

## Financier's Consent Deed

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**Property:** The land comprised in folio identifier(s) **##insert folio identifiers]**

**Landcom (trading as UrbanGrowth NSW)**  
ABN 79 268 260 688

**##Landowner name**  
**ACN ##**

**##Financier name**  
**ACN ##**

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## KEY DETAILS

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**1 Date**

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**2 Parties**

**UrbanGrowth**

Name Landcom (trading as UrbanGrowth NSW)  
ABN 79 268 260 688  
Address Level 14, 60 Station Street Parramatta, NSW 2150  
Attention Senior Legal Counsel

**Landowner**

Name ##Landowner name(s)  
Address ##Address  
Attention ##Attention  
Fax ##Fax  
Email ##Email

**Financier**

Name ##Financier name  
Address ##Address  
Attention ##Attention  
Fax ##Fax  
Email ##Email

**3 Land**

The whole of the land comprised in folio identifier(s)  
##insert folio identifier details

**4 VCA**

The voluntary contributions agreement in respect of the  
Land dated 2017  
between UrbanGrowth and the Landowner, a copy of which  
is attached to this deed in Annexure A.

**5 Security**

*Delete inapplicable provision*

**Registered mortgage**

Registered mortgage [##insert dealing number] in respect of the Land between the Landowner and the Financier

**Unregistered mortgage**

Executed but unregistered mortgage dated in respect of the Land between the Landowner and the Financier

**Registered PPSA security interest**

Agreement in respect of Collateral in, on or about the Land, registered on the Personal Property Securities Register as security interest number

**6 Compensation Amount**

*Delete inapplicable provision*

**Compensation agreed**

\$

**Compensation not agreed**

The aggregate of:

- (a) the principal and interest required to be paid by the Landowner to the Financier pursuant to the Security up to and including the Compulsory Acquisition Date to discharge the Security in full; and
- (b) the Financier's reasonable legal, administrative and financial costs in connection with the discharge of or acquisition of the Security, up to a maximum of \$2,000 (including GST).

## BACKGROUND

- A UrbanGrowth is established as a corporation under section 5(1) of the Landcom Corporation Act 2001 (NSW) with the corporate name of Landcom and trades under the name of UrbanGrowth NSW.
- B The Landowner is the registered owner of the Land.
- C The Financier has or will have an interest in the [##Land/the Collateral/the Land and the Collateral] pursuant to the Security.
- D UrbanGrowth and the Landowner are parties to the VCA. The VCA requires that the Landowner must procure the Financier to enter into this deed.
- E In consideration of UrbanGrowth performing the works the subject of the VCA and the Development Plan, the Financier has agreed to enter into this deed.
- F This deed is an agreement between UrbanGrowth and the Financier under section 30 of the Just Terms Act.

## 1 Interpretation

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### 1.1 Definitions

In this deed, the following words have the following meanings, unless the context requires otherwise.

**Business Day** means a day that is not a Saturday, Sunday, bank holiday or public holiday in the state of New South Wales.

**Collateral** means all of the:

- (a) goods, inventory, machinery, equipment, furniture and fixtures and signage (if any); and
- (b) additions, substitutions, replacements and improvements to, the items described in paragraph (a),

owned by the Landowner or in the Landowner's possession and in respect of which the Landowner has granted a Security Interest to the Financier pursuant to the Security or another agreement in writing.

**Compensation Amount** means the sum specified in Item 6 or, if no sum is specified, the sum determined in accordance with the provisions of Item 6.

**Compulsory Acquisition Date** means, if the Land or the Security is compulsorily acquired by UrbanGrowth, the date on which UrbanGrowth causes an acquisition notice in respect of that acquisition to be published in the New South Wales Government Gazette.

**Controller** includes the following persons, and any of their agents:

- (a) a receiver, or receiver and manager;
- (b) an Administrator (as that term is defined in the Corporations Act 2001 (Cth));

- (c) a liquidator;
- (d) a trustee in bankruptcy; or
- (e) anyone else who (whether or not as agent for the Financier) is in possession, or has control, of the property of the Landowner (including the Land) for the purpose of enforcing a Security Interest.

**Cure Period** means the period commencing on the date UrbanGrowth provides the Financier with any UG Default Notice and ending the later of:

- (a) 5 Business Days after that date; or
- (b) the time specified for compliance by the Landowner with the UG Default Notice.

**Development Plan** has the meaning given to that term in the VCA.

**EP&A Act** means the Environmental Planning and Assessment Act 1979 (NSW).

**Financier's Associate** means any employee, agent, officer, contractor, licensee or invitee of the Financier or any of the Financier's related body corporates.

**Financier's Default Notice** means a notice from the Financier to the Landowner that the Landowner is in default under the Security or any agreements collateral to the Security.

**GST Law** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), and terms used which are not defined in this deed, but which are defined in the GST Law, have the meanings given in the GST Law.

**Item** means a numbered item in the Key Details.

**Just Terms Act** means the Land Acquisition (Just Terms Compensation) Act 1991 (NSW).

**Key Details** means the section of this deed entitled "Key Details".

**Land** means the land described in Item 3 and includes all fittings, fixtures and improvements in, on or under that land.

**Loss** includes, in each case whether of a direct, indirect or consequential nature:

- (a) any liability, damage, cost (including reasonable legal costs on a solicitor and own client basis) and other outgoing, and any diminution in value of, or deficiency of any kind in, anything; and
- (b) to the extent not covered in paragraph (a), any loss of profits, sales, turnover, reputation (or damage to it), production, anticipated savings, goodwill, business opportunities, customers, software or data, or loss of use of any software or data, and loss in connection with any other contract.

**LPI** means Land and Property Information New South Wales.

**PAN** means a proposed acquisition notice under the Just Terms Act.

**Security** means the security described in Item 5.

**Security Interest** means an interest under any or all of:

- (a) a charge, mortgage, lien or pledge; or
- (b) a security interest within the meaning of the Personal Property Securities Act 2009 (Cth).

**Step In** means that the Financier:

- (a) appoints a Controller to the Landowner in respect of the Land or the Collateral, or any part of the Land or the Collateral;
- (b) takes possession of the Land or any part of it under or in connection with the Security;
- (c) if the Landowner is a corporation, appoints a Controller to the issued shares (or part of them) of the Landowner; or
- (d) otherwise exercises a right or power under the Security or any collateral agreement to effect control or possession of any part of the Land, any part of the Collateral or the assets of the Landowner.

**Subdivision Works** means the works to be carried out to the Land by or behalf of UrbanGrowth pursuant to the VCA and the Development Plan.

**UG Default Notice** means a notice from UrbanGrowth to the Landowner that the Landowner is in default under the VCA.

**UrbanGrowth's Associates** means any employee, agent, officer, contractor, licensee or invitee of UrbanGrowth.

**VCA** means the agreement described in Item 4.

## 1.2 Interpretation

The following apply in the interpretation of this deed, unless the context requires otherwise.

- (a) A reference to this agreement, this deed, this document or a similar term means either the agreement set out in this deed or the deed itself, as the context requires.
- (b) A reference to this deed or any other document is a reference to this document or that other document as varied, novated or replaced in any way.
- (c) A reference to a law includes any law, principle of equity, statute and official directive of any governmental authority.
- (d) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (e) A reference to the singular includes the plural number and vice versa.



- (f) A reference to a party means a person who is named as a party to this deed.
- (g) A reference to a person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (h) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this deed, their substitutes and assigns.
- (i) An agreement on the part of, or in favour of, 2 or more persons binds or is for the benefit of them jointly and severally.
- (j) A reference to includes means includes but without limitation.
- (k) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (l) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and executing a document.
- (m) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this deed.
- (n) A reference to dollars or \$ is to Australian currency.
- (o) A heading is for reference only. It does not affect the meaning or interpretation of this deed.
- (p) If there is any inconsistency between a provision of the deed and a provision of the VCA, the provision in the VCA prevails.

## **2 Acknowledgements, consent and registration of VCA**

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### **2.1 Acknowledgements**

The Financier acknowledges that:

- (a) it has been provided with a copy of the VCA and the Development Plan and is aware of the terms and conditions of the VCA and the Development Plan;
- (b) UrbanGrowth has an interest in the Land pursuant to the VCA;
- (c) the Landowner has agreed to or may agree to the compulsory acquisition of the whole or part of the Land (or any interest in it) by UrbanGrowth pursuant to the VCA and the Development Plan; and
- (d) UrbanGrowth has rights, powers and privileges conferred on it by the EP&A Act, the Development Plan, the VCA and any other law which confers power on UrbanGrowth as a relevant authority under Schedule 5 of the EP&A Act, including the right to carry out the Subdivision Works to the Land and to compulsorily acquire the whole of or part of the Land.

## 2.2 Consent

For the purposes of the Security, the Financier consents to:

- (a) the VCA and the Landowner's entry into the VCA;
- (b) the registration of any plan of subdivision or plan of consolidation prepared by or on behalf of UrbanGrowth under or in connection with the Development Plan; and
- (c) the exercise of UrbanGrowth's rights, powers and privileges, and the performance by UrbanGrowth of all of its obligations, under or in connection with the VCA or the Development Plan.

## 2.3 Registration of the VCA and creation of easements, etc

The Financier must promptly when asked to do so by UrbanGrowth or the Landowner:

- (a) sign all consents, approvals and documents reasonably required by UrbanGrowth or the Landowner to facilitate:
  - (i) the registration of the VCA at LPI;
  - (ii) the creation and registration of any easement, covenant or other interest in the Land required to be granted to UrbanGrowth or any governmental authority by the Landowner; and
  - (iii) the registration at LPI of any plan of subdivision or plan of consolidation prepared by or on behalf of UrbanGrowth under or in connection with the Development Plan.
- (b) for the purposes of paragraph (a), produce the certificates of title to the Land at LPI and advise UrbanGrowth of the relevant title production details.

## 3 Financier's rights subject to deed

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The Financier:

- (a) agrees that its rights under the Security are subject to this deed; and
- (b) must exercise its rights under the Security subject to and in accordance with this deed.

## 4 Notice of proposed enforcement action

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### 4.1 Financier's Default Notice

The Financier must:

- (a) give UrbanGrowth a copy of any Financier's Default Notice at the same time as it is given to the Landowner, or as soon as reasonably practicable (but in any event, within not less than 2 Business Days of the date of the Financier's Default Notice);

- (b) notify UrbanGrowth at least 5 Business Days before it exercises any of its rights under the Security which affect the Land or which may affect the Landowner's ability to perform its obligations under the VCA;
- (c) notify UrbanGrowth within 3 Business Days if the Financier enters into possession of the Land (or any part of it) or procures that a Controller enter into possession of the Land (or any part of it); and
- (d) not take any action to exercise any of its rights under the Security (including its power of sale) or procure that a Controller exercises any of those rights unless the Financier has complied with all of its obligations under this clause 4.1.

#### **4.2 UG Default Notice**

UrbanGrowth must give a copy of any:

- (a) UG Default Notice; or
- (b) PAN,

to the Financier at the same time as it is given to the Landowner, or as soon as reasonably practicable (but in any event, within 2 Business Days of the date of the relevant notice).

### **5 Financier may cure Landowner default**

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The Financier may rectify a default by the Landowner under the VCA within the Cure Period and if the Financier does so, that default by the Landowner is taken to have been rectified as between the Landowner and UrbanGrowth.

### **6 Exercise of Financier's Security rights**

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#### **6.1 Exercise of Financier's rights subject to VCA**

If the Financier exercises its right to Step In, the Financier becomes bound by the VCA as if the Financier was the Landowner and must or must procure the Controller to:

- (a) observe the terms of the VCA as if the Financier or the Controller (as the case may be) were the landowner under the VCA for so long as the Financier or the Controller (as the case may be) has Stepped In, including:
  - (i) paying any contributions required to be paid by the Landowner under the VCA but which have not been paid when the Financier Steps In or during the period of the Step in; and
  - (ii) providing vacant possession of the whole or part of the Land to UrbanGrowth on the date and terms specified in the VCA;
- (b) comply with the requirements of any notice (including a contributions notice issued under the VCA or the Development Plan) issued to the Landowner, the Financier or the Controller by UrbanGrowth;
- (c) not exercise any power or remedy under the Security which is inconsistent with this deed or UrbanGrowth's rights under the VCA;

- (d) exercise any power of sale of the Land on the basis that any purchaser of the Land will be bound by the VCA pursuant to clause 17(4) of Schedule 5 to the EP&A Act;
- (e) comply with UrbanGrowth's reasonable directions in relation to:
  - (i) the inspection of the Land by the Financier, the Controller and any prospective purchasers; and
  - (ii) the removal of any Collateral by the Financier or the Controller;
- (f) promptly at the Financier's cost repair any damage to the Land which:
  - (i) the Financier or the Controller causes or contributes to during the removal of any Collateral; or
  - (ii) the Financier or the Controller or any prospective purchasers cause or contribute to in the inspection of the Land;
- (g) use reasonable endeavours to minimise disturbance to other owners, occupants and invitees of land in the vicinity of the Land;
- (h) permit UrbanGrowth to access the Land at all times with or without plant, equipment, machinery or equipment to exercise any rights or to perform any obligations of UrbanGrowth under the VCA or the Development Plan; and
- (i) not hinder, obstruct, impede or delay UrbanGrowth from exercising a right or performing an obligation under the VCA or the Development Plan.

## 6.2 **Make good**

If the Financier removes any Collateral affixed to the Land, the Financier must reinstate the Land to the condition the Land was in before the affixation.

## 7 **Indemnities and releases**

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- (a) The Financier indemnifies UrbanGrowth from and against all Loss suffered or incurred by UrbanGrowth which is caused or contributed to by anything done or required to be done by the Financier under this deed, or which was required to be done by the Financier but has not been done or has not been done properly.
- (b) The Financier indemnifies UrbanGrowth from and against any claims, liabilities, actions or demands for any Loss suffered or incurred by UrbanGrowth because the Financier:
  - (i) improperly removes the Collateral;
  - (ii) enters the Land without authority;
  - (iii) sells the Land or any part of it in breach of this deed;
  - (iv) causes damage to the Land or the Collateral; or
  - (v) breaches this deed.

- (c) The Financier releases UrbanGrowth from any claim, action or demand which the Financier may have or any Loss which the Financier suffers or incurs in connection with:
  - (i) any damage to the Land or any Collateral caused or contributed to by UrbanGrowth during the performance of the VCA and the Development Plan by UrbanGrowth, including the performance of any Subdivision Works; and
  - (ii) the demolition, removal, storage or sale of any Collateral by UrbanGrowth to the extent which that demolition, removal, storage or sale was authorised by the VCA, the Development Plan, the EP&A Act or any other law.

## **8 Costs**

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The Landowner must pay to UrbanGrowth when demanded:

- (a) UrbanGrowth reasonable costs (including reasonable legal costs and expenses) in connection with the preparation, negotiation and execution of this deed and any transactions or documents required to be entered into by UrbanGrowth pursuant to its terms;
- (b) any stamp duty payable on this deed;
- (c) all of UrbanGrowth's costs and expenses (including legal costs and expenses on a full indemnity basis) arising from any breach or non-observance by the Financier or the Landowner of any provision of this deed; and
- (d) UrbanGrowth's reasonable costs and expenses (including reasonable legal costs and expenses) of any amendment to this deed, or any consent, approval, waiver, release or discharge given under or in connection with this deed and any transactions or documents contemplated by its terms.

## **9 Notices**

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### **9.1 Requirements**

Any notice given in connection with this deed must be in legible writing and must be addressed to a party and either hand delivered to, or sent by post to the relevant address, faxed to the relevant fax number or emailed to the relevant email address, each as set out for that party in the Key Details section of this deed.

### **9.2 When given**

A notice is taken to have been given:

- (a) in the case of being hand delivered, on the date on which it is delivered;
- (b) in the case of being sent by post, on the third (seventh if sent to an address in another country) day after the date of posting;
- (c) in the case of being sent by fax, at the time of dispatch as confirmed by a transmission report by the sending machine; and

- (d) in the case of delivery by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent (which, for the avoidance of doubt, excludes "out of office" messages).

### 9.3 Notices while Financier in possession

If the Financier exercises its right to Step In, any notice (other than a PAN) required to be given to the Landowner by UrbanGrowth under or in connection with the VCA may be given by UrbanGrowth to the Financier only and need not be given to the Landowner.

## 10 Section 30 agreement

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If UrbanGrowth compulsorily acquires the Financier's interest in the Land arising from the Security:

- (a) this deed is an agreement under section 30 of the Just Terms Act between UrbanGrowth and the Financier as to the compulsory acquisition of the Financier's interest in the Security;
- (b) the compensation payable to the Financier by UrbanGrowth in connection with the acquisition is the Compensation Amount;
- (c) the Financier may not claim any compensation from UrbanGrowth other than the Compensation Amount;
- (d) if requested to do so by UrbanGrowth NSW, the Financier must discharge or release any Security it holds in respect of the Land;
- (e) the Financier releases unconditionally and forever all claims and causes of action whether past, present or future which the Financier has or asserts to have or could, would or might but for this release have against UrbanGrowth under the Just Terms Act, this deed or otherwise for or in respect of the compulsory acquisition; and
- (f) the Financier indemnifies UrbanGrowth from and against any and all claims, demands, actions, liabilities, losses, damages and costs that may be made against UrbanGrowth or that UrbanGrowth may suffer or incur in respect of the compulsory acquisition of the Financier's interest in the Security.

## 11 General

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### 11.1 No extension of rights

Nothing in this deed:

- (a) authorises the Financier to do anything which the Landowner may not do;
- (b) grants the Financier rights greater than those of the Landowner; or
- (c) waives the requirement for the Financier to obtain any consent or to do anything for which the Landowner is required to obtain consent,

under the VCA.

## 11.2 **GST**

Unless stated otherwise, all consideration provided under this deed is exclusive of GST. If GST is payable by the party making the supply (**supplier**), the recipient must, upon receipt of a tax invoice from the supplier, pay the supplier an amount equal to the GST payable on that supply.

## 11.3 **Assignment**

- (a) Neither the Landowner or the Financier may assign this deed or any part of it without first obtaining the written consent of UrbanGrowth, which must not be unreasonably withheld or delayed.
- (b) An assignment made by the Financier or the Landowner without the consent of UrbanGrowth is a breach of this deed and is of no effect.
- (c) UrbanGrowth may, without limiting the generality of clause 11.3(a), require as a condition of its consent to any assignment of this deed by the Financier that any new financier or other person taking a Security Interest in the Land or in any fittings, fixtures, goods or chattels in, on or about the Land enters into a deed on the terms reasonably required by UrbanGrowth, pursuant to which the new financier or other person agrees to be bound by the terms of this deed.
- (d) UrbanGrowth may assign this deed or part of it without obtaining the prior consent of the Financier or the Landowner, provided that UrbanGrowth notifies the Landowner and the Financier within a reasonable time after the assignment becomes effective.

## 11.4 **Financier's Associates**

For the purposes of establishing whether there has been a default by the Financier under this deed, anything done or not done by a Financier's Associate will be taken to have been done or not done by the Financier.

## 11.5 **UrbanGrowth's Associates**

- (a) UrbanGrowth's Associates are authorised to exercise any of UrbanGrowth's rights, or to perform any of UrbanGrowth's obligations, under or in connection with this deed.
- (b) The Landowner and the Financier must comply with a direction or requirement of UrbanGrowth's Associates as if that was a direction or requirement of UrbanGrowth.

## 11.6 **Further assurances**

Each party must do everything necessary, or reasonably required, by another party, to give effect to this deed and the transactions contemplated by this deed.

## 11.7 **No merger and survival**

A party's right or obligation which is of a continuing nature or which is not fully satisfied and discharged on completion of any transaction contemplated by this deed does not merge on completion of that transaction.

### 11.8 **Waiver**

A waiver of a right or remedy under this deed is effective only if in writing and signed by or on behalf of the party to be bound and is effective to the extent that the party giving it expressly states in writing.

### 11.9 **Continuing obligations**

- (a) Each indemnity in this deed in favour of UrbanGrowth is a continuing indemnity which survives the termination of this deed.
- (b) UrbanGrowth is not required to incur any expense or make any payment before enforcing an indemnity in this deed.

### 11.10 **Variation**

A provision of this deed or a right conferred by it may only be varied in writing signed by the parties.

### 11.11 **Counterparts and commencement**

- (a) If this deed is signed in counterparts then each counterpart is an original and together they constitute one deed.
- (b) If this deed is undated and there is no contrary intention stated, the date of this deed is the date of last execution by a party.

### 11.12 **Governing law and jurisdiction**

- (a) This deed is governed by the law in force in New South Wales.
- (b) The parties submit to the jurisdiction of the courts of New South Wales.



**EXECUTION**

Executed as a deed on \_\_\_\_\_ day of \_\_\_\_\_ 2017

**EXECUTED BY LANDCOM (TRADING AS URBANGROWTH NSW) ABN 79 268 260 688**

Signed for and on behalf of Landcom by its attorneys jointly under power of attorney dated 25 September 2015. By signing this document, each attorney certifies that they have no notice of revocation of such powers and authorities.	
Signed in the presence of:  _____	_____ Signature of attorney
Signature of witness  _____	_____ Name of attorney
Name of witness  _____	
Address of witness  _____	
Signed in the presence of:  _____	_____ Signature of attorney
Signature of witness  _____	_____ Name of attorney
Name of witness  _____	Signed for and on behalf of Landcom Power of attorney <b>Book: <u>4695</u></b> <b>No.: <u>858</u></b>
Address of witness  _____	

**EXECUTION BY FINANCIER**

**Signed, sealed and delivered** by  
by its attorney under Power of Attorney  
dated \_\_\_\_\_ Book \_\_\_\_\_ No \_\_\_\_\_  
who is personally known to me:

Signature of witness  _____	Signature of attorney  _____
Print name  _____	Print name By executing this document the attorney states that the attorney has received no notice of revocation of the Power of Attorney
Address  _____	

**EXECUTION BY LANDOWNER**

*Delete inapplicable execution provisions*

**Natural person(s)**

**Signed, sealed and delivered by**  
in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Address

**Signed, sealed and delivered by**  
in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Address

**Signed, sealed and delivered by**  
in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Address

**Corporation(s)**

**Signed, sealed and delivered by**  
by:

\_\_\_\_\_  
Signature of director/company secretary

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

**Signed, sealed and delivered by**  
by:

\_\_\_\_\_  
Signature of director/company secretary

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

**Power of attorney**

**Signed, sealed and delivered by**  
by his/her/its attorney under Power of  
Attorney dated \_\_\_\_\_ Book  
No \_\_\_\_\_ who is personally known to me:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name  
By executing this document the attorney states that  
the attorney has received no notice of revocation of  
the Power of Attorney

\_\_\_\_\_  
Address

**Signed, sealed and delivered by**  
by his/her/its attorney under Power of  
Attorney dated \_\_\_\_\_ Book  
No \_\_\_\_\_ who is personally known to me:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name  
By executing this document the attorney states that  
the attorney has received no notice of revocation of  
the Power of Attorney

\_\_\_\_\_  
Address

