

# Memorandum of Provisions

Registered Number	State or Territory
AF751541	New South Wales
AA1546	Victoria
713456017	Queensland
1708558	Australian Capital Territory
M421	Tasmania
11457421	South Australia
372121	Northern Territory
L423978	Western Australia

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### Key words

The meaning of words printed *like this* and of some other common key words is explained in clause 36 at the end of this mortgage.

## WHAT YOU UNDERTAKE IN THIS MORTGAGE

- 1.1 By signing this mortgage *you* undertake certain obligations as mortgagor. *You* also give us rights concerning *you* and *the property* – for example, if *you* do not comply with your obligations, *we* may take possession of *the property*, sell it and sue *you* for any remaining money *you* owe us.
- 1.2 *You* are liable for all the obligations under this mortgage both separately on your *own* and jointly with any one or more other persons named in this mortgage as mortgagor.
- 1.3 *You* must ensure that *you* are not in default under this mortgage. *You* must also carry out on time all your obligations under every *agreement covered by this mortgage including* the obligation to pay any of the *amount owing*. These obligations and your other obligations under this mortgage (*such as* under “Costs, indemnities and interest” or “Enforcement expenses”) continue even if *we* release *the property* from this mortgage.
- 1.4 *You* may require us to release *the property* from this mortgage when there is no *amount owing*. However, even if the *amount owing* is repaid, *the property* remains mortgaged to us until *we* actually release it from this mortgage.
- 1.5 *You* declare that:
- (a) *you own the property* or are in the process of becoming the owner of it; and
  - (b) *you* have told us about all rights that affect *the property* (or are proposed or likely to affect it) (*such as* easements, leases, *securities*, the rights of a beneficiary under a trust or plans to compulsorily acquire *the property*); and
  - (c) *you* do not breach any law or any obligation to any other *person* by signing this mortgage; and
  - (d) all the information *you* have given us is correct and not misleading; and

- (e) *you* have not withheld any material information that might have caused us not to enter into this mortgage or an *agreement covered by this mortgage* ; and
  - (f) *you* have told us about any structure on adjoining land that encroaches on *the property* and any structure on *the property* that encroaches on adjoining land.
- 1.6 *You* must tell us if anything has happened which prevents *you* from repeating any one or more of the declarations in clause 1.5 before:
- (a) *we* provide *you* with a loan or other financial accommodation under an *agreement covered by this mortgage*; or
  - (b) *you* acknowledge that another agreement is to be an *agreement covered by this mortgage*; or
  - (c) *you* consent to us providing financial accommodation to another *person* which is guaranteed by *you* under an *agreement covered by this mortgage*.

## HOW THIS MORTGAGE AFFECTS YOU AND THE PROPERTY

### Rates, taxes and levies

2. *You* must pay on time all amounts for which *you* are liable as owner of *the property*, including rates, taxes and *shared scheme* levies.

### Looking after *the property*

- 3.1 *You* must:
- (a) keep *the property* in good condition and correct any material defect that could affect the value of *the property*; and
  - (b) not do anything that might lower the value of *the property*; and

- (c) tell us if *the property* is contaminated or materially defective or damaged such that it could affect the value of *the property*; and
- (d) remove any contaminant and clean up any contamination, if *the property* is contaminated.
- 3.2 *You must:*
- (a) give us any order or notice from an authority, *such as* the local council, or a *governing body* concerning the use or condition of *the property* (or the shared property, if it is part of a *shared scheme*) as soon as *you* become aware of it; and
- (b) comply with all laws and requirements of authorities and your other obligations in connection with *the property*.
- 3.3 If *the property* is part of a *shared scheme* (for example a townhouse or home unit), *you* must also:
- (a) comply with the by-laws, rules or articles of the *shared scheme*; and
- (b) vote at any *governing body* meeting following any reasonable directions *we* give *you*; and
- (c) do your best to ensure that the *governing body* complies with its obligations (*such as* keeping the shared property in good condition); and
- (d) tell us if the *governing body* does not comply with its obligations (*including* its insurance obligations); and
- (e) do your best to ensure that your rights under the *shared scheme* are not varied; and
- (f) tell us of any proposal to vary, substitute or terminate the *shared scheme* or its by-laws, rules or articles.
- Insurance**
- 4.1 *You* must maintain insurance over *the property* and any *works* against fire and other usual risks.
- 4.2 The insurance under clause 4.1 must be for the full insurable value of *the property* and any *works* on a replacement and reinstatement basis, unless *the property* is part of a *shared scheme*.
- 4.3 If *the property* is part of a *shared scheme* anywhere other than Victoria, the insurance under clause 4.1 must be for the total amount secured by all mortgages and charges over *the property* (sometimes known as a mortgagee's protection policy).
- 4.4 If *the property* is part of a *shared scheme* in Victoria, the insurance under clause 4.1 must be for the full insurable value of *the property* and any *works* on a replacement and reinstatement basis, unless the *governing body* has insured *the property* and the shared property. In that case, *you* need only take out insurance for any sum by which the *amount owing* exceeds the amount of the *governing body* insurance attributable to *the property* and its share in the shared property.
- 4.5 *You* must maintain insurance against public liability risk and any other risk *we* reasonably require in connection with *the property*.
- 4.6 Each policy under clauses 4.1 to 4.5 must:
- (a) note our interest as mortgagee; and
- (b) be on terms and for an amount satisfactory to us; and
- (c) be with an insurer approved by us acting reasonably.
- 4.7 If *the property* is part of a *shared scheme*, *you* must also do your best to ensure that the *governing body* maintains whatever insurance it is required to by law.
- 4.8 *You* must produce evidence satisfactory to us of current insurance cover whenever *we* ask for it.

- 4.9 *You must:*
- (a) ensure that the insurance cover is not reduced or cancelled, and notify us if it is or could be; and
  - (b) ensure that nothing happens that could permit an insurer to decline a claim, and notify us if anything would permit an insurer to do this.
- 4.10 The obligations in clauses 4.8 and 4.9 apply to insurance taken out by either *you* or a *governing body*.

### Insurance claims

5.1 *You must do your best to ensure that proceeds from an insurance claim (including a claim by a governing body if the property is part of a shared scheme) are:*

- (a) used to reinstate *the property* or carry out other *works*; or
- (b) paid to us. (*We must then use them as set out in clause 22.*)

However, if *we* reasonably direct *you* to use or hold insurance proceeds *you* receive in a particular way, *you* must use or hold them as *we* direct.

- 5.2 *You must notify us if an insurance claim is refused either in part or in full.*
- 5.3 If *we* notify *you*, *we* may take over your rights to make, pursue or settle an insurance claim. *We* may exercise those rights in any reasonable manner *we* choose.

### Building and other work

6.1 *You must get our consent and all necessary approvals from authorities (and the governing body if the property is part of a shared scheme) before you carry out or permit works, or enter into a contract to carry them out.*

- 6.2 *You must:*
- (a) comply with all laws, requirements of authorities, easements and covenants which affect any *works*; and
  - (b) ensure that all *works* are done competently and completed within a reasonable time; and
  - (c) obtain and give us relevant certificates and permits *we* require (*such as* certificates of satisfactory completion or compliance or occupancy permits).

6.3 If *we* think *you* are not proceeding with *works* satisfactorily, *we* may take them over *including* by varying, demolishing or stopping them as *we* see fit.

6.4 *We* are not liable for any loss:

- (a) in connection with *works* *we* consent to (*including* loss arising out of plans or specifications *we* may approve); or
- (b) which arises because *we* do not finish *works* *we* take over under clause 6.3.

6.5 If *we* monitor *works* (*such as* inspecting or accepting any part of their construction or approving plans), *we* will be doing so for our own purposes. *We* do not owe *you* any duty to exercise care or skill in doing so and *we* need not tell *you* the results of any inspection.

6.6 For the purpose of securing to us the payment of the *amount owing*, *you* transfer to us all your rights under any warranty, guarantee or builders' insurance relating to *the property* or to any *works* carried out before or after this mortgage is signed.

*You* may require us to transfer back to *you* all those rights when there is no *amount owing*. Even if the *amount owing* is repaid, *we* retain all of your rights until *we* actually transfer them back to *you*.

## ***The property and adjoining land***

7.1 If after signing this mortgage any part of a structure on *the property* materially encroaches on adjoining land, then, if we ask, *you* may elect to:

- (a) correct the encroachment; or
- (b) obtain an easement or other permission acceptable to us to allow it to continue; or
- (c) become the owner of the encroached land.

7.2 As further *security* for payment of the *amount owing*, *you* must mortgage to us on the same terms as this mortgage any encroached land of which *you* become the owner.

7.3 If after signing this mortgage we ask, *you* must have any material encroachment on *the property* from adjoining land removed.

## **Dealings – *such as* selling, renting or mortgaging**

8. *You* must get our consent before *you*:

- (a) sell *the property*; or
- (b) rent out *the property* for a period greater than one year or allow a surrender or variation of any rental agreement that is for a period greater than one year. Our consent will not be unreasonably withheld for investment property loans; or
- (c) create another mortgage or charge in connection with *the property*, or allow one to arise or continue; or
- (d) part with possession of *the property* for a period greater than one year. Our consent will not be unreasonably withheld for investment property loans; or
- (e) subdivide or consolidate *the property*; or
- (f) create, release or vary an easement, covenant

or public right of way which relates to *the property* or allow one to arise; or

(g) deal in any other way with *the property*, this mortgage or any interest in them, or allow any interest in them to arise or be varied.

## **Other securities**

9.1 If we consent to another *security* over *the property* and if we ask, then *you* must get an agreement acceptable to us regarding the priority between this mortgage and the other *security*.

9.2 If *you* do not get our consent and any agreement we ask for, we:

- (a) need not make funds available under any *agreement covered by this mortgage*; and
- (b) may exercise any other rights that arise because *you* do not do so, *such as* the right to take possession of *the property* or to sell it.

9.3 *You* must ensure that the amount secured under any other *security* over *the property* is not increased without our consent.

9.4 *You* must comply on time with any obligation in connection with any other *security* over *the property*.

## **Caveats**

10. *You* must do everything necessary to remove any caveat placed on the title to *the property* without our consent. (A caveat is a warning, noted in the official title register, restricting dealings with *the property*, *such as* its sale.)

## **Crown land**

11. If *the property* is held under law relating to Crown land, *you* must mortgage to us on terms we require as further *security* for payment of the *amount owing*:

- a) any estate or interest in land or other property:

- which the rights *you* have from the Crown are converted into; or
- which *you* become owner of because *you own the property*; and

b) any further estate or interest *you* acquire in the Crown land.

### Rural land

12. If any of *the property* is used for grazing, farming, horticultural or agricultural purposes, *you* must:
- (a) manage and preserve it properly and efficiently *including* by taking reasonable action (*such as* fencing and spraying) to keep it free from pests and harmful vegetation; and
  - (b) if *we* ask, secure to us on terms *we* require as further *security* for payment of the *amount owing* any stock on *the property*, or clip or crop produced on *the property*; and
  - (c) not, without our consent, give any other *security* over any stock on *the property*, or clip or crop produced on *the property*; and
  - (d) not, without our consent, deal with any quota or contract for producing or selling crops or produce capable of being produced on *the property* or do anything which could cause a quota or contract to be forfeited or cancelled; and
  - (e) not, without our consent, deal with any licence attached to the land (*such as* a water licence) or do anything which could cause a licence to be forfeited or cancelled.

### Consents

13. *You* must comply with all our reasonable requirements in any consent *we* give in connection with this mortgage *including* any conditions attached to the consent.

### Payments *such as* compensation

- 14.1 *You* must notify us if *you* have a right to claim or receive a payment in connection with your ownership of *the property* (*such as* compensation if *the property* is acquired for a road widening scheme).
- 14.2 *You* must claim payment in the manner *we* reasonably direct *you* to. But, if *we* notify *you* and where reasonable, *we* may take over your rights to make, pursue or settle your claim. *We* may then exercise those rights in any manner *we* choose (*including* signing releases for the payment in your name or ours).
- 14.3 *You* must do your best to ensure that any payments are paid to us where *we* have a reasonable claim to payments from *you*. If those payments are, despite your best attempts, paid to *you*, *you* must pay them to us promptly. (In each case, *we* must then use the payments as set out in clause 22).

### Administrative matters

- 15.1 *You* must deposit with us:
- (a) any documents of title and leases; and
  - (b) any other documents *we* reasonably request relating to *the property*. But *you* need not deposit them with us if another *person* is holding them under a *security* over *the property* to which *we* have consented and which has priority over this mortgage.
- 15.2 *We* may register this mortgage.
- 15.3 *You* must do anything *we* reasonably ask (*such as* obtaining consents, signing and producing documents, replying to questions, producing receipts and getting documents completed and signed):
- (a) to provide more effective *security* over *the property* (or any other property *you* are



required to mortgage under this mortgage)  
for the payment of the *amount owing*; or

(b) to enable us to register this mortgage with the  
agreed priority; or

(c) to enable us to exercise our rights  
in connection with *the property*; or

(d) to ensure that each agreement which  
is intended to be covered by this mortgage  
becomes an *agreement covered by this  
mortgage*; or

(e) to enable us to register the power of attorney  
in clause 30 or a similar power; or

(f) to show whether *you* are complying with this  
mortgage.

15.4 *You* agree that *we* may fill in any blanks in this  
mortgage.

15.5 *You* must supply us with any information or  
documents *we* reasonably ask for about or affecting:

(a) *the property* or any *works*; or

(b) the *shared scheme*, if *the property* is part  
of a *shared scheme*; or

(c) any lease, tenancy or other arrangement  
connected with *the property*; or

(d) this mortgage.

15.6 *You* must pay for anything that *you* must do under  
this mortgage.

#### **Additional obligation if *you* are a company**

16. If *you* are a company, *you* must ensure that your  
directors and your secretary are not changed, and  
*you* must not approve or register a transfer of any  
shares, without our consent.

## **COSTS, INDEMNITIES AND INTEREST**

### **Scope of this clause**

17.1 This clause 17 applies to the extent that the National  
Credit Code does not apply to this mortgage.

### **What *you* must pay**

17.2 When *we* ask, *you* must pay us for:

(a) our reasonable costs, and any receiver's *costs*  
and remuneration, in arranging, administering  
(*including* enforcing, attempting to enforce  
or taking any other action in connection with  
our rights or any receiver's rights), releasing  
and terminating this mortgage or any  
*agreement covered by this mortgage*; and

(b) all stamp and other duties, fees, taxes and  
charges payable in connection with this  
mortgage, any *agreement covered by this  
mortgage* and any transaction or return  
relating to them and any interest, penalties,  
fines and expenses in connection with them.

17.3 *You* indemnify us against, and *you* must therefore  
pay us for, liability, loss or *costs* (*including*  
consequential or economic loss) *we* suffer or incur:

(a) if *you* default under this mortgage (in which  
case *you* will also be liable for any loss arising  
because *we* require repayment of the *amount  
owing* earlier than its due date); or

(b) in connection with *the property* or our  
monitoring of works.

17.4 The indemnity in clause 17.3 is a continuing  
obligation, independent of your other obligations  
under this mortgage. It continues after *we* release  
*the property* from this mortgage.



## Interest

- 17.5 *You* must pay interest calculated on daily balances on any part of the *amount owing* which arises solely under this mortgage (*such as* under clause 17.2) rather than arising under an *agreement covered by this mortgage*.
- 17.6 The interest accrues from the date *we* ask *you* for the amount until *you* pay it.
- 17.7 The rate of interest applying to each daily balance is 3% above our overdraft interest rate on that day.
- 17.8 *You* must pay interest owing under clause 17.5 when *we* specify.
- 17.9 Each month (or any other periods *we* choose), *we* may add to the amount *you* owe us any interest payable under clause 17.5 which is overdue (this is known as ‘capitalising’ or ‘compounding’ the interest). *You* will then be liable for interest under clause 17.5 on the total amount.
- 17.10 If any amount *you* must pay under this mortgage becomes merged in a court order, *you* must pay interest on that amount as a separate obligation. The interest is payable from the date *we* first ask *you* for the amount until that amount is paid. This obligation is not affected by the court order. The rate is the rate in clause 17.7 or the rate in the court order, whichever is higher.

## THINGS WE MAY DO AT ANY TIME

- 18.1 *We* may assign or otherwise deal with our rights under this mortgage or any *agreement covered by this mortgage* in any way *we* consider appropriate. *You* agree that *we* may disclose any information or documents *we* consider desirable to help us exercise this right. *You* also agree that *we* may disclose information or documents at any time to a *person* to whom *we* assign our rights under this mortgage.
- 18.2 *We* may enter *the property* to:

- (a) inspect its condition or any *works*; or
- (b) find out whether *you* are complying with this mortgage; or
- (c) carry out our rights under this mortgage.

18.3 Unless there is an emergency, *we* must give *you* reasonable notice before entering under clause 18.2. *You* must help us to enter, *such as* by getting any consent necessary.

18.4 *We* may do anything which *you* should have done under this mortgage but which *you* have either not done or in our opinion have not done properly. If *we* do so, *you* must pay our expenses in accordance with clause 17 or 21.

## WHAT CAN HAPPEN IF YOU ARE IN DEFAULT?

### When are *you* in default?

19. *You* are in default if:
- (a) *you* do not pay the *amount owing* on time; or
- (b) *you* do something *you* agree not to do, or *you* don't do something *you* agree to do, under this mortgage or an *agreement covered by this mortgage*; or
- (c) *you* give, or another *person* gives, us incorrect or misleading information (*including* through your declarations under clause 1.5) in connection with this mortgage or an *agreement covered by this mortgage*; or
- (d) *we* reasonably believe *you* or another *person* has acted fraudulently in connection with this mortgage or an *agreement covered by this mortgage*; or
- (e) if *you* are a company, *you* become *insolvent* or steps are taken to make *you* so; or

(f) *you* do not, or another *person* does not, carry out in full an undertaking given in connection with this mortgage or an *agreement covered by this mortgage*, within the period specified, or within seven days if no period is specified.

(d) appoint a receiver to do any of those things and anything else the law allows a receiver to do.

### What can happen then?

20.1 If *you* are in default and *we* choose to enforce this mortgage, *we* must give *you* a notice. (*You* must have been in default for one day or more before *we* may do this.) The notice must:

(a) state that *you* are in default; and

(b) specify a period of grace of at least 31 days.

20.2 The law (*including* statute law governing the exercise of our power of sale as mortgagee and, if applicable, the National Credit Code) requires us to give *you* certain information before enforcing this mortgage. *We* may include that information in the notice under clause 20.1 or another notice.

20.3 During the period of grace given under clause 20.1, *you* are allowed to correct any default that can be corrected. If *you* do not correct that default within that period or if there is a default that cannot be corrected, then, to the extent it is not already due for payment, the *amount owing* becomes immediately due for payment at the end of the grace period without further notice. In addition, *we* may then do one or more of the following as well as anything else the law allows us to do as mortgagee:

(a) sue *you* for the *amount owing*;

(b) take possession of *the property* (*We* may remove personal possessions and store them without being liable to *you*. If *we* store them and *you* do not reclaim them within a reasonable time, *we* may dispose of them and use the proceeds towards paying the *amount owing*.);

(c) do anything an owner or receiver of *the property* could do, *including* improving, selling or leasing it; and

### Enforcement expenses

21. When *we* ask, *you* must pay us the reasonable expenses *we* reasonably incur in enforcing this mortgage after *you* are in default (*including* in preserving and maintaining *the property* – *such as* by paying insurance, rates and taxes for *the property*). This applies to expenses *we* incur before or after taking action under clause 20.

### WHAT HAPPENS TO MONEY WE RECEIVE?

22.1 Money received under this mortgage is to be used towards paying the *amount owing* unless *we* are obliged to pay the money to anyone with a prior claim. However, if money received represents proceeds of an insurance claim, *we* may use it to reinstate *the property* or carry out other work on it.

22.2 If, at the time *we* receive the money, any part of the *amount owing* is not then due for payment, *we* may retain an amount equal to that part. *We* must hold it in an interest bearing account and use it (and any net interest after tax) to pay the *amount owing* when it becomes due for payment.

22.3 *We* may use any money received under this mortgage towards paying any part of the *amount owing* *we* choose, *such as* by:

- paying a later instalment before an earlier instalment (This applies even if that part falls due after *we* give a notice under clause 20.1.); or
- applying the payment under one *agreement covered by this mortgage* before another.

22.4 *We* must pay any money remaining after the *amount owing* is paid either to *you* or to another *person* entitled to it (*such as* another *person* with a security over *the property*). In particular, *we* may pay it to a

*person* with a subsequent registered or unregistered *security* without incurring liability to *you*.

22.5 We need not credit *you* with money until as soon as practicable after *we* actually receive it.

## GENERAL MATTERS

### Setting off money

23. Except to the extent *you* have a right of set-off granted by law which *we* cannot exclude by agreement (*such as* under the National Credit Code),:

(a) *you* must pay the *amount owing* in full without setting off amounts *you* believe *we* owe *you* and without counter claiming amounts from us; or

(b) *We* may set off against the *amount owing* (*including* any disputed amounts) any money *we* owe *you*.

### Notices, other communications and service of documents

24.1 Notices, certificates, consents, approvals and other communications in connection with this mortgage must be in writing.

24.2 Communications from us may be signed by any of our employees whose job description includes the word “manager”. If *you* are a company, communications from *you* must be signed by a director.

24.3 Communications to *you* may be:

(a) given personally (if *you* are a company, to one of your directors); or

(b) left at your residential or business address last known to us; or

(c) sent by post to your postal or residential or business address last known to us; or

(d) sent by facsimile to your residential or business facsimile number last known to us; or

(e) given any other way permitted by law that *we* have notified *you* of, using one of the above methods.

24.4 Communications for us must be:

(a) given personally to one of our employees at:

- the branch where *you* arrange this mortgage; or
- any other branch *we* tell *you*; or our registered office; or

(b) sent by prepaid post or electronically (*such as* by facsimile or telex) to any of those places; or

(c) given any other way permitted by law that *we* have notified *you* of, using one of the above methods.

24.5 A communication is taken to be given:

(a) in the case of a communication given personally – on the date it bears or the date it is received by the *person* to whom it is addressed, whichever is the later; or

(b) in the case of a communication sent by post – on the date it bears or the date it would have been delivered in the ordinary course of post, whichever is the later; or

(c) in the case of a communication sent by facsimile or some other form of electronic transmission – on the date it bears or on the date on which the machine from which it was sent produces a report indicating the communication was sent to the fax or other number of the *person* to whom it is addressed, whichever is the later.

24.6 *We* may serve any document in a court action (*including* a writ of summons, other originating process or third or other party notice) on *you* by

delivering it to *the property* or by leaving it there. This clause does not prevent any other method of service.

still exercise our rights under this mortgage as well as under the *security*, right or remedy.)

#### Our certificates

25. We may give *you* a certificate about a matter or about an amount payable in connection with this mortgage. The certificate is sufficient evidence of the matter or amount, unless it is proved to be incorrect.

#### Prompt performance

26. If this mortgage specifies when *you* must perform an obligation, *you* must perform it by the time specified. *You* must perform all other obligations promptly.

#### How we may exercise our rights

27.1 We may enforce this mortgage before we enforce other rights or remedies *including* under another *security*.

27.2 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.

27.3 Our rights and remedies under this mortgage are in addition to other rights and remedies provided by law independently of it or by any other *security*.

27.4 Our rights and remedies under this mortgage may be exercised by any of our directors, any of our employees whose job title includes the word “manager”, any of our solicitors or any other *person* we authorise.

#### Your obligations and our rights are unaffected

28.1 This mortgage does not merge with or adversely affect, and is not adversely affected by, any of the following:

(a) another *security* or right or remedy to which we are entitled; or

(b) any rights claimed or enforced against *you* in respect of any of the *amount owing*. (We can

#### Variation or waiver

29. A term of this mortgage, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

#### Power of attorney

30.1 *You* appoint us, each of our directors, each of our employees whose job title includes the word “manager”, each of our solicitors, each other *person* we authorise, and each receiver under this mortgage, separately as your attorney. If we ask, *you* must formally approve anything they do under clause 30.2. *You* may not revoke these appointments.

30.2 If we have served a notice stating that *you* are in default, each attorney may:

(a) do anything which *you* can do as owner of *the property* (*including* executing deeds, selling or leasing *the property*, selling or surrendering any lease, lodging or withdrawing caveats and starting, conducting and defending legal proceedings); and

(b) delegate their powers (*including* this power) and revoke a delegation; and

(c) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.

#### Receiver

31.1 If we appoint a receiver, the receiver is your agent unless we notify *you* that the receiver is to act as our agent. *You* are solely responsible for anything done, or not done, by a receiver and for the receiver’s pay and costs.

31.2 We may set a receiver’s pay, remove a receiver and appoint a new or additional receiver, as we choose.

## National Credit Code

32.1 This clause 32 applies to the extent this mortgage is regulated by the National Credit Code.

32.2 If:

- (a) that Code would otherwise make a provision of this mortgage illegal, void or unenforceable; or
- (b) a provision of this mortgage would otherwise contravene a requirement of that Code or impose an obligation or liability which is prohibited by that Code, this mortgage is to be read as if that provision were varied to the extent necessary to comply with that Code or, if necessary, omitted.

32.3 This mortgage does not secure (and the *amount owing* does not include) any amount (in relation to an *agreement covered by this mortgage* which is a credit contract, guarantee or indemnity to which that Code applies) that exceeds the sum of:

- (a) your liabilities under that credit contract, guarantee or indemnity; and
- (b) our reasonable enforcement expenses reasonably incurred in enforcing this mortgage.

## Inconsistent law

33. To the extent allowed by law and subject to clause 32, this mortgage prevails to the extent it is inconsistent with any law.

## Applicable law

34. This mortgage is governed by the law of the state or territory where *the property* is situated. *You and we* submit to the non-exclusive jurisdiction of the courts of that place.

## Deed

35. This mortgage is a deed.

## MEANING OF WORDS

36. *agreement covered by this mortgage* means, subject to clause 32:

- an agreement or other arrangement (*including* a deed) under which one or more of *you* incurs or owes obligations to us or under which *we* have rights against *you*, *including* any such agreement or arrangement which all of *you* acknowledge in writing to be an *agreement covered by this mortgage*; and
- each variation of it. Without limiting this definition, it includes an agreement or arrangement which is assigned to us and any agreement or arrangement which *you* acknowledged to another *person* to be an *agreement covered by this mortgage* before the agreement or arrangement was assigned to us.

*amount owing* means, at any time and subject to clause 32, all money which one or more of *you* owe us, or will or may owe us in the future, *including* under this mortgage or an *agreement covered by this mortgage*. Without limiting this definition, it includes money owing (or which will or may be owing) to us in our capacity as an assignee because *we* have taken an assignment of an *agreement covered by this mortgage* or this mortgage itself, and whether or not:

- *you* were aware of the assignment or consented to it; or
- the assigned obligation was secured before the assignment; or
- the assignment takes place before or after this mortgage is delivered.

*costs* includes charges and expenses; and *costs*, charges and expenses in connection with legal and other advisers on a full indemnity basis.

*governing body* means each entity which administers any *shared scheme* of which *the property* is part.

**including** or **such as** when introducing an example does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

**insolvent** means being an *insolvent* under administration or *insolvent* or having a controller appointed (each as defined in the Corporations Law), in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or otherwise unable to pay debts when they fall due.

**own**, when used in relation to land, means being the registered proprietor, the registered holder, the registered Crown lessee or the holder of an estate in fee simple, and owner has the corresponding meaning.

**person** includes an individual, a firm, a body corporate, an unincorporated association or an authority.

**the property** means each one or more of the following which the context allows:

- the land described in this mortgage
- each fixture, structure or improvement on the land or fixed to it;
- your estate and interest in the land.

**security** means any *security* for the payment of money or performance of obligations *including* a mortgage, charge, lien, pledge, trust or power.

**shared scheme** means each scheme or plan regulated by a *shared scheme law* that affects *the property*. Examples of properties which are often part of a *shared scheme* are strata or stratum title home units and town houses and properties in integrated developments.

**shared scheme law** means any legislation that provides for the:

- subdivision and development of land with shared property; or

- subdivision of buildings; or
- management of land which is subdivided and has shared property; or
- (management of subdivided buildings).

**such as** see *including*.

**we** means the *person* or persons named in this mortgage as mortgagee. If there are more than one, *we* means each of them separately and every two or more of them jointly. **We** includes our successors and assigns.

**works** means building work, excavation or earthworks on *the property*, work demolishing, removing or altering any part of *the property*, or any building or development work required by an authority in connection with *the property*.

**you** means the *person* or persons named in this mortgage as mortgagor. If there are more than one, *you* means each of them separately and every two or more of them jointly. **You** includes your successors and assigns.

The singular includes the plural and vice versa.

A reference to:

- a document includes any variation or replacement of it; or
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them)
- anything (*including the amount owing*) includes the whole and each part of it.

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