

## GENERAL SECURITY AGREEMENT

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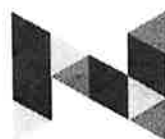
**H & M CUSTODIANS PTY LTD (ACN 619 109 063)**

**And**

**KAMATA HOMES PTY LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (ACN 130 155 305)**

**And**

**ANDREW PETER SCHWARZ AND BENJAMIN JOSEPH CONRAD IN THEIR CAPACITIES AS JOINT AND SEVERAL DEED ADMINISTRATORS OF KAMATA HOMES PTY LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (ACN 130 155 305)**



**NERLICH**  
lawyers

Level 6, 533 Little Lonsdale Street  
Melbourne Victoria 3000

Telephone: 0407 561 622

ACN 169 134 525

## General Security Agreement

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**DATE:** July 2019

### **PARTIES TO THIS DEED:**

1. **H & M Custodians Pty Ltd (ACN 613 109 063)** of Level 7, 555 Lonsdale Street, Melbourne, Victoria, 3000 (**Grantor**).
2. **Kamata Homes Pty Ltd (Subject to Deed of Company Arrangement) (ACN 130 155 305)** of Level 7, 555 Lonsdale Street, Melbourne, Victoria, 3000 (**Company**).
3. **Andrew Peter Schwarz and Benjamin Joseph Conrad in their capacities as joint and several Deed Administrators of Kamata Homes Pty Ltd (Subject to Deed of Company Arrangement) (ACN 130 155 305)** of Level 3, 90 William Street, Melbourne, Victoria, 3000 (**Deed Administrators**).

### **RECITALS:**

- A. On 26 June 2019 the creditors of the Company resolved pursuant to section 439C(a) of the *Corporations Act 2001 (Act)* that the Company execute a Deed of Company Arrangement (**DOCA**).
- B. On 17 July 2019, in accordance with the resolution of creditors, the Company, the Deed Administrators and Hisham Khartabil (**Director**) executed the DOCA.
- C. The DOCA establishes a fund for the benefit of creditors of the Company (**Distribution Fund**).
- D. It is a term of the DOCA that the Director make contributions to the Distribution Fund (**Director's Contribution**).
- E. To better secure the Director's obligation to pay the Director's Contribution, it is a term of the DOCA that the Director procure a security over the fixed and floating assets of the Grantor.
- F. The Grantor and Secured Parties wish to enter into this Deed to better secure the Director's Contribution.

### **OPERATIVE PART:**

#### **1. Interpretation and definitions**

##### **1.1. Definitions**

In this document, the following words mean:

**Administration** means the external administration of the Company including any voluntary administration, deed of company arrangement, liquidation or provisional liquidation of the Company.

**Business Day** means Monday to Friday excluding public holidays in Victoria.

**Circulating Asset** has the meaning set out in section 340 of the PPSA.

**Collateral** means all of the Grantor's present and after-acquired property (including real property), whether that property is held by the Grantor in its own right or in its capacity as trustee of the H & M Family Trust, in which the Grantor can grant the Security Interest including property in which the Grantor has, or may in the future have, rights or the power to transfer rights and the proceeds of sale of any asset held now or in the future by the Grantor.

**Control Event** has the meaning set out in section 5 of this Deed.

**Deed** means this Deed.

**Director's Contribution** means the contributions required to be paid by the Director under the terms of the DOCA in the aggregate amount of \$1,000,000.

**Event of Default of the DOCA** means a default by the Director to make any payment to the Deed Administrators of the Director's Contribution in accordance with the terms of the DOCA.

**Execution Date** means the date all Parties have executed this Deed.

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

**PPSR** means the Personal Property Securities Register established under the PPSA.

**Secured Money** means all of the Director's Contribution.

**Secured Property** means the Collateral.

**Security Interest** has the meaning set out in section 12 of the PPSA;

## 1.2. Interpretation

In this Deed, the following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) any gender includes any other gender;
- (d) "includes" means includes without limitation;
- (e) No rule of construction applies to the disadvantage of a party because this Deed is prepared by (or on behalf of) that party;
- (f) anything required to be done on a day that is not a Business Day may be done on the next Business Day;
- (g) reference to a person includes a natural person, corporation, partnership, association or other legal entity;

## General Security Agreement

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- (h) reference to legislation includes that legislation as amended or modified or re-enacted;
- (i) reference to a provision, clause, Schedule or Annexure means, respectively, a provision, clause, Schedule or Annexure of this Deed;
- (j) save to the extent otherwise provided in this Deed, if there is any inconsistency between the provisions of this Deed and the Act or Regulations, this Deed prevails to the extent permitted by law;
- (k) 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; and
- (l) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

### **2. Security**

- 2.1. The Grantor grants to the Secured Party a Security Interest over the Collateral to secure payment of the Secured Money.
- 2.2. The Security Interest is a floating charge over Circulating Assets and a fixed charge over all other Collateral.
- 2.3. The Grantor acknowledges and confirms that:
  - (a) the Secured Party has given value for the Secured Party's Security Interest in the Collateral;
  - (b) nothing in the DOCA is intended as an agreement that the Security Interest attaches at a later time than the time specified in section 19(2) of the PPSA;
  - (c) for the purposes of section 20(2)(b)(ii) of the PPSA, the Security Interest is taken over all of its present and after-acquired property.

### **3. Grantor must pay Secured Money**

- 3.1. In the event of an Event of Default of the DOCA, the Grantor agrees to pay to the Secured Party so much of the Secured Money as is then outstanding.
- 3.2. The obligation of the Grantor under clause 3.1 continues until all of the Secured Money is paid to the Secured Party.

### **4. Dealing with Collateral**

- 4.1. Subject to sub-clause 4.2, for as long as any of the Director's Contribution is outstanding and to the extent permitted by law, the parties agree that the Grantor must not:
  - (a) pay or declare any dividends;
  - (b) enter into a transaction involving the sale or other disposal of any of the Collateral; or
  - (c) grant any other security in the Collateral,

## General Security Agreement

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without the consent of the Secured Party which consent will not be unreasonably withheld.

4.2. The Grantor may do any of the following in the ordinary course of the Grantor's business:

- (a) create or allow another interest in, or dispose or part with possession of, any Collateral which is a Circulating Asset;
- (b) withdraw or transfer money from an account with a bank or other financial institution.

### 5. Control Event

5.1. It is a Control Event if:

- (a) the Secured Party gives notice to the Grantor that there is an Event of Default of the DOCA and the Event of Default of the DOCA is continuing;
- (b) a voluntary administrator, liquidator, provisional liquidator is appointed in respect of the Grantor; or
- (c) a receiver, receiver and manager or controller is appointed in respect of any of the Collateral.

5.2. If a Control Event occurs then:

- (a) the Collateral is not and immediately ceases to be a Circulating Asset;
- (b) to the extent that the Security Interest is a floating charge over the Collateral, it immediately operates as a fixed charge; and
- (c) the Grantor may no longer deal with the Collateral in accordance with clause 4.2 of this Deed.

### 6. Enforcement

6.1. If there is a Control Event:

- (a) the Security Interest becomes immediately enforceable;
- (b) the Secured Party may, by giving written notice to the Grantor, declare that so much of the Secured Money as remains outstanding at the date of the Event of Default of the DOCA is immediately due and payable, is payable on demand or is payable at such later time as the Secured Party determines;
- (c) the Secured Party has all of the rights conferred by law in relation to the Collateral including, but not limited to, the right to appoint Receivers in accordance with clause 8 of this Deed.

### 7. Reasonable assistance

7.1. The Grantor will provide to the Secured Party all reasonable assistance to enable it to register and perfect its Security Interest on the PPSR.

**8. Appointment of Receiver**

- 8.1. To the extent permitted by law, at any time after an Event of Default of the DOCA, the Secured Party may appoint any person or any persons jointly or severally or both, to be a Receiver of all or any of the Secured Property and to fix or vary the remuneration of a Receiver.
- 8.2. To the extent permitted by law, every Receiver and any delegate of the Receiver is the agent of the Grantor and the Grantor alone is responsible for his or her acts and defaults.
- 8.3. In addition to any powers of the Receiver at law, every Receiver has power to do anything in respect of the Secured Property that the Grantor could do.
- 8.4. Whether or not a Receiver has been appointed, to the extent permitted by law, the Secured Party may at any time after an Event of Default of the DOCA:
- (a) exercise any power referred to in clause 8.3 as if they were a Receiver;
  - (b) exercise those powers without taking possession of all or any of the Collateral; and
  - (c) exercise those powers directly or through an agent or agents;
- 8.5. The Secured Party may at any time:
- (a) give up possession of the Secured Property; and
  - (b) terminate any receivership.

**9. Application of money received**

- 9.1. Subject to any law including section 140 of the PPSA:
- (a) all money recovered by the Secured Party under this Deed will be applied in the manner and order determined by the Secured Party;
  - (b) if the Secured Party does not make a determination, the money recovered by the Secured Party under this Deed will be applied in the following order:
    - (i) first, all costs, charges and expenses (other than remuneration of any Receiver) incurred by the Secured Party or any Receiver in or incidental to the exercise or enforcement of its rights under this Deed;
    - (ii) second, the Receiver's remuneration;
    - (iii) third, in payment of any Security over the Collateral of which the Secured Party is aware that has priority over the Security Interest of the Secured Party created by this Deed;
    - (iv) fourth, to the Secured Party in payment of the Secured Money;
    - (v) fifth, in payment of any Security over the Collateral of which the Secured Party is aware that ranks after the Security Interest of the Secured Party created by this Deed; and

## General Security Agreement

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(vi) sixth, the surplus to the Grantor or other person entitled to it.

### **10. Release**

- 10.1. Upon the earlier of the effectuation of the terms of the DOCA or the payment of the Director's Contribution in full, whether that payment is made by the Director, by the Grantor, by any other person whatsoever, or by any combination of the aforementioned, the Secured Party will immediately release the Collateral from the Security Interest.
- 10.2. If the DOCA is terminated at any time for any reason other than an Event of Default of the DOCA the Secured Party will immediately release the Collateral from the Security Interest.
- 10.3. At the request of the Grantor the Secured Party may, at its sole and absolute discretion, allow a partial release of any of the Collateral from the Security Interest.
- 10.4. If the Secured Party releases all or part of the Collateral it will, as soon as is reasonably practicable, take all steps necessary and lodge on the PPSR all documentation required to reflect the aforementioned full or partial release of the Collateral or part of the Collateral from the Security Interest.

### **11. Notices**

- 11.1. Notices under this Deed may be:
  - (a) delivered by hand to the recipient at the address of the Party or its legal representative in which case it is taken as being received on the date of delivery;
  - (b) mailed to the recipient by ordinary pre-paid post to the address of the Party or its legal representative in which case it is taken to have been received on the fourth Business Day following posting;
  - (c) sent by facsimile to the recipient or its legal representative in which case it is taken to have been received when the sending machine receives a confirmation that it has been sent in its entirety; or
  - (d) sent by e-mail or electronic transmission to the recipient or its legal representative in which case it is taken to have been received on the day it is sent subject to any evidence that it was not received by the recipient.

### **12. Counterparts**

- 12.1. This Deed may be executed in any number of identical counterparts and such identical counterparts together will constitute one and the same instrument.

### **13. Confidentiality**

- 13.1. The terms and the subject matter of this Deed will be kept confidential and will not be disclosed to any other person without the written consent of the other Parties to this Deed, save for such disclosure:
  - (a) as may be required by law; or

(b) for the purpose of reporting to creditors of the Administration.

**14. Entire Agreement**

- 14.1. This is the entire agreement between the Parties concerning the subject matter of this Deed.
- 14.2. There is no other agreement, understanding, warranty or representation whether oral or written, binding the parties concerning any aspect of this Deed.
- 14.3. The Parties acknowledge that they have entered into this Deed without relying on any representation by the other, other than the representations contained in this Deed.

**15. Severability**

- 15.1. If a provision (or part of it) is held to be unenforceable or invalid, then it must be interpreted as narrowly as necessary to allow it to be enforceable or valid.
- 15.2. If a provision (or part of it) is held to be unenforceable or invalid and cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then:
  - (a) the provision (or part of it) must be severed from this Deed; and
  - (b) the remaining provisions (and the remaining part of the provision) are valid and enforceable.

**16. Variation**

- 16.1. This Deed may not be varied except by written instrument executed by the Parties.

**17. Victorian Law and Jurisdiction**

- 17.1. The law of the State of Victoria from time to time governs this Deed.
- 17.2. The parties agree to the non-exclusive jurisdiction of the courts of the State of Victoria and of courts entitled to hear appeals from those courts.

General Security Agreement

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**EXECUTED AS A DEED:**

**EXECUTED** by **H & M CUSTODIANS PTY LTD (ACN 619 109 063)**

in accordance with section 127 of the *Corporations Act 2001*



Signature of sole director

HISHAM KHARTABIK

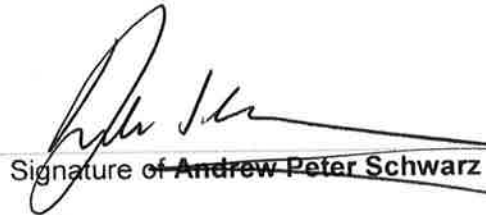
Name of sole director

Date: 31/07/2019

**SIGNED SEALED AND DELIVERED** by )  
**ANDREW PETER SCHWARZ** in his capacity )  
as Deed Administrator of Kamata Homes Pty )  
Ltd (ACN 130 155 305) (Subject to Deed of )  
Company Arrangement) in the presence of: )



Signature of witness



Signature of ~~Andrew Peter Schwarz~~

BRENDAN SMITH

Name of witness (please print)

Date: 31/07/19

General Security Agreement

SIGNED SEALED AND DELIVERED by )  
BENJAMIN JOSEPH CONRAD in his )  
capacity as Deed Administrator of Kamata )  
Homes Pty Ltd (ACN 130 155 305) (Subject )  
to Deed of Company Arrangement) in the )  
presence of:



Signature of witness



Signature of Benjamin Joseph Conrad

BRENDAN SMITH

Name of witness (please print)

Date: 31/07/19

Executed by KOMATA HOMES PTY LTD  
(ACN 130 155 305) (SUBJECT TO DEED OF  
COMPANY ARRANGEMENT) in accordance  
with section 127 of the Corporations Act 2001  
(Cth):



Signature of sole director

HISHAM KHAKTASIL

Name of sole director

Date: 31/07/2019

**DEED OF VARIATION OF GENERAL SECURITY AGREEMENT**

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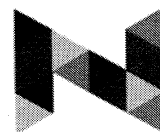
**H & M CUSTODIANS PTY LTD (ACN 619 109 063)**

**And**

**KAMATA HOMES PTY LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (ACN 130 155 305)**

**And**

**ANDREW PETER SCHWARZ AND BENJAMIN JOSEPH CONRAD IN THEIR CAPACITIES AS JOINT AND SEVERAL DEED ADMINISTRATORS OF KAMATA HOMES PTY LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (ACN 130 155 305)**



**NERLICH**  
lawyers

Level 6, 533 Little Lonsdale Street  
Melbourne Victoria 3000

Telephone: 0407 561 622

ACN 169 134 525

Deed of Variation of General Security Agreement

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**DATE:** August 2019

**PARTIES TO THIS DEED:**

1. **H & M Custodians Pty Ltd (ACN 613 109 063)** of Level 7, 555 Lonsdale Street, Melbourne, Victoria, 3000 (**Grantor**).
2. **Kamata Homes Pty Ltd (Subject to Deed of Company Arrangement) (ACN 130 155 305)** of Level 7, 555 Lonsdale Street, Melbourne, Victoria, 3000 (**Company**).
3. **Andrew Peter Schwarz and Benjamin Joseph Conrad in their capacities as joint and several Deed Administrators of Kamata Homes Pty Ltd (Subject to Deed of Company Arrangement) (ACN 130 155 305)** of Level 3, 90 William Street, Melbourne, Victoria, 3000 (**Deed Administrators**).

**RECITALS:**

- A. On 26 June 2019 the creditors of the Company resolved pursuant to section 439C(a) of the *Corporations Act 2001 (Act)* that the Company execute a Deed of Company Arrangement (**DOCA**).
- B. On 17 July 2019, in accordance with the resolution of creditors, the Company, the Deed Administrators and Hisham Khartabil (**Director**) executed the DOCA.
- C. The DOCA establishes a fund for the benefit of creditors of the Company (**Distribution Fund**).
- D. It is a term of the DOCA that the Director make contributions to the Distribution Fund (**Director's Contribution**).
- E. To better secure the Director's obligation to pay the Director's Contribution, it is a term of the DOCA that the Director procure a security over the fixed and floating assets of the Grantor.
- F. In accordance with the terms of the DOCA the Grantor and Secured Parties entered into a General Security Agreement on 31 July 2019 (**GSA**).
- G. The Parties enter into this Deed to vary the definitions contained in the GSA in order to, for the avoidance of doubt, clarify any inconsistency and better reflect the intention of the Parties.

**OPERATIVE PART:**

1. **Interpretation**
  - 1.1. Interpretation

In this Deed, the following rules apply unless the context requires otherwise:

## Deed of Variation of General Security Agreement

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- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) any gender includes any other gender;
- (d) "includes" means includes without limitation;
- (e) No rule of construction applies to the disadvantage of a party because this Deed is prepared by (or on behalf of) that party;
- (f) anything required to be done on a day that is not a Business Day may be done on the next Business Day;
- (g) reference to a person includes a natural person, corporation, partnership, association or other legal entity;
- (h) reference to legislation includes that legislation as amended or modified or re-enacted;
- (i) reference to a provision, clause, Schedule or Annexure means, respectively, a provision, clause, Schedule or Annexure of this Deed;
- (j) save to the extent otherwise provided in this Deed, if there is any inconsistency between the provisions of this Deed and the Act or Regulations, this Deed prevails to the extent permitted by law;
- (k) 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; and
- (l) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

## 2. Variation

2.1. The GSA is varied as set out below:

- (a) A new definition be inserted in clause 1.1 of the GSA as follows:

**"Secured Party** means the Deed Administrators."

- (b) The definition of "Security Interest" contained in clause 1.1 of the GSA be deleted and a new definition be inserted into clause 1.1 as follows:

**"Security Interest** in relation to personal property has the meaning set out in section 12 of the PPSA and in relation to real property means a charge over real property."

## 3. Counterparts

3.1. This Deed may be executed in any number of identical counterparts and such identical counterparts together will constitute one and the same instrument.

**4. Confidentiality**

- 4.1. The terms and the subject matter of this Deed will be kept confidential and will not be disclosed to any other person without the written consent of the other Parties to this Deed, save for such disclosure:
- (a) as may be required by law; or
  - (b) for the purpose of reporting to creditors of the Administration.

**5. Entire Agreement**

- 5.1. This is the entire agreement between the Parties concerning the subject matter of this Deed.
- 5.2. There is no other agreement, understanding, warranty or representation whether oral or written, binding the parties concerning any aspect of this Deed.
- 5.3. The Parties acknowledge that they have entered into this Deed without relying on any representation by the other, other than the representations contained in this Deed.

**6. Severability**

- 6.1. If a provision (or part of it) is held to be unenforceable or invalid, then it must be interpreted as narrowly as necessary to allow it to be enforceable or valid.
- 6.2. If a provision (or part of it) is held to be unenforceable or invalid and cannot be interpreted as narrowly as necessary to all it to be enforceable or valid, then:
- (a) the provision (or part of it) must be severed from this Deed; and
  - (b) the remaining provisions (and the remaining part of the provision) are valid and enforceable.

**7. Variation**

- 7.1. This Deed may not be varied except by written instrument executed by the Parties.

**8. Victorian Law and Jurisdiction**

- 8.1. The law of the State of Victoria from time to time governs this Deed.
- 8.2. The parties agree to the non-exclusive jurisdiction of the courts of the State of Victoria and of courts entitled to hear appeals from those courts.

Deed of Variation of General Security Agreement

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**EXECUTED AS A DEED:**

**EXECUTED by H & M CUSTODIANS PTY LTD (ACN 619 109 063)**

in accordance with section 127 of the  
*Corporations Act 2001*

  
Signature of sole director

  
Name of sole director

Date: 19/08/2019

**SIGNED SEALED AND DELIVERED** by )  
**ANDREW PETER SCHWARZ** in his capacity )  
as Deed Administrator of Kamata Homes Pty )  
Ltd (ACN 130 155 305) (Subject to Deed of )  
Company Arrangement) in the presence of: )

Signature of witness

Signature of **Andrew Peter Schwarz**

Name of witness (*please print*)

Date:

Deed of Variation of General Security Agreement

SIGNED SEALED AND DELIVERED by )  
BENJAMIN JOSEPH CONRAD in his )  
capacity as Deed Administrator of Kamata )  
Homes Pty Ltd (ACN 130 155 305) (Subject )  
to Deed of Company Arrangement) in the )  
presence of:


Signature of witness

Signature of Benjamin Joseph Conrad

Name of witness (please print)

Date:

Executed by KOMATA HOMES PTY LTD  
(ACN 130 155 305) (SUBJECT TO DEED OF  
COMPANY ARRANGEMENT) in accordance  
with section 127 of the *Corporations Act 2001*  
(Cth):

  
Signature of sole director

HISHAM KHATTARIC  
Name of sole director

Date: 19/08/2019

Deed of Variation of General Security Agreement

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**EXECUTED AS A DEED:**

**EXECUTED by H & M CUSTODIANS PTY  
LTD (ACN 619 109 063)**

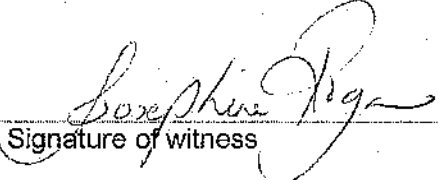
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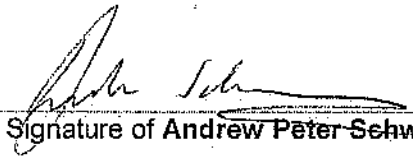
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Signature of sole director

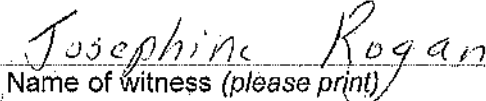
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Name of sole director

Date:

**SIGNED SEALED AND DELIVERED** by )  
**ANDREW PETER SCHWARZ** in his capacity )  
as Deed Administrator of Kamata Homes Pty )  
Ltd (ACN 130 155 305) (Subject to Deed of )  
Company Arrangement) in the presence of: )

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

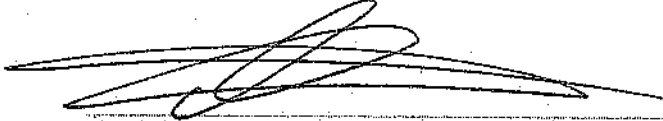
  
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Signature of Andrew Peter Schwarz

  
\_\_\_\_\_  
Name of witness (please print)

Date:

Deed of Variation of General Security Agreement

SIGNED SEALED AND DELIVERED by )  
BENJAMIN JOSEPH CONRAD in his )  
capacity as Deed Administrator of Kamata )  
Homes Pty Ltd (ACN 130 155 305) (Subject )  
to Deed of Company Arrangement) in the )  
presence of:



Signature of witness



Signature of Benjamin Joseph Conrad

Alexander David Nicol  
Name of witness (please print)

Date: 19 August 2019

Executed by KOMATA HOMES PTY LTD  
(ACN 130 155 305) (SUBJECT TO DEED OF  
COMPANY ARRANGEMENT) in accordance  
with section 127 of the *Corporations Act 2001*  
(Cth):

Signature of sole director

Name of sole director

Date: