance with clause 12.3(c); or
  - (ii) an amount contingently owing or payable to the Mortgagee does not become actually due and payable and ceases to be contingently owing or payable in the opinion of the Mortgagee,

that retained amount and accrued interest or the balance, is to be distributed in accordance with clause 12.1.

**12.4 Receipts**

- (a) The receipt of the Mortgagee for any moneys payable to or received by the Mortgagee under this Mortgage exonerates the payer from all liability to enquire whether the Mortgagee is entitled to receive those moneys.
- (b) Every receipt of the Mortgagee shall as to the moneys paid or expressed to be received in such receipt, effectually discharge the payer from:
  - (i) being concerned to see to the application, or being answerable or accountable for any loss or misapplication, of the moneys which are the subject of that receipt; or
  - (ii) any further liability in relation to the amount specified in the receipt.

**12.5 Surplus moneys**

Surplus moneys available for distribution under clause 12.312.1(d) shall not bear interest pending distribution.

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## **13 Power of attorney**

### **13.1 Appointment**

The Mortgagor irrevocably appoints the Mortgagee, each Authorised Representative of the Mortgagee and each Receiver severally to be its attorney.

### **13.2 Powers of an Attorney**

If a Default Event occurs, an Attorney may in the name of the Mortgagor:

- (a) do anything which the Mortgagor may lawfully authorise an attorney to do in relation to the Mortgaged Property;
- (b) perform any of the Mortgagor's obligations under any Transaction Document;
- (c) execute any further Security Interest in relation to the Mortgaged Property;
- (d) do anything (including executing any deed, instrument, document or agreement) which in the opinion of the Mortgagee or any Receiver is necessary or expedient:
  - (i) to enable the exercise of or give effect to any Right;
  - (ii) for more satisfactorily securing to the Mortgagee the payment or repayment of the Secured Moneys; or
  - (iii) in relation to the Mortgaged Property;
- (e) do anything (including executing any deed, instrument, document or agreement) which the Mortgagor is authorised, permitted or empowered to do under any deed, instrument, document or agreement which forms part of the Mortgaged Property;
- (f) execute deeds of release, assignment or composition concerning the Mortgaged Property;
- (g) appoint another person as sub-attorney for any period and to revoke that appointment; or
- (h) delegate its powers to any person for any period and to revoke a delegation.

### **13.3 Ratification**

The Mortgagor agrees to ratify and confirm any exercise or attempted exercise by an Attorney of any power conferred on that Attorney.

### **13.4 Conflict**

An Attorney may exercise or concur in exercising a Right as an attorney even if the Attorney has a conflict of duty or interest in the means or the result of an exercise of a Right.

### **13.5 Consideration**

The power of attorney is granted for valuable consideration (receipt of which is acknowledged by the Mortgagor) and to secure the performance of the obligations of the Mortgagor under this Mortgage and to secure any proprietary interest of the Mortgagee.

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## **14 Protection of third parties**

### **14.1 No duty to enquire**

A person dealing with the Mortgagee, a Receiver or an Attorney in relation to any sale, disposal or dealing made or purporting to be made in the exercise of any Right, or a person to whom is tendered for registration a document executed by the Mortgagee, a Receiver or an Attorney, is not:

- (a) bound or concerned to enquire whether this Mortgage has become enforceable, or whether the Receiver or Attorney was properly appointed or otherwise as to the propriety or regularity of the exercise of any Right in relation to any such sale, disposal or dealing; or
- (b) affected by an express, implied or constructive notice that the exercise of any Right in relation to any such sale, disposal or dealing was or is unnecessary or improper.

**14.2 Authorisation**

For the purposes of further protecting any person or the title of any person that is protected by clause 14.1, the Mortgagor agrees that every act, matter or thing which is done in the exercise or purported exercise of a Right is valid and taken to be authorised by the Mortgagor and this Mortgage notwithstanding that the exercise or purported exercise of the Right is invalid, improper or irregular as between the Mortgagee and the Mortgagor.

**15 Protection of the Mortgagee and its Rights**

**15.1 Protection of Mortgagee, Receiver and Attorney**

The Mortgagee, each Receiver and each Attorney are not liable for any loss or damage caused by:

- (a) any omission or delay in the exercise of any Right; or
- (b) the exercise or attempted exercise of any Right except where the loss or damage arises from fraud or gross negligence on the part of the Mortgagee, the Receiver or an Attorney in the exercise or attempted exercise of that Right.

**15.2 Mortgagee in possession**

- (a) The exercise of any Right by the Mortgagee, a Receiver or an Attorney does not render the Mortgagee, that Receiver or that Attorney:
  - (i) liable to account as mortgagee in possession; or
  - (ii) responsible or answerable for any act or omission for which a Mortgagee in possession might be liable.
- (b) If the Mortgagee has entered into possession of the Mortgaged Property, the Mortgagee may give up that possession at any time but without prejudice to the Mortgagee's power to enter into possession at a later time.
- (c) The obligations of the Mortgagor under this Mortgage are not affected by the Mortgagee, a Receiver or an Attorney entering into possession of the Mortgaged Property.

**15.3 Notice of exercise of rights**

The Mortgagee, any Receiver and any Attorney are not required:

- (a) to give notice of this Mortgage to any debtors of the Mortgagor or any other person;
- (b) to take any steps or proceedings to enforce payment of any moneys payable to the Mortgagor; or
- (c) to obtain the consent of the Mortgagor to any exercise of a Right.

**15.4 Statutory powers**

- (a) The Rights conferred on the Mortgagee by any applicable Law are in addition to the Rights conferred by a Transaction Document.
- (b) The Mortgagee is not required to give any notice to any person or allow the expiration of any time prior to exercising any Right, and to the fullest extent that it is lawful to do so, the

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Mortgagor and the Mortgagee dispense with and agree to negative any such requirement to do so pursuant to any legislative provision.

- (c) If a legislative provision stipulates that a notice must be given or a period of time allowed to expire prior to exercising a Right, and that statutory provision cannot be dispensed with, excluded or negated, then:
  - (i) that notice must be given; and
  - (ii) any mandatory or minimum period of time must be allowed to expire, and if no minimum period is prescribed, then a period of two days is fixed as the period of time which must expire.

### 15.5 Moratorium provisions

- (a) Any legislative provision which at any time, directly or indirectly:
  - (i) defeats, extinguishes, lessens or otherwise varies or affects in favour of the Mortgagor any of its obligations under any Transaction Document to which it is a party; or
  - (ii) suspends, postpones or otherwise prevents or prejudicially affects the exercise of any Right by the Mortgagor, any Receiver or any Attorney,

is negated and excluded from its application to the fullest extent permitted by law.

- (b) If at any time the interest charges or fees payable by the Mortgagor in relation to any Secured Moneys contravenes any legislative provision applicable to a Transaction Document which:
  - (i) is not excluded or negated pursuant to clause 15.5(a);
  - (ii) would render a Transaction Document void or unenforceable; and
  - (iii) applies because the interest charges or fees exceed the maximum amount permitted under that legislative provision,

then, in relation to those Secured Moneys, the rate of interest or fees charged is to be reduced to the maximum amount as will comply with the terms of that legislative provision so as not to affect the validity or enforceability of that Transaction Document.

### 15.6 Continuing security

This Mortgage:

- (a) is a continuing security;
- (b) remains in full force and effect until:
  - (i) the Secured Moneys have been paid to the Mortgagee in full;
  - (ii) the Mortgagor has fully performed all of its obligations to the Mortgagee under the Transaction Documents; and
  - (iii) the Security Interest created by this Mortgage has been discharged by the Mortgagee in accordance with clause 3;
- (c) applies to the present and future balance of the Secured Moneys; and
- (d) is not wholly or partially discharged by the payment of any of the Secured Moneys, any settlement of account or the occurrence of any other event, circumstance, matter or thing.

## 15.7 No merger of security

- (a) The Mortgagee's right to payment of the Secured Moneys arising in any way does not merge with the Mortgagor's undertaking to pay the Secured Moneys under this Mortgage.
- (b) Nothing in this Mortgage merges, extinguishes, postpones, lessens or otherwise prejudicially affects:
  - (i) any other Security Interest or Guarantee in favour of the Mortgagee at any time including any other Security Interest over the Mortgaged Property or any Collateral Security; or
  - (ii) any Right that the Mortgagee may have in relation to the Mortgagor or any other person.
- (c) No other Security Interest or Guarantee held by the Mortgagee merges, extinguishes, postpones, lessens or otherwise prejudicially affects this Mortgage or a Right.
- (d) Any judgment or order that the Mortgagee obtains in relation to the Secured Moneys is Mortgaged Property to this Mortgage, and this Mortgage does not merge in that judgment or order.

## 15.8 Exercise of rights

The Mortgagee, a Receiver or an Attorney may exercise any Right even if a negotiable instrument, security, contract or other obligation relating to the Secured Moneys is still current or has not fallen due.

## 15.9 No marshalling

The Mortgagee is not under any obligation to marshal in favour of the Mortgagor any Security Interest or any of the moneys or assets that the Mortgagee may be entitled to receive or have a claim upon.

## 15.10 Completion of blanks

The Mortgagee, any Authorised Representative of the Mortgagee, any Receiver or an Attorney may fill in any blanks in this Mortgage and complete in favour of the Mortgagee or any person any document at any time executed by or on behalf of the Mortgagor in blank and deposited with the Mortgagee under or as Mortgaged Property security to this Mortgage.

## 15.11 Determination

Where the Mortgagee is required or entitled to form or hold an opinion or view under or in relation to this Mortgage, that opinion or view may be formed or held on behalf of the Mortgagee or by any Authorised Representative of the Mortgagee.

## 15.12 Consent

- (a) If the doing of anything by the Mortgagor is dependent upon the consent or approval of the Mortgagee, any such approval or consent must be in writing.
- (b) The Mortgagee may withhold its consent or approval or give it conditionally or unconditionally.
- (c) If any consent or approval is given by the Mortgagee subject to any condition:
  - (i) the Mortgagor must comply with that condition; and
  - (ii) a failure to comply with any condition is taken to be a breach of this Mortgage.

## 15.13 Performance of the Mortgagor's obligations

If the Mortgagor defaults in fully and punctually performing any obligation contained or implied in any Transaction Document, the Mortgagee may, without prejudice to any Right, do all things

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necessary or desirable in the opinion of the Mortgagee to make good or attempt to make good that default to the satisfaction of the Mortgagee.

#### **15.14 Mortgagor to assist exercise of the Rights**

- (a) The Mortgagor must do everything (including executing any document) that the Mortgagee, any Receiver or an Attorney considers necessary or desirable to assist any of them to exercise any Right.
- (b) The Mortgagor must not do anything that may prevent or hinder the exercise of any Right by the Mortgagee, any Receiver or an Attorney.

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### **16 Indemnities**

#### **16.1 Indemnities to Receiver and Attorney**

The Mortgagee may give such indemnities to any Receiver or Attorney in relation to the exercise of any Right as the Mortgagee thinks fit. Moneys paid pursuant to any such indemnity become part of the Secured Moneys.

#### **16.2 Mortgagor's general indemnity**

The Mortgagor indemnifies the Mortgagee against any claim, action, proceeding, liability, damage, loss, cost, charge, expense, outgoing or payment which the Mortgagee pays, incurs, suffers or is liable for in respect of or in relation to any of the following:

- (a) any Default Event or Potential Default;
- (b) the non-exercise, attempted exercise, exercise or any delay in the exercise of any Right;
- (c) any insurance policy or a claim under an insurance policy in relation to the Mortgaged Property;
- (d) any act or omission of the Mortgagor, or any of its employees, agents, contractors or tenants (other than the Mortgagee);
- (e) the sale or storage of or any loss of or damage to any personal property situated on or removed by the Mortgagee from the Mortgaged Property;
- (f) any intended or actual compulsory acquisition of the Mortgaged Property or any estate or interest in it;
- (g) any indemnity given by the Mortgagee to a Receiver or an Attorney.

#### **16.3 Foreign currency indemnity**

- (a) If a judgment, order or proof of debt in relation to any of the Secured Moneys is expressed in a currency other than the Specified Currency, the Mortgagor must indemnify the Mortgagee against:
  - (i) any difference arising from converting an amount received in the other currency to the Specified Currency if the rate of exchange, at which the Mortgagee can reasonably convert the other currency into the Specified Currency at the time payment is received in the other currency pursuant to that judgment, order or proof of debt, is less favourable than the rate of exchange used for the purpose of calculating the amount of the judgment (or the claim to which the judgment relates), order or acceptance of proof of debt in the other currency; and
  - (ii) the costs of conversion.
- (b) The Mortgagor acknowledges that it may be necessary to convert the other currency through more than one currency to convert the other currency to the Specified Currency.

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## 16.4 Independence and survival of indemnities

Each of the indemnities in clauses 16.2 and 16.3 is a continuing obligation, separate and independent from the other obligations of the Mortgagor and survives the termination of any Transaction Document. An indemnity in this Mortgage is not to be limited by reference to any other indemnity.

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## 17 Strata titles

### 17.1 Application

This clause 17 applies if the Mortgaged Property is or includes a lot described in a strata plan registered under the Strata Act.

### 17.2 Interpretation

Unless the context otherwise requires, words and phrases which have a defined meaning in the Strata Act have the same meaning when used in this clause 17.

### 17.3 Strata title obligations

The Mortgagor:

- (a) **(no amendments)**: except with the Mortgagee's prior written consent, must not apply for, consent or agree to, or vote in favour of any resolution for, any amendments to the strata plan or the by-laws;
- (b) **(compliance with by-laws and Strata Act)**:
  - (i) must comply with the by-laws for the strata plan;
  - (ii) must comply with its obligations under the Strata Act;
  - (iii) must ensure that the body corporate complies with its obligations under the Strata Act; and
  - (iv) must take reasonable steps to ensure that the owners of other lots created by the strata plan comply with the by-laws and their obligations under the Strata Act if non compliance would adversely affect the Mortgaged Property;
- (c) **(mortgage protection insurance)**: if required by the Mortgagee, in accordance with section 102 of the Strata Act, must insure the Mortgaged Property for the benefit of the Mortgagee with an insurer acceptable to the Mortgagee for an amount greater than or equal to the Secured Moneys (or such lesser amount as the Mortgagee may agree in writing) and must otherwise comply with the provisions of clause 7.10 in relation to that insurance to the extent those provisions are capable of application to it;
- (d) **(information)**: must provide to the Mortgagee all information which the Mortgagee requests relating to the strata scheme;
- (e) **(obligation to vote as directed)**: must vote or abstain from voting as directed by the Mortgagee in respect of any matter which requires a unanimous resolution of the body corporate;
- (f) **(notice of meetings)**: at the request of the Mortgagee, must give to the Mortgagee not less than five Business Days notice in writing of any proposed meeting of the body corporate; and
- (g) **(proxy)**: must give to such person as is nominated by the Mortgagee from time to time, a valid proxy (in a form and substance satisfactory to the Mortgagee) to attend and vote at meetings of the body corporate (to the exclusion of the Mortgagor).

## 17.4 Authority to obtain information

- (a) The Mortgagor irrevocably authorises the Mortgagee, each of the Mortgagee's Authorised Representatives and each Receiver:
  - (i) to inspect the by-laws for the time being in force; and
  - (ii) to obtain from the body corporate all information and copies of any document relating to the strata scheme.
- (b) The Mortgagor irrevocably authorises the body corporate to supply to the Mortgagee any information or document which the Mortgagee is authorised to obtain under clause 17.4(a).

## 17.5 Strata title Default Events

It is a Default Event whether or not within the control of the Mortgagor if:

- (a) **(resolution)**: the body corporate passes a unanimous resolution and the Mortgagee did not consent to the Mortgagor voting in favour of that resolution before it was passed;
- (b) **(insurance)**: the body corporate fails to maintain appropriate and adequate insurances;
- (c) **(destruction)**: any building containing the Mortgaged Property is substantially damaged or destroyed; or
- (d) **(security)**: any other act, event, circumstance, matter or thing occurs in relation to the strata scheme which in the opinion of the Mortgagee diminishes or prejudices the security constituted by this Mortgage.

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## 18 Third party provisions

### 18.1 Liability not affected

- (a) The liability of the Mortgagor under this Mortgage (whether as mortgagor, principal debtor, guarantor, indemnifier or in any other capacity) and the Rights of the Mortgagee are not affected, released, discharged or extinguished by anything which might otherwise have that effect, including any of the following:
  - (i) the Mortgagee granting any time, waiver or other indulgence or consideration to, or compounding or compromising with, any person in any way;
  - (ii) the Mortgagee becoming a party to, or being bound by, any compromise, assignment of property, scheme of arrangement, composition of debts, scheme of reconstruction or administration in respect of any property or any person;
  - (iii) any act, omission, delay, laches, default, mistake or acquiescence on the part of the Mortgagee;
  - (iv) any agreement (including any Transaction Document, Security Interest or Guarantee) or transaction made or entered into, between the Mortgagee and any person at any time;
  - (v) any Security Interest, Guarantee or judgment being granted in favour of the Mortgagee at any time;
  - (vi) any agreement (including any Transaction Document, Security Interest or Guarantee), transaction, judgment, document (including a negotiable instrument), obligation or liability:
    - (A) not being executed or effectively executed by, or binding on, any person; or



- (B) being or becoming lost, impaired, invalid, void, voidable or unenforceable (whether in whole or in part);
- (vii) the Mortgagee failing to take or obtain any agreement (including any Transaction Document, Security Interest or Guarantee), judgment or document (including a negotiable instrument) or to enter into any transaction;
- (viii) any dealing in any way with any agreement (including any Transaction Document, Security Interest or Guarantee), transaction, judgment or document (including a negotiable instrument) including by releasing, discharging, abandoning, varying, amending, replacing, renewing, assigning, novating or extending it (whether in whole or in part);
- (ix) the release or discharge by the Mortgagee or by operation of Law of:
  - (A) any property or any person from any Security Interest;
  - (B) any person from any obligation or liability including an obligation or liability in relation to pay any of the Secured Moneys;
- (x) any covenant or agreement by the Mortgagee not to sue any person in relation to any obligation or liability to pay any of the Secured Moneys or any other moneys;
- (xi) the Mortgagee failing to enforce or fully enforce against any person any agreement (including any Transaction Document, Security Interest or Guarantee), transaction, judgment, document (including a negotiable instrument), obligation or liability;
- (xii) any moratorium or other suspension of a Right;
- (xiii) the Mortgagee exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any Right;
- (xiv) the Mortgagee failing to preserve the liability of any person under any agreement (including any Transaction Document, Security Interest or Guarantee), transaction, judgment or document (including a negotiable instrument);
- (xv) the Mortgagee failing to recover any of the Secured Moneys or any other moneys from any person;
- (xvi) the Secured Moneys or any other moneys being irrecoverable from any person for any reason;
- (xvii) the Mortgagee failing to give notice to any Transaction Party of any act, omission, event, matter of thing including any default by any person under, or in relation to, any agreement (including any Transaction Document, Security Interest or Guarantee), transaction, judgment or document (including a negotiable instrument);
- (xviii) any judgment against any person;
- (xix) the opening of a new account by any person or the operation of a new account;
- (xx) the fact that any person who was to become a co-surety or co-indemnifier in relation to the Secured Moneys or any other moneys has not done so, has not done so effectively or has done so on different terms to the Mortgagor;
- (xxi) the acceptance of the repudiation of or other termination of any agreement (including any Transaction Document, Security Interest or Guarantee) transaction or document;
- (xxii) any breach of any agreement (including any Transaction Document, Security Interest or Guarantee) transaction or document;

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- (xxiii) an assignment of any rights in connection with the Secured Moneys or any other moneys;
  - (xxiv) the death, incapacity, disability, insolvency or bankruptcy, or notice to the Mortgagee of the death, incapacity, disability, insolvency or bankruptcy of, any person;
  - (xxv) the dissolution, or any alteration in the composition, of any partnership, firm or joint venture;
  - (xxvi) the appointment of a provisional liquidator, liquidator, official manager, administrator, receiver or receiver and manager in relation to any person that is a corporation or the assets of any such person;
  - (xxvii) the merger, amalgamation, change in control, insolvency, winding up, dissolution, administration or reconstruction of any person that is a corporation;
  - (xxviii) the fact that any person is a trustee, nominee, joint owner or joint venturer or a member of a partnership, firm or an association;
  - (xxix) any asset or property subject to an Encumbrance being destroyed, lost, forfeited, extinguished, surrendered, compulsorily acquired or determined;
  - (xxx) any payment, dividend or distribution to, or receipt by, the Mortgagee;
  - (xxxi) any increase in the Secured Moneys; or
  - (xxxii) any other act, omission, event, circumstance, matter or thing whatsoever whether negligent or not.
- (b) Nothing in clause 18.1(a) limits the generality of anything else in it.
  - (c) For the avoidance of doubt and without limiting who is included in the term 'person' when used in any other provision of this Mortgage, a reference in clause 18.1(a) to 'any person' includes a Transaction Party.
  - (d) Clause 18.1(a) applies irrespective of:
    - (i) any Law to the contrary; or
    - (ii) the knowledge or consent, or the lack of knowledge or consent, of the Mortgagee, any Transaction Party or any other person of any act, omission, event, circumstance, matter or thing referred to in that clause.

**18.2 Suspension of Mortgagor's rights**

Until all of the Secured Moneys have been paid in full and this Mortgage has been discharged, the Mortgagor is not entitled to:

- (a) be subrogated to the Mortgagee;
- (b) claim or enforce any right of contribution or indemnity against any Transaction Party;
- (c) raise a defence, set-off or counter-claim available to it or any Transaction Party against the Mortgagee;
- (d) claim or receive the benefit of any moneys held by the Mortgagee or any Security Interest, Guarantee or other agreement or document held by or which benefits the Mortgagee;
- (e) make a claim or enforce any Right (including under or pursuant to a Security Interest or Guarantee) against any Transaction Party or the property of any Transaction Party;

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- (f) subject to clause 18.3, directly or indirectly prove in, or claim or receive the benefit of any distribution, dividend or payment made or to be made in relation to, the insolvency, bankruptcy, liquidation or administration of any Transaction Party; or
- (g) take, obtain or permit to exist any Security Interest from a Transaction Party.

**18.3 Bankruptcy or liquidation**

- (a) If a Transaction Party goes into liquidation or becomes bankrupt, the Mortgagor must, if directed by the Mortgagee:
  - (i) prove in the liquidation or bankruptcy (in the manner and to the extent required by the Mortgagee) for all amounts, debts and monetary liabilities which can be proved for or claimed in the liquidation or bankruptcy; and
  - (ii) enforce (in the manner and to the extent required by the Mortgagee) each Security Interest held by the Mortgagor from that Transaction Party.
- (b) Any money, asset or other dividend recovered or received by the Mortgagor in any liquidation or bankruptcy of a Transaction Party or under any Security Interest held by the Mortgagor from that Transaction Party must be received and held on trust by the Mortgagor to the extent of the unsatisfied liability of the Mortgagor under the Transaction Documents.
- (c) The Mortgagor irrevocably and unconditionally authorises the Mortgagee in its absolute discretion (as agent for the Mortgagor) to do anything that the Mortgagor is required to do following any direction by the Mortgagee under clause 18.3(a).

**18.4 Void transactions**

If any transaction or payment relating to any Secured Moneys is void, voidable, unenforceable or refundable:

- (a) the Mortgagee is entitled against the Mortgagor to all rights that it would have had if the transaction or payment had never occurred; and
- (b) the Mortgagor must do all things and sign any documents necessary to restore to the Mortgagee its rights immediately before that transaction.

**18.5 Appropriation**

- (a) The Mortgagee may appropriate to payment or repayment of any part of Secured Moneys any moneys:
  - (i) received by the Mortgagee from any Transaction Party; or
  - (ii) received or recovered by the Mortgagee under any Transaction Document.
- (b) If a Transaction Document secures any moneys in addition to the Secured Moneys, the Mortgagee may apply any amounts received or recovered by the Mortgagee under that Transaction Document in such manner as the Mortgagee may determine in its absolute discretion.
- (c) Any appropriation or application made by the Mortgagee overrides any appropriation made by any Transaction Party.

**18.6 Suspense account**

The Mortgagee may place any moneys received by it in respect of the Secured Moneys into a suspense account and may at any time appropriate any of those moneys towards payment of the Secured Moneys. Any moneys received by the Mortgagee and placed in a suspense account are deemed not to be a reduction in the Secured Moneys until the Mortgagee appropriates the moneys towards payment of the Secured Moneys.

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## 18.7 Enforcement

- (a) The Mortgagor's obligation to pay the Secured Moneys is a primary obligation.
- (b) The Mortgagee may demand payment of the Secured Moneys by the Mortgagor and enforce this Mortgage without first:
  - (i) proceeding against or enforcing any other Right against any Transaction Party or any other person or property;
  - (ii) enforcing any Security Interest or Guarantee (including a Collateral Security); or
  - (iii) demanding payment of any of the Secured Moneys by any Transaction Party or any other person.

## 18.8 Interpretation

Nothing in this clause 18 limits the generality of any other provision of this Mortgage.

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## 19 Notices

### 19.1 Notice requirements

- (a) A notice, certificate, consent, application, waiver or other communication (each a **Notice**) under this Mortgage must be:
  - (i) in legible writing in the English language;
  - (ii) subject to clauses 19.1(b) and 19.1(c), signed by or on behalf of the sender or by a lawyer for the sender;
  - (iii) marked for the attention of the person or position (if any) specified in the Details applicable to the intended recipient of the Notice or, if the intended recipient has notified otherwise, marked for attention in the way last notified; and
  - (iv) left or sent in accordance with clause 19.2.
- (b) A printed or copy signature is sufficient for the purposes of sending any Notice by facsimile.
- (c) A Notice sent by email is taken to have been signed by the sender.
- (d) A Notice must not be given orally.

### 19.2 Method and address for delivery

- (a) Subject to clause 19.2(b), a Notice must be:
  - (i) left at the intended recipient's address set out in the Details;
  - (ii) sent by prepaid ordinary mail (or prepaid airmail, if from one country to another country) to the intended recipient's address set out in the Details;
  - (iii) sent by facsimile to the intended recipient's facsimile number (if any) set out in the Details; or
  - (iv) sent by email to the intended recipient's email address (if any) set out in the Details.
- (b) If the intended recipient of a Notice has notified the sender of another address, facsimile number or email address for the purposes of receiving Notices, then subsequent Notices to that intended recipient must be left at or sent to the address, facsimile number or email address (as applicable) last notified by that intended recipient.

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### 19.3 Time of receipt

- (a) Subject to clause 19.3(b), a Notice is taken to have been received by the intended recipient:
  - (i) if left at the intended recipient's address, at the time of delivery;
  - (ii) if sent by prepaid ordinary mail, on the third Business Day after the day of posting, or if sent by prepaid airmail from one country to another country, on the tenth Business Day after the day of posting;
  - (iii) if sent by facsimile, at the time shown in the transmission report as the time when the whole Notice was sent; and
  - (iv) if sent by email, four hours after the time the email was sent (as recorded by the device from which the email was sent) provided that the sender has not received an automated message that the email has not been delivered.
- (b) If a Notice is received by a recipient on a day that is not a Business Day or after 4.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- (c) A Notice is effective from the time it is taken to have been received in accordance with clauses 19.3(a) and 19.3(b)(unless a later time is specified in the Notice, in which case the notice takes effect from that time).

### 19.4 Other modes or places of service

Nothing in this Mortgage limits or excludes any other mode or place of service required by an applicable Law.

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## 20 Costs and expenses

- (a) The Mortgagor and the Mortgagee must bear their own costs in preparing and negotiating this Mortgage.
- (b) The Mortgagor must pay any stamp duty assessed on this Mortgage.
- (c) Where the Mortgagor is required by its Financier, or the Mortgagor for its own purposes requires this Mortgage to be wholly or partially restructured, the Mortgagor must pay the Mortgagee's reasonable costs of such restructuring. Nothing in this clause imposes any obligation on the Mortgagee to agree to any such restructuring.
- (d) The Mortgagor must pay to the Mortgagee all fees (including legal fees), costs, charges and expenses incurred, paid or payable by the Mortgagee in connection with any or any combination of the following:
  - (i) the registration, performance, release, discharge, amendment, enforcement or attempted enforcement or otherwise of any Transaction Document;
  - (ii) the defence, protection or preservation of the title of the Mortgagor to the Mortgaged Property;
  - (iii) any approval, consent or waiver of any Right under any Transaction Document;
  - (iv) any request for any approval, consent or waiver of any Right under any Transaction Document;
  - (v) the exercise or the attempted exercise of any Right under a Transaction Document or an applicable Law;
  - (vi) the remedy or rectification or attempted remedy or rectification of any breach of or default under any Transaction Document;

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- (vii) any Default Event;
- (viii) the payment or repayment of the Secured Moneys, including:
  - (A) demanding or attempting to demand payment or repayment of the Secured Moneys; or
  - (B) enforcing or attempting to enforce payment or repayment of the Secured Moneys;
- (ix) the survey, valuation, inspection, preservation, maintenance or protection of, or any report in relation to, the Mortgaged Property.
- (e) Where a party requests a variation to this Mortgage, that party will bear the other party's costs in preparing and negotiating the deed of variation.
- (f) The Mortgagor must pay to the Mortgagee:
  - (i) all duties, taxes and registration fees which are payable, assessed or incurred in relation to the execution, delivery, performance, release, discharge, amendment, enforcement or attempted enforcement or otherwise of any Transaction Document or any transaction contemplated by any Transaction Document; and
  - (ii) any fine or penalty which is incurred in respect of any failure to pay a duty or tax before the due date for payment except to the extent that the failure is attributable to the Mortgagee's failure to pay the duty or tax from moneys received from the Mortgagor before the due date.
- (g) The Mortgagor must pay the costs incurred by the Mortgagee in reviewing, consenting to or approving any document under this Mortgage unless otherwise specified in this Mortgage.
- (h) Anything which the Mortgagor is required to do under or pursuant to this Mortgage, whether or not at the request of the Mortgagee, must be done at the cost and expense of the Mortgagor.

**20.2 Mortgagor to bear costs**

Anything which the Mortgagor is required to do under or pursuant to this Mortgage, whether or not at the request of the Mortgagee, must be done at the cost and expense of the Mortgagor.

**20.3 Remuneration**

The Mortgagee, any Receiver and any Attorney must be remunerated by the Mortgagor for any services rendered by any of them in relation to any of the matters referred to in clause 20(d). The rate of remuneration and the manner of payment will be determined by the Mortgagee.

**21 Miscellaneous**

**21.1 Governing law**

This Agreement is governed by the Laws applying in Tasmania.

**21.2 Dispute jurisdiction**

The parties submit to the non-exclusive jurisdiction of courts with jurisdiction in Tasmania, and any courts that may hear appeals from those courts, in respect of any proceedings in connection with this Mortgage.

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**21.3 Liability**

An obligation of, or a representation, a warranty or an indemnity by, two or more parties (including where two or more persons are included in the same defined term) under or in respect of this Mortgage, binds them jointly and each of them severally.

**21.4 Binding obligation**

This Mortgage binds each person who is a Mortgagor that executes it even if this Mortgage is not executed or not effectively executed by, or is otherwise not binding on, another person who is named as a Mortgagor.

**21.5 Benefit**

An obligation, a representation, a warranty or an indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and each of them severally.

**21.6 Compliance with obligations**

- (a) A party must ensure that its officers, employees, volunteers, authorised contractors, agents and advisers involved in the performance by that party of its obligations under this Mortgage:
  - (i) comply with the provisions of this Mortgage related to that performance; and
  - (ii) do not conduct themselves in a way that would result in the party being in breach of this Mortgage or that, if the conduct was undertaken by the party, would result in the party being in breach of this Mortgage.
- (b) If a party is prohibited from doing anything under this Mortgage, that party must not knowingly assist, authorise or allow any other person to do that thing.

**21.7 Severance**

If a provision of this Mortgage is or at any time becomes illegal, prohibited, void or unenforceable for any reason, that provision is severed from this Mortgage and the remaining provisions of this Mortgage:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this Mortgage.

**21.8 Further assurance**

The parties agree to do or cause to be done all such acts, matters and things (including, as applicable, passing resolutions and executing documents) as are necessary or reasonably required to give full force and effect to this Mortgage.

**21.9 Business Days**

If the day on or by which an act, matter or thing is to be done under this Mortgage is not a Business Day, that act, matter or thing must be done by no later than the next Business Day.

**21.10 Amendment**

This Mortgage may only be amended or supplemented in writing signed by the parties.

**21.11 Waiver**

- (a) A failure or delay in exercising a Right does not operate as a waiver of that Right.
- (b) A single or partial exercise of a Right does not preclude any other exercise of that Right or the exercise of any other Right.

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- (c) A Right may only be waived in writing, signed by the party to be bound by the waiver. Unless expressly stated otherwise, a waiver of a Right is effective only in the specific instance and for the specific purpose for which it was given.

**21.12 Successors and assigns**

This Mortgage is binding on and benefits each party and, unless repugnant to the sense or context, their respective administrators, personal representatives, successors and permitted assigns.

**21.13 Rights cumulative**

Each Right of the Mortgagee, an Attorney or a Receiver provided for in this Mortgage:

- (a) operates independently of any other Right of the Mortgagee, an Attorney or a Receiver provided for in this Mortgage; and
- (b) is cumulative with, and does not exclude or limit, any other Right of the Mortgagee, an Attorney or a Receiver, whether at Law or pursuant to any other agreement, deed or document.

**21.14 Set-off**

The Mortgagee may set-off against any moneys payable by the Mortgagee to the Mortgagor under this Mortgage any debt or other moneys from time to time due and owing by the Mortgagor to the Mortgagee. This right of set-off does not limit or affect any other right of set-off available to the Mortgagee.

**21.15 No assignment**

- (a) The Mortgagee may assign its rights under all or any of the Transaction Documents.
- (b) The Mortgagee may disclose to a potential assignee of the Mortgagee's interest in any Transaction Document any information concerning any Transaction Document or any Transaction Party.
- (c) The Mortgagor must not assign any of its rights under any Transaction Document without the prior written consent of the Mortgagee.

**21.16 Disclosure**

- (a) Despite any confidentiality or intellectual property right subsisting in this Mortgage, a party may publish all or any part of this Mortgage without reference to another party.
- (b) Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

**21.17 Determination**

Where the Mortgagee is required or entitled to form or hold an opinion or view under or in relation to this Mortgage, that opinion or view may be formed or held by an Authorised Representative on behalf of the Mortgagee. This clause does not limit any other way in which the Mortgagee may otherwise form or hold an opinion or view under or in relation to this Mortgage.

**21.18 Exercise of powers**

- (a) An Authorised Representative of the Mortgagee may act as the agent of the Mortgagee in discharging any functions or exercising any Rights that this Mortgage provides that the Mortgagee is to perform or may exercise.
- (b) A decision that may be made, or is required under this Mortgage to be made, by the Mortgagee may be made by an Authorised Representative of the Mortgagee.
- (c) An Authorised Representative of the Mortgagee may at any time and from time to time exercise on behalf of the Mortgagee any of the Mortgagee's Rights under this Mortgage.

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**21.19 Consent and approvals**

- (a) This clause applies to any consent or approval which the Mortgagor must obtain from the Mortgagee in accordance with this Mortgage.
- (b) A request for consent or approval must be made in writing.
- (c) A consent or approval for the purposes of this Mortgage is not effective unless given in writing.
- (d) A consent or approval may be given subject to reasonable conditions.
- (e) The Mortgagor must comply with any conditions subject to which the approval or consent is given. To the extent that the Mortgagor fails to comply with the condition, that failure is taken to be a breach of this Mortgage.

**21.20 Doctrine of merger**

The doctrine or principle of merger does not apply to this Mortgage or to anything done under or in connection with this Mortgage. Accordingly, no Right or obligation of a party is merged in any thing done pursuant to this Mortgage.

**21.21 No interference with executive duties or powers**

Nothing in this Mortgage is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by the Mortgagee, of any duties or authorities of his or her office. Any provision of this Mortgage that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

**Executed as a deed**

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of the Mortgagor .....

## Attachment: Maintenance Expenditure

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## Attachment: Key Performance Indicators

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## Attachment: Specified Personnel

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## Attachment: Amortisation Schedule

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