



## **Deed of Company Arrangement**

**Morabuilt Pty Ltd (Administrators Appointed)**  
ACN 630 816 830

**Jonathon Sherwood Keenan and Peter Paul Krejci in their  
capacities as Joint and Several Administrators of Morabuilt Pty  
Limited (Administrators Appointed)**

**Marc Morabito and Vicki Morabito**

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**Date** **20 February 2024**

## Parties

<b>Company</b>	Morabuilt Pty Limited ACN 630 816 630
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Attention	The Director
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<b>Deed Administrator 1</b>	Jonathon Sherwood Keenan
Address	Level 26, 25 Bligh Street, Sydney, NSW 2000
Email	jkeenan@brifnsw.com.au
<b>Deed Administrator 2</b>	Peter Paul Krejci
Address	Level 26, 25 Bligh Street, Sydney, NSW 2000
Email	pkrejci@brifnsw.com.au
<b>Deed Proponents</b>	Marc Morabito and Vicki Morabito
Address	c/- Adam Cutri of Bartier Perry of Level 25, 161 Castlereagh Street, Sydney NSW 2000
Email	marc@morabuilt.com.au

## Background

- A On the Administration Date, the Administrators were appointed as joint and several administrators of the Company pursuant to a resolution of the Company in accordance with section 436A of the Corporations Act.
- B On 22 December 2023, the first meeting of creditors of the Company was held in accordance with section 436E of the Corporations Act and the appointment of the Administrators as voluntary administrators of the Company was confirmed by its creditors (**First Meeting**).
- C On 22 January 2024, the Administrators issued a report to creditors pursuant to Insolvency Practice Rules (Corporations) 2016 (**IPR**), rule 75-225 and section 439A of the Corporations Act, setting out, amongst other things, the terms of a deed of company arrangement proposed by the Deed Proponent in respect of the Company (**Deed Proposal**).
- D On 22 January 2024, the Administrators issued a report to creditors pursuant to Insolvency Practice Rules (Corporations) 2016 (**IPR**), rule 75-225 and section 439A of

the Corporations Act, setting out, amongst other things, the terms of a deed of company arrangement proposed by the Deed Proponent in respect of the Company (**Deed Proposal**).

- E A second meeting of creditors of the Company was convened pursuant to section 439A(1) of the Corporations Act and held on 31 January 2024 (**Second Meeting**).
- F At the Second Meeting, the creditors of the Company resolved pursuant to section 439C of the Corporations Act to execute a deed of company arrangement in the terms of the Deed Proposal (**Section 439C Resolution**).
- G The Company, the Deed Administrators and the Deed Proponents have agreed to execute this Deed to give effect to the section 439C Resolution.
- H The Administrators have agreed to be the Deed Administrators under this Deed.

## Operative Provisions

### 1 Definitions and interpretation

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#### 1.1 Definitions

In this Deed:

**Administration Date** means 14 December 2023.

**Administrator** means the Deed Administrators in their capacity as joint and several voluntary administrators of the Company appointed under Part 5.3A of the Corporations Act.

**Administrator's Liabilities** all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments whatsoever arising out of or in any way connected to the administration of the Company or their role as Administrators and incurred or sustained in good faith and without negligence.

**Administrator's Remuneration** any amounts which the Administrators are entitled to be indemnified out of the assets of the Company in accordance with the Corporations Act, at law or equity, including any amounts payable pursuant to ss 443A, 443B or 443BA, s443D of the Corporations Act.

**Admitted Claim** means a Claim that has been admitted to proof by the Deed Administrators under clause 8.1 of this Deed.

**Admitted Creditor** means a Creditor under an Admitted Claim.

**Admitted Priority Claim** means any Priority Claim that has been admitted to proof by the Deed Administrators under clause 8.2 of this Deed.

**ASIC** means the Australian Securities and Investments Commission.

**Business Day** means any day on which the banks in Sydney, Australia are open for business.

**Claim** means all actions, claims, suits, causes of actions, arbitrations, debts, costs, demands, verdicts and judgments at law or in equity or under any statute, whether certain or contingent, present or future, ascertained or sounding only in damages, the circumstances giving rise to which occurred, or arose, on or before the Administration Date, but does not include an Excluded Claim.

**Commencement Date** means the date that this Deed is executed by the Deed Administrators, the Deed Proponents and the Company.

**Completion** means the payment by the Deed Administrators of the Final Dividend from the Deed Fund.

**Contract** means a contract to which the Company and a Creditor are party (including as novated or assigned) but excludes an Excluded Contract.

**Contribution Amount** means the amount of \$400,000.

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

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

**Court** means the Supreme Court of New South Wales or the Federal Court of Australia.

**Creditor** means a person who has a Claim against the Company as at the Administration Date.

**Creditor Indemnity** has the meaning given to it in clause 9.1(d) of this Deed.

**Deed** means this deed of company arrangement.

**Deed Account** means a bank account in the name of the Company established for the purposes of holding funds comprising the Deed Fund.

**Deed Administrator's Liabilities** means any liabilities, debts, costs, fees, charges, disbursements and expenses of the Deed Administrators, including any statutory liabilities, incurred in connection with or arising out of:

- (a) the administration of this Deed;
- (b) the preparation, execution and performance of this Deed;
- (c) any application to set aside this Deed,

including, without limitation, all legal costs incurred by the Deed Administrators in respect of the foregoing.

**Deed Administrator's Remuneration** means the remuneration and other fees to which the Deed Administrators are lawfully entitled (under the Corporations Act, under this Deed or otherwise) by reason of the performance of their duties as Deed Administrators.

**Deed Fund** means the fund created in accordance with clause 10 of this Deed and the aggregate of the property transferred, paid or assigned into that fund during the DOCA Period, including any property of the Company accrued during the voluntary administration of the Company prior to the Commencement Date.

**Deed of Forgiveness** means the Deed of Forgiveness entered into between the Company, Marc Morabito and Vicki Morabito in respect of the Loans which forgives, on the part of Marc Morabito and Vicki Morabito, the Loans owed to them by the Company on and from the date of the Deed of Forgiveness.

**Directors** means the directors of the Company from time to time.

**Dividend** means any distribution paid by the Deed Administrators from the Deed Fund to an Admitted Creditor in respect of their Admitted Claim.

**DOCA Period** means the period from and including the Commencement Date until and including the Termination Date.

**Employee** means any eligible employee creditor within the meaning prescribed by section 9 of the Corporations Act.

**Employee Creditors** means all employee creditors (other than the accrued entitlements of Continuing Employees whose entitlements will be paid in the ordinary course of business of the Company) with Admitted Claims entitled to priority pursuant to section 556 of the Corporations Act and any subrogating Employee Creditor.

**Enforcement Process** has the meaning given to that term in the Corporations Act.

**Excluded Contract** means any contract entered into by the Company and a Creditor after the Administration Date and:

- (a) pursuant to which a Creditor has provided financing or replacement financing to the Company or the Deed Administrators; or
- (b) which was entered into otherwise than in the ordinary course of the Company's business; and
  - (i) pursuant to which a Creditor has agreed to forbear from the enforcement of its rights against the Company; or
  - (ii) which amends or otherwise regulates the terms or effect of any financing agreement or guarantee to which the Company is a party.

**Final Dividend** means the last Dividend paid by the Deed Administrators.

**GST** means the goods and services tax as imposed by the GST Law, a consumption tax, value added tax, retail turnover tax or tax of a similar nature.

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

**Insolvency Practice Rules** means the *Insolvency Practice Rules (Corporations) 2016* (Cth).

**Insolvency Practice Schedule** means Schedule 2 (the Insolvency Practice Schedule) to the Corporations Act.

**Insured Claim** means a Claim that a Creditor has against the Company that would have been entitled to priority in a liquidation of the Company under section 562 of the Corporations Act, where:

- (a) the Claim is not an Excluded Claim;
- (b) the Company is insured against the Claim under a contract of insurance (not being a contract of reinsurance) entered into before the Administration Date; and
- (c) an amount in respect of that Claim would be payable by the insurer to the Company under the contract of insurance,

but only to the extent of such part of the Claim as would be discharged by payment from the insurer and provided that the Creditor complies with the requirements of clause 9 in connection with such a Claim.

**Loan Holders** means Marc Morabito and Vicki Morabito.

**Meeting** means the meeting referred to in paragraph E of the Background.

**Member** has the meaning given to that term in section 9 of the Corporations Act.

**Officer** has the meaning given to that term in section 9 of the Corporations Act but excludes the Deed Administrators.

**Owner** means any person who is the legal or beneficial owner of a Property which is in the possession of the Company at the date of execution of this Deed. It includes a person with a retention of title claim over the Property that is in the possession of the Company which is established to the satisfaction of the Deed Administrators.

**PPSA Security Interest** has the same meaning as 'security interest' under the Corporations Act.

**Prescribed Provisions** means the provisions prescribed by s444A(5) of the Corporations Act as set out in schedule 8A of the Corporations Regulations.

**Priority Claim** means Claims against the Company that would be payable in priority in a liquidation of the Company pursuant to ss 556, 560 or 561 of the Corporations Act had a winding up order made under the Corporations Act in respect of the Company on the Administration Date.

**Property** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a chose in action as at Commencement Date.

**Report to Creditors** means the report to creditors of the Company provided by the Administrators pursuant to rule 75-225(3) of the Insolvency Practice Rules.

**Section 439C Resolution** means the resolution passed at the Meeting.

**Secured Creditor** means any Creditor to the extent that their Claim is secured by a Security Interest over or in the Property of the Company and has been admitted to proof by the Deed Administrators.

**Secured Property** means Property subject to a Security Interest.

**Security Interest** means any valid security interest, PPSA Security Interest, hypothecation, lien, mortgage, pledge, charge, encumbrance or any other type of security which secures the payment of any liability.

**Superannuation Contribution** has the meaning given that term in the Corporations Act.

**Superannuation Contribution Amount** means the Superannuation Contribution owed as at the Administration Date (pre-appointment).

**Superannuation Guarantee Charge** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Termination** means the termination of this Deed as determined in accordance with clause 18.1 of this Deed.

**Termination Date** means the date on which this Deed terminates as determined in accordance with clause 18.1 of this Deed.

## 1.2 Interpretation

In this document, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) any schedule or annexure attached to this document forms part of it;
- (e) a reference to a party includes its legal personal representatives, successors and permitted assigns;
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and separately;
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it;



- (j) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar inclusive expressions;
- (k) a reference to this document or any other document means this document and includes any variation or replacement of this document;
- (l) if the date on or by which any act must be done under this deed is not a Business Day, the act must be done on or by the next Business Day;
- (m) if a word or phrase is defined its other grammatical forms have corresponding meanings; and
- (n) \$ or dollars is a reference to Australian currency.

## **2 Commencement and purpose**

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- 2.1 This Deed commences on the Commencement Date and continues until the Termination Date.
- 2.2 The purpose and objects of this Deed are to:
  - (a) provide Creditors a greater and more timely return than would result from an immediate winding up of the Company;
  - (b) establish the Deed Fund in order to pay dividends (if any) to Admitted Creditors; and
  - (c) facilitate the efficient distribution of the Deed Fund.

## **3 Conditions Precedent**

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This Deed is subject to, and conditional upon, the following condition being met on or before the Commencement Date:

- (a) Each of the Loan Holders must execute a Deed of Forgiveness with the Company and the Administrators.

## **4 Moratorium**

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Subject to clauses 5 and 6 of this Deed, there will be a moratorium in favour of the Company for the DOCA Period for all Claims, and during that moratorium, no Creditor, in relation to its Claim, may:

- (a) **(winding up)** make, concur in, or proceed with any application for an order to wind up the Company;
- (b) **(institute proceedings)** without the leave of the Court, and then, only in accordance with terms as the Court imposes, begin, revive or proceed with any

action, suit, mediation or proceeding against the Company or in relation to any of the Company's Property or Property used or occupied by, or in the possession of, the Company;

- (c) **(enforcement process)** without the leave of the Court, and then, only in accordance with terms as the Court imposes, begin or proceed with any Enforcement Process in relation to any of the Company's Property or Property used or occupied by, or in the possession of, the Company;
- (d) **(arbitration)** commence, continue or take any additional step in any arbitration against the Company or to which the Company is a party in relation to any matter arising or occurring before the Administration Date;
- (e) **(set off)** exercise any right of set off or defence, cross-claim or cross action to which the Creditor would not have been entitled had the Company been wound up on the Administration Date;
- (f) **(enforcement of debt)** take any action whatsoever to seek to recover any part of its Claim from the Company; or
- (g) otherwise enforce any right it may have or acquire against the Company.

## **5 Secured Creditors**

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### **5.1 Moratorium on Secured Creditors in favour of Section 439C Resolution**

This Deed does not prevent a Secured Creditor from realising or otherwise dealing with their Security Interest unless:

- (a) that Secured Creditor voted in favour of the Section 439C Resolution;
- (a) the debt subject to the Security Interest has been paid in full; or
- (b) the Security Interest granted by the Company has vested in the Company.

### **5.2 Restrictions cease to apply**

If a Secured Creditor voted in favour of the Section 439C Resolution, the restrictions in clause 5.1 of this Deed will cease to apply on the Termination Date for any reason prior to Completion.

## **6 Owners of Property in possession of the Company**

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6.1 This Deed does not affect the rights of an Owner to terminate an agreement or take possession of or otherwise recover the Property the subject of an agreement (including, any event of default or breach relating to the appointment of Administrators or Deed Administrators) following an event of default by the Company of that agreement, unless that Owner voted in favour of the Section 439C Resolution.

6.2 If an Owner voted in favour of the Section 439C Resolution, the restriction in clause 6.1 will apply only if:

- (a) the breach or default occurred or may occur on or prior to the Commencement Date or during the DOCA Period; and/or
- (b) the Owner is a party to a Continuing Lease.

## **7 Control of the Company**

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### **7.1 Managerial control**

During the DOCA Period control of the business operations of the Company will return to the Directors.

### **7.2 Co-operation with Deed Administrators**

During the DOCA Period:

- (a) the Directors and Officers of the Company must:
  - (i) co-operate with and assist the Deed Administrators in the performance by the Deed Administrators of their obligations under this Deed;
  - (ii) provide all reasonable assistance to the Deed Administrators, at no cost to the Company, to assist with the collection of all debtors of the Company;
  - (iii) carry out and perform such operations, functions, powers and other matters as may be delegated to them by the Deed Administrators; and
  - (iv) perform their obligations under this Deed.

### **7.3 Obligations of Company and Directors**

During the DOCA Period:

- (a) The Deed Administrators must ensure that all documents in relation to the business of the Company or the Company itself bear the notation 'Subject to deed of company arrangement';
- (b) the Company must:
  - (i) Comply with the all lodgement requirements of the Australian Taxation Office and, to the extent applicable, any state taxation authority (such as the Office of State Revenue New South Wales); and
  - (ii) pay to the Australian Taxation Office and, to the extent applicable, any state taxation authority (such as the Office of State Revenue New South Wales), the amounts that it owes under all relevant tax legislation;
  - (iii) pay any amount to the Australian Taxation Office and, to the extent applicable, any state taxation authority (such as the Office of State Revenue New South Wales), on or before the due date for payment of that amount; and

- (iv) not incur any new debts or liabilities.
- (c) the Directors:
  - (i) covenant to provide the Deed Administrators with all assistance that the Deed Administrators may reasonably require with respect to the affairs of the Company and this Deed, including without limitation notifying the Deed Administrators in writing of any event that is likely to have a possible effect on the ability of the Company to pay any moneys to the Deed Administrators under this Deed;
  - (ii) acknowledge that the Deed Administrators are at liberty, at any time during the course of this Deed, to inspect the records of the Company and enter upon any premises occupied or used by the Company or where such records may be kept;
  - (iii) covenant to provide the Deed Administrators with a copy of the Company's financial records on a quarterly basis, and otherwise as required by the Deed Administrators;
  - (iv) preserve all insurance claims which may otherwise result in a further return to creditors; and
  - (v) use their best endeavours to ensure that the Company remains solvent and compliant in terms of its reporting obligations and regulatory requirements.
- (d) the Directors must immediately notify the Deed Administrators in writing if a winding up application is brought against the Company during the DOCA Period.

#### **7.4 Rights of Deed Administrators**

- (a) During the DOCA Period, the Deed Administrators may inspect the records of the Company, regardless of where the records are kept.
- (b) Notwithstanding anything in clause 7.4(a) of this Deed, the Company will remain responsible for all books and records of the Company and will retain them in accordance with the relevant statutory periods as set out in section 286 of the Corporations Act.

#### **7.5 Deed Proponent**

The Deed Proponent agrees to use all reasonable endeavours and do all things reasonably necessary to:

- (a) achieve the purpose of this Deed as set out in clause 2.2 of this Deed; and
- (b) ensure all obligations of the Deed Proponent under this Deed are satisfied.

## **8 Making and adjudicating Claims**

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### **8.1 Making a Claim/ Determining Admitted Creditors**

- (a) Creditors wishing to make a Claim must lodge a proof of debt with the Deed Administrators as soon as practicable after the Commencement Date, for the purposes of establishing their entitlement to receive a Dividend from the Deed Fund.
- (b) After the Commencement Date, the Deed Administrators will send out a notice to the last known address of each person appearing in records of the Company as a Creditor inviting each within 14 days of the date of notice to submit a claim to the Deed Administrators by way of proof of debt specifying in detail the nature and amount of the claim against the Company as at the Administration Date.

### **8.2 Determination of Priority**

- (a) The Deed Administrators will assess the proofs of debt received and will determine whether to admit each proof of debt and if so, the quantum to be attributed to each proof of debt, including the Superannuation Contribution Amount.
- (b) When the Deed Administrators are making these determinations and determining the priority of the Claims, sections 556, 558, 559, 560 and 561 of the Corporations Act will apply with such modifications as may be necessary as if the Company had been wound up on the Administration Date.

### **8.3 Claims Barred**

Claims that are not submitted in accordance with the provisions of clause 8.1 of this Deed will be barred and extinguished against the Company in accordance with this Deed.

### **8.4 Interest**

Interest does not accrue on, and is not payable in respect of, any Claim.

## **9 Insured Claims**

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### **9.1 Rights of Creditors who have Claims covered by insurance**

If insurance is held by or on behalf of the Company in respect of an Insured Claim:

- (a) a Creditor may, in relation to its Insured Claim and notwithstanding that the Final Dividend has been paid, take action to recover the amount due in respect of the Claim against the Company, but such action must not exceed what is necessary to obtain payment from the insurer;
- (b) to the extent that a Creditor is able, by settlement, arbitral award or judgment, to obtain payment from the insurer on account of the Insured Claim, the Creditor may retain that amount in full satisfaction of its Claim;

- (c) the Company is not required to provide assistance to a Creditor in relation to the Insured Claim or take action in response to enforcement action taken by the Creditor in accordance with this clause;
- (d) where a Creditor intends to take enforcement action in relation to the Insured Claim:
  - (i) the Creditor must, prior to taking an enforcement action in relation to the Insured Claim, provide the Company with an indemnity in a form satisfactory to the Deed Administrators (**Creditor Indemnity**) prior to, and during, any enforcement action in relation to the Insured Claim;
  - (ii) if requested by the Company, provide the Company with evidence, to the reasonable satisfaction of the Company, that the Creditor will be (and will continue to be) in a financial position, or have access to sufficient funds, to enable it to satisfy the Creditor Indemnity; and
  - (iii) the Company may plead this Deed as a bar to any enforcement action taken by a Creditor in relation to the Insured Claim in circumstances where the Creditor has not, prior to commencing that enforcement action, given the Creditor Indemnity.

## 9.2 Release of Insured Claims where payment not obtained from insurer

To the extent that a Creditor is unable to seek or obtain payment of its Insured Claim from the insurer (including without limitation, by reason of any excess or deductible applicable to the insurance policy, or failure by the Company to take action) this Deed operates as a complete release and bar to that part of the Creditor's Insured Claim which has not been met by the insurer.

## 10 Deed Fund

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### 10.1 Creation of the Deed Fund

- (a) The Deed Administrators must establish the Deed Account as soon as practicable after the Commencement Date.
- (b) The Deed Administrators must:
  - (i) deposit any of the Deed Fund (to the extent it constitutes funds) into the Deed Account and during the DOCA Period;
  - (ii) apply the Deed Fund in the manner contemplated by clauses 8 and 10.

### 10.2 Composition of the Deed Fund

- (a) The Deed Fund is to be comprised of:
  - (i) the Cash at bank on the Commencement Date which will be paid or otherwise transferred into the Deed Fund Account;
  - (ii) Contribution Amount;

- (iii) All proceeds of debtors which is recovered by the Company (including but not limited to the current retentions held by the Company's clients in respect of construction projects);
  - (iv) All realisable plant and equipment of the Company which has not been sold at the end of the Company's Voluntary Administration period; and
  - (v) Any GST recoveries that are available to the Company at the end of the Company's Voluntary Administration period.
- (b) The Deed Proponent may (in their absolute discretion and without any obligation to do so) at any time increase the total sum of the Deed Fund by paying an additional amount into the Deed Account.

### **10.3 Property available to meet Admitted Claims**

Subject to this Deed, the Deed Fund is the Property of the Company available to pay the Admitted Claims.

### **10.4 Proceeds of realisation of Deed Fund**

The Deed Administrators must, to the extent necessary, realise the Property comprising the Deed Fund as soon as reasonably practicable and pay the proceeds into the Deed Account, which funds will be held on trust by the Company for the benefit of the persons entitled to those funds in accordance with this Deed.

### **10.5 Advancement of the Contribution Amount**

- (a) The Deed Proponent must make payment of the Contribution Amount to the Deed Account within 14 days of the Commencement Date.
- (b) The Deed Proponent will provide evidence of payment of the Contribution Amount to the Deed Administrators within 2 days of making the payment referred to in clause 10.5(a) of this Deed.
- (c) If the Deed Proponents fail to pay the Contribution Amount within 14 days of the Commencement Date, the Deed Administrators, at their discretion, may terminate this Deed and place the Company into Liquidation pursuant to section 445C(c) of the Corporations Act, without a need to convene a meeting of creditors or otherwise.

## **11 Payments from Deed Fund**

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### **11.1 Dividends**

- (a) Each Admitted Creditor will be entitled to receive a Dividend in respect of its Admitted Claim from the Deed Fund in accordance with this Deed.
- (b) Admitted Creditors are only entitled to receive the Dividends declared by the Deed Administrators and provided for in this Deed.

- (c) The Deed Administrators must pay an Admitted Creditor their Dividend as soon as reasonably practicable, including by issuing an interim Dividend whenever, in their sole discretion, they consider it appropriate.
- (d) The Deed Administrators will endeavour to declare a dividend to participating Admitted Creditors who have an Admitted Claim as soon as possible, and by no later than 1 June 2025.

## **11.2 Distribution of the Deed Fund**

- (a) The Deed Administrator will distribute the Deed Fund in the following order of priority:
  - (i) first, in payment of any indemnified liability of the Administrators, including pursuant to clause 16.1 of this Deed;
  - (ii) second, in payment of the Administrators' remuneration, costs, fees, disbursements, taxation liabilities (including GST) and expenses, including pursuant to clause 16.2 of this Deed;
  - (iii) third, in payment of any indemnified liability of the Deed Administrators, including pursuant to clause 16.1 of this Deed;
  - (iv) fourth, in payment of the Deed Administrators' remuneration, costs, fees, disbursements, taxation liabilities (including GST) and expenses, including pursuant to clause 16.2 of this Deed;
  - (v) fifth, in payment of the Employee Claims; and
  - (vi) last, in payment of Admitted Claims (which are not Employee Claims) on a *pari passu* basis.
- (b) Subject to compliance with the priorities specified in clause 11.2(a) of this Deed and elsewhere in this Deed, payments out of the Deed Fund are to be made on a *pari passu* basis and in the manner (including by way of interim Dividend) and at the time determined by the Deed Administrators in their absolute discretion.

## **11.3 Unclaimed funds and Property**

If any funds or other Property being distributed has remained unclaimed for more than 6 months after the day the amount payable to an Admitted Creditor has become payable or transferable, the Deed Administrators must pay that money or transfer that Property to ASIC to be dealt with under Part 9.7 of the Corporations Act, and the Deed Administrators will cease to be under any further obligation or liability in respect of it.

## **12 Extinguishment of Claims**

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### **12.1 Condition precedent for operation**

Clauses 12.2 and 12.4 of this Deed take effect following payment of the Final Dividend.



**12.2 Claims released, discharged and extinguished**

- (a) On payment of the Final Dividend:
  - (i) all Claims of the Creditors will be released, discharged and extinguished; and
  - (ii) the Creditors accept the terms of this Deed in full and final satisfaction and complete discharge of their Claims in accordance with section 444D of the Corporations Act.

**12.3 Execution of all necessary documents**

Each Creditor must, if required by the Deed Administrators, execute and deliver to the Deed Administrators such form of acknowledgement or release of any Claim as reflects the release and discharge of that Claim pursuant to clause 12.2 of this Deed.

**12.4 Bar to Creditor's Claims**

Subject to section 444D of the Corporations Act, this Deed may be pleaded by the Company or the Deed Administrators against any Creditor as an absolute bar and defence to any Claim.

**12.5 Abandonment by Creditors who do not prove**

- (a) A Creditor is deemed to have abandoned its Claim against the Company if, prior to the Final Dividend being declared, the Creditor:
  - (i) fails to submit a proof of debt in respect of its Claim as required by the Deed Administrators; or
  - (ii) having submitted a proof of debt which is rejected by the Deed Administrators, fail to appeal to the Court against the rejection in the timeframe specified by the Corporations Act and the Corporations Regulations.
- (b) In the event the Deed Administrators declare an interim Dividend pursuant to this Deed, Regulation 5.6.65 of the Corporations Regulations will apply to a Claim of a Creditor who fails to submit a proof of debt before the date on which the interim Dividend is paid.

**12.6 Company Release**

To the extent permitted by law, any claim the Company has against a Director of the Company will be released and extinguished upon the Termination Date.

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**13 Meetings of Creditors****13.1 Convening Creditors meetings**

Any meeting of Creditors convened during the DOCA Period will be convened in the manner prescribed by the provisions of Division 75 of the Insolvency Practice Schedule and Division 75 of the Insolvency Practice Rules.

### **13.2 Meeting procedures**

Except to the extent that the Corporations Act, the Insolvency Practice Schedule or the Insolvency Practice Rules are inconsistent with the terms of the Deed, the provisions of Division 75 of the Insolvency Practice Schedule and Division 75 of the Insolvency Practice Rules apply to meetings of Creditors convened under this Deed.

## **14 Deed Administrators**

---

### **14.1 Deed Administrators**

The Deed Administrators consent to their appointment as administrator of this Deed.

### **14.2 Joint and several**

The rights, powers and privileges of the Deed Administrators may be exercised by them jointly and severally.

### **14.3 Agent for the Company**

In exercising the powers conferred by this Deed and carrying out the duties arising under this Deed, the Deed Administrators act as agent for and on behalf of the Company and will not be personally liable for any debt, liability or other obligation which they incur on behalf of the Company.

### **14.4 Discretion**

Where this Deed confers a power or discretion on the Deed Administrators, they may exercise that power or discretion in such manner as they, in their absolute discretion, consider fit.

### **14.5 Resignation**

Any Deed Administrators may resign at any time by giving not less than 14 days' prior written notice to the Company unless that resignation would result in there being no remaining Deed Administrators in which case, the Deed Administrators must:

- (a) convene a meeting of Creditors for the purpose of nominating a replacement deed administrator;
- (b) assign to a replacement deed administrator nominated by the Creditors, the Deed Administrators' rights, title and benefit under this Deed; and
- (c) do all things necessary to give effect to the assignment referred to in paragraph (b).

## **15 Powers and limitation of liability of Deed Administrators**

---

### **15.1 Powers of Deed Administrators**

- (a) The Deed Administrators will administer this Deed and have all the functions, powers and duties conferred on them by this Deed and the Corporations Act.
- (b) For the purposes of administering this Deed, the Deed Administrators have the powers specified in clause 2 of Schedule 8A of the Corporations Regulations.
- (c) In addition to the general powers in clauses 15.1(a) and (b), the Deed Administrators will have all actual and incidental powers to give effect to the objects of the Deed as set out in clause 2.2, including, without limiting the generality of this clause:
  - (i) all the powers of a voluntary administrator appointed under section 436A of the Corporations Act;
  - (ii) the powers to:
    - (A) novate, release or terminate a Contract;
    - (B) approve, ratify and implement any decision or agreement made, or transaction entered into, during the voluntary administration of the Company;
    - (C) insure the Deed Administrators for actions taken during the DOCA Period;
    - (D) disclaim any Contract;
    - (E) investigate the Property, business and affairs of the Company;
    - (F) account for, or give effect to accounting treatment of the affairs of the Company;
    - (G) convene and hold meetings of the Members or Creditors of the Company for any purposes the Deed Administrators see fit;
    - (H) establish and administer the Deed Account and the Deed Fund;
    - (I) remove the Company from any securities exchange if applicable;
    - (J) propound a compromise or arrangement under Part 5.1 of the Corporations Act; and
    - (K) do anything that is incidental to exercising a power set out in this clause.

## 15.2 Limitation on liability

Subject to the Corporations Act and to the extent permitted by law, in the performance or exercise of the Deed Administrators' powers, functions and duties under this Deed, except in the case of fraud, unlawful conduct or conduct contrary to the terms of this Deed, the Deed Administrators will not be personally liable for:

- (a) any debt, liability or other obligation which the Deed Administrators may incur on behalf of the Company pursuant to this Deed;

- (b) any loss or damage caused by any act, default or omission by the Deed Administrators or on behalf of the Deed Administrators or any person or body corporate acting on their behalf in exercise of their powers, obligations, functions and duties under this Deed, except any loss or damage occasioned by the cross negligence or wilful misconduct of the Deed Administrators; and
- (c) any debt payable or liabilities incurred by the Company after the Commencement Date including any amounts payable by the Deed Administrators for services rendered, goods purchased or property hired, leased, used or occupied by or on behalf of the Company.

15.3 Clause 15.2 will survive effectuation or termination of this Deed.

## **16 Deed Administrators' remuneration and indemnity**

---

### **16.1 Indemnity**

The Deed Administrators will be indemnified as Administrators and as Deed Administrators by the Company out of the Deed Fund for:

- (a) Administrator's Liabilities;
- (b) Administrator's Remuneration;
- (c) Deed Administrator's Liabilities;
- (d) Deed Administrator's Remuneration;
- (e) any amount for which the Administrators or Deed Administrators are entitled to exercise a lien at law or in equity on the property of the Company; and
- (f) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments whatsoever arising out of or in the course of this Deed or in connection with the appointment of the Deed Administrators as Administrators and as Deed Administrators, incurred or sustained in good faith and without gross negligence or wilful misconduct.

### **16.2 Remuneration and costs**

Subject to s60-5 of the Insolvency Practice Schedule, the Deed Administrators will be:

- (a) remunerated by the Company in respect of any work done by them as Administrators or Deed Administrators at the hourly rates charged from time to time by the firm of which the Deed Administrators are partners or employees as set out in the Report to Creditors issued with their notice of meeting of Creditors; and
- (b) reimbursed by the Company in respect of all remuneration, costs and expenses incurred in connection with the performance of their duties, obligations and responsibilities as Administrators or Deed Administrators.

### **16.3 Continuing indemnity**

The indemnity in this Deed is a continuing indemnity and will endure for the benefit of the Deed Administrators and their partners, employees, directors, officers, contractors, advisers, authorised agents, or delegates, including any of their respective legal personal representatives, despite the removal of the Deed Administrators and the appointment of a new deed administrator or the termination of this Deed for any reason.

### **16.4 Indemnity not to be affected or prejudiced**

The indemnity under clauses 16.1 and 16.3 will not:

- (a) be affected, limited or prejudiced in any way by an irregularity, defect or invalidity in the appointment of the Deed Administrators and extends to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Deed Administrators, the approval and execution of this Deed or otherwise; or
- (b) affect or prejudice any right that the Deed Administrators may have against the Company or any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Deed Administrators of or incidental to the exercise or performance of any of the powers or authorities conferred on the Deed Administrators but this Deed or otherwise.

### **16.5 Lien**

To secure the rights of indemnity under clause 16.1, the Deed Administrators have a lien over the assets of the Company and the Deed Fund.

### **16.6 Priority**

The Deed Administrators' right of indemnity under clause 16.1 and their lien under clause 16.5 have priority over the claims of all Creditors.

## **17 Breach of Deed**

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### **17.1 If:**

- (a) the Directors breach any of their obligations, including their reporting obligations referred to in clauses 7.2 to 7.3; or
- (b) the Deed Administrators, acting reasonably, form the view that the Company is unlikely to be able to comply with the terms of this Deed; or
- (c) the Company otherwise breaches the terms of this Deed,

any one of these breaches will result in the Deed Administrators issuing a notice to the Directors to remedy that breach within ten (10) business days.

### **17.2 If the Company or Directors fail to remediate the breaches in accordance with clause 17.1, the Deed Administrators will reserve the right to take one of the following steps:**

- (a) convene a meeting of creditors of the Company to vary the terms of this Deed pursuant to section 445A of the Corporations Act; or
- (b) immediately terminate this Deed pursuant to section 445C(c) of the Corporations Act and the Company will immediately be placed into liquidation by the Deed Administrators.

## **18 Termination**

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### **18.1 Termination of the Deed where Arrangement achieves Purpose**

If the Deed Administrators of the Company have paid, transferred, allotted or issued to each Admitted Creditor their full entitlements under this Deed in accordance with clause 10, then this Deed will have achieved its purpose and will be terminated by the Deed Administrators certifying to that effect in writing and within 28 days lodging with ASIC a Notice of Termination of this Deed in the following terms:

**Morabuilt Pty Limited ACN 630 816 830 (Subject to Deed of Company Arrangement)**

We, Jonathon Sherwood Keenan and Peter Paul Krejci, Deed Administrators of the Deed of Company Arrangement executed on [enter date] **CERTIFY** that the Deed of Company Arrangement has been wholly effectuated.

### **18.2 Company's obligation to de-register the Company**

If this Deed has been terminated in accordance with clause 18.1 of this Deed, the Directors must do all things necessary to deregister the Company within 10 business days of the termination.

### **18.3 Termination Prior to Performance**

- (a) This Deed will terminate prior to its full performance if:
  - (i) the Court makes an order terminating the Deed under s445D of the Corporations Act, in accordance with the Court's orders;
  - (ii) the Creditors pass a resolution terminating this Deed at a meeting convened under the provisions of Division 75 of the Insolvency Practice Schedule and Division 75 of the Insolvency Practice Rules, by notice setting out the proposed resolution;
  - (iii) a breach of this Deed occurs in accordance with clause 17 of this Deed and section 445C(c) of the Corporations Act;
  - (iv) the Deed Proponents fail to comply with their obligations in clause 10.5(a) of this Deed and the Deed Administrators exercise their discretion provided in clause 10.5(c) of this Deed; or
  - (v) if the Court declares this Deed in its entirety to be void under section 445G(2) of the Act, upon the Court's order becoming effective

- (b) Upon termination of this Deed in accordance with clause 18.3, the Deed Administrators will certify to that effect in writing and lodge with ASIC a notice of termination of the Deed in accordance with ASIC Form 509G (or such other relevant form as required by ASIC).

#### **18.4 Consequences of Termination**

On Termination:

- (a) the powers, functions, duties, obligations and responsibilities of the Deed Administrators under this Deed will end; and
- (b) every person bound by this Deed hereby releases the Deed Administrators in their capacity as Administrators and Deed Administrators, and their partners, employees, agents and sub-contract labourers from all and any Claims of any nature whatsoever concerning or arising out of the administration of the Company under Part 5.3A of the Corporations Act and the implementation, administration and enforcement of this Deed, except where that Claim arises as a result of fraud, dishonesty, breach of duty or negligence.

#### **18.5 Effect of Termination**

In accordance with s444H of the Corporations Act, the Termination, or avoidance in whole or in part, of this Deed does not affect the previous operation of this Deed.

#### **18.6 Consequences of termination for non-performance**

On termination under clause 18.3:

- (a) the Company will be taken to have passed a special resolution under s491 of the Corporations Act that the Company will be voluntarily wound up and the Deed Administrators be the Company's liquidators;
- (b) section 446AA of the Corporations Act will apply;
- (c) the Company will be wound up; and
- (d) the Deed Fund (or any residual part of it) will become an asset of the Company available to the liquidator appointed.

#### **18.7 Survival of clauses**

Despite any other provision of this Deed, clauses 12.2, 12.4, 16.1, 16.2, 16.3, 16.4, 16.5 and 16.6 survive the Termination of this Deed.

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### **19 GST**

#### **19.1 GST exclusive amounts**

- (a) If GST is or will be payable on a supply made under or in connection with this Deed, to the extent that the consideration otherwise provided for that supply under this Deed is not stated to include an amount in respect of GST on the supply:

- (i) the consideration otherwise provided for that supply under this Deed is increase by the amount of that GST; and
  - (ii) the recipient must make payment of the increase as and when the consideration otherwise provided for or relevant part of it must be paid or provided or, if the consideration has already been paid or provided, within 7 days of receiving a written demand from the supplier.
- (b) The right of the supplier to recover any amount in respect of GST under this Deed on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient within the time period within which the recipient is otherwise entitled to the relevant tax credit.

## **19.2 Reimbursements**

If a payment to a person is a reimbursement or indemnification that is calculated by reference to a loss, cost or expense incurred by that person, the payment will be reduced by the amount of any input tax credit to which that person is entitled for the acquisition to which that loss, cost or expense relates and then, if consideration for a taxable supply, clause 19.1 of this Deed will apply.

## **19.3 Interpretation**

For the purposes of clauses concerning GST, all terms defined in the GST Law have the meanings given to those terms in the GST Law unless the context requires otherwise.

## **20 Notices**

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### **20.1 Notices given under this document:**

- (a) must be in writing and clearly readable in the English language;
- (b) must be signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
- (c) may be delivered to a party by hand or by prepaid post or by email to that party's address or email address shown on page 1 of this document or to such other address or person as a party may specify by notice given in accordance with this clause.

### **20.2 A notice is taken to be duly given and received:**

- (a) if delivered by hand, when delivered; or
- (b) if delivered by prepaid post, three Business Days after being deposited in the mail with postage prepaid; or
- (c) if delivered by email, at the time that the recipient party confirms, by non-automated email, receipt of the notice.



- 20.3 Despite clause 20.2 of this Deed, notices received after 5 pm in the place of receipt or on a non-Business Day are taken to be received at 9 am on the next Business Day.

## **21 Corporations Act**

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### **21.1 Prescribed Provisions**

The parties acknowledge that the Deed Administrators will have all the powers set out in the Prescribed Provisions to the extent necessary to fulfil their statutory responsibilities and exercise their powers under the DOCA.

### **21.2 Required provisions**

To the extent that the Corporations Act requires any provision to be included in this Deed which is not expressly included in this Deed, that provision will be deemed to be included in this Deed and all persons bound by this Deed agree to sign all documents and do all things necessary to include such provision in this Deed, the cost of which will be borne by the Company.

### **21.3 Binding effect**

Subject to the terms of this Deed, this Deed binds:

- (a) all parties to this Deed and all Creditors in accordance with section 444D of the Corporations Act;
- (b) any creditors who have Claims relating to construction projects which the Company had entered prior to the Administrators' appointment will be bound by this Deed, notwithstanding that those creditor claims may have crystallised after the Administration Date; and
- (c) the Deed Administrators, Company, its Officers and Members in accordance with section 444G of the Corporations Act.

### **21.4 Inconsistency**

- (a) If there is an inconsistency between this Deed and the Corporations Act, Corporations Regulations, the Insolvency Practice Schedule or the Insolvency Practice Rules, this Deed prevails to the extent permitted by law.
- (b) If there is any consistency between this Deed and the Company's constitution or any other obligations binding on the Company, then this Deed prevails to the extent of that inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency, the costs of which will be borne by the Company.

## **22 Reporting**

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Except as required by law, the Deed Administrators are not required to report to Creditors. However, the Deed Administrators may, in their absolute discretion, report to Creditors during the DOCA Period at such times as the Deed Administrators consider

appropriate and on matters which the Deed Administrators consider should to be brought to the attention of the Creditors.

## **23 Attorney**

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The Creditors and the Company each irrevocably appoint the Deed Administrators as their attorney for the purpose of enforcing the terms of this Deed, and, if necessary for that purpose to commence and pursue any Court proceedings.

## **24 General**

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### **24.1 Relationship between the parties**

Except as expressly provided to the contrary in this document, nothing in this document will constitute a party as a principal, agent, employer or employee, partner or otherwise liable for the acts or omissions of any other party.

### **24.2 Entire agreement**

This document records the entire agreement between the parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the parties in relation to the subject matter of this document.

### **24.3 Further assurance**

Each party must (at its own expense) do all things that any other party reasonably requires of it to give the other party the full benefit of any obligations owed to the other party and expressed in this document.

### **24.4 Acknowledgement**

The Deed Proponents acknowledge that they have obtained, or had a reasonable opportunity to obtain, independent taxation and legal advice prior to entering into this Deed.

### **24.5 Counterparts**

This document and any variation of this document may be executed and take effect in two or more counterparts, each of which when taken together, will constitute one and the same instrument.

The signature of any party to this Deed by scanned reproduction is as sufficiently binding as an original signature.

### **24.6 Survival**

All warranties, releases, exclusions and limitations of liability, indemnities, terms with respect to intellectual property and confidential information in this document will remain valid and binding following expiry or termination of this document. Any other provision

by its nature intended to survive expiry or termination of this document survives expiry or termination of this document.

**24.7 No waiver**

The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under this document does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

**24.8 Cumulative rights**

The rights, powers, authorities, discretions and remedies of a party under this document do not exclude any other right, power, authority, discretion or remedy.

**24.9 Severability**

If any provision of this document is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
- (b) where the offending provision cannot be read down then that provision must be severed from the document in which event, the remaining provisions of this document operate as if the severed provision had not been included; and
- (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,

but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this document.

**24.10 Variation**

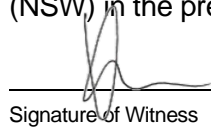
This document can only be amended, supplemented or replaced by resolution of creditors pursuant to section 445A of the Corporations Act or order of the Court.

**24.11 Governing law and jurisdiction**

This document is governed by the law of New South Wales. Each party submits to the jurisdiction of the courts in New South Wales in connection with matters concerning this document.

**Executed** as a deed

**Executed** by Morabuilt Pty Ltd ACN 630 816 830 (Administrators Appointed) by its Joint and Several Administrators by audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW) in the presence of:

  
\_\_\_\_\_  
Signature of Witness

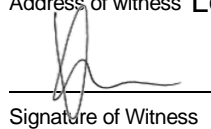
  
\_\_\_\_\_  
Signature

**Katherine La**  
\_\_\_\_\_

Name of Witness

\_\_\_\_\_  
Name: Peter Paul Krejci


Address of witness **Level 26, 25 Bligh Street, Sydney NSW 2000**

  
\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature

**Katherine La**  
\_\_\_\_\_

Name of Witness

  
\_\_\_\_\_  
Name: Jonathon Sherwood Keenan

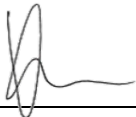
**Level 26, 25 Bligh Street, Sydney NSW 2000**  
\_\_\_\_\_

Address of Witness

**Signed sealed and delivered** as a deed  
by Jonathon Sherwood Keenan in his  
capacity as Joint and Several Administrator  
of Morabuilt Pty Ltd ACN 630 816 830  
(Administrators Appointed) by audio visual  
link in accordance with section 14G of the  
*Electronic Transactions Act 2000* (NSW) in  
the presence of:



Signature of Jonathon Sherwood Keenan



Signature of Witness

Katherine La

Name of Witness

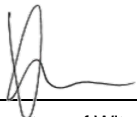
Level 26, 25 Bligh Street, Sydney NSW 2000

Address of Witness

**Signed sealed and delivered** as a deed  
by Peter Paul Krejci in his capacity as Joint  
and Several Administrator of Morabuilt Pty  
Ltd ACN 630 816 830 (Administrators  
Appointed) by audio visual link in  
accordance with section 14G of the  
*Electronic Transactions Act 2000* (NSW) in  
the presence of:



Signature of Peter Paul Krejci



Signature of Witness

Katherine La

Name of Witness

Level 26, 25 Bligh Street, Sydney NSW 2000

Address of Witness

**Signed sealed and delivered** as a deed  
by Marc Morabito in the presence of:

\_\_\_\_\_  
Signature of Marc Morabito

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Address of Witness

**Signed sealed and delivered** as a deed  
by Vicki Morabito in the presence of:

\_\_\_\_\_  
Signature of Vicki Morabito

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Address of Witness



## **Deed of Company Arrangement**

**Morabuilt Pty Ltd (Administrators Appointed)**  
**ACN 630 816 830**

**Jonathon Sherwood Keenan and Peter Paul Krejci in their  
capacities as Joint and Several Administrators of Morabuilt Pty  
Limited (Administrators Appointed)**

**Marc Morabito and Vicki Morabito**

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**Date** **February 2024**

## Parties

<b>Company</b>	Morabuilt Pty Limited ACN 630 816 630
Address	16/7 Salsbury Road, Castle Hill NSW 2154
Attention	The Director
Email	marc@morabuilt.com.au
<b>Deed Administrator 1</b>	Jonathon Sherwood Keenan
Address	Level 26, 25 Bligh Street, Sydney, NSW 2000
Email	jkeenan@brifnsw.com.au
<b>Deed Administrator 2</b>	Peter Paul Krejci
Address	Level 26, 25 Bligh Street, Sydney, NSW 2000
Email	pkrejci@brifnsw.com.au
<b>Deed Proponents</b>	Marc Morabito and Vicki Morabito
Address	c/- Adam Cutri of Bartier Perry of Level 25, 161 Castlereagh Street,
Email	Sydney NSW 2000
	marc@morabuilt.com.au

## Background

- A On the Administration Date, the Administrators were appointed as joint and several administrators of the Company pursuant to a resolution of the Company in accordance with section 436A of the Corporations Act.
- B On 22 December 2023, the first meeting of creditors of the Company was held in accordance with section 436E of the Corporations Act and the appointment of the Administrators as voluntary administrators of the Company was confirmed by its creditors (**First Meeting**).
- C On 22 January 2024, the Administrators issued a report to creditors pursuant to Insolvency Practice Rules (Corporations) 2016 (**IPR**), rule 75-225 and section 439A of the Corporations Act, setting out, amongst other things, the terms of a deed of company arrangement proposed by the Deed Proponent in respect of the Company (**Deed Proposal**).
- D On 22 January 2024, the Administrators issued a report to creditors pursuant to Insolvency Practice Rules (Corporations) 2016 (**IPR**), rule 75-225 and section 439A of

the Corporations Act, setting out, amongst other things, the terms of a deed of company arrangement proposed by the Deed Proponent in respect of the Company (**Deed Proposal**).

- E A second meeting of creditors of the Company was convened pursuant to section 439A(1) of the Corporations Act and held on 31 January 2024 (**Second Meeting**).
- F At the Second Meeting, the creditors of the Company resolved pursuant to section 439C of the Corporations Act to execute a deed of company arrangement in the terms of the Deed Proposal (**Section 439C Resolution**).
- G The Company, the Deed Administrators and the Deed Proponents have agreed to execute this Deed to give effect to the section 439C Resolution.
- H The Administrators have agreed to be the Deed Administrators under this Deed.

## Operative Provisions

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Deed:

**Administration Date** means 14 December 2023.

**Administrator** means the Deed Administrators in their capacity as joint and several voluntary administrators of the Company appointed under Part 5.3A of the Corporations Act.

**Administrator's Liabilities** all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments whatsoever arising out of or in any way connected to the administration of the Company or their role as Administrators and incurred or sustained in good faith and without negligence.

**Administrator's Remuneration** any amounts which the Administrators are entitled to be indemnified out of the assets of the Company in accordance with the Corporations Act, at law or equity, including any amounts payable pursuant to ss 443A, 443B or 443BA, s443D of the Corporations Act.

**Admitted Claim** means a Claim that has been admitted to proof by the Deed Administrators under clause 8.1 of this Deed.

**Admitted Creditor** means a Creditor under an Admitted Claim.

**Admitted Priority Claim** means any Priority Claim that has been admitted to proof by the Deed Administrators under clause 8.2 of this Deed.

**ASIC** means the Australian Securities and Investments Commission.

**Business Day** means any day on which the banks in Sydney, Australia are open for business.

**Claim** means all actions, claims, suits, causes of actions, arbitrations, debts, costs, demands, verdicts and judgments at law or in equity or under any statute, whether certain or contingent, present or future, ascertained or sounding only in damages, the circumstances giving rise to which occurred, or arose, on or before the Administration Date, but does not include an Excluded Claim.

**Commencement Date** means the date that this Deed is executed by the Deed Administrators, the Deed Proponents and the Company.

**Completion** means the payment by the Deed Administrators of the Final Dividend from the Deed Fund.

**Contract** means a contract to which the Company and a Creditor are party (including as novated or assigned) but excludes an Excluded Contract.

**Contribution Amount** means the amount of \$400,000.

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

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

**Court** means the Supreme Court of New South Wales or the Federal Court of Australia.

**Creditor** means a person who has a Claim against the Company as at the Administration Date.

**Creditor Indemnity** has the meaning given to it in clause 9.1(d) of this Deed.

**Deed** means this deed of company arrangement.

**Deed Account** means a bank account in the name of the Company established for the purposes of holding funds comprising the Deed Fund.

**Deed Administrator's Liabilities** means any liabilities, debts, costs, fees, charges, disbursements and expenses of the Deed Administrators, including any statutory liabilities, incurred in connection with or arising out of:

- (a) the administration of this Deed;
- (b) the preparation, execution and performance of this Deed;
- (c) any application to set aside this Deed,

including, without limitation, all legal costs incurred by the Deed Administrators in respect of the foregoing.

**Deed Administrator's Remuneration** means the remuneration and other fees to which the Deed Administrators are lawfully entitled (under the Corporations Act, under this Deed or otherwise) by reason of the performance of their duties as Deed Administrators.

**Deed Fund** means the fund created in accordance with clause 10 of this Deed and the aggregate of the property transferred, paid or assigned into that fund during the DOCA Period, including any property of the Company accrued during the voluntary administration of the Company prior to the Commencement Date.

**Deed of Forgiveness** means the Deed of Forgiveness entered into between the Company, Marc Morabito and Vicki Morabito in respect of the Loans which forgives, on the part of Marc Morabito and Vicki Morabito, the Loans owed to them by the Company on and from the date of the Deed of Forgiveness.

**Directors** means the directors of the Company from time to time.

**Dividend** means any distribution paid by the Deed Administrators from the Deed Fund to an Admitted Creditor in respect of their Admitted Claim.

**DOCA Period** means the period from and including the Commencement Date until and including the Termination Date.

**Employee** means any eligible employee creditor within the meaning prescribed by section 9 of the Corporations Act.

**Employee Creditors** means all employee creditors (other than the accrued entitlements of Continuing Employees whose entitlements will be paid in the ordinary course of business of the Company) with Admitted Claims entitled to priority pursuant to section 556 of the Corporations Act and any subrogating Employee Creditor.

**Enforcement Process** has the meaning given to that term in the Corporations Act.

**Excluded Contract** means any contract entered into by the Company and a Creditor after the Administration Date and:

- (a) pursuant to which a Creditor has provided financing or replacement financing to the Company or the Deed Administrators; or
- (b) which was entered into otherwise than in the ordinary course of the Company's business; and
  - (i) pursuant to which a Creditor has agreed to forbear from the enforcement of its rights against the Company; or
  - (ii) which amends or otherwise regulates the terms or effect of any financing agreement or guarantee to which the Company is a party.

**Final Dividend** means the last Dividend paid by the Deed Administrators.

**GST** means the goods and services tax as imposed by the GST Law, a consumption tax, value added tax, retail turnover tax or tax of a similar nature.

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

**Insolvency Practice Rules** means the *Insolvency Practice Rules (Corporations) 2016* (Cth).



**Insolvency Practice Schedule** means Schedule 2 (the Insolvency Practice Schedule) to the Corporations Act.

**Insured Claim** means a Claim that a Creditor has against the Company that would have been entitled to priority in a liquidation of the Company under section 562 of the Corporations Act, where:

- (a) the Claim is not an Excluded Claim;
- (b) the Company is insured against the Claim under a contract of insurance (not being a contract of reinsurance) entered into before the Administration Date; and
- (c) an amount in respect of that Claim would be payable by the insurer to the Company under the contract of insurance,

but only to the extent of such part of the Claim as would be discharged by payment from the insurer and provided that the Creditor complies with the requirements of clause 9 in connection with such a Claim.

**Loan Holders** means Marc Morabito and Vicki Morabito.

**Meeting** means the meeting referred to in paragraph E of the Background.

**Member** has the meaning given to that term in section 9 of the Corporations Act.

**Officer** has the meaning given to that term in section 9 of the Corporations Act but excludes the Deed Administrators.

**Owner** means any person who is the legal or beneficial owner of a Property which is in the possession of the Company at the date of execution of this Deed. It includes a person with a retention of title claim over the Property that is in the possession of the Company which is established to the satisfaction of the Deed Administrators.

**PPSA Security Interest** has the same meaning as 'security interest' under the Corporations Act.

**Prescribed Provisions** means the provisions prescribed by s444A(5) of the Corporations Act as set out in schedule 8A of the Corporations Regulations.

**Priority Claim** means Claims against the Company that would be payable in priority in a liquidation of the Company pursuant to ss 556, 560 or 561 of the Corporations Act had a winding up order made under the Corporations Act in respect of the Company on the Administration Date.

**Property** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a chose in action as at Commencement Date.

**Report to Creditors** means the report to creditors of the Company provided by the Administrators pursuant to rule 75-225(3) of the Insolvency Practice Rules.

**Section 439C Resolution** means the resolution passed at the Meeting.



**Secured Creditor** means any Creditor to the extent that their Claim is secured by a Security Interest over or in the Property of the Company and has been admitted to proof by the Deed Administrators.

**Secured Property** means Property subject to a Security Interest.

**Security Interest** means any valid security interest, PPSA Security Interest, hypothecation, lien, mortgage, pledge, charge, encumbrance or any other type of security which secures the payment of any liability.

**Superannuation Contribution** has the meaning given that term in the Corporations Act.

**Superannuation Contribution Amount** means the Superannuation Contribution owed as at the Administration Date (pre-appointment).

**Superannuation Guarantee Charge** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Termination** means the termination of this Deed as determined in accordance with clause 18.1 of this Deed.

**Termination Date** means the date on which this Deed terminates as determined in accordance with clause 18.1 of this Deed.

## 1.2 Interpretation

In this document, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) any schedule or annexure attached to this document forms part of it;
- (e) a reference to a party includes its legal personal representatives, successors and permitted assigns;
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and separately;
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it;

- (j) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar inclusive expressions;
- (k) a reference to this document or any other document means this document and includes any variation or replacement of this document;
- (l) if the date on or by which any act must be done under this deed is not a Business Day, the act must be done on or by the next Business Day;
- (m) if a word or phrase is defined its other grammatical forms have corresponding meanings; and
- (n) \$ or dollars is a reference to Australian currency.

## **2 Commencement and purpose**

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- 2.1 This Deed commences on the Commencement Date and continues until the Termination Date.
- 2.2 The purpose and objects of this Deed are to:
  - (a) provide Creditors a greater and more timely return than would result from an immediate winding up of the Company;
  - (b) establish the Deed Fund in order to pay dividends (if any) to Admitted Creditors; and
  - (c) facilitate the efficient distribution of the Deed Fund.

## **3 Conditions Precedent**

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This Deed is subject to, and conditional upon, the following condition being met on or before the Commencement Date:

- (a) Each of the Loan Holders must execute a Deed of Forgiveness with the Company and the Administrators.

## **4 Moratorium**

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Subject to clauses 5 and 6 of this Deed, there will be a moratorium in favour of the Company for the DOCA Period for all Claims, and during that moratorium, no Creditor, in relation to its Claim, may:

- (a) **(winding up)** make, concur in, or proceed with any application for an order to wind up the Company;
- (b) **(institute proceedings)** without the leave of the Court, and then, only in accordance with terms as the Court imposes, begin, revive or proceed with any



action, suit, mediation or proceeding against the Company or in relation to any of the Company's Property or Property used or occupied by, or in the possession of, the Company;

- (c) **(enforcement process)** without the leave of the Court, and then, only in accordance with terms as the Court imposes, begin or proceed with any Enforcement Process in relation to any of the Company's Property or Property used or occupied by, or in the possession of, the Company;
- (d) **(arbitration)** commence, continue or take any additional step in any arbitration against the Company or to which the Company is a party in relation to any matter arising or occurring before the Administration Date;
- (e) **(set off)** exercise any right of set off or defence, cross-claim or cross action to which the Creditor would not have been entitled had the Company been wound up on the Administration Date;
- (f) **(enforcement of debt)** take any action whatsoever to seek to recover any part of its Claim from the Company; or
- (g) otherwise enforce any right it may have or acquire against the Company.

## **5 Secured Creditors**

### **5.1 Moratorium on Secured Creditors in favour of Section 439C Resolution**

This Deed does not prevent a Secured Creditor from realising or otherwise dealing with their Security Interest unless:

- (a) that Secured Creditor voted in favour of the Section 439C Resolution;
- (a) the debt subject to the Security Interest has been paid in full; or
- (b) the Security Interest granted by the Company has vested in the Company.

### **5.2 Restrictions cease to apply**

If a Secured Creditor voted in favour of the Section 439C Resolution, the restrictions in clause 5.1 of this Deed will cease to apply on the Termination Date for any reason prior to Completion.

## **6 Owners of Property in possession of the Company**

- 6.1 This Deed does not affect the rights of an Owner to terminate an agreement or take possession of or otherwise recover the Property the subject of an agreement (including, any event of default or breach relating to the appointment of Administrators or Deed Administrators) following an event of default by the Company of that agreement, unless that Owner voted in favour of the Section 439C Resolution.
- 6.2 If an Owner voted in favour of the Section 439C Resolution, the restriction in clause 6.1 will apply only if:





- (a) the breach or default occurred or may occur on or prior to the Commencement Date or during the DOCA Period; and/or
- (b) the Owner is a party to a Continuing Lease.

## **7 Control of the Company**

### **7.1 Managerial control**

During the DOCA Period control of the business operations of the Company will return to the Directors.

### **7.2 Co-operation with Deed Administrators**

During the DOCA Period:

- (a) the Directors and Officers of the Company must:
  - (i) co-operate with and assist the Deed Administrators in the performance by the Deed Administrators of their obligations under this Deed;
  - (ii) provide all reasonable assistance to the Deed Administrators, at no cost to the Company, to assist with the collection of all debtors of the Company;
  - (iii) carry out and perform such operations, functions, powers and other matters as may be delegated to them by the Deed Administrators; and
  - (iv) perform their obligations under this Deed.

### **7.3 Obligations of Company and Directors**

During the DOCA Period:

- (a) The Deed Administrators must ensure that all documents in relation to the business of the Company or the Company itself bear the notation 'Subject to deed of company arrangement';
- (b) the Company must:
  - (i) Comply with the all lodgement requirements of the Australian Taxation Office and, to the extent applicable, any state taxation authority (such as the Office of State Revenue New South Wales); and
  - (ii) pay to the Australian Taxation Office and, to the extent applicable, any state taxation authority (such as the Office of State Revenue New South Wales), the amounts that it owes under all relevant tax legislation;
  - (iii) pay any amount to the Australian Taxation Office and, to the extent applicable, any state taxation authority (such as the Office of State Revenue New South Wales), on or before the due date for payment of that amount; and



- (iv) not incur any new debts or liabilities.
- (c) the Directors:
  - (i) covenant to provide the Deed Administrators with all assistance that the Deed Administrators may reasonably require with respect to the affairs of the Company and this Deed, including without limitation notifying the Deed Administrators in writing of any event that is likely to have a possible effect on the ability of the Company to pay any moneys to the Deed Administrators under this Deed;
  - (ii) acknowledge that the Deed Administrators are at liberty, at any time during the course of this Deed, to inspect the records of the Company and enter upon any premises occupied or used by the Company or where such records may be kept;
  - (iii) covenant to provide the Deed Administrators with a copy of the Company's financial records on a quarterly basis, and otherwise as required by the Deed Administrators;
  - (iv) preserve all insurance claims which may otherwise result in a further return to creditors; and
  - (v) use their best endeavours to ensure that the Company remains solvent and compliant in terms of its reporting obligations and regulatory requirements.
- (d) the Directors must immediately notify the Deed Administrators in writing if a winding up application is brought against the Company during the DOCA Period.

#### **7.4 Rights of Deed Administrators**

- (a) During the DOCA Period, the Deed Administrators may inspect the records of the Company, regardless of where the records are kept.
- (b) Notwithstanding anything in clause 7.4(a) of this Deed, the Company will remain responsible for all books and records of the Company and will retain them in accordance with the relevant statutory periods as set out in section 286 of the Corporations Act.

#### **7.5 Deed Proponent**

The Deed Proponent agrees to use all reasonable endeavours and do all things reasonably necessary to:

- (a) achieve the purpose of this Deed as set out in clause 2.2 of this Deed; and
- (b) ensure all obligations of the Deed Proponent under this Deed are satisfied.

## **8 Making and adjudicating Claims**

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### **8.1 Making a Claim/ Determining Admitted Creditors**

- (a) Creditors wishing to make a Claim must lodge a proof of debt with the Deed Administrators as soon as practicable after the Commencement Date, for the purposes of establishing their entitlement to receive a Dividend from the Deed Fund.
- (b) After the Commencement Date, the Deed Administrators will send out a notice to the last known address of each person appearing in records of the Company as a Creditor inviting each within 14 days of the date of notice to submit a claim to the Deed Administrators by way of proof of debt specifying in detail the nature and amount of the claim against the Company as at the Administration Date.

### **8.2 Determination of Priority**

- (a) The Deed Administrators will assess the proofs of debt received and will determine whether to admit each proof of debt and if so, the quantum to be attributed to each proof of debt, including the Superannuation Contribution Amount.
- (b) When the Deed Administrators are making these determinations and determining the priority of the Claims, sections 556, 558, 559, 560 and 561 of the Corporations Act will apply with such modifications as may be necessary as if the Company had been wound up on the Administration Date.

### **8.3 Claims Barred**

Claims that are not submitted in accordance with the provisions of clause 8.1 of this Deed will be barred and extinguished against the Company in accordance with this Deed.

### **8.4 Interest**

Interest does not accrue on, and is not payable in respect of, any Claim.

## **9 Insured Claims**

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### **9.1 Rights of Creditors who have Claims covered by insurance**

If insurance is held by or on behalf of the Company in respect of an Insured Claim:

- (a) a Creditor may, in relation to its Insured Claim and notwithstanding that the Final Dividend has been paid, take action to recover the amount due in respect of the Claim against the Company, but such action must not exceed what is necessary to obtain payment from the insurer;
- (b) to the extent that a Creditor is able, by settlement, arbitral award or judgment, to obtain payment from the insurer on account of the Insured Claim, the Creditor may retain that amount in full satisfaction of its Claim;

- (c) the Company is not required to provide assistance to a Creditor in relation to the Insured Claim or take action in response to enforcement action taken by the Creditor in accordance with this clause;
- (d) where a Creditor intends to take enforcement action in relation to the Insured Claim:
  - (i) the Creditor must, prior to taking an enforcement action in relation to the Insured Claim, provide the Company with an indemnity in a form satisfactory to the Deed Administrators (**Creditor Indemnity**) prior to, and during, any enforcement action in relation to the Insured Claim;
  - (ii) if requested by the Company, provide the Company with evidence, to the reasonable satisfaction of the Company, that the Creditor will be (and will continue to be) in a financial position, or have access to sufficient funds, to enable it to satisfy the Creditor Indemnity; and
  - (iii) the Company may plead this Deed as a bar to any enforcement action taken by a Creditor in relation to the Insured Claim in circumstances where the Creditor has not, prior to commencing that enforcement action, given the Creditor Indemnity.

#### 9.2 Release of Insured Claims where payment not obtained from insurer

To the extent that a Creditor is unable to seek or obtain payment of its Insured Claim from the insurer (including without limitation, by reason of any excess or deductible applicable to the insurance policy, or failure by the Company to take action) this Deed operates as a complete release and bar to that part of the Creditor's Insured Claim which has not been met by the insurer.

## 10 Deed Fund

### 10.1 Creation of the Deed Fund

- (a) The Deed Administrators must establish the Deed Account as soon as practicable after the Commencement Date.
- (b) The Deed Administrators must:
  - (i) deposit any of the Deed Fund (to the extent it constitutes funds) into the Deed Account and during the DOCA Period;
  - (ii) apply the Deed Fund in the manner contemplated by clauses 8 and 10.

### 10.2 Composition of the Deed Fund

- (a) The Deed Fund is to be comprised of:
  - (i) the Cash at bank on the Commencement Date which will be paid or otherwise transferred into the Deed Fund Account;
  - (ii) Contribution Amount;



- (iii) All proceeds of debtors which is recovered by the Company (including but not limited to the current retentions held by the Company's clients in respect of construction projects);
  - (iv) All realisable plant and equipment of the Company which has not been sold at the end of the Company's Voluntary Administration period; and
  - (v) Any GST recoveries that are available to the Company at the end of the Company's Voluntary Administration period.
- (b) The Deed Proponent may (in their absolute discretion and without any obligation to do so) at any time increase the total sum of the Deed Fund by paying an additional amount into the Deed Account.

### 10.3 Property available to meet Admitted Claims

Subject to this Deed, the Deed Fund is the Property of the Company available to pay the Admitted Claims.

### 10.4 Proceeds of realisation of Deed Fund

The Deed Administrators must, to the extent necessary, realise the Property comprising the Deed Fund as soon as reasonably practicable and pay the proceeds into the Deed Account, which funds will be held on trust by the Company for the benefit of the persons entitled to those funds in accordance with this Deed.

### 10.5 Advancement of the Contribution Amount

- (a) The Deed Proponent must make payment of the Contribution Amount to the Deed Account within 14 days of the Commencement Date.
- (b) The Deed Proponent will provide evidence of payment of the Contribution Amount to the Deed Administrators within 2 days of making the payment referred to in clause 10.5(a) of this Deed.
- (c) If the Deed Proponents fail to pay the Contribution Amount within 14 days of the Commencement Date, the Deed Administrators, at their discretion, may terminate this Deed and place the Company into Liquidation pursuant to section 445C(c) of the Corporations Act, without a need to convene a meeting of creditors or otherwise.

## 11 Payments from Deed Fund

### 11.1 Dividends

- (a) Each Admitted Creditor will be entitled to receive a Dividend in respect of its Admitted Claim from the Deed Fund in accordance with this Deed.
- (b) Admitted Creditors are only entitled to receive the Dividends declared by the Deed Administrators and provided for in this Deed.

- (c) The Deed Administrators must pay an Admitted Creditor their Dividend as soon as reasonably practicable, including by issuing an interim Dividend whenever, in their sole discretion, they consider it appropriate.
- (d) The Deed Administrators will endeavour to declare a dividend to participating Admitted Creditors who have an Admitted Claim as soon as possible, and by no later than 1 June 2025.

## 11.2 Distribution of the Deed Fund

- (a) The Deed Administrator will distribute the Deed Fund in the following order of priority:
  - (i) ~~first, in payment of any indemnified liability of the Administrators, including pursuant to clause 16.1 of this Deed;~~
  - (ii) ~~second, in payment of the Administrators' remuneration, costs, fees, disbursements, taxation liabilities (including GST) and expenses, including pursuant to clause 16.2 of this Deed;~~
  - (iii) ~~third, in payment of any indemnified liability of the Deed Administrators, including pursuant to clause 16.1 of this Deed;~~
  - (iv) ~~fourth, in payment of the Deed Administrators' remuneration, costs, fees, disbursements, taxation liabilities (including GST) and expenses, including pursuant to clause 16.2 of this Deed;~~
  - (v) ~~fifth, in payment of the Employee Claims; and~~
  - (vi) ~~last, in payment of Admitted Claims (which are not Employee Claims) on a *pari passu* basis.~~
- (b) ~~Subject to compliance with the priorities specified in clause 11.2(a) of this Deed and elsewhere in this Deed, payments out of the Deed Fund are to be made on a *pari passu* basis and in the manner (including by way of interim Dividend) and at the time determined by the Deed Administrators in their absolute discretion.~~

## 11.3 Unclaimed funds and Property

~~If any funds or other Property being distributed has remained unclaimed for more than 6 months after the day the amount payable to an Admitted Creditor has become payable or transferable, the Deed Administrators must pay that money or transfer that Property to ASIC to be dealt with under Part 9.7 of the Corporations Act, and the Deed Administrators will cease to be under any further obligation or liability in respect of it.~~

## 12 Extinguishment of Claims

### 12.1 Condition precedent for operation

Clauses 12.2 and 12.4 of this Deed take effect following payment of the Final Dividend.

## **12.2 Claims released, discharged and extinguished**

- (a) On payment of the Final Dividend:
  - (i) all Claims of the Creditors will be released, discharged and extinguished; and
  - (ii) the Creditors accept the terms of this Deed in full and final satisfaction and complete discharge of their Claims in accordance with section 444D of the Corporations Act.

## **12.3 Execution of all necessary documents**

Each Creditor must, if required by the Deed Administrators, execute and deliver to the Deed Administrators such form of acknowledgement or release of any Claim as reflects the release and discharge of that Claim pursuant to clause 12.2 of this Deed.

## **12.4 Bar to Creditor's Claims**

Subject to section 444D of the Corporations Act, this Deed may be pleaded by the Company or the Deed Administrators against any Creditor as an absolute bar and defence to any Claim.

## **12.5 Abandonment by Creditors who do not prove**

- (a) A Creditor is deemed to have abandoned its Claim against the Company if, prior to the Final Dividend being declared, the Creditor:
  - (i) fails to submit a proof of debt in respect of its Claim as required by the Deed Administrators; or
  - (ii) having submitted a proof of debt which is rejected by the Deed Administrators, fail to appeal to the Court against the rejection in the timeframe specified by the Corporations Act and the Corporations Regulations.
- (b) In the event the Deed Administrators declare an interim Dividend pursuant to this Deed, Regulation 5.6.65 of the Corporations Regulations will apply to a Claim of a Creditor who fails to submit a proof of debt before the date on which the interim Dividend is paid.

## **12.6 Company Release**

To the extent permitted by law, any claim the Company has against a Director of the Company will be released and extinguished upon the Termination Date.

## **13 Meetings of Creditors**

### **13.1 Convening Creditors meetings**

Any meeting of Creditors convened during the DOCA Period will be convened in the manner prescribed by the provisions of Division 75 of the Insolvency Practice Schedule and Division 75 of the Insolvency Practice Rules.



**13.2 Meeting procedures**

Except to the extent that the Corporations Act, the Insolvency Practice Schedule or the Insolvency Practice Rules are inconsistent with the terms of the Deed, the provisions of Division 75 of the Insolvency Practice Schedule and Division 75 of the Insolvency Practice Rules apply to meetings of Creditors convened under this Deed.

**14 Deed Administrators**

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**14.1 Deed Administrators**

The Deed Administrators consent to their appointment as administrator of this Deed.

**14.2 Joint and several**

The rights, powers and privileges of the Deed Administrators may be exercised by them jointly and severally.

**14.3 Agent for the Company**

In exercising the powers conferred by this Deed and carrying out the duties arising under this Deed, the Deed Administrators act as agent for and on behalf of the Company and will not be personally liable for any debt, liability or other obligation which they incur on behalf of the Company.

**14.4 Discretion**

Where this Deed confers a power or discretion on the Deed Administrators, they may exercise that power or discretion in such manner as they, in their absolute discretion, consider fit.

**14.5 Resignation**

Any Deed Administrators may resign at any time by giving not less than 14 days' prior written notice to the Company unless that resignation would result in there being no remaining Deed Administrators in which case, the Deed Administrators must:

- (a) convene a meeting of Creditors for the purpose of nominating a replacement deed administrator;
- (b) assign to a replacement deed administrator nominated by the Creditors, the Deed Administrators' rights, title and benefit under this Deed; and
- (c) do all things necessary to give effect to the assignment referred to in paragraph (b).

**15 Powers and limitation of liability of Deed Administrators**

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**15.1 Powers of Deed Administrators**



- (a) The Deed Administrators will administer this Deed and have all the functions, powers and duties conferred on them by this Deed and the Corporations Act.
- (b) For the purposes of administering this Deed, the Deed Administrators have the powers specified in clause 2 of Schedule 8A of the Corporations Regulations.
- (c) In addition to the general powers in clauses 15.1(a) and (b), the Deed Administrators will have all actual and incidental powers to give effect to the objects of the Deed as set out in clause 2.2, including, without limiting the generality of this clause:
  - (i) all the powers of a voluntary administrator appointed under section 436A of the Corporations Act;
  - (ii) the powers to:
    - (A) novate, release or terminate a Contract;
    - (B) approve, ratify and implement any decision or agreement made, or transaction entered into, during the voluntary administration of the Company;
    - (C) insure the Deed Administrators for actions taken during the DOCA Period;
    - (D) disclaim any Contract;
    - (E) investigate the Property, business and affairs of the Company;
    - (F) account for, or give effect to accounting treatment of the affairs of the Company;
    - (G) convene and hold meetings of the Members or Creditors of the Company for any purposes the Deed Administrators see fit;
    - (H) establish and administer the Deed Account and the Deed Fund;
    - (I) remove the Company from any securities exchange if applicable;
    - (J) propound a compromise or arrangement under Part 5.1 of the Corporations Act; and
    - (K) do anything that is incidental to exercising a power set out in this clause.

## 15.2 Limitation on liability

Subject to the Corporations Act and to the extent permitted by law, in the performance or exercise of the Deed Administrators' powers, functions and duties under this Deed, except in the case of fraud, unlawful conduct or conduct contrary to the terms of this Deed, the Deed Administrators will not be personally liable for:

- (a) any debt, liability or other obligation which the Deed Administrators may incur on behalf of the Company pursuant to this Deed;

- (b) any loss or damage caused by any act, default or omission by the Deed Administrators or on behalf of the Deed Administrators or any person or body corporate acting on their behalf in exercise of their powers, obligations, functions and duties under this Deed, except any loss or damage occasioned by the cross negligence or wilful misconduct of the Deed Administrators; and
- (c) any debt payable or liabilities incurred by the Company after the Commencement Date including any amounts payable by the Deed Administrators for services rendered, goods purchased or property hired, leased, used or occupied by or on behalf of the Company.

15.3 Clause 15.2 will survive effectuation or termination of this Deed.

## **16 Deed Administrators' remuneration and indemnity**

### **16.1 Indemnity**

The Deed Administrators will be indemnified as Administrators and as Deed Administrators by the Company out of the Deed Fund for:

- (a) Administrator's Liabilities;
- (b) Administrator's Remuneration;
- (c) Deed Administrator's Liabilities;
- (d) Deed Administrator's Remuneration;
- (e) any amount for which the Administrators or Deed Administrators are entitled to exercise a lien at law or in equity on the property of the Company; and
- (f) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments whatsoever arising out of or in the course of this Deed or in connection with the appointment of the Deed Administrators as Administrators and as Deed Administrators, incurred or sustained in good faith and without gross negligence or wilful misconduct.

### **16.2 Remuneration and costs**

Subject to s60-5 of the Insolvency Practice Schedule, the Deed Administrators will be:

- (a) remunerated by the Company in respect of any work done by them as Administrators or Deed Administrators at the hourly rates charged from time to time by the firm of which the Deed Administrators are partners or employees as set out in the Report to Creditors issued with their notice of meeting of Creditors; and
- (b) reimbursed by the Company in respect of all remuneration, costs and expenses incurred in connection with the performance of their duties, obligations and responsibilities as Administrators or Deed Administrators.



### 16.3 Continuing indemnity

The indemnity in this Deed is a continuing indemnity and will endure for the benefit of the Deed Administrators and their partners, employees, directors, officers, contractors, advisers, authorised agents, or delegates, including any of their respective legal personal representatives, despite the removal of the Deed Administrators and the appointment of a new deed administrator or the termination of this Deed for any reason.

### 16.4 Indemnity not to be affected or prejudiced

The indemnity under clauses 16.1 and 16.3 will not:

- (a) be affected, limited or prejudiced in any way by an irregularity, defect or invalidity in the appointment of the Deed Administrators and extends to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Deed Administrators, the approval and execution of this Deed or otherwise; or
- (b) affect or prejudice any right that the Deed Administrators may have against the Company or any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Deed Administrators of or incidental to the exercise or performance of any of the powers or authorities conferred on the Deed Administrators but this Deed or otherwise.

### 16.5 Lien

To secure the rights of indemnity under clause 16.1, the Deed Administrators have a lien over the assets of the Company and the Deed Fund.

### 16.6 Priority

The Deed Administrators' right of indemnity under clause 16.1 and their lien under clause 16.5 have priority over the claims of all Creditors.


## 17 Breach of Deed

### 17.1 If:

- (a) the Directors breach any of their obligations, including their reporting obligations referred to in clauses 7.2 to 7.3; or
- (b) the Deed Administrators, acting reasonably, form the view that the Company is unlikely to be able to comply with the terms of this Deed; or
- (c) the Company otherwise breaches the terms of this Deed,

any one of these breaches will result in the Deed Administrators issuing a notice to the Directors to remedy that breach within ten (10) business days.

### 17.2 If the Company or Directors fail to remediate the breaches in accordance with clause 17.1, the Deed Administrators will reserve the right to take one of the following steps:



- (a) convene a meeting of creditors of the Company to vary the terms of this Deed pursuant to section 445A of the Corporations Act; or
- (b) immediately terminate this Deed pursuant to section 445C(c) of the Corporations Act and the Company will immediately be placed into liquidation by the Deed Administrators.

## **18 Termination**

### **18.1 Termination of the Deed where Arrangement achieves Purpose**

If the Deed Administrators of the Company have paid, transferred, allotted or issued to each Admitted Creditor their full entitlements under this Deed in accordance with clause 10, then this Deed will have achieved its purpose and will be terminated by the Deed Administrators certifying to that effect in writing and within 28 days lodging with ASIC a Notice of Termination of this Deed in the following terms:

**Morabuilt Pty Limited ACN 630 816 830 (Subject to Deed of Company Arrangement)**

We, Jonathon Sherwood Keenan and Peter Paul Krejci, Deed Administrators of the Deed of Company Arrangement executed on [enter date] **CERTIFY** that the Deed of Company Arrangement has been wholly effectuated.

### **18.2 Company's obligation to de-register the Company**

If this Deed has been terminated in accordance with clause 18.1 of this Deed, the Directors must do all things necessary to deregister the Company within 10 business days of the termination.

### **18.3 Termination Prior to Performance**

- (a) This Deed will terminate prior to its full performance if:
  - (i) the Court makes an order terminating the Deed under s445D of the Corporations Act, in accordance with the Court's orders;
  - (ii) the Creditors pass a resolution terminating this Deed at a meeting convened under the provisions of Division 75 of the Insolvency Practice Schedule and Division 75 of the Insolvency Practice Rules, by notice setting out the proposed resolution;
  - (iii) a breach of this Deed occurs in accordance with clause 17 of this Deed and section 445C(c) of the Corporations Act;
  - (iv) the Deed Proponents fail to comply with their obligations in clause 10.5(a) of this Deed and the Deed Administrators exercise their discretion provided in clause 10.5(c) of this Deed; or
  - (v) if the Court declares this Deed in its entirety to be void under section 445G(2) of the Act, upon the Court's order becoming effective



- (b) Upon termination of this Deed in accordance with clause 18.3, the Deed Administrators will certify to that effect in writing and lodge with ASIC a notice of termination of the Deed in accordance with ASIC Form 509G (or such other relevant form as required by ASIC).

#### 18.4 Consequences of Termination

On Termination:

- (a) the powers, functions, duties, obligations and responsibilities of the Deed Administrators under this Deed will end; and
- (b) every person bound by this Deed hereby releases the Deed Administrators in their capacity as Administrators and Deed Administrators, and their partners, employees, agents and sub-contract labourers from all and any Claims of any nature whatsoever concerning or arising out of the administration of the Company under Part 5.3A of the Corporations Act and the implementation, administration and enforcement of this Deed, except where that Claim arises as a result of fraud, dishonesty, breach of duty or negligence.

#### 18.5 Effect of Termination

In accordance with s444H of the Corporations Act, the Termination, or avoidance in whole or in part, of this Deed does not affect the previous operation of this Deed.

#### 18.6 Consequences of termination for non-performance

On termination under clause 18.3:

- (a) the Company will be taken to have passed a special resolution under s491 of the Corporations Act that the Company will be voluntarily wound up and the Deed Administrators be the Company's liquidators;
- (b) section 446AA of the Corporations Act will apply;
- (c) the Company will be wound up; and
- (d) the Deed Fund (or any residual part of it) will become an asset of the Company available to the liquidator appointed.

#### 18.7 Survival of clauses

Despite any other provision of this Deed, clauses 12.2, 12.4, 16.1, 16.2, 16.3, 16.4, 16.5 and 16.6 survive the Termination of this Deed.

### 19 GST

#### 19.1 GST exclusive amounts

- (a) If GST is or will be payable on a supply made under or in connection with this Deed, to the extent that the consideration otherwise provided for that supply under this Deed is not stated to include an amount in respect of GST on the supply:



- (i) the consideration otherwise provided for that supply under this Deed is increase by the amount of that GST; and
  - (ii) the recipient must make payment of the increase as and when the consideration otherwise provided for or relevant part of it must be paid or provided or, if the consideration has already been paid or provided, within 7 days of receiving a written demand from the supplier.
- (b) The right of the supplier to recover any amount in respect of GST under this Deed on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient within the time period within which the recipient is otherwise entitled to the relevant tax credit.

### **19.2 Reimbursements**

If a payment to a person is a reimbursement or indemnification that is calculated by reference to a loss, cost or expense incurred by that person, the payment will be reduced by the amount of any input tax credit to which that person is entitled for the acquisition to which that loss, cost or expense relates and then, if consideration for a taxable supply, clause 19.1 of this Deed will apply.

### **19.3 Interpretation**

For the purposes of clauses concerning GST, all terms defined in the GST Law have the meanings given to those terms in the GST Law unless the context requires otherwise.

## **20 Notices**

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### **20.1 Notices given under this document:**

- (a) must be in writing and clearly readable in the English language;
- (b) must be signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
- (c) may be delivered to a party by hand or by prepaid post or by email to that party's address or email address shown on page 1 of this document or to such other address or person as a party may specify by notice given in accordance with this clause.

### **20.2 A notice is taken to be duly given and received:**

- (a) if delivered by hand, when delivered; or
- (b) if delivered by prepaid post, three Business Days after being deposited in the mail with postage prepaid; or
- (c) if delivered by email, at the time that the recipient party confirms, by non-automated email, receipt of the notice.

- 20.3 Despite clause 20.2 of this Deed, notices received after 5 pm in the place of receipt or on a non-Business Day are taken to be received at 9 am on the next Business Day.

## **21 Corporations Act**

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### **21.1 Prescribed Provisions**

The parties acknowledge that the Deed Administrators will have all the powers set out in the Prescribed Provisions to the extent necessary to fulfil their statutory responsibilities and exercise their powers under the DOCA.

### **21.2 Required provisions**

To the extent that the Corporations Act requires any provision to be included in this Deed which is not expressly included in this Deed, that provision will be deemed to be included in this Deed and all persons bound by this Deed agree to sign all documents and do all things necessary to include such provision in this Deed, the cost of which will be borne by the Company.

### **21.3 Binding effect**

Subject to the terms of this Deed, this Deed binds:

- (a) all parties to this Deed and all Creditors in accordance with section 444D of the Corporations Act;
- (b) any creditors who have Claims relating to construction projects which the Company had entered prior to the Administrators' appointment will be bound by this Deed, notwithstanding that those creditor claims may have crystallised after the Administration Date; and
- (c) the Deed Administrators, Company, its Officers and Members in accordance with section 444G of the Corporations Act.

### **21.4 Inconsistency**

- (a) If there is an inconsistency between this Deed and the Corporations Act, Corporations Regulations, the Insolvency Practice Schedule or the Insolvency Practice Rules, this Deed prevails to the extent permitted by law.
- (b) If there is any consistency between this Deed and the Company's constitution or any other obligations binding on the Company, then this Deed prevails to the extent of that inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency, the costs of which will be borne by the Company.

## **22 Reporting**

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Except as required by law, the Deed Administrators are not required to report to Creditors. However, the Deed Administrators may, in their absolute discretion, report to Creditors during the DOCA Period at such times as the Deed Administrators consider

appropriate and on matters which the Deed Administrators consider should to be brought to the attention of the Creditors.

## **23 Attorney**

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The Creditors and the Company each irrevocably appoint the Deed Administrators as their attorney for the purpose of enforcing the terms of this Deed, and, if necessary for that purpose to commence and pursue any Court proceedings.

## **24 General**

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### **24.1 Relationship between the parties**

Except as expressly provided to the contrary in this document, nothing in this document will constitute a party as a principal, agent, employer or employee, partner or otherwise liable for the acts or omissions of any other party.

### **24.2 Entire agreement**

This document records the entire agreement between the parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the parties in relation to the subject matter of this document.

### **24.3 Further assurance**

Each party must (at its own expense) do all things that any other party reasonably requires of it to give the other party the full benefit of any obligations owed to the other party and expressed in this document.

### **24.4 Acknowledgement**

The Deed Proponents acknowledge that they have obtained, or had a reasonable opportunity to obtain, independent taxation and legal advice prior to entering into this Deed.

### **24.5 Counterparts**

This document and any variation of this document may be executed and take effect in two or more counterparts, each of which when taken together, will constitute one and the same instrument.

The signature of any party to this Deed by scanned reproduction is as sufficiently binding as an original signature.

### **24.6 Survival**

All warranties, releases, exclusions and limitations of liability, indemnities, terms with respect to intellectual property and confidential information in this document will remain valid and binding following expiry or termination of this document. Any other provision



by its nature intended to survive expiry or termination of this document survives expiry or termination of this document.

#### **24.7 No waiver**

The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under this document does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

#### **24.8 Cumulative rights**

The rights, powers, authorities, discretions and remedies of a party under this document do not exclude any other right, power, authority, discretion or remedy.

#### **24.9 Severability**

If any provision of this document is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
- (b) where the offending provision cannot be read down then that provision must be severed from the document in which event, the remaining provisions of this document operate as if the severed provision had not been included; and
- (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,

but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this document.

#### **24.10 Variation**

This document can only be amended, supplemented or replaced by resolution of creditors pursuant to section 445A of the Corporations Act or order of the Court.

#### **24.11 Governing law and jurisdiction**

This document is governed by the law of New South Wales. Each party submits to the jurisdiction of the courts in New South Wales in connection with matters concerning this document.

**Executed as a deed**

**Executed** by Morabuilt Pty Ltd ACN 630 816 830 (Administrators Appointed) by its Joint and Several Administrators by audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW) in the presence of:

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Signature of Witness

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Signature

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Name of Witness

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Name: Peter Paul Krejci

---

Address of witness

---

Signature of Witness

---

Signature

---

Name of Witness

---

Name: Jonathon Sherwood Keenan

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Address of Witness

**Signed sealed and delivered** as a deed by Jonathon Sherwood Keenan in his capacity as Joint and Several Administrator of Morabuilt Pty Ltd ACN 630 816 830 (Administrators Appointed) by audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW) in the presence of:

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Signature of Jonathon Sherwood Keenan

---

Signature of Witness

---

Name of Witness

---

Address of Witness

**Signed sealed and delivered** as a deed by Peter Paul Krejci in his capacity as Joint and Several Administrator of Morabuilt Pty Ltd ACN 630 816 830 (Administrators Appointed) by audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW) in the presence of:

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Signature of Peter Paul Krejci

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Signature of Witness

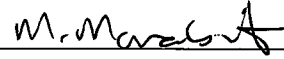
---

Name of Witness

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Address of Witness


**Signed sealed and delivered** as a deed  
by Marc Morabito in the presence of:



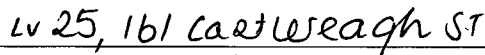
Signature of Marc Morabito



Signature of Witness



Name of Witness



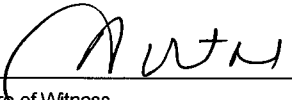
Address of Witness



**Signed sealed and delivered** as a deed  
by Vicki Morabito in the presence of:



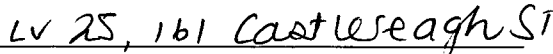
Signature of Vicki Morabito



Signature of Witness



Name of Witness



Address of Witness

