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TGP and TOT take 19.99% strategic position in Velocity Property Group (ASX:VP7) and provides \$33.7 million in senior debt and convertible note funding

23 December 2019

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360 Capital Group (ASX: TGP) and 360 Capital Total Return (ASX:TOT) via their 50/50 JV investment company TGP TOT JV Pty Limited (formerly 360 Capital 2017 PERE Pty Limited) have acquired a strategic stake in Velocity Property Group (ASX:VP7).

Velocity Property Group was listed on the ASX on 7 February 2017 and is an Australian boutique property development company that develops multi-unit apartment and mixed commercial developments, recognisable for their stylish architectural design, high finishes and usable and flexible spaces that maximise lifestyle and saleability in the Queensland markets in which it operates.

The Transaction

The transaction comprises multiple components, strategies and capital funding sources to reposition Velocity to become a high growth developer of predominantly owner occupier product in south-east Queensland. The initiatives include:

- TGP TOT JV Pty Limited has taken a 19.99% strategic stake in Velocity for an investment of approximately \$1.6 million or 2.0 cents per security reflecting a 64% discount to the 30 June 2019 Net Tangible Assets (NTA) per security of 5.6 cents per security;
- Tony Pitt and James Storey have become non-executive directors of Velocity;
- TOT will also provide a \$23.7 million residual stock loan over a completed project currently being sold down by Velocity;
- TOT will acquire from Velocity a \$10.0m secured convertible note with a term of two (2) years and an interest rate of 7.0% p.a. and conversion price of 4.0 cents per security (pre-consolidation) a 28% discount to the 30 June 2019 NTA per security (conversion rights being subject to Velocity shareholder approval). The convertible note is tradable and will enable the holder(s) to convert to approximately 7.14 million Velocity shares (post 1 for 35 share consolidation). Velocity will seek to obtain shareholder approval for the convertible note in January 2020. If shareholder approval is not obtained the note will be immediately repayable;
- Velocity will also seek shareholder approval to consolidate its shares at a ratio of 1 new share to every 35 existing shares.



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Velocity's New Business Strategy

With the new capital injections from 360 Capital entities and 360 Capital's funds management experience, Velocity will capitalise on its experience and reputation of a developer of multi-unit apartment and mixed commercial developments, however will adopt a more capital light, capital management strategy to grow its business, relying on 360 Capital's funds management expertise for its capital requirements.

Going forward it is expected that Velocity developments will be syndicated with preference equity component being raised from Cambridge Investment Partners (360 Capital's recently formed placement agency).

Post completion of the Transaction, Velocity may access the capital markets also to expand its shareholder base.

Benefits for Velocity Property Group

Velocity will benefit from the Transaction in multiple ways including:

- Velocity will continue to roll out its high-quality developments and participate in the profits from each development through profit share on a lower capital investment and enhanced returns from project, development and other fees;
- With 360 Capital's bank and non-bank relationships, it is expected that Velocity's cost of debt financing will be dramatically reduced, providing savings in development expenses;
- Provide greater access to capital and the capital markets through 360 Capital's existing investor base.

Benefits for 360 Capital Total Return Fund

TOT will benefit from the Transaction in multiple ways including:

- Access to dividends from Velocity which are expected to commence and grow as the new strategy is rolled out;
- Provide TOT ongoing funding of non-bank lending opportunities to Velocity's projects.
- TOT will have to opportunity to underwrite the various development syndicates which will be created from Velocity's future pipeline of projects;
- Velocity can provide AMF Finance with access to project and development management expertise if needed as part of its broader financing activities.

Benefits for 360 Capital Group

TGP will benefit from The Transaction in multiple ways including:

- Access to dividends from Velocity which are expected to commence and grow as the new strategy is rolled out;
- Funds management fees from establishing and managing each development syndicate;
- Velocity can provide AMF Finance with access to project and development management expertise if needed as part of its broader financing activities.



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James Storey, Head of Real Assets said, "*The Transaction announced today with Velocity Property Group provides TOT and TGP investors with access to funds management and underwriting fees from future development syndicates, along with a pipeline of high-quality equity and debt investment opportunities in owner occupier focused property developments. Proceeds from TOT and TGP's investment will form part of Velocity's 20% co-investment in the 'TWO27' Palm Beach project which will be developed as an unlisted development syndicate expected to be launched in early 2020*".

More information on the Group can be found on the ASX's website at www.asx.com.au using the Group's ASX code "TGP", on the Group's website www.360capital.com.au, by calling the 360 Capital investor enquiry line on 1300 082 130 or by emailing investor.relations@360capital.com.au

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About 360 Capital Group (ASX: TGP)

360 Capital Group is an ASX-listed, alternative asset investment and funds management group concentrating on strategic investment and active investment management of alternative assets. The Group actively invests in real asset debt and equity and has expanded its investment universe into public and private equity as well as investing in credit strategies.

About 360 Capital Total Return Fund (ASX: TOT)

360 Capital Total Return Fund aims to provide total returns with a performance hurdle of 12% per annum to investors through a selective and disciplined investment philosophy, combined with access to real estate-based investment opportunities available to TOT through the 360 Capital Group (ASX: TGP), the manager of the Fund.

Convertible Note Deed Poll

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Issuer

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Convertible Note Deed Poll

Date 23 December 2019
Made by Velocity Property Group Limited ACN 605 935 153 (**Issuer**)
In favour of the **Noteholders** from time to time

Background

- A. The Issuer may from time to time issue Convertible Notes on the terms and conditions contained in the Convertible Note Terms.
- B. If the Issuer issues Convertible Notes, the Noteholders will have the benefit of this Convertible Note Deed Poll.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Convertible Note Deed Poll:

- (a) **Convertible Note Terms** means the terms and conditions of a Convertible Note set out in the Annexure to this Convertible Note Deed Poll; and
- (b) words and expressions defined in the Convertible Note Terms have the same meanings when used in this Convertible Note Deed Poll.

1.2 Interpretation

Clause 1.2 of the Convertible Note Terms applies to the interpretation of this Convertible Note Deed Poll as if every reference to "these Convertible Note Terms" is replaced with "this Convertible Note Deed Poll".

2. Nature and status of Convertible Notes

2.1 Constitution of Convertible Notes

Each Convertible Note is a debt obligation of the Issuer constituted by, and owing under, this Convertible Note Deed Poll.

2.2 Terms of Convertible Notes

Each Convertible Note is issued on, and subject to, the provisions of this Convertible Note Deed Poll and the Convertible Note Terms.

2.3 Form of Convertible Notes

Each Convertible Note will be issued in registered form by entry in the Register.

2.4 Creation of Convertible Notes

- (a) The Issuer will create and issue Convertible Notes with an aggregate principal amount of up to \$10,000,000 ~~(which may be increased at the absolute discretion of the Issuer)~~ and such Convertible Notes will rank *pari passu* among themselves.
- (b) Each Convertible Note will be created and issued immediately upon the entry in the Register of the subscriber for that Convertible Note as its initial Noteholder.

2.5 Effect of registration

Each entry in the Register in respect of a Convertible Note constitutes an unconditional and irrevocable covenant by the Issuer in favour of the person whose name is so registered that the Issuer will:

- (a) **(Make all payments)** make all payments of principal, interest and other amounts in respect of the Convertible Note in accordance with this Convertible Note Deed Poll and the Convertible Note Terms; and
- (b) **(Perform other obligations)** perform all of its other obligations in full, and by the due dates, referred to in this Convertible Note Deed Poll and the Convertible Note Terms.

3. Enforceability

3.1 Noteholder may enforce

This document operates as a deed poll and is enforceable against the Issuer in accordance with its terms by each Noteholder in respect of the Convertible Notes held by it, even though the Noteholder is not a party to, or is not in existence at the time of execution and delivery of, this Convertible Note Deed Poll.

3.2 Noteholders bound

Each Noteholder, and each person claiming through each Noteholder, is bound by, and is deemed to have notice of, the provisions of this Convertible Note Deed Poll and the corresponding Convertible Note Terms.

3.3 Independent enforcement

Each Noteholder may enforce its rights under this Convertible Note Deed Poll and the Convertible Note Terms in relation to their Convertible Notes independently from each other Noteholder, subject to any limitations imposed by this Convertible Note Deed Poll and the corresponding Convertible Note Terms.

4. Governing law and jurisdiction

4.1 Governing law

This Convertible Note Deed Poll is governed by the law applying in New South Wales.


4.2 Jurisdiction

The Issuer and each Noteholder irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Convertible Note Deed Poll and the Convertible Notes; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 4.2(a).

Executed as a deed poll,

Executed by Velocity Property Group Limited
ACN 605 935 153 in accordance with section 127
of the Corporations Act 2001 (Cth):



Signature of director

Philip John Raff

Full name of director



Signature of company secretary/director

Phillip James Young

Full name of company secretary/director

Annexure A - Convertible Note Terms

The following are the terms and conditions of each Convertible Note.

Each Convertible Note:

- (a) will be issued in registered form only;
- (b) is a debt obligation of the Issuer constituted by, and owing under, the Convertible Note Deed Poll;
- (c) is issued on, and subject to, the provisions of the Convertible Note Deed Poll and these Convertible Note Terms; and
- (d) is enforceable by the corresponding Noteholder.

Each Noteholder, and each person claiming through each Noteholder, is bound by, and is deemed to have notice of, the provisions of the Convertible Note Deed Poll and these Convertible Note Terms.

1. Definitions and interpretation

1.1 Definitions

In these Convertible Note Terms:

Administrative Action means any judicial decision, official administrative pronouncement or action, published or private ruling, interpretative decision, regulatory procedure or policy, application of a regulatory procedure or policy and any notice or announcement (including any notice or announcement of intent to adopt or make any of those things).

ASX means ASX Limited (ACN 008 624 691) or the market operated by it, as the context requires.

ASX Listing Rules means the listing rules of ASX.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the city of Sydney.

Conversion means a Noteholder ceasing to hold Convertible Notes and receiving Shares in accordance with clause 4.

Conversion Amount has the meaning given in clause 4.3(a)(i).

Conversion Date means:

- (a) in respect of Conversion required in accordance with a Noteholder Conversion Notice, the date determined by the Issuer which is no later than 10 Business Days after receipt by the Issuer of the relevant Noteholder Conversion Notice; or
- (b) in respect of a Conversion required in accordance with an Event of Default Notice, the date determined by the Issuer which is no later than 20 Business Days after receipt by the Issuer of the relevant Event of Default Notice.

Convertible Note means a convertible redeemable preference note, being an obligation of the Issuer to a Noteholder in respect of indebtedness of the Issuer to that Noteholder which is recorded in or evidenced by an entry in the Register.

Convertible Note Deed Poll means the convertible note deed poll under which the Convertible Notes are constituted.

Convertible Note Terms means these terms and conditions of a Convertible Note.

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

Coupon Amount means the coupon amount that accrues on a Convertible Note in accordance with clause 3.1.

Coupon Balance means the Face Value plus any accumulated Shortfall Amount as at the beginning of that Coupon Period.

Coupon Date means:

- (a) each 31 March, 30 June, 30 September and 31 December until and including the Maturity Date of that Convertible Note; and
- (b) if the Maturity Date does not fall on one of the dates listed in paragraph (a), the day on which the Maturity Date of that Convertible Note falls.

Coupon Period means, in respect of Convertible Note:

- (a) the period from and including the Issue Date of that Convertible Note to the date after the Issue Date of that Convertible Note in the same calendar year which is the first to occur of either 31 March, 30 June, 30 September or 31 December (as applicable); and
- (b) each consecutive period of three calendar months after the period in paragraph (a) above and ending on a Coupon Date (for the avoidance of doubt, the final Coupon Period may be shorter than three calendar months).

Event of Default has the meaning given in clause 8.1.

Event of Default Notice has the meaning given in clause 8.3(a).

Event of Insolvency means:

- (a) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 14 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a scheme of arrangement, other than with the prior written approval of all Noteholders, under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (d) any application (not withdrawn or dismissed within 14 days) is made to a court for an order, a meeting is convened, a resolution is passed for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;

- (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,
- or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
 - (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
 - (g) anything analogous to anything referred to in paragraphs (a) to (f) inclusive of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
 - (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

Face Value has the meaning given in clause 2.4.

Full Year Balance Date means 30 June in any given year.

General Security Deed means a general security deed between the Issuer and the Nominated Noteholder in substantially the form set out in Attachment 1.

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

Half Year Balance Date means 31 December in any given year.

Issue Date means, in relation to a Convertible Note, the date on which that Convertible Note is issued.

Issuer means Velocity Property Group Limited ACN 605 935 153 (ASX:VP7).

Maturity Date means, in respect of a Convertible Note, the date that is 2 years after the Issue Date of that Convertible Note.

Nominated Noteholder means 360 Capital FM Limited ACN 090 664 396 as responsible entity for 360 Capital Total Return Active Fund.

Note Certificate means a Convertible Note certificate issued by the Issuer to a Noteholder in the form set out in Annexure B.

Noteholder means, in relation to a Convertible Note, the person or persons registered as the holder of that Convertible Note in the Register.

Noteholder Conversion Notice has the meaning given in clause 4.1.

NTA means the net tangible assets of the Issuer, being the Issuer's assets minus the Issuer's intangible assets and liabilities.

NTAPS means the net tangible assets per Share, calculated as:

$$NTAPS = \frac{NTA}{total\ number\ of\ Shares\ on\ issue}$$

Payment Date means, in relation to a Convertible Note, any date on which the Issuer is obliged to make any payment to the Noteholder in respect of that Convertible Note.

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

Record Date means, in relation to a Payment Date for a Convertible Note, the date which is 5 Business Days before the Payment Date.

Redemption Amount means, in relation to a Convertible Note:

- (a) the Face Value of that Convertible Note; plus
- (b) any Coupon Amount for the current Coupon Period accrued but unpaid to the Redemption Date; plus
- (c) any Shortfall Amount in respect of that Convertible Note.

Redemption Date means, in relation to a Convertible Note, the date on which a Convertible Note is redeemed pursuant to clause 4 or clause 8.3.

Redemption Notice Period has the meaning given in clause 5.2.

Register means a register of Noteholders established and maintained by the Issuer.

Regulatory Event means:

- (a) any amendment to, clarification of, or change (including any announcement of a prospective change) in, the laws or regulations of Australia; or
- (b) any Administrative Action or any amendment to, clarification of, or change in an Administrative Action, in each case, by any legislative body, court, governmental authority or regulatory body,

which the Issuer determines in its sole discretion to have a material adverse impact on the Issuer's business or the Noteholders.

Relevant Interest has the meaning given to that term in sections 608 and 609 of the Corporations Act.

Secured Money has the meaning given to that term under the General Security Deed.

Senior Creditors means:

- (a) a Noteholder;
- (b) creditors of the Issuer who are unsubordinated creditors of the Issuer; and
- (c) creditors of the Issuer whose claims are or are expressed to be subordinated to the claims of other creditors of the Issuer.

Shareholder means a person who holds Shares.

Shares means fully paid ordinary shares in the Issuer.

Shortfall Amount means the Coupon Amount (if any) in respect of a Convertible Note from any prior Coupon Period that has not been paid to the holder of the Convertible Note.

Statute means any legislation of the Parliament of the Commonwealth of Australia or of any State or Territory of the Commonwealth of Australia in force at any time, and any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that legislation.

Subscription Agreement means the subscription agreement dated 23 December 2019 between the Issuer, the Nominated Noteholder and TGP TOT JV Pty Limited ACN 618 476 681.

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

1.2 Interpretation

In these Convertible Note Terms:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) "person" includes an individual, the estate of an individual, a corporation, a Government Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a person includes that person's executors, administrators, successors, and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document (including these Convertible Note Terms) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to amending a term, condition or a document includes supplementing, deleting or replacing the term, condition or document (as the case may be);
- (f) a reference to "\$" "A\$", "AUD", "Dollars" "dollar" and "Australian dollars" is to Australian currency;
- (g) a reference to "the Register" in relation to a Convertible Note is, respectively, to the Register on which that Convertible Note is entered;
- (h) a reference to a Statute includes its delegated legislation and a reference to a Statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (i) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (j) a reference to a clause, term, schedule, exhibit, attachment or annexure is a reference to a clause, term, schedule, exhibit, attachment or annexure to or of these Convertible Note Terms, and a reference to these Convertible Note Terms includes all schedules, exhibits, attachments and annexures to it;
- (k) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (l) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day, that sum must be paid and that act, matter or thing must be done on the immediately succeeding Business Day;
- (m) a reference to time is to local time in Sydney, New South Wales;
- (n) where time is to be determined by reference to a day or event, that day or the day of that event is to be excluded; and
- (o) "includes" in any form is not a word of limitation.

2. The Convertible Notes

2.1 Acknowledgment of indebtedness

The Issuer acknowledges its indebtedness in respect of, and promises to pay all amounts due in relation to, each Convertible Note on the terms contained in the Convertible Note Deed Poll and these Convertible Note Terms.

2.2 Covenant to perform obligations

The Issuer covenants in favour of each Noteholder from time to time that it will perform its obligations in full, and by the due dates, referred to in the Convertible Note Deed Poll and these Convertible Note Terms.

2.3 Status of Convertible Notes

In relation to a Convertible Note:

- (a) **(Direct obligations)** each Convertible Note constitutes direct and unconditional obligations of the Issuer in accordance with these Convertible Note Terms;
- (b) **(Secured)** The Secured Money will be secured by the General Security Deed which the Issuer must grant on the date of the Convertible Note Deed Poll; and
- (c) **(Certificates)** the Issuer must issue a Note Certificate to each Noteholder (or their nominated professional custodian) who is issued with or transferred a Convertible Note in accordance with these Convertible Note Terms within 5 Business Days after the Issue Date or transfer of that Convertible Note, as the case may be.

If a Note Certificate is lost, stolen, defaced or destroyed, a replacement Note Certificate will be issued by the Issuer within a reasonable period of request by a Noteholder, at no cost to the Noteholder, provided that:

- (i) in the case of a defaced Note Certificate, that Note Certificate is delivered to the Issuer; and
- (ii) in the case of a lost, stolen or destroyed Note Certificate, if requested by the Issuer, the Noteholder provides an appropriate certification (whether by way of statutory declaration or otherwise) and an indemnity in respect of the lost, stolen, or destroyed Note Certificate on terms reasonably satisfactory to the Issuer.

2.4 Denomination and currency of Convertible Notes

Each Convertible Note will be issued with a denomination of \$1.00 (**Face Value**) and in Australian dollars.

2.5 Location of the Convertible Notes

The property in a Convertible Note for all purposes is situated where the Register is located.

2.6 Nominated Noteholder

- (a) The Issuer acknowledges and agrees that the Nominated Noteholder will hold the benefit of the General Security Deed for itself and on behalf of each other Noteholder from time to time.
- (b) By subscribing for a Convertible Note, each Noteholder (other than the Nominated Noteholder) irrevocably appoints the Nominated Noteholder as the attorney of that Noteholder with power to do at any time all acts on behalf of that Noteholder to exercise or give effect to any right, power or authority under or in connection with the General Security Deed.
- (c) Any action taken by the Nominated Noteholder under and in accordance with the General Security Deed will be conclusive and binding on the other Noteholders, whether or not that other Noteholder gave any instruction, consent or waiver in relation to that matter.

3. Coupon Amount

3.1 Coupon Amount accrual

Each Noteholder is entitled to receive the Coupon Amount in respect of each Coupon Period calculated in accordance with the following formula:

$$\text{Coupon Amount} = \frac{\text{Coupon Rate} \times \text{Coupon Balance} \times N}{365}$$

where:

Coupon Rate means, in respect of a Noteholder, 7.00% per annum.

Coupon Balance means the Face Value plus any accumulated Shortfall Amount as at the beginning of that Coupon Period.

N means the number of days in each Coupon Period.

3.2 Payment of cumulative coupons

- (a) Subject to paragraph 3.2(b), a Coupon Amount in respect of a Convertible Note will be payable quarterly in arrears on each Coupon Date.
- (b) To the extent sufficient funds are not available to pay a Coupon Amount or the Coupon Amount paid is less than the amount calculated pursuant to clause 3.1, the Shortfall Amount need not be paid on the Coupon Date but will accrue for calculation in the Coupon Balance at the next Coupon Date.

3.3 Calculations

All calculations of the Coupon Amount on the Convertible Notes will be to four decimal places. For the purposes of making any Coupon Amount payment in respect of a Noteholder's aggregate Convertible Notes, any fraction of a cent will be disregarded.

4. Conversion

4.1 Conversion rights subject to approval

- (a) The Issuer and Nominated Noteholder agree that clauses 4.2 to 4.5 do not come into effect in relation to any of the Convertible Notes issued to the Nominated Noteholder on or around the date of the Convertible Note Deed Poll, until a resolution approving the conversion rights is passed by the Shareholders at a meeting held within two months of the date of the Convertible Note Deed Poll.
- (b) If the resolution contemplated in clause 4.1(a) is not approved by the Shareholders, then all Convertible Notes held by the Nominated Noteholder must be redeemed within 40 Business Days after the date of the Shareholder meeting.

4.2 Conversion by a Noteholder

- (a) Subject to clause 4.3, a Noteholder may by notice to the Issuer (**Noteholder Conversion Notice**) at any time before the Maturity Date require Conversion of some or all of the Convertible Notes held by the Noteholder.
- (b) When a Noteholder Conversion Notice is given, the Issuer must issue the relevant number of Shares, subject to these Convertible Note Terms, as soon as practicable but no later than 10 Business Days after the Noteholder Conversion Notice is received.
- (c) Notwithstanding any other Convertible Note Term, the Conversion rights under this clause 4 do not have effect, and the Issuer is entitled to refuse to Convert a Convertible Note if that Conversion of a Convertible Note would result in:
 - (i) a person acquiring a Relevant Interest in the voting Shares in the Issuer in breach of section 606(1) of the Corporations Act (or any equivalent provision); or
 - (ii) the Issuer contravening ASX Listing Rule 7.1,
and the Issuer must promptly seek:
 - (iii) Shareholder approval for the purposes of the ASX Listing Rule 7.1; and
 - (iv) at the request of the Noteholder, Shareholder approval for the purposes of item 7 of section 611 of the Corporations Act,to allow the Conversion of the relevant Convertible Note(s) to occur.
- (d) If a Conversion of Convertible Notes the subject of a Noteholder Conversion Notice provided by the Nominated Noteholder would result in a contravention of section 606(1) of the Corporations Act, the relevant Noteholder Conversion Notice will be deemed to be amended as required to permit the Conversion of such number of Convertible Notes as possible without giving rise to a contravention of section 606(1) of the Corporations Act.

4.3 Conversion

- (a) Where a Convertible Note is to be Converted under these Convertible Note Terms, on the Conversion Date:
 - (i) the Issuer will redeem the Convertible Note for the Redemption Amount, and apply the whole of that amount (**Conversion Amount**) towards the

subscription by the Noteholder of the relevant Convertible Note of the number of new Shares calculated in accordance with clause 4.4; and

- (ii) the Issuer must issue to the relevant Noteholder the number of Shares:
 - A. calculated in accordance with clause 4.4; and
 - B. adjusted for any reconstruction event in accordance with clause 4.5.

(b) The relevant Noteholder irrevocably and unconditionally:

- (i) acknowledges that compliance with clause 4.3(a) is in full and final satisfaction of the Noteholder's rights in respect of the relevant Convertible Note; and
- (ii) consents to be a shareholder of the Issuer.

4.4 Conversion rate

The number of Shares to which a Noteholder is entitled upon Conversion of a Convertible Note is determined by the following formula:

$$\text{Number of Shares} = \frac{\text{Conversion Amount}}{\text{Conversion Price}}$$

where:

Conversion Amount means the Redemption Amount of the Convertible Note.

Conversion Price means 4.0 cents per Share.

4.5 Adjustments

- (a) If, prior to conversion of any Convertible Notes:
 - (i) a consolidation or sub-division of Shares occurs which alters the number of Shares on issue, then the number of Convertible Notes on issue must be consolidated or sub-divided in the same ratio and the Conversion Price, the Face Value and the Redemption Amount must be amended in inverse proportion to that ratio (for example, if the number of Convertible Notes on issue is halved, the Redemption Price and the Face Value will double);
 - (ii) the Issuer undertakes a return of capital, the number of Convertible Notes remain the same and the Conversion Price must be reduced by the same amount returned in relation to each Share; or
 - (iii) the Issuer undertakes any other reorganisation or reconstruction, then the number of Convertible Notes on issue, the Conversion Price, the Face Value and the Redemption Amount must be amended so that the Noteholders do not receive a benefit that the holders of Shares do not receive and vice versa.
- (b) Notwithstanding any other Convertible Note Term, the rights of the Noteholders will be changed to the extent necessary to comply with the ASX Listing Rules applying to a reorganisation of the Issuer's capital at the time of the reorganisation, provided that where a reorganisation would have an adverse effect on the Noteholders, the Issuer must first obtain the consent of the Nominated Noteholder to the reorganisation, such consent not to be unreasonably withheld or delayed.

- (c) If there are any inconsistencies between the ASX Listing Rules and the adjustment mechanisms in this clause 4.5, the ASX Listing Rules will apply.

5. Redemption

5.1 Redemption on maturity

The Issuer must redeem each Convertible Note that is not the subject of a Noteholder Conversion Notice or an Event of Default Notice on the Maturity Date of that Convertible Note for the Redemption Amount.

5.2 Redemption by the Issuer

Subject to clauses 5.4 and 8.3, from the date which is 6 months after the Issue Date, the Issuer may redeem all of the Convertible Notes for the Redemption Amount by providing 30 Business Days written notice (**Redemption Notice Period**) to the relevant Noteholder.

5.3 Redemption following Shareholder meeting

In the event that the Issuer convenes a meeting of its Shareholders under clause 4.2(c) to seek Shareholder approval for the purposes of either or both of:

- (a) item 7 of section 611 of the Corporations Act; and
- (b) ASX Listing Rule 7.1,

but such resolution is not passed by the requisite majority of Shareholders, the Issuer must where the Noteholder so requires, within 40 Business Days, redeem all of the Convertible Notes for the Redemption Amount.

5.4 Noteholder Conversion Notice to prevail

Where the Issuer provides a redemption notice in accordance with clause 5.2 of these Convertible Note Terms a Noteholder may, prior to the expiry of the Redemption Notice Period, issue a Noteholder Conversion Notice. Subject to clause 4.2(d), in such circumstances the Noteholder Conversion Notice will prevail.

6. The Register

The Issuer must establish and maintain the Register.

7. Rights attaching to the Convertible Notes

7.1 Ranking

- (a) The Convertible Notes rank equally with all other Convertible Notes in all respects.
- (b) The claims of Noteholders rank equally to the claims of other Senior Creditors in that if at any time an Event of Insolvency occurs in relation to the Issuer the amount payable to the Noteholders under these Convertible Note Terms will be paid in conjunction with the debts owing to all Senior Creditors.

7.2 Voting and other rights

- (a) Except as required by the Corporations Act, a Noteholder does not have any right to vote at or speak at any general meetings of the Issuer.

- (b) Except as set out in these Convertible Note Terms, the Convertible Notes carry no right to participate in any Shares or interests or any offering of Shares or other interests in the Issuer.

7.3 Transfer of Convertible Notes

- (a) A Convertible Note may be transferred by an instrument of transfer in an appropriate form.
- (b) Subject to receipt of an instrument of transfer in the appropriate form as required under clause 7.3(a), the Issuer must:
 - (i) update the Register to affect any transfer request received; and
 - (ii) issue a Note Certificate in accordance with clause 2.3(c).

7.4 Rights on winding up

- (a) Subject to clause 7.4(b), on a winding up of the Issuer, each Noteholder is entitled to receive the Redemption Amount in priority to any payment of capital to the holders of Shares in the Issuer.
- (b) For the avoidance of doubt, Noteholders are not entitled to participate in the surplus assets or profits of the Issuer.

7.5 Noteholder acknowledgments

Each Noteholder acknowledges and agrees that:

- (a) to the maximum extent permitted by applicable law, it may not exercise or claim any right of set-off or counterclaim in respect of any amount owed by it to the Issuer against any amount owed to it by the Issuer in respect of Convertible Notes and it shall waive and be deemed to have waived such rights of set-off or counter-claim; and
- (b) it must pay or deliver to the liquidator any amount or asset received on account of its claim in the winding-up of the Issuer in respect of Convertible Notes in excess of its entitlement under these Convertible Note Terms.

8. Default

8.1 Events of Default

Each of the events set out in this clause 8.1 is an Event of Default, whether or not the cause is beyond the control of the Issuer or any other person:

- (a) **(Failure to pay)** the Issuer does not pay any amount payable by it at or before the due time on the due date and in the manner specified in these Convertible Note Terms;
- (b) **(Failure to comply)** the Issuer in performing or observing any provision of these Convertible Note Terms (other than a provision requiring the payment of money as contemplated by clause 8.1(a) or any other provision specifically referred to in this clause 8.1), and if that default is capable of remedy it has not been remedied within 10 Business Days of the earlier of it becoming aware of the default;
- (c) **(Breach of undertaking)** the Issuer breaches any undertaking in these Convertible Note Terms or the Subscription Agreement;

- (d) **(Event of Insolvency)** an Event of Insolvency occurs in relation to the Issuer;
- (e) **(Cessation of business)** the Issuer ceases, or threatens to cease, to carry on all or a material part of its business;
- (f) **(Regulatory Event)** a Regulatory Event occurs;
- (g) **(Void or voidable)** these Convertible Note Terms are, or become invalid, void, voidable, unenforceable or of limited force and effect, either in whole or in part;
- (h) **(Illegality)** at any time it is unlawful for the Issuer to perform any of its obligations under these Convertible Note Terms;
- (i) **(Minimum NTAPS)** as at the Half Year Balance Date and the Full Year Balance Date in any given year, the NTAPS falls below 4 cents, adjusted as required to preserve the effect of this clause and to take account of any:
 - (i) consolidation or sub-division of Shares which alters the number of Shares on issue;
 - (ii) return of capital undertaken by the Issuer; or
 - (iii) other reorganisation or reconstruction undertaken by the Issuer; or
- (j) **(Cap on distributions)** the Issuer makes a dividend or distribution in respect of a financial year that is greater than 50% of the Issuer's net profit after tax in that financial year.

8.2 Notice of Event of Default

The Issuer must notify all Noteholders immediately upon the occurrence of an Event of Default.

8.3 Noteholders' rights on Event of Default

- (a) If any Event of Default occurs then during the period it subsists a Noteholder may by notice to the Issuer (**Event of Default Notice**) take any one or more of the following actions:
 - (i) declare that an Event of Default has occurred; and
 - (ii) require:
 - A. redemption of each Convertible Note held by it for the Redemption Amount; or
 - B. Conversion of each Convertible Note held by it.
- (b) The Issuer must upon receipt of a notice under clause 8.3(a) immediately redeem the relevant Convertible Notes for the Redemption Amount, or effect Conversion of the relevant Convertible Notes on the Conversion Date in accordance with clause 4.

9. Payments

9.1 How payments are to be made

All payments under a Convertible Note will be made on the due date for payment in accordance with the Convertible Note Terms and:

- (a) **(Currency)** in Australian dollars; and

- (b) **(Payment) by:**
- (i) an electronic funds transfer to an account nominated by the Noteholder; or
 - (ii) cheque posted to the address of the Noteholder recorded in the Register.

9.2 Registered Noteholders

A person whose name (or in the case of joint holders the first person whose name) appears on the Register as the Noteholder of a Convertible Note at 4.00 pm on the Record Date is the only person entitled to receive payment of moneys in respect of that Convertible Note on the corresponding Payment Date.

9.3 Payments

All payments in respect of a Convertible Note will be made free and clear of, and without withholding or deduction for, any Taxes, duties assessments or governmental charges of whatsoever nature imposed, levied, collected, withheld or assessed by any Government Authority in Australia unless such withholding or deduction is required by law.

9.4 Deductions and Withholdings

- (a) If at any time an applicable law obliges the Issuer to make a deduction or withholding in respect of Taxes from a payment to the Noteholder, the Issuer:
- (i) **(Deduct from Coupon Amount)** must ensure that the deduction or withholding is deducted or withheld from any Coupon Amount payable to the Noteholder; and
 - (ii) **(Pay Government Authority)** must pay to the relevant Government Authority on time the full amount of the deduction or withholding and promptly deliver to the Noteholder a copy of any receipt, certificate or other proof of payment.
- (b) If the Issuer is required to make a deduction or withholding pursuant to clause 9.4(a), the Noteholders acknowledge and agree that the balance of the amount payable to the Noteholder will be deemed to be the full amount payable to such Noteholder.

9.5 Other profits

A Noteholder, by virtue of being issued a Convertible Note, is not entitled to participate in any distribution of income of the Issuer.

10. Amendments

10.1 Permitted amendments

The Issuer may by deed amend the Convertible Note Deed Poll and the Convertible Note Terms if the amendment is:

- (a) **(Manifest Error)** to correct a manifest error or ambiguity or if the amendment is of a formal, technical or administrative nature only;
- (b) **(Comply with Statutes)** in the reasonable opinion of the Issuer necessary to comply with the provisions of any Statute or with the requirements of any Government Authority; and

- (c) **(Not Prejudicial)** in the reasonable opinion of the Issuer neither prejudicial nor likely to be prejudicial to the interests of any Noteholder (in its capacity as a Noteholder).

10.2 Amendment with approval of Noteholders

The Issuer may by an instrument in writing amend the Convertible Note Deed Poll and the Convertible Note Terms of issue if the amendment has been approved by all Noteholders.

10.3 Copies of amendments

The Issuer must provide to each Noteholder, upon the request of that Noteholder, copies of each supplemental agreement or deed effecting any amendment to the Convertible Note Deed Poll or the Convertible Note Terms.

11. Notices

All communications (including notices, consents, approvals, requests and demands) under or in connection with a Convertible Note:

- (a) **(In writing)** must be in writing and in English;
- (b) **(Executed in the case of communications other than email)** must be signed by the party making the communication or (on its behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party or (in the case of the Issuer) any director and a company secretary or duly authorised agent of the Issuer;
- (c) **(Noteholders)** must be posted by prepaid registered post or delivered to the address of that Noteholder as set out in the Register or sent by email to the email address of that Noteholder as set out in the Register. A notice may be given to the joint holders of a Convertible Note by giving the notice to the joint holder first named in the Register in respect of the Convertible Note;
- (d) **(Issuer)** must be posted by prepaid registered post or delivered to the following address or sent by email to the email address, of the Issuer in accordance with this clause 11(d):

Address (for hand delivery or delivery by courier or by post):

6/59 Oxford Street, Bulimba, Queensland, 4171

Email address: brendon.ansell@velocitypropertygroup.com.au

For the attention of: Brendan Ansell

The Issuer may amend its postal address or email address for the above purposes by notice to the Noteholders and the registrar; and

- (e) **(In the case of email)** must state the name of the sending party or a person duly authorised by the sending party and state that the email is a communication under or in connection with this Convertible Note Deed Poll and communications sent by email are taken to be signed by the named sender.
- (f) **(Time of receipt)** are taken to be received by the addressee:
- (i) **(in the case of prepaid registered post)** 2 Business Days after the date of posting if posted from within Australia and 5 Business Days after the date of posting by airmail to or from an address outside Australia;

(ii) (in the case of email whether or not containing attachments) the first to occur of:

- A. receipt by the sender of an electronic acknowledgment from the recipient's information system showing confirmation of delivery to the recipient's email address; and
- B. 4 hours after the time sent (as recorded on the sender's information system) unless the party sending the email receives an automated message that the email has not been delivered; and

provided that the communication will be taken to be so given by the sender and received by the recipient regardless of whether the email or any of its attachments is opened by the recipient; and

(iii) (in the case of delivery by hand) on delivery.

If a communication delivered or sent under this clause 11 is delivered or sent by more than one method, the communication is taken to be given by the sender and received by the recipient whenever it is taken to be first received in accordance with clause (f).

12. Governing Law and Jurisdiction

12.1 Governing Law

The Convertible Note Deed Poll and these Convertible Note Terms are governed by the law applying in New South Wales.

12.2 Jurisdiction

The Issuer and each Noteholder irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals and from those courts, with respect to any proceedings which may be brought at any time relating to the Convertible Note Deed Poll and these Convertible Note Terms; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 12.2(a).

13. Miscellaneous

13.1 Obligations of Noteholders

Each Noteholder, and the Convertible Notes are issued on the condition that each Noteholder, is bound by and complies with the terms and conditions of the Convertible Note Deed Poll and the Convertible Note Terms.

13.2 Stamp duty

The Issuer:

- (a) must pay all stamp duties and any related fines and penalties that arise in connection with the issue of a Convertible Note; and

- (b) must pay to the Noteholder on demand the amount of any loss, costs or expenses suffered or incurred by that Noteholder arising out of or in connection with any failure to comply with clause 13.2(a).

13.3 Severance

If at any time any provision of the Convertible Note Deed Poll or these Convertible Note Terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of the Convertible Note Deed Poll or the Convertible Note Terms; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of the Convertible Note Deed Poll or the Convertible Note Terms.

13.4 Remedies cumulative

The rights and remedies conferred by the Convertible Note Deed Poll and the Convertible Note Terms on the Issuer are cumulative and in addition to all other rights or remedies available to the Issuer by Statute, by general law or by virtue of any other document.

13.5 Waiver

- (a) A failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under the Convertible Note Deed Poll or these Convertible Note Terms by the Issuer does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under the Convertible Note Deed Poll or these Convertible Note Terms.
- (a) A waiver or consent given by the Issuer under the Convertible Note Deed Poll or these Convertible Note Terms is only effective and binding on the Issuer if it is given or confirmed in writing.
- (b) No waiver of a breach of a term of the Convertible Note Deed Poll or these Convertible Note Terms operates as a waiver of another breach of that term or of a breach of any other term of the Convertible Note Deed Poll or these Convertible Note Terms.

13.6 Moratorium legislation

To the fullest extent permitted by law, the provisions of all Statutes which at any time operate directly or indirectly to lessen or affect in favour of Noteholders any obligation under the Convertible Note Deed Poll and any Convertible Note Terms, or to delay or otherwise prevent or prejudicially affect the exercise by the Issuer of any power or right under the Convertible Note Deed Poll and any Convertible Note Terms or otherwise, are expressly waived.

Annexure B - Form of Note Certificate

Velocity Property Group Limited
ACN 605 935 153
(Issuer)

Registered Noteholder:

Certificate Number:

Issue Date:

Amount: \$

ISSUE OF [INSERT NUMBER] CONVERTIBLE NOTES

This is to certify that *[insert name of Noteholder or its professional custodian]* is the registered holder of *[insert number]* Convertible Notes in an aggregate principal amount of \$*[insert value]* and issued with the benefit of and subject to the provisions of the Convertible Note Terms set out in the Convertible Note Deed Poll signed by the Issuer on *[date]* (Deed Poll).

Capitalised Terms in this Note Certificate have the meanings given to them in the Deed Poll.

The Face Value of each Note is \$1.00.

For value received, the Issuer promises to pay to the registered holder of this Note Certificate the aggregate principal amount in respect of each Convertible Note held and all accrued but unpaid interest on the aggregate principal amount on the Redemption Date (determined in accordance with the Deed Poll) or such earlier date as Convertible Notes may be converted in accordance with the Convertible Note Terms set out in the Deed Poll.

Each Convertible Note is convertible into fully paid ordinary shares in the Issuer and bears interest in accordance with the Convertible Note Terms set out in the Deed Poll.

Each Convertible Note is only transferable in accordance with the Convertible Note Terms.

This certificate and each Convertible Note is governed by the laws of the State of New South Wales.

DATED:

Executed by Velocity Property Group Limited
ACN 605 935 153 in accordance with section 127
of the *Corporations Act 2001* (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Attachment 1 - General Security Deed

General security deed

Velocity Property Group Limited (ASX:VP7)
Grantor

360 Capital FM Limited as responsible entity for 360 Capital Total Return
Active Fund
Secured Party

Clayton Utz
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 855/21257/81002441

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General security deed

Date

Parties Velocity Property Group Limited ACN 605 935 153 (ASX:VP7) (**Grantor**)
360 Capital FM Limited ACN 090 664 396 as responsible entity for 360 Capital Total Return Active Fund (**Secured Party**)

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Accepted Accounting Practices means the accounting practices and standards generally accepted in Australia from time to time.

Collateral means all present and after acquired property, interests, rights and proceeds in respect of which the Grantor has at any time sufficient rights to grant a security interest, including all of the following:

- (a) the assets, undertaking and goodwill of the business of the Grantor; and
- (b) the uncalled and called but unpaid capital of the Grantor.

Constitution means, in relation to any person, the replaceable rules, constitution or combination of both (as those terms are used in section 134 of the Corporations Act) of that person (if any).

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

Convertible Note means a convertible redeemable preference note, being an obligation of the Grantor to a Noteholder in respect of indebtedness of the Grantor to that Noteholder which is recorded or evidenced by an entry into the Register.

Convertible Note Deed Poll means the document titled "Convertible Note Deed Poll" executed by the Grantor on 23 December 2019.

Convertible Note Terms means the terms and conditions of a Convertible Note set out in Annexure A to the Convertible Note Deed Poll.

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

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

Deal means dispose, or part with possession of, make any bailment over or create or permit to exist any interest in, any part of the Collateral.

Delegate means any agent, attorney or other delegate appointed under this deed by the Secured Party or by any receiver or receiver and manager appointed under this deed.

Encumbrance means a mortgage, charge, pledge, lien, security interest, title retention, preferential right, trust arrangement, contractual right of set-off and any other encumbrance, security agreement or arrangement in favour of any person, including any Security Interest.

Event of Default has the meaning given in clause 7.1.

Event of Insolvency has the meaning given in the Convertible Note Terms.

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

- (a) calculated on or by reference to the gross amount of any payment (without the allowance of any deduction) derived under any Transaction Document by the Secured Party; or
- (b) imposed as a result of the Secured Party being considered a resident of or organised or doing business in that jurisdiction solely as a result of:
 - (i) it being a party to any Transaction Document; or
 - (ii) any transaction contemplated by any Transaction Document.

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

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

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

Marketable Securities has the meaning given to "marketable securities" in section 9 of the Corporations Act but as if the reference to "managed investment scheme" included any unit trust which is not registered under the Corporations Act.

Material Adverse Effect means a material adverse effect on the:

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

Non PPSA Property means property:

- (a) which is not personal property as defined in the PPSA; or
- (b) to which the PPSA does not apply.

Obligations means all the liabilities and obligations of the Grantor to the Secured Party under or by reason of clause 8.3(b) (*Noteholders' rights on an Event of Default*) of the Convertible Note Terms and this deed and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) arise from the making of any advance on or before the date of this deed or from any future advances;
- (d) are in existence before or come into existence on or after the date of this deed;
- (e) relate to the payment of money or the performance or omission of any act;
- (f) sound in damages only;
- (g) accrue as a result of any Event of Default; or
- (h) would exist but for an Event of Insolvency affecting any person,

and irrespective of:

- (i) whether the Grantor is liable or obligated solely, jointly or jointly and severally with another person;
- (j) the circumstances in which the Secured Party comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this deed, including any assignment of any liability or obligation or of this deed; or
- (k) the capacity in which the Grantor and the Secured Party comes to owe or to be owed that liability or obligation.

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

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

Regulatory Event has the meaning given in the Convertible Note Terms.

Related Body Corporate has the meaning given in section 9 of the Corporations Act, but on the basis that "subsidiary" for the purposes of that definition has the meaning given to "Subsidiary" in this deed.

Revolving Asset means any part of the Collateral:

- (a) which is:
 - (i) inventory;
 - (ii) a negotiable instrument;
 - (iii) machinery, plant or equipment which is not inventory and has a value of less than \$1,000 or its equivalent;
 - (iv) money (including money withdrawn or transferred to a third party from an account of the Grantor with a bank or other financial institution); and
- (b) in respect of which the Grantor has a current licence to Deal under clause 3.2.

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

Security Interest has the meaning given to that term in section 12 of the PPSA.

Serial Numbered Property means Collateral that may or must be described by serial number in a financing statement under the PPSA.

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

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

Transaction Document means:

- (a) this deed;
- (b) any Convertible Note;
- (c) the Convertible Note Deed Poll (including the Convertible Note Terms);
- (d) any other document as agreed between the Grantor and the Secured Party to be, for the purposes of this deed, a Transaction Document; or
- (e) any other document entered into at any time after the date of this deed which has the effect of varying, novating, ratifying, replacing or restating, in any manner, any other document referred to in this definition.

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

1.2 Convertible Note Terms definitions

Definitions in the Convertible Note Terms apply to this deed unless the context requires otherwise or the relevant term is defined in this deed.

1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) **"person"** includes an individual, the estate of an individual, a corporation, a Government Authority, an association or a joint venture and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including any Transaction Document) is to that document as varied, novated, ratified, replaced or restated from time to time, including for the avoidance of doubt any such variation, novation, ratification, replacement or restatement which has the effect directly or indirectly of increasing in any way the Secured Money;
- (e) a reference to a law includes any law, principle of equity, Statute and official directive of any Government Authority and a reference to any legislation (including any Statute) includes any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that legislation and, in each case, any consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause or schedule is a reference to a party, clause or schedule to or of this deed and a reference to this deed includes all schedules to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) a reference to the Collateral or any other thing includes any part of it;
- (j) **"includes"** in any form is not a word of limitation;
- (k) all accounting terms used in this deed have the meaning given to them under Accepted Accounting Practices;
- (l) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or that act, matter or thing will be done on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not);
- (m) a reference to **"subsists"** or any similar expression in relation to an Event of Default or a Potential Event of Default indicates an Event of Default or Potential Event of Default which has not been remedied or waived in accordance with the terms of the Transaction Documents;
- (n) a reference to "proceeds" includes, where the context permits, any proceeds as that term is defined in the PPSA; and
- (o) each of the terms "ABN", "ACN", "ARBN", "ARSN", "ADI", "ADI Account", "advance", "future advance", "purchase money security interest", "chattel paper", "financing statement", "financing change statement", "serial number" and "verification statement" have the meanings given to them in the PPSA.

1.4 Secured Party assumes no obligations

The Secured Party will not be deemed by virtue of this deed to have assumed any obligation of the Grantor under any law.

1.5 Capacity of Secured Party

The Secured Party enters into this deed for itself and for each other Noteholder from time to time, as contemplated by clause 2.6 (*Nominated Noteholder*) of the Convertible Note Terms.

2. Security interest

2.1 Creation

- (a) The Grantor grants a security interest in the Collateral to the Secured Party to secure the satisfaction of the Obligations and the payment of the Secured Money.
- (b) This security interest is:
 - (i) a transfer by way of security of Collateral consisting of accounts or chattel paper which are not, or cease to be, Revolving Assets; and
 - (ii) a charge of any Collateral not so transferred.
- (c) The Grantor grants this charge in respect of the Collateral which it owns or will own as beneficial owner.

2.2 Priority

This security interest will operate as a first ranking security subject only to any other Encumbrances mandatorily preferred by law.

2.3 Nature of charge over Non PPSA Property

To the extent that any Non PPSA Property subject to this security interest consists of a Revolving Asset this security interest will operate as a floating charge in respect of that property until it ceases to be a Revolving Asset. This security interest will otherwise operate as a fixed charge over all Non PPSA Property.

3. Dealing with the Collateral

3.1 Dealing restrictions

The Grantor will not without the Secured Party's prior written consent or as expressly permitted in any other Transaction Document:

- (a) **(No Encumbrances)** create, purport or attempt to create or permit to exist any Encumbrance over the Collateral (unless by law its creation cannot be restricted, in which case the Grantor must procure that the holder of the Encumbrance first enters into a priority arrangement in form and substance acceptable to the Secured Party);
- (b) **(No Dealing)** subject to clause 3.2, Deal with any part of the Collateral; or
- (c) **(Not to prejudice)** do, fail to do or consent to any act, omission or thing as a result of which the Collateral becomes or could become liable to surrender, forfeiture or cancellation, or becomes or could become prejudiced in any manner, or the value

to the Secured Party of any Encumbrance under this deed becomes or could become materially lessened.

3.2 Licence to Deal

Subject to clause 3.3, the Grantor may:

- (a) Deal with (but not, other than as permitted under clause 3.1(a), grant any Encumbrance over) any Revolving Asset in the ordinary course of its ordinary business; or
- (b) withdraw or transfer money from an account of the Grantor with a bank or other financial institution in the ordinary course of its ordinary business.

3.3 Termination of licence to Deal

- (a) The Grantor's licence to Deal with any Revolving Assets under clause 3.2 will come to an end if:
 - (i) the Grantor breaches clause 3.1 or takes any steps which would result in a breach of that clause;
 - (ii) a Government Authority takes a step (including signing a notice or direction) which may result in Taxes ranking ahead of the security interest under this deed; or
 - (iii) an Event of Insolvency occurs in relation to the Grantor; or
 - (iv) the Secured Party gives a notice terminating such licence in respect of any Collateral specified in that notice (however, the Secured Party may only give a notice if an Event of Default is subsisting).
- (b) If the Grantor's licence to Deal comes to an end then automatically:
 - (i) that Collateral is not (and immediately ceases to be) a Revolving Asset; and
 - (ii) any floating charge over that Collateral immediately operates as a fixed charge.
- (c) The licence to Deal may be reinstated by the Secured Party giving the Grantor a notice stating that, from a date specified in the notice, the Collateral specified in the notice is again subject to the licence to Deal under clause 3.2.

3.4 Notice to debtor or contractual counterparty

The Grantor authorises the Secured Party to give notice to any debtor or contractual counterparty of the transfer of any account or chattel paper which is not, or ceases to be, a Revolving Asset.

3.5 Control of inventory

Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to the security interest under this deed. The Grantor may not remove it without obtaining the specific and express authority of the Secured Party to do so.

4. Representations and warranties

4.1 General representations and warranties

The Grantor represents and warrants to the Secured Party that:

- (a) **(Good right to grant)** it has good right to grant a security interest in the Collateral in the manner provided in this deed and the Collateral is free of all Encumbrances other than in favour of the Secured Party or as expressly permitted by any other Transaction Document or the interest of any owner or lessor of any personal property in respect of which the Grantor has an interest as buyer or lessee or which the Grantor receives a commercial consignment;
- (b) **(Serial numbers)** Schedule 1 shows accurate serial numbers for each item of, and a complete list as at the date of this deed of, Collateral having a value greater than \$100,000 and which the PPSA requires or permits to be described by serial number in a registration under the PPSA;
- (c) **(Legally binding obligation)** this deed constitutes its valid and legally binding obligation and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration requirements and laws affecting creditors' rights generally;
- (d) **(Execution, delivery and performance)** the execution, delivery and performance of this deed and each transaction contemplated by this deed does not violate or breach any law or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (e) **(No Event of Default)** no Event of Default has occurred which is subsisting;
- (f) **(Laws)** it has complied with all laws applicable to it; and
- (g) **(No trusts)** the Grantor is not the trustee of any trust.

4.2 Corporate representations and warranties

The Grantor represents and warrants to the Secured Party that:

- (a) **(Existence and power)** it:
 - (i) is duly registered and remains in existence; and
 - (ii) has the power to own the assets held by it and carry on business as it is being conducted;
- (b) **(Power)** it has the power to enter into, deliver and perform this deed and to carry out the transactions contemplated by this deed; and
- (c) **(Due authority)** it has taken all corporate action required to enter into, deliver and perform this deed and to carry out the transactions contemplated by this deed.

4.3 Representations and warranties repeated

Each representation and warranty in this clause 3.2 will be repeated on each day while any of the Secured Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

5. General undertakings

5.1 Satisfaction of Obligations

The Grantor will satisfy, or procure the satisfaction of, the Obligations and will pay the Secured Money in the manner provided in this deed or in any other Transaction Document.

5.2 Notification of certain events

The Grantor will immediately notify the Secured Party in writing if it becomes aware of the occurrence of:

- (a) **(Event of Default)** any Event of Default; or
- (b) **(Litigation)** any litigation, arbitration, criminal or administrative proceedings which are current, pending or to its knowledge threatened relating to the Grantor or its assets and which involve a claim against the Grantor in excess of \$2,000,000 (or the equivalent in any other currency) or which, if determined adversely to the Grantor, could have a Material Adverse Effect.

5.3 Insurance

The Grantor will insure its business and assets, and keep its business and assets insured, with insurance companies approved by the Secured Party against any risks and liabilities to which its business is exposed and to the extent as is commercially reasonable/appropriate having regard to those risks and liabilities.

5.4 Secured Party assumes no obligations

The Secured Party will not be deemed by virtue of this deed to have assumed any obligation of the Grantor under any law.

6. Additional undertakings concerning the Collateral

6.1 Events of Default

The Grantor will ensure that no Event of Default occurs. Without affecting the liability of the Grantor or any Power in any other respect (including where a breach of this clause 6.1 is a breach of any other provision of any Transaction Document), the Grantor is not liable in damages for a breach of its obligations under this clause 6.1 but the Secured Party may exercise the Powers following any breach of this clause 6.1, during the period it subsists.

6.2 Grantor details

The Grantor will notify the Secured Party before:

- (a) it changes its name or any trust in respect of which it is a trustee (if applicable) changes its name;
- (b) any ABN, ARBN or ARSN allocated to it changes, is cancelled or ceases to apply it;
- (c) any ABN, ARBN or ARSN is allocated to it where it did not previously have one;
- (d) it becomes the trustee of any trust not specified in this deed.

6.3 Collateral generally

- (a) The Grantor will:
- (i) **(Good repair)** maintain the Collateral in good repair and condition and in good working order;
 - (ii) **(Security Interests: policies and practices)** implement policies and practices and take all steps necessary to ensure that all Security Interests which it holds are attached, enforceable and continuously perfected under the PPSA until the obligations they secure are satisfied or they are released for value where a failure to implement the relevant policies and practices or to take the necessary steps could have a Material Adverse Effect;
 - (iii) **(Protection of Collateral)** at the request of the Secured Party take or defend all legal proceedings and effect all registrations that the Secured Party, acting reasonably, considers necessary or desirable for the preservation, protection or recovery of the Collateral;
 - (iv) **(Lodgement)** lodge with the Secured Party on the date of this deed or, if later, the date on which the relevant Collateral is acquired:
 - A. all certificates, scrip and other indicia of title or interest in any Marketable Securities forming part of the Collateral and any transfers for those Marketable Securities required by the Secured Party, signed by the Grantor, and with the name of the transferee, consideration and date left blank;
 - B. all negotiable instruments other than cheques forming part of the Collateral;
 - C. all certificates of title to land forming part of the Collateral; and
 - D. all chattel paper forming part of the Collateral;
 - (v) **(Serial numbered property)** immediately notify the Secured Party in writing if it becomes aware of the acquisition of any Serial Numbered Property having a value greater than \$100,000 and not specified in Schedule 2 which forms part of the Collateral and, in respect of that Serial Numbered Property, all the details required by the PPSA to be entered in a financing statement;
 - (vi) **(Commingling and accessions)** not permit the Collateral, or any part of the Collateral to become:
 - A. commingled with any asset that is not subject to the security interest under this deed, except in the ordinary course of the Grantor's business;
 - B. an accession to or affixed to any asset that is not subject to the security interest under this deed;
- (b) **(Register share transfers)** Notwithstanding any provision contained in its Constitution, the Grantor will take all steps necessary to approve any transfer of shares in the Grantor in its share register, in any case, where the transfer arises because of the enforcement of any Encumbrance granted under any Transaction Document.

6.4 Postponement or waiver of Encumbrances

If requested by the Secured Party, the Grantor will immediately cause:

- (a) any Encumbrance (other than any Encumbrances expressly permitted under any other Transaction Document to rank in priority to this deed) which has arisen or which arises from time to time by operation of law over the Collateral in favour of any person to be postponed in all respects after and subject to this deed or to be otherwise discharged, released or terminated; and
- (b) any Financial Liability or other obligation secured by any Encumbrance of the type referred to in clause 6.4(a), to be waived, released, paid or performed.

7. Events of Default

7.1 Events of Default

Each of the events set out in this clause 7.1 is an Event of Default whether or not the cause is beyond the control of the Grantor or any other person:

- (a) **(Grantor's failure)** the Grantor fails to comply with clause 8.3(b) (*Noteholders' rights on an Event of Default*) of the Convertible Note Terms;
- (b) **(Failure to pay)** the Grantor does not pay any amount payable by it at or before the due time on the due date and in the manner specified in this deed;
- (c) **(Failure to comply)** the Grantor defaults in performing or observing any provision of any this deed (other than a provision requiring the payment of money as contemplated by clause 7.1(a) or any other provision specifically referred to in this clause 7.1), and if that default is capable of remedy it has not been remedied within 10 Business Days of the earlier of it becoming aware of the default;
- (d) **(Untrue warranty)** any representation, warranty or statement made, repeated or taken to be made or repeated in this deed or in any document, of any nature, issued under this deed is proved to be untrue in any material respect when made or repeated or taken to be made or repeated as the case may be (a **Misrepresentation**) and if the circumstances causing the Misrepresentation are capable of remedy those circumstances have not been remedied within 10 Business Days of the occurrence of the Misrepresentation;
- (e) **(Breach of undertaking)** the Grantor breaches any undertaking given at any time to the Secured Party under this deed;
- (f) **(Event of Insolvency)** an Event of Insolvency occurs in relation to the Grantor;
- (g) **(Cessation of business)** the Grantor ceases, or threatens to cease, to carry on all or a material part of its business;
- (h) **(Regulatory Event)** a Regulatory Event occurs;
- (i) **(Void or voidable)** this deed, becomes or is claimed by the Grantor to be invalid, void, voidable, unenforceable or of limited force and effect, either in whole or in part;
- (j) **(No Encumbrance)** this deed does not create the Encumbrance it purports to create; or
- (k) **(Illegality)** at any time it is unlawful for the Grantor to perform any of its obligations under this deed.

7.2 Rights on an Event of Default

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

- (a) the Secured Money becomes immediately due and payable on demand from the Secured Party;
- (b) all Powers not previously exercisable become exercisable; and
- (c) any right of the Grantor to Deal with the Collateral (other than through a Receiver appointed under this deed) immediately ceases.

8. Receivers: appointment and Powers

8.1 Appointment of Receiver

If any Event of Default occurs then, during the period it subsists, the Secured Party may:

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

8.2 Joint Receivers

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

8.3 Remuneration of Receiver

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

8.4 Agent of Grantor

Each Receiver will be the agent of the Grantor. The Grantor will be solely responsible for all acts and omissions by, and the remuneration of, each Receiver.

8.5 Powers of Receiver

Without the need for any consent from the Grantor or any other person, each Receiver will have all of the following powers:

- (a) **(Section 420)** all of the powers granted to a receiver of property of a corporation under section 420 of the Corporations Act;
- (b) **(Dispose)** whether or not in possession, to dispose of the Collateral in such manner and on such terms as the Receiver thinks fit;
- (c) **(Borrow or raise money)** to borrow or raise from the Secured Party or any other person any money which may be required for any purposes and, if the Receiver thinks fit, to secure any money borrowed or raised by the grant of any

Encumbrance over the Collateral (whether in the name of the Grantor or otherwise) so that the Encumbrance ranks (priority to, pari passu with or after this deed. The Secured Party will not be bound to inquire as to the necessity or propriety of any Financial Liability nor be responsible for the misapplication or non-application of any money so borrowed or raised;

- (d) **(Lease)** whether or not the Receiver has taken possession, to lease or licence the Collateral in the name of the Grantor or otherwise, for any period and on any terms or to vary or terminate a lease or licence;
- (e) **(Collection)** collect accounts;
- (f) **(Engage)** to engage consultants, contractors, professional advisors, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which the Receiver is interested and that person may charge for his or her services as if independently retained at a salary or remuneration determined by the Receiver) and the Receiver may act on any advice given by any person so engaged;
- (g) **(Conduct works)** to repair, renew, replace, renovate or clean the Collateral, to erect any new buildings or make any improvements to any land forming part of the Collateral and to demolish, alter, rebuild or extend any existing buildings on the Collateral;
- (h) **(Invest proceeds against contingencies)** if any of the Secured Money is contingent, to invest, deposit or hold the Collateral in a form or mode of investment for the time being as the Receiver thinks fit, with like power to vary, transpose or re-invest the investments or deposits from time to time until that part of the Secured Money ceases to be contingent;
- (i) **(Perform contracts)** to perform, observe, carry out, enforce specific performance of, exercise or refrain from exercising, the Grantor's rights and powers under, obtain the benefit of, and vary or rescind all contracts and rights forming part of the Collateral or entered into in the exercise of any Power;
- (j) **(Take proceedings)** to institute, conduct or defend any proceedings in law or bankruptcy and to submit to arbitration, mediation or conciliation, in the name of the Grantor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Collateral or otherwise;
- (k) **(Compromise)** to make any settlement, arrangement or compromise regarding any action, proceeding or dispute arising in connection with the Collateral, to grant to any person involved time or other indulgence and to execute all related releases or discharges as the Receiver thinks expedient in the interests of the Secured Party;
- (l) **(Appeal)** to appeal against or to enforce any judgment or order in respect of the Collateral;
- (m) **(Bankrupt debtors and wind up bodies corporate)** to make debtors bankrupt and to wind up bodies corporate and to do all things in connection with any bankruptcy or winding up which the Receiver thinks necessary for the recovery or protection of the Collateral or for the security or other benefit of the Secured Party;
- (n) **(Delegate)** with the Secured Party's prior approval, to delegate to any person, for any time, any of the Powers including this power of delegation;
- (o) **(File)** to file all certificates, registrations and other documents and to take any and all action on behalf of the Grantor which the Receiver believes is necessary to protect, preserve or improve any or all of the Collateral and the rights of the Grantor and the Secured Party in respect of any agreement for sale and to obtain for the Secured Party all of the benefits of this deed and any other Transaction Document;

- (p) **(Operate bank accounts)** to open or operate any bank account in the name of the Grantor (whether alone or jointly with any other person) to the exclusion of the Grantor and to deposit or withdraw any money standing to the credit of that account and to sign and endorse or to authorise others to sign and endorse in the name of the Grantor cheques, promissory notes, bills of exchange and other negotiable instruments;
- (q) **(Do all other things)** to do all things the law allows an owner of any interest in the Collateral, or any Controller of the Collateral, to do; and
- (r) **(Do all things as are expedient)** to do all other acts and things without limitation as the Receiver thinks expedient,

and any further powers as the Secured Party confers on a Receiver by notice in writing to that Receiver.

8.6 Indemnity

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

9. Secured Party's Powers

9.1 Exercise of Power

If any Event of Default occurs then, during the period it subsists, the Secured Party may without notice and whether or not a Receiver has been appointed:

- (a) exercise all or any of the Powers conferred on a Receiver, or which would be conferred on a Receiver if appointed, as if those Powers had been expressly conferred on the Secured Party;
- (b) exercise all other Powers; and
- (c) appoint an agent or agents (whether severally, jointly or jointly and severally) and delegate the Powers (or any of them) to the agent or agents (in which case clauses 8.1, 8.3, 8.6, 12.1 and 12.2 will apply as if the agent or agents were each appointed as a Receiver).

9.2 Claim on Grantor

The Secured Party is not required to:

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

in any case, before making any demand on the Grantor under this deed or otherwise enforcing this deed.

9.3 Act jointly

The Secured Party and each Receiver may exercise any of the Powers in conjunction with the exercise of similar powers by the holder of any other Encumbrance over the Collateral or by any receiver or receiver and manager appointed by that other holder and may enter into and

give effect to agreements and arrangements with that other holder, receiver or receiver and manager as the Secured Party or the relevant Receiver thinks fit.

9.4 Power of attorney

- (a) In consideration of the Secured Party entering into the Transaction Documents, the Grantor irrevocably appoints the Secured Party and each of its directors, company secretaries and attorneys from time to time and each Receiver, severally, as an attorney of the Grantor with power at any time an Event of Default has occurred and is subsisting:
- (i) to do all acts which ought to be done by the Grantor under any Transaction Document;
 - (ii) to do all acts to exercise or give effect to any Power;
 - (iii) to demand, sue for, recover and receive the Collateral from any person, in the name of the Grantor or in the name of the Secured Party, the relevant Receiver or any other attorney appointed under this clause 9.4;
 - (iv) to take further action and to execute further instruments which are, or are in the opinion of the Secured Party, the relevant Receiver or any other attorney appointed under this clause 9.4, necessary or desirable to secure more satisfactorily the performance of the Obligations or the payment of the Secured Money or to sell or otherwise deal with the Collateral; and
 - (v) to appoint (and remove at will) at any time any person as a substitute for an attorney.
- (b) The Grantor:
- (i) agrees that each attorney may exercise powers under this power of attorney notwithstanding that the exercise may or will involve or result in a conflict between the duty of that attorney to the Grantor and either the interests of that attorney or a Related Party of that attorney or another duty of that attorney; and
 - (ii) ratifies and confirms now and for the future all actions undertaken by or on behalf of any attorney under this power of attorney, including any action which may or will involve or result in a conflict of the type referred to in clause 9.4(b)(i) or in respect of which that attorney has a personal interest.
- For the purposes of this clause 9.4(b) a Related Party of any attorney is any Related Body Corporate of that attorney or, in the case of any attorney that is an individual, any person that is related to or has any personal or professional relationship, of any nature, with that attorney.
- (c) The Grantor declares that this power of attorney will continue in force until all actions taken under it have been completed, despite the discharge of this deed.
- (d) The Grantor will do anything requested by the Secured Party, acting reasonably, to enable the Secured Party to register this power of attorney in the manner and within any time limits prescribed by law to ensure the efficacy of this power of attorney.

9.5 Secured Party may make good any default

If the Grantor defaults in satisfying any of the Obligations, the Secured Party may, without prejudice to any other Power, do all things and pay all money necessary or expedient in the

opinion of the Secured Party to make good or to attempt to make good that default to the satisfaction of the Secured Party. The Grantor will take all steps which the Secured Party, acting reasonably, requests to facilitate the exercise by the Secured Party of its rights under this clause 9.5. The Secured Party will not be a mortgagee or secured party in possession simply as a result of the exercise of its rights under this clause 9.5.

9.6 Notice for exercise of Powers

- (a) The Powers may be exercised by the Secured Party and any Receiver at any time during the period any Event of Default subsists, without any notice, demand or lapse of time being necessary unless required by a law which cannot be excluded.
- (b) Subject to clause 9.6(c), if required by any law which cannot be excluded, one day is fixed as the period for which:
 - (i) default must continue in the satisfaction of the whole or any part of the Obligations or in the payment of any part of the Secured Money before the Secured Party may give any notice or demand as required by any law affecting the Powers; and
 - (ii) default in the satisfaction of the whole or any part of the Obligations or in the payment of any part of the Secured Money must continue after the giving of any notice or demand before any Power may be exercised.
- (c) If any law which cannot be excluded provides that a specific period of notice or lapse of time is mandatorily required before any Power may be exercised by the Secured Party or any Receiver, that period of notice must be given or time must elapse before that Power may be exercised.

9.7 Exclusion of PPSA provisions

To the extent permitted by law, and in respect of each Security Interest created by this deed:

- (a) the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA);
- (b) the Grantor waives its rights to receive any information under section 275 of the PPSA and agrees not to make any request under that section; and
- (c) the Grantor irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this deed.

10. Application of money

10.1 Priority of payments

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

- (a) **(Incidental to exercise of Powers)** in payment of all Costs incurred in or incidental to the exercise or attempted exercise of any of the Powers;
- (b) **(Outgoings)** in payment of any other outgoings as any Receiver or the Secured Party thinks fit;

- (c) **(Payment of Encumbrances having priority)** in payment of all amounts secured by any other Encumbrances of which the Secured Party is aware which have priority to this deed, in the order of their priority;
- (d) **(Payment of Secured Money)** in payment of the balance of the Secured Money then owing or contingently or prospectively owing, whether or not due and payable;
- (e) **(Subsequent Encumbrances)** if the Secured Party determines to do so, in payment of all amounts secured by any subsequent Encumbrances of which the Secured Party is aware in the order of their priority; and
- (f) **(Surplus)** the surplus (if any) belongs to the Grantor but does not carry interest. The Secured Party or relevant Receiver, as applicable, will pay this amount to the Grantor by paying this amount into an account in the name of the Grantor.

All money received by the Secured Party or by any Receiver as a result of the exercise of the Powers and all other proceeds of enforcement under this deed will be applied in the order specified in the Transaction Documents.

10.2 Money received

In applying any money towards satisfaction of the Secured Money in the manner contemplated by clause 10.1, the Grantor will be credited only with as much of the money available for that purpose as is actually received by the Secured Party or any Receiver and is not required to be disgorged. Any credit will date from the time of receipt.

10.3 Application of money

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

10.4 Reliance on certificate

In making any payment to the holder of any other Encumbrance as contemplated by clause 10.1, the Secured Party and each Receiver may rely on a certificate from that holder as to the amount secured by the relevant Encumbrance and is not bound to inquire as to the accuracy of the certificate or whether the amount referred to is validly secured by the Encumbrance.

11. Liability and release

11.1 Continuing obligation

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

11.2 Personal liability

No grant of full or partial satisfaction of or discharge from this deed by the Secured Party will, unless it expressly provides otherwise, release the Grantor from personal liability under this deed or under any other Transaction Document until none of the Secured Money is owing (whether actually, contingently or prospectively) and it is not reasonably foreseeable that there could be any Secured Money owing in the future.

11.3 Grantor's liability not affected

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

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

11.4 Release of Collateral

The Secured Party will be under no obligation to grant a release of the Collateral from this deed unless at the time the release is to be provided, none of the Secured Money is owing (whether actually, contingently or prospectively), none of the Obligations remain to be satisfied and it is not reasonably foreseeable that there could be any Secured Money owing or Obligations to be satisfied in the future.

12. Protection and indemnity

12.1 No liability to account

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

12.2 No conflict

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

12.3 Indemnity

The Grantor will on demand indemnify and keep the Secured Party indemnified in respect of all Costs and Taxes incurred by the Secured Party or any Receiver:

- (a) in the exercise, attempted exercise or non-exercise of any Power, including those resulting from any mistake, oversight, error of judgment or want of prudence on the

part of the Secured Party or any Receiver, unless the same is due to its own gross negligence, fraud or wilful misconduct;

- (b) as a consequence of the occurrence or subsistence of any Event of Default;
- (c) in respect of any act or omission for which the Secured Party or any Receiver is exonerated by this deed; and
- (d) by reason of the Secured Party redeeming or taking a transfer of any Encumbrance ranking in priority to or pari passu with this deed,

unless such Costs or Taxes arise from the wilful default, fraud or gross negligence of the Secured Party or Receiver, and the Grantor will defend all actions, proceedings, claims or demands brought by any person in relation to any matter the subject of this indemnity.

12.4 Protection of persons dealing with the Secured Party or Receiver

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

- (a) bound to inquire:
 - (i) whether the Secured Party or the relevant Receiver or Delegate has the right to dispose of any money or asset;
 - (ii) whether any Event of Default has occurred or is subsisting;
 - (iii) whether any of the Secured Money is owing or payable;
 - (iv) whether the relevant Receiver or Delegate has been properly appointed;
 - (v) as to the propriety or regularity of the exercise or purported exercise of any Power; or
 - (vi) as to any other matter or thing;
- (b) affected by actual or constructive notice that any transaction, document or other dealing is unnecessary or improper; or
- (c) concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication,

and:

- (i) in the case of any person paying or handing over any money or asset, that person will be discharged from any further liability to pay or hand over that money or asset; and
- (ii) the irregular, improper or unnecessary exercise of any Power and any other dealing of any nature with the Secured Party, any Receiver or any Delegate will be, as regards the protection of any such person, deemed to be authorised by the Grantor and valid.

12.5 Waiver by Grantor

The Grantor waives in favour of the Secured Party:

- (a) all rights against the Secured Party and any other person, estate or assets as far as is necessary to give effect to any provision of this deed;
- (b) promptness and diligence on the part of the Secured Party; and
- (c) all rights inconsistent with the provisions of this deed.

12.6 No liability for loss

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

13. Payments**13.1 Money repayable as agreed or on demand**

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

13.2 Credit balances of other accounts

In determining the amount of the Secured Money, no credit need be allowed by the Secured Party for any credit balance in any joint or other account of the Grantor with the Secured Party, or for any other money owing by the Secured Party to the Grantor.

13.3 Payment of interest on Unpaid Sums

The Grantor will pay interest on all Unpaid Sums in accordance with any other applicable Transaction Document from the due date up to the date of actual payment.

13.4 No set-off or counterclaim

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

13.5 Merger

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

13.6 No deduction for Taxes

All payments of Secured Money by the Grantor under the Transaction Documents will be without deduction or withholding for any present or future Taxes unless the Grantor is compelled by law to deduct or withhold the same in which case the Grantor will, on demand by the Secured Party, pay to the Secured Party any additional amounts necessary to ensure that the Secured Party receives (after all deductions and withholdings for Taxes other than Excluded Taxes) a net amount equal to the full amount which it would have been entitled to

receive and retain had the deduction or withholding not been made or had the Secured Party not been obliged to pay Taxes (other than Excluded Taxes) in respect of the payment.

14. Expenses, stamp duties and GST

14.1 Expenses

Subject to clause 12.3 (*Indemnity*) each Party must pay its own costs in relation to the preparation, negotiation and execution of this deed and the documents and transactions contemplated by this deed.

14.2 Stamp duties

The Grantor:

- (a) must promptly pay all stamp duty, transaction, registration and similar Taxes, including fines and penalties which may be payable to, or required to be paid by, any appropriate Government Authority or determined to be payable in connection with the execution, delivery, performance or enforcement of this deed or any payment, receipt or other transaction contemplated by this deed; and
- (b) indemnifies the Secured Party against any loss or liability incurred or suffered by it as a result of the delay or failure by the Grantor to pay any Taxes as required in accordance with clause 14.2(a).

14.3 GST

- (a) Any reimbursement required to be made by the Grantor under this deed for a Cost or other amount paid or incurred by the Secured Party will be limited to the total Cost or other amount less the amount of any input tax credit to which the Secured Party is entitled for the acquisition to which the Cost or other amount relates.
- (b) If GST is payable in respect of any supply made by or through the Secured Party under, pursuant to, or in connection with this deed (**GST Liability**), then:
 - (i) where consideration is provided by the Grantor in relation to that supply, the Grantor will pay an additional amount to the Secured Party equal to the full amount of the GST Liability; and
 - (ii) except where clause 14.3(b)(i) applies, the Grantor will indemnify and keep the Secured Party indemnified for the full amount of the GST Liability.

The Secured Party will provide to the Grantor a tax invoice complying with the relevant law relating to any payment made to it in accordance with this clause 14.3(b).

15. Governing law and jurisdiction

15.1 Governing law

This deed is governed by the law applying in New South Wales.

15.2 Jurisdiction

The Grantor irrevocably:

- (a) submits to the nonexclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 15.2(a).

16. Confidentiality

- (a) Subject to clause 16(b), if the Grantor is a debtor as defined in the PPSA, the parties agree to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and not to disclose that information to anyone.
- (b) Clause 16(a) does not apply to any disclosure of information or documents:
 - (i) in any proceeding arising out of or in connection with this deed to the extent that the disclosure is deemed by the disclosing party necessary to protect its interests;
 - (ii) where the information is in the public domain other than as a result of a breach by that disclosing party of this clause 16;
 - (iii) if required to do so under a binding order of any Government Authority or any procedure for discovery in any proceedings;
 - (iv) if the disclosing party reasonably believes it is required to do so by any law or stock exchange (except that this clause does not permit the Secured Party to disclose any information of the kind referred to in section 275(1) of the PPSA, to the extent that disclosure can be resisted under subsection 275(6) of the PPSA);
 - (v) otherwise as required or permitted by any Transaction Document;
 - (vi) to a disclosing party's Related Bodies Corporate, its legal advisors and its consultants as long as it advises them of the confidential nature of the information or documents or that nature is clear from the circumstances of the disclosure;
 - (vii) by the Secured Party to a proposed assignee or transferee of any rights or obligations under any Transaction Document or to any sub-participant or other person with whom any other transaction may be entered into under which payments may be made by reference to any Transaction Document or the Grantor;
 - (viii) by the Secured Party with the Grantor's prior written consent;
 - (ix) by the Grantor with the Secured Party's prior written consent.

Each party authorises disclosures made by the other party in accordance with clause 16(b)(i) to 16(b)(vii).

17. Notices

17.1 How notice to be given

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

- (a) must be given to a party;
 - (i) using one of the following methods (and no other method) namely, hand delivery, courier service, prepaid express post or email; and
 - (ii) using the address or other details for the parties set out below (or as otherwise notified by a party to the other party and the Secured Party) from time to time;

Grantor

Address: 6/59 Oxford Street, Bulimba, Queensland, 4171
 Email: brendon.ansell@velocitypropertygroup.com.au
 For the attention of: Brendan Ansell

Secured Party

Address: Suite 804, Level 8, 56 Pitt Street, Sydney NSW 2000
 Email: James.Storey@360capital.com.au
 (copy to: manderson@claytonutz.com)
 For the attention of: James Storey (copy to: Matt Anderson)

- (b) must be in legible writing and in English;
- (c) (in the case of communications other than email) must be signed by the sending party or on the sender's behalf by a director, company secretary, attorney or authorised agent of the sender; and
- (d) (in the case of email) must:
 - (i) state the name of the sending party or a person duly authorised by the sending party and state that the email is a communication under or in connection with this deed; and
 - (ii) if the email contains attachments, ensure the attachments are in PDF or other non-modifiable format the receiving party can open, view and download at no additional cost,

and communications sent by email are taken to be signed by the named sender.

17.2 When notice is taken to be received

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

- (a) (in the case of delivery by hand or courier service) on delivery;
- (b) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;

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

provided that:

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

18. Miscellaneous

18.1 Certificate of Secured Party

A certificate or determination in writing signed by the Secured Party or a director, company secretary or attorney of the Secured Party certifying an exchange rate, a rate of interest or an amount payable by the Grantor under any Transaction Document is sufficient evidence of the matters to which it relates.

18.2 Further acts and documents

The Grantor will, and will use its reasonable endeavours (without being required to do anything that might result in a financial or commercial disadvantage to it) to procure that all persons having or claiming any estate or interest in the Collateral from time to time after the date of this deed will, on reasonable demand by the Secured Party (and at the entire cost and expense of the Grantor) perform all acts and execute and deliver all further documents as the Secured Party provided that the Grantor's rights under the Transaction Documents would not be prejudiced, acting reasonably, requires:

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

18.3 Severance

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

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

18.4 Powers cumulative

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

18.5 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, any Power does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other Power.
- (b) A waiver or consent given by the Secured Party under this deed is only effective and binding on the Secured Party if it is given or confirmed in writing by the Secured Party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

18.6 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion, expiration or release of this deed.
- (b) The Grantor must pay on demand any amount it must pay under an indemnity in this deed.

18.7 Time of essence

Time is of the essence in respect of the Grantor's obligations under this deed.

18.8 Binding on each signatory

This deed binds and is enforceable against the Grantor despite:

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

18.9 Counterparts

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

18.10 Registration

The Secured Party may register this deed, or any financing statement or financing change statement relating to this deed, in the manner prescribed by law to ensure the full efficacy of this deed as an Encumbrance to the Secured Party in all relevant jurisdictions.

18.11 Assignment

- (a)
 - (i) The Secured Party may at any time assign or otherwise transfer all or any part of its rights under this deed and may disclose to a proposed assignee or transferee any information in the Secured Party's possession relating to the Grantor.
 - (ii) If the Secured Party assigns or otherwise transfers all or any part of its rights under this deed as permitted in accordance with this clause 18.11(a) the Grantor may not claim against any assignee or transferee any right of set-off or any other rights the Grantor has against the assigning or transferring Secured Party.
- (b) The Grantor cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of the Secured Party.

18.12 No merger

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

18.13 Blanks

The Grantor authorises the Secured Party to complete any blanks in this deed or any document, of any nature, entered into or executed by the Grantor in connection with this deed.

Schedule 1 - Serial numbered goods or intangible property (if any)**Goods****Motor vehicle:**

Vehicle identification number (VIN)	[]
If no VIN, chassis number	[]
If no chassis number, manufacturer's number	[]

Watercraft:

Official number	[]
If none, the hull identification number	[]
If an outboard motor, manufacturer's number	[]

Aircraft:

For aircraft engine, airframe or helicopter:

Manufacturer's serial number	[]
Manufacturer's name	[]
Manufacturer's generic model description	[]

Goods:

For small aircraft: nationality and registration marks assigned to it under the Chicago Convention	[]
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Intangible property

Trade mark:

IP Australia trade mark number []
If none, the trademark application number issued by IP Australia []

Patent:

IP Australia patent number []
If none, the patent application number issued by IP Australia []
If no patent number or patent application number a PCT number []
If none, the design application number issued by IP Australia []

Plant breeder's right:

IP Australia plant breeder's right number []
If none, the plant breeder's right application number issued by IP Australia []
Licence over a Trade Mark, Patent, Design or Plant Breeder's right (use serial number of the right for which the licence is given) []

Executed as a deed

Executed by Velocity Property Group Limited
ACN 605 935 153 in accordance with section 127
of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director

Executed by 360 Capital FM Limited ACN 090
664 396 as responsible entity for 360 Capital
Total Return Active Fund in accordance with
section 127 of the *Corporations Act 2001* (Cth):



Signature of director

Tony Pitt

Full name of director

Signature of company secretary/director

Full name of company secretary/director



Signature of company secretary/director

Glenn Butterworth

Full name of company secretary/director

