

# Memorandum of Standard Terms of Mortgage

**This is an important transaction.**

**You should read this document carefully and consider whether you want to obtain legal and financial advice.**

**We recommend that you seek independent professional legal and financial advice before you sign your mortgage.**

This memorandum of standard terms of mortgage is registered in each State and Territory with the following registration numbers:

Australian Capital Territory	3297240
New South Wales	AT870352
Northern Territory	372431
Queensland	723041753
South Australia	14211960
Tasmania	M788
Victoria	AA9852
Western Australia	P875988

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**1. Meaning of words**

In this mortgage:

**Agreement Covered by This Mortgage** means:

- (a) any agreement or other arrangement (including a deed) under which the mortgagee agrees to advance or have advanced money, or agree to provide or have provided financial accommodation, to the mortgagor or to another person at the mortgagor's request;
- (b) any guarantee and indemnity (whether by agreement or deed) under which the mortgagor guarantees payment or performance of obligations by another person to the mortgagee and/or indemnify the mortgagee in relation to loss the mortgagee suffers as a result of advancing money or providing financial accommodation to another person;
- (c) any agreement or other arrangement (including a deed) under which the mortgagor incurs or owes obligations to the mortgagee or under which the mortgagee has rights against the mortgagor;
- (d) any agreement or deed under which the mortgagor grants the mortgagee a Security Interest;
- (e) any other agreement which the mortgagor and the mortgagee, at any time, agree is to be secured by this mortgage or is to be an Agreement Covered By This Mortgage for the purposes of this mortgage; and
- (f) any document entered into in connection with, or to amend, novate or replace, any of the abovementioned documents;

**Amount Owing** means all money which the mortgagor (personally or as a trustee, alone or with another person) now or in the future owes or may contingently owe to the mortgagee (alone or with another person), including:

- (a) money the mortgagor owes the mortgagee under this mortgage or an Agreement Covered By This Mortgage

including by way of principal, interest, fees, costs (including any break costs), guarantee, indemnity, charges, duties or expenses;

- (b) money not contemplated by the mortgagor or the mortgagee at the date of this mortgage;
- (c) money which is at any time advanced or paid by the mortgagee to the mortgagor or a person at the mortgagor's express or implied request;
- (d) a liability of the mortgagor assigned to the mortgagee (with or without the mortgagor's consent);
- (e) liquidated or unliquidated damages;
- (f) Taxes, costs and discounts incurred by the mortgagee in connection with this mortgage or a document or transaction entered into by the mortgagee for the mortgagor or at the mortgagor's express or implied request;
- (g) money which the mortgagor would owe or contingently owe if the mortgagor were not an externally administered body corporate or an insolvent under administration;
- (h) money this mortgage or an Agreement Covered By This Mortgage says forms part of the Amount Owing; and
- (i) any money the mortgagor and the mortgagee at any time agree is to be part of the Amount Owing for the purposes of this mortgage,

but only includes money owing to the mortgagee under a credit contract, guarantee or other arrangement to which the National Credit Code applies that is a "future credit contract" or a "future related guarantee" for the purposes of the National Credit Code if the mortgagor has given the mortgagee written acceptance of the extension of this mortgage to that credit contract, guarantee or arrangement.

**Attorney** means an attorney appointed by the mortgagor under clause 26.1 of this mortgage;

**Authorised Representative** of a person means:

(a) a director, secretary or manager (of any class) of that person, or a person acting in any of those offices;

(b) a person appointed as an Authorised Representative by that person for the purposes of this mortgage; and

(c) a lawyer acting for that person;

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth);

**Business Day** means any day except a Saturday or a Sunday or other public holiday in the state or territory in which the Mortgaged Property is located;

**Contaminant** means anything (including a liquid, solid, gas, odour, temperature, sound, vibration or radiation) that could harm human health or the Environment;

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

**Enforcement Expenses** means all reasonable costs, charges and expenses of or incidental to the mortgagee's exercise of a power under this mortgage, the attempted exercise of such a power or contemplating the exercise of such a power;

**Environment** includes soil, air, water (ground or surface), a layer of the atmosphere, organic or inorganic matter, living organisms, and human made or modified structures and areas, and any combination of them;

**Environmental Protection Law** means any legislation or any directive, authority, permit or licence issued by an authority relating to pollution, use of land or protection of the Environment;

**Event of Default** means an event or circumstances which would cause the mortgagor to be in default under this mortgage;

**Governing Body** means an entity which administers a Shared Scheme which includes the Mortgaged Property;

**Insolvency Event** means, in respect of a Transaction Party:

(a) a natural person Transaction Party becoming a bankrupt or committing an

act of bankruptcy under the Bankruptcy Act 1966 (Cth);

(b) an application is made to a court for an order or an order is made that a body corporate Transaction Party be wound up;

(c) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate Transaction Party, or one of them is appointed, whether or not under an order;

(d) except to reconstruct or amalgamate while solvent on terms approved by us, a body corporate Transaction Party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;

(e) a body corporate Transaction Party resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the mortgagee or is otherwise wound up or dissolved;

(f) the Transaction Party states that they are unable to pay their debts when they fall due;

(g) as a result of the operation of section 459F(1) of the Corporations Act, a body corporate Transaction Party is taken to have failed to comply with a statutory demand;

(h) a body corporate Transaction Party is, or makes a statement from which it may be reasonably deduced by the mortgagee that the Transaction Party is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or

- (i) a person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.

**Mortgaged Property** means:

- (a) the land specified in the mortgage;
- (b) each fixture, structure and improvement on or affixed to the land at any time and any natural or planted crops growing on it at any time;
- (c) the mortgagor's estate and interest in the land and any associated common property;
- (d) the mortgagor's right to use the land and any associated common property;
- (e) the mortgagor's right, title and interest in any Water Rights; and
- (f) any identifiable or traceable property derived directly or indirectly from any dealing by the mortgagor with the Mortgaged Property;

**National Credit Code** means the National Credit Code contained in Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cth);

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

**Receiver** means a receiver or receiver and manager appointed under this mortgage;

**Security Interest** includes:

- (a) an interest under a mortgage, charge, pledge, lien or other encumbrance or trust or power as or in effect as security for the repayment of any monetary obligation or the performance of any other obligations;
- (b) a "security interest" as defined in the PPSA; and
- (c) an interest arising from retention of title;

but excludes:

- (d) a statutory charge in favour of a governmental authority, unless there is a default in payment of money secured by that charge; and

- (e) a lien arising by operation of law or equity in the ordinary course of ordinary business;

**Shared Scheme** means a scheme or plan regulated by a Shared Scheme Law, including strata title or community title schemes;

**Shared Scheme Law** means a statute about subdivision and development of land with shared property and/or subdivision of buildings and management of such land or buildings;

**Taxes** means any taxes, imposts, duties, levies, charges, fees, withholdings and deductions imposed by statute or any government or governmental authority, including land tax, stamp duty, goods and services tax, transaction duties, fines and penalties;

**Transaction Party** means the mortgagor and any other party to an Agreement Covered By This Mortgage (other than the mortgagee) and, in each case, means that person personally and as trustee;

**Water Rights** means any rights, holdings, quotas, approvals, entitlements, licences, permits, allocations, shares or leases under legislation relating to the use, abstraction, supply, sharing in, access to or delivery or taking of water that:

- (a) are attached or related to any land which forms part of the Mortgaged Property;
- (b) are held or used by the mortgagor in connection with any land which forms part of the Mortgaged Property; or
- (c) the mortgagor agrees in writing form part of the Mortgaged Property;

**Works** means building work, excavation or earthworks on the Mortgaged Property, the demolition, removal or alteration of any improvements on the Mortgaged Property, or any building or development work required by a governmental authority in connection with the Mortgaged Property.

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## 2. Interpretation

In this mortgage, unless the context otherwise requires:

- (a) singular includes plural and plural includes singular;
- (b) one gender includes the other genders;
- (c) reference to legislation includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force;
- (d) reference to a person includes a corporation, a firm and any other entity;
- (e) reference to a party includes that party's personal representatives, successors and permitted assigns;
- (f) reference to a person, if more than one, means each of them individually and all of them together;
- (g) if a party comprises two or more persons:
  - (1) reference to that party means each of the persons individually and any two or more of them together;
  - (2) a promise by that party binds each of them individually and all of them together;
  - (3) a right given to that party is given to each of them individually;
  - (4) a representation, warranty or undertaking by that party is made by each of them individually;
- (h) headings do not affect interpretation;
- (i) a provision must be read down to the extent necessary to be legally valid and if it cannot be read down to that extent it must be severed;
- (j) the rights, duties and remedies in this mortgage operate to the extent that they are not excluded by law;
- (k) reference to a thing (including a right) includes a part of that thing;
- (l) examples are descriptive only and not exhaustive and 'including', 'includes' and 'for example' are not words of limitation;

- (m) an expression defined in the Corporations Act has the meaning given by the Corporations Act as at the date of this mortgage; and
- (n) a reference to "this mortgage" is a reference to the mortgage constituted by the mortgage, any annexure or schedule to the mortgage and these terms.

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### **3. Mortgage**

- 3.1 The mortgagor mortgages to the mortgagee all the mortgagor's right, title and interest in, to, under and derived from the Mortgaged Property to secure the due and punctual payment of the Amount Owning and the performance of the mortgagor's obligations under each Agreement Covered By This Mortgage.
- 3.2 The mortgagor acknowledges giving this mortgage and incurring obligations and giving rights under it for valuable consideration received from the mortgagee.

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### **4. Agreements Covered By This Mortgage**

The mortgagor must perform all the mortgagor's obligations under each Agreement Covered By This Mortgage.

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### **5. Payment of Amount Owning**

- 5.1 The mortgagor must pay to the mortgagee each part of the Amount Owning:
  - (a) on the due date under each Agreement Covered By This Mortgage; or
  - (b) if there is no such due date, promptly on demand.
- 5.2 The mortgagor must not withhold a payment or make a deduction from a payment for any reason, including set off, defence or counterclaim, except to the extent that the mortgagor has a right of set off granted by law which cannot be excluded by agreement.
- 5.3 Payment of part of the Amount Owning does not affect the mortgagor's liability for the rest.
- 5.4 The mortgagee is obliged to credit the mortgagor only with money the mortgagee actually receives as the Amount Owning.

5.5 The mortgagee may credit to a suspense account any money the mortgagee receives towards satisfaction of the Amount Owing for any period and at any interest rate and apply that money and any interest on it towards satisfaction of the Amount Owing whenever the mortgagee thinks fit.

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**6. Payment of interest**

6.1 The mortgagor must pay to the mortgagee interest on the Amount Owing (whether or not demand has been made) from the day the money becomes owing to the mortgagee until and including the date of payment.

6.2 Interest is to be calculated at the rate and in the manner agreed by the mortgagor and the mortgagee in writing.

6.3 If there has not been agreement as to the interest rate or the method of calculation of interest that applies to part of the Amount Owing, interest on that part of the Amount Owing is to be calculated at the rate and using the method of calculation set by us, acting reasonably and by reference to the rates and methods of calculation used by the mortgagee in offering credit to borrowers the mortgagee provides credit to in circumstances similar to the mortgagee's circumstances at the time of calculation.

6.4 If the mortgagee's liability to pay any part of the Amount Owing becomes merged in a judgment or order or other thing, interest on that part of the Amount Owing under that judgment or order or thing is at the rate payable under that judgment or order or thing.

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**7. Costs**

7.1 The mortgagor must pay the mortgagee promptly on the mortgagee's demand all costs, charges and expenses reasonably incurred by the mortgagee, a Receiver or an Attorney in respect of or related to this mortgage including, without limitation:

(a) the costs and expenses of preparing, negotiating, executing, stamping, registering, protecting, administering, exercising a power under, attempting to exercise a power under, varying, extending or discharging this mortgage

or an Agreement Covered By This Mortgage;

(b) costs and expenses of considering any request for a consent pursuant to this mortgage or an Agreement Covered By This Mortgage;

(c) the costs and expenses of and incidental to the mortgagee performing any of the mortgagor's obligations under this mortgage;

(d) the costs and expenses of maintaining or protecting the Mortgaged Property;

(e) the costs and expenses of surveying, valuing, inspecting or reporting on the Mortgaged Property;

(f) the costs and expenses of obtaining advice from a professional person or consultant in connection with this mortgage, an Agreement Covered By This Mortgage, the Mortgaged Property or the mortgagor's affairs or financial position;

(g) reasonable legal costs, on a solicitor and own client basis;

(h) the reasonable hourly costs as fixed by the mortgagee or a Receiver or Attorney of its officers and employees in protecting, administering, or exercising a power under or attempting to exercise a power under this mortgage or an Agreement Covered By This Mortgage, and in negotiating any variation of this mortgage, an Agreement Covered By This Mortgage or any facilities or financial accommodation secured by this mortgage or provided under an Agreement Covered By This Mortgage; and

(i) Taxes in respect of this mortgage, an Agreement Covered By This Mortgage, an act authorised by an Agreement Covered By This Mortgage, any Amount Owing and the payment of any Amount Owing.

7.2 The mortgagee may debit to any of the mortgagor's accounts held with the mortgagee any amount payable by the mortgagor pursuant to this clause with effect from the date the cost,

charge or expense is incurred by the mortgagee and whether or not the mortgagee has demanded payment. The mortgagee will provide notice of this debit at a reasonable time after it occurs.

- 7.3 The mortgagor must perform the mortgagor's obligations under this mortgage and each Agreement Covered By This Mortgage at the mortgagor's own cost, whether or not at the mortgagee's request.

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## 8. Gross up

If the mortgagor is required by law to deduct or withhold any Taxes from a payment to the mortgagee, the mortgagor must:

- (a) deduct or withhold the Taxes and pay them as required by law; and
- (b) increase the payment to the mortgagee to the amount that the mortgagee would have received if no deduction or withholding had been required. If a statute overrides this obligation, the mortgagor will be in default under this mortgage as a result of a failure by the mortgagor to pay the additional amount.

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## 9. Dealing with the Mortgaged Property

The mortgagor must not, without the mortgagee's consent which will not be unreasonably withheld:

- (a) dispose of or deal with or part with possession of the Mortgaged Property or an estate or interest in it (including by transfer, lease, licence, sub-division, consolidation or dedication for a public purpose);
- (b) burden the Mortgaged Property with an easement or restrictive covenant;
- (c) create or allow to exist another Security Interest or a caveat over the Mortgaged Property; or
- (d) increase the amount secured by another Security Interest in the Mortgaged Property.

The mortgagee acknowledges that the mortgagee's consent will only be withheld for a valid collateral purpose.

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## 10. Maintenance and protection of the Mortgaged Property

The mortgagor must:

- (a) protect the Mortgaged Property from loss, theft or damage;
- (b) keep the Mortgaged Property in good repair and condition;
- (c) not do or omit to do or allow anything which, in the mortgagee's reasonable opinion, may materially lessen the value of the Mortgaged Property or the mortgagee's interests under this mortgage;
- (d) comply with all laws and governmental requirements affecting the Mortgaged Property including Environmental Protection Law;
- (e) take or defend any legal proceedings to protect or recover any Mortgaged Property, as the mortgagee may require;
- (f) punctually pay all rates, taxes, levies, rents, contributions and other outgoings for the Mortgaged Property and, at the mortgagee's request, deliver to the mortgagee evidence of such payment;
- (g) punctually perform all the mortgagor's contractual and other obligations affecting the Mortgaged Property, including obligations relating to a Security Interest, encumbrance, covenant, easement or restriction as to use;
- (h) remedy any defect in the mortgagor's ownership of the Mortgaged Property;
- (i) not pull down or remove an improvement on the Mortgaged Property, except where the improvement is worn out or damaged and the mortgagor replaces it with an improvement of the same or better quality, or where the mortgagor has obtained the mortgagee's prior written consent which will not be unreasonably withheld;
- (j) give the mortgagee written notice about:

(1) a breach of an Environmental Protection Law in respect of the Mortgaged Property; or

(2) a native title claim proposed or made in respect of the Mortgaged Property;

as soon as the mortgagor becomes aware of it;

(k) give the mortgagee written notice upon the occurrence of an event which may result in the termination of a lease, licence or other right associated with the Mortgaged Property;

(l) on receipt, deliver to the mortgagee any notice or other document received from a governmental authority in respect of the Mortgaged Property;

(m) at the mortgagee's reasonable request, promptly give the mortgagee full information about all leases and other agreements in respect of the Mortgaged Property;

(n) not carry on or allow a noxious, noisy or offensive activity on the Mortgaged Property;

(o) not cause or allow a nuisance to the owners, occupiers or users of neighbouring lands; and

(p) not transfer, encumber or entitle another person to receive present or future benefits from the Mortgaged Property (including rents or profits from a lease or licence or business carried on upon the Mortgaged Property).

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## 11. Encroachment

11.1 If an improvement on the Mortgaged Property encroaches on adjoining land, at the mortgagee's reasonable request the mortgagor must:

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

11.2 At the mortgagee's reasonable request, the mortgagor must mortgage to the mortgagee any encroached land acquired by the mortgagor, on the same terms as this mortgage.

11.3 At the mortgagee's reasonable request, the mortgagor must have promptly removed any encroachment on the Mortgaged Property from adjoining land.

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## 12. Use

The mortgagor must use the mortgagor's best efforts to obtain consent to use the Mortgaged Property for any purpose the mortgagee reasonably requires.

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## 13. Contaminants

The mortgagor must:

- (a) upon becoming aware, notify the mortgagee if there is a Contaminant on, in, under or migrating to or from the Mortgaged Property;
- (b) use reasonable efforts to ensure there are no Contaminants on, in or under the Mortgaged Property, or allow a Contaminant to escape or migrate from or to it;
- (c) to the extent within the mortgagor's reasonable control, promptly remove any Contaminant from the Mortgaged Property, minimise its impact on the Environment and make good any damage it causes; and
- (d) not deal with the Mortgaged Property or any Contaminant in a way which increases the risk of harm to the Environment.

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## 14. Insurance

14.1 The mortgagor must insure and keep insured the Mortgaged Property and any Works:

- (a) naming the mortgagee as mortgagee, an interested party, a person to whom the insurance cover extends or, if the mortgagee directs, in the names of the mortgagor and the mortgagee;
- (b) for the full insurable value of the Mortgaged Property and any Works;

- (c) against fire, storm and tempest and all other risks that a prudent owner would insure against;
- (d) with an insurer approved by the mortgagee (which approval must not be unreasonably withheld); and
- (e) with a condition in the policy that the insurer may cancel or alter the insurance only on at least 14 days' written notice to the mortgagee,

or as the mortgagee otherwise directs in writing.

- 14.2 The mortgagor must pay all insurance premiums before the due date and, at the mortgagee's reasonable request, deliver to the mortgagee copies of all policies, certificates and receipts for the insurance.
- 14.3 The mortgagor must not do or omit to do or allow anything which could prejudice the insurance or a claim under the insurance.
- 14.4 The mortgagor must not vary or cancel or fail to renew the insurance.
- 14.5 The mortgagor must notify the mortgagee upon becoming aware of any event which may give rise to an insurance claim in respect of the Mortgaged Property over \$10,000.
- 14.6 The mortgagee may make, pursue or settle a claim for insurance over the Mortgaged Property.
- 14.7 The mortgagor must not also insure the Mortgaged Property in the mortgagor's name alone.
- 14.8 The recipient of any insurance proceeds holds them on trust for us, to apply them in any of the following ways the mortgagee thinks fit (even if the policy contravenes the previous sub-clause):
  - (a) towards payment of the Amount Owing then payable;
  - (b) in replacing or repairing the Mortgaged Property; and
  - (c) in paying a part of the proceeds, up to the amount of the Amount Owing contingently owing, into an interest-bearing account in the mortgagee's name with a person the mortgagee approves (including the mortgagee or a related body corporate of us). The

mortgagee must apply the money in that account towards payment of the Amount Owing when it becomes payable.

The mortgagee (if the recipient) must pay any surplus to the mortgagor.

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**15. Documents of title**

The mortgagor must deliver to the mortgagee all documents of title to the Mortgaged Property (including any certificate of title or lease or other document under which the mortgagor occupies the Mortgaged Property), except those held by the holder of a prior ranking Security Interest in the Mortgaged Property.

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**16. Better security**

- 16.1 The mortgagor must do all things and execute all further documents (and cause any third party to do likewise), including legal mortgages and transfers, reasonably required by the mortgagee to provide better security over the Mortgaged Property to the mortgagee or to assist the mortgagee to exercise a right under this mortgage or an Agreement Covered By This Mortgage.
- 16.2 Without limiting clause 16.1, the mortgagor must do all things reasonably considered necessary or desirable by the mortgagee to enable the mortgagee to register this mortgage, or obtain an interest as mortgagee under a registered mortgage on the same terms as this mortgage, under any applicable statute that deals with the registration of mortgages.

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**17. Entitlement to compensation**

- 17.1 If the mortgagor is or may become entitled to compensation for any Mortgaged Property (including compensation for compulsory acquisition, resumption or alteration to planning schemes), the mortgagor must:
  - (a) notify the mortgagee promptly and keep the mortgagee informed of all material matters relating to the compensation;
  - (b) give the mortgagee full details of and any document about the compensation;
  - (c) at the mortgagee's request, use the mortgagor's best efforts to obtain the compensation;
  - (d) at the mortgagee's request, appeal against any decision about the claim;

- (e) at the mortgagee's request, assign the mortgagor's rights to compensation to the mortgagee and assist the mortgagee to obtain the compensation; and
- (f) not settle, conduct, enforce or compromise any claim without the mortgagee's prior written consent.
- 17.2 The recipient of any compensation proceeds holds them on trust for the mortgagee, to apply them in any of the following ways the mortgagee directs:
- (a) towards payment of the Amount Owing then payable;
- (b) in paying a part of the proceeds, up to the amount of the Amount Owing contingently owing, into an interest-bearing account in the mortgagee's name with a person the mortgagee approves (including the mortgagee or a related body corporate of the mortgagee). The mortgagee must apply the money in that account towards payment of the Amount Owing when it becomes payable.
- The mortgagee (if the recipient) must pay any surplus to the mortgagor.
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- 18. Warranties**
- 18.1 The mortgagor represents and warrants that, except as disclosed in writing to the mortgagee before the date of this mortgage:
- (a) the mortgagor is the only owner of the Mortgaged Property and have absolute and indefeasible title to the Mortgaged Property;
- (b) the mortgagor does not own the Mortgaged Property as trustee;
- (c) there are no Security Interests, encumbrances, rights of adverse possession, rights of way, easements, restrictions as to use, licences, leases or agreements to lease or other interests in favour of another person over the Mortgaged Property;
- (d) the mortgagor is absolutely entitled to present and future benefits from the Mortgaged Property (including rent or profits from a lease or licence or business carried on upon the Mortgaged Property);
- (e) the insurance over the Mortgaged Property is enforceable, and the mortgagor have disclosed to the insurer all material facts about the Mortgaged Property and the mortgagor;
- (f) the mortgagor has taken all necessary steps and have requisite power and authority to enter into this mortgage and each Agreement Covered By This Mortgage and to perform the mortgagor's obligations under this mortgage and each Agreement Covered By This Mortgage;
- (g) by granting this mortgage, the mortgagor does not breach a law or the mortgagor's obligations under any other legally binding agreement or arrangement;
- (h) the mortgagor is able to pay all the mortgagor's debts as and when they become due and payable;
- (i) the mortgagor is not bankrupt or insolvent;
- (j) neither the mortgagor nor the mortgagor's property are the subject of any right of immunity from set-off, proceedings or execution;
- (k) to the best of the mortgagor's knowledge, information and belief there are no existing or threatened proceedings affecting the mortgagor or the Mortgaged Property before any court or governmental authority or arbitrator which may materially impair the mortgagor's financial position or ability to perform the mortgagor's obligations under this mortgage or any Agreement Covered By This Mortgage or affect the mortgagee's rights, or the value of the mortgagee's rights, under this mortgage;
- (l) no information provided to the mortgagee by or for the mortgagor is false or misleading;
- (m) the mortgagor has disclosed in writing to the mortgagee all information which may reasonably affect the mortgagee's

decision to provide financial accommodation or not press for immediate payment of the Amount Owing;

- (n) there has been no act or omission and there is no circumstance relating to the Mortgaged Property which has given rise, or may give rise, to a claim against the mortgagor or a requirement that the mortgagor spend money or cease an activity or make substantial alteration of an activity under a law about the Environment;
- (o) there is no hazardous or toxic condition which may impair the value of the Mortgaged Property; and
- (p) no part of the Mortgaged Property is subject to a native title claim.

18.2 The mortgagor represents and warrant that each warranty and representation in this mortgage and any Agreement Covered By This Mortgage will be true at all times while this mortgage is in force.

18.3 The mortgagor repeats each warranty and representation whenever the mortgagee provides financial accommodation to the mortgagor or to third parties at the mortgagor's request.

18.4 The mortgagor acknowledges that the mortgagee relies on the warranties and representations the mortgagor makes or gives in this mortgage and each Agreement Covered By This Mortgage in agreeing to provide financial accommodation to the mortgagor or at the mortgagor's request and that the mortgagee would not have done so if such warranties and representations were not given.

18.5 The mortgagor must notify the mortgagee promptly if there is any material change to any of the warranties or representations the mortgagor makes or give in this mortgage or an Agreement Covered By This Mortgage.

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**19. Mortgagee's power to enter**

19.1 At any reasonable time, the mortgagee and persons authorised by the mortgagee may enter and inspect the Mortgaged Property, however the mortgagee must give the mortgagor reasonable notice unless there is an immediate

risk to the mortgagee's legitimate business interests which require the mortgagee to immediately enter the Mortgaged Property.

19.2 The mortgagee is not liable to account as a mortgagee in possession just because the mortgagee exercises a power under this clause.

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**20. Events of Default**

20.1 The mortgagor is in default under this mortgage if:

- (a) the mortgagor fails to pay the Amount Owing, or any part of it, on time;
- (b) the mortgagor fails to pay any amount the mortgagor is required to pay under this mortgage on time;
- (c) an Insolvency Event occurs in respect of a Transaction Party, or a Transaction Party no longer has legal capacity or, in respect of a Transaction Party that is a company, any step is taken to deregister the Transaction Party;
- (d) the mortgagor or another Transaction Party do something the mortgagor agreed not to do or the mortgagor doesn't do something the mortgagor agreed to do under this mortgage or an Agreement Covered By This Mortgage;
- (e) a default or event of default (however described) occurs under an Agreement Covered By This Mortgage;
- (f) the mortgagor fails to maintain the Mortgaged Property as required by this mortgage;
- (g) a Transaction Party's property is dealt with, or attempted to be dealt with, in breach of this mortgage or any Agreement Covered By This Mortgage or other agreement with the mortgagee, without the mortgagee's consent, which will not be unreasonably withheld;
- (h) a Transaction Party fails to give the mortgagee financial information the Transaction Party is required to give the mortgagee under this Mortgage or any Agreement Covered By This Mortgage;
- (i) enforcement proceedings are taken against a Transaction Party or their

- property by the holder of a Security Interest;
  - (j) a Transaction Party gives the mortgagee information or makes a representation or warranty to the mortgagee which is materially incorrect or misleading (including by omission);
  - (k) the mortgagee believes on reasonable grounds that a Transaction Party has not complied with the law or any requirements of a statutory authority;
  - (l) legal or beneficial ownership, or management control, of any Transaction Party or their business changes without the mortgagee's consent, which will not be unreasonably withheld;
  - (m) the status, capacity or composition of a Transaction Party changes without the mortgagee's consent, which will not be unreasonably withheld;
  - (n) there is an event that (by itself or with the giving of notice or passage of time) empowers the mortgagee to require early payment under an Agreement Covered By This Mortgage;
  - (o) a Transaction Party does not maintain a licence or permit necessary to conduct its business without the mortgagee's consent, which shall not be unreasonably withheld; or
  - (p) a Transaction Party fails to maintain any insurance required by this mortgage.
- 20.2 The mortgagor must promptly give the mortgagee notice and any information the mortgagee reasonably requires about the occurrence of any Event of Default.

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**21. Acceleration of payment and when the mortgagee may exercise the mortgagee's powers under this mortgage**

21.1 If the mortgagor is in default under this mortgage, the full Amount Owed will become immediately due for payment (to the extent that it was not already due for payment) and the mortgagee may exercise any and all of the powers given to the mortgagee as mortgagee by law or under clause 22 but only:

- (a) if the mortgagor is in default because of clause 20.1(a), where the default is able to be remedied, the mortgagee allows the mortgagor at least 30 days for the default to be remedied and notifies the mortgagor of this time period;
- (b) if the mortgagor is in default because of a clause other than clause 20.1(a):
  - (1) the mortgagee reasonably considers the default has had, or is likely to have, a material impact on a:
    - (A) a Transaction Party's ability to meet their financial obligations to the mortgagee;
    - (B) the mortgagee's credit or security risk or the mortgagee's ability to assess either of these risks (including, without limitation, a material impact on the effectiveness, value, priority or enforceability of this mortgage); or
    - (C) in the case of clauses 20.1(d), 20.1(j) and 20.1(k), the mortgagee's legal or reputational risk;
  - (2) where the default is able to be remedied, the mortgagee allows the mortgagor at least 3 months for the default to be remedied and notify the mortgagor of this time period; and
- (c) subject to clause 21.2, the mortgagee gives the mortgagor any notice the mortgagee is required to give the mortgagor by any law including, if it applies, the National Credit Code and, if the mortgagee is required by law to allow the mortgagor a period to remedy the default after giving the mortgagor such a notice, the mortgagor does not remedy the default within that period.

For the avoidance of doubt, the mortgagee may give the mortgagor a single notice to satisfy the applicable notice requirements in this clause.

21.2 A statutory requirement about notice or lapse of time is excluded from this mortgage unless the statute does not allow exclusion and, where a statute allows a period of notice to be fixed, the period of notice is one day.

## 22. The mortgagee's powers on default

Subject to any laws which cannot be excluded, when the mortgagee's powers under this clause become exercisable by the mortgagee under clause 21.1, in addition to the mortgagee's duty to realise the best price possible for the Mortgaged Property, any powers, rights or remedies conferred by law or under any Agreement Covered By This Mortgage, the mortgagee may, without further notice to the mortgagor and without limiting any other power:

22.1 **(Demand repayment)** Demand and require immediate payment of the Amount Owing;

22.2 **(Deal with Mortgaged Property)** Do anything in respect of the Mortgaged Property, and any business carried on by the mortgagor upon it, which an absolute owner or mortgagee or receiver or receiver and manager of the Mortgaged Property and/or business could do. For example, the mortgagee may:

- (a) eject occupants from, enter or otherwise take possession of, manage, use, maintain or improve, or give up possession of the Mortgaged Property;
- (b) collect rent, profits and other income from the Mortgaged Property;
- (c) sell or concur in selling or otherwise dispose of the Mortgaged Property or part of the Mortgaged Property (whether the mortgagee has taken possession of the Mortgaged Property or not) in any manner and on such terms as the mortgagee considers appropriate;
- (d) perform, assume the benefit of and enforce any contract of the mortgagor in respect of the Mortgaged Property;
- (e) have access to and use any premises, plant, equipment and records of the mortgagor;
- (f) carry on any activity of the mortgagor on the Mortgaged Property;

(g) if the Mortgaged Property includes a lease, surrender or terminate or renew that lease;

(h) grant a lease or licence or accept the surrender of or terminate or renew a lease or licence of the Mortgaged Property;

(i) compromise with tenants or licensees on any terms;

(j) if the Mortgaged Property is subject to a lease:

(1) if the mortgagee enters into possession of the Mortgaged Property, charge against the mortgagor and the Mortgaged Property a fee for collecting rent, set by the mortgagee acting reasonably; and

(2) if the Mortgaged Property is leased with chattels subject to a lease or hire purchase agreement or consumer mortgage, pay the rent, interest and instalments for those chattels;

(k) acquire any property or interest in any property in any manner, which will then be part of the Mortgaged Property;

(l) exchange the Mortgaged Property for any estate or interest in any land, which will then be part of the Mortgaged Property, and the mortgagee may give or receive additional consideration in the exchange;

(m) raise money on any terms and on any security (with any priority) from any person in the name of the mortgagor;

(n) rescind, vary or complete any contract for the sale of the Mortgaged Property;

(o) execute transfers of the Mortgaged Property in the mortgagor's name and for the mortgagor;

(p) execute any other documents the mortgagee considers necessary or desirable for the mortgagor;

(q) do anything which the mortgagee thinks necessary to complete a sale;

- (r) grant an option to purchase the Mortgaged Property on any terms;
- (s) sever and sell fixtures;
- (t) employ or engage any person to perform or delegate to any person any of the mortgagee's powers;
- (u) make, defend, pursue, settle, or submit to arbitration of, a claim against or by the mortgagor, including a claim about the Mortgaged Property or insurance over it or the business carried on upon it;
- (v) give releases and receipts for the mortgagor;
- (w) acting reasonably, spend money or incur liability in exercising any of the mortgagee's powers, and that money and those liabilities become part of the Amount Owing;
- (x) do anything reasonably necessary to protect or enforce this mortgage or recover the Amount Owing;
- (y) do anything a receiver can do (whether a receiver has been appointed or not);
- (z) pull down, rebuild, alter, extend, renovate, erect, complete, repair, paint, clean, make, service or otherwise spend money on the Mortgaged Property or any improvements on it;
- (aa) consolidate, sub-divide and develop the Mortgaged Property;
- (bb) insure the Mortgaged Property;
- (cc) surrender or transfer the Mortgaged Property to the Crown or a governmental authority;
- (dd) perform any of the mortgagor's obligations under this mortgage; and
- (ee) do anything incidental to the exercise of any of these powers.

22.3 **(Deal with Chattels)** Remove chattels from the Mortgaged Property and:

- (a) store them, in the mortgagor's name and at the mortgagor's cost, with any person (including the mortgagee);

- (b) give the mortgagor notice of the name and place of storage and, if the mortgagor does not collect the chattels within 14 days after the mortgagee gives that notice, consider those chattels abandoned and sell or dispose of them in any way and on any terms the mortgagee thinks fit;
- (c) the mortgagee may apply proceeds from the sale or disposal of those chattels in accordance with clause 27 (Application of money);
- (d) the mortgagee is not liable to the mortgagor for those chattels for any reason, except to the extent that any liability is caused by fraud, negligence or wilful misconduct by the mortgagee or the mortgagee's agents, contractors, employees or agents, or any receiver appointed by the mortgagee;
- (e) the mortgagor indemnifies the mortgagee against any liability to, or claim by, any third party in respect of those chattels (including in relation to any personal information that may be contained in, with, or on any chattels), but only to the extent that any liability or claim is not caused by fraud, negligence or wilful misconduct by the mortgagee or the mortgagee's agents, contractors, employees or agents, or any receiver appointed by us; and
- (f) the mortgagor must reimburse the mortgagee for any cost or expense the mortgagee incur in dealing with chattels or dealing with the mortgagor or any third party in relation to those chattels and such costs and expenses form part of the Amount Owing, but only to the extent that any cost or expense is not caused by fraud, negligence or wilful misconduct by the mortgagee or the mortgagee's agents, contractors, employees or agents, or any receiver appointed by the mortgagee.

22.4 **(Discharge or acquire prior or subsequent Security Interests)** Do one or more of the following:

- (a) purchase a debt secured by a prior or subsequent Security Interest;

- (b) discharge or satisfy that debt; or
- (c) take a transfer of that Security Interest and any right or document ancillary to it.

If the mortgagee exercises the mortgagee's rights under this sub clause 22.4:

- (d) the mortgagor owes the mortgagee the amount paid by the mortgagee or the amount of the debt acquired (whichever is higher) and that amount is immediately payable to the mortgagee and forms part of the Amount Owing;
- (e) the mortgagee may rely on a written statement by the holder of the prior or subsequent Security Interest as to the amount of that debt and the property subject to the prior Security Interest;
- (f) the holder of the prior or subsequent Security Interest need not enquire whether any money is owing under this mortgage or an Agreement Covered By This Mortgage; and
- (g) the mortgagor irrevocably directs the holder of the prior or subsequent Security Interest to give the mortgagee any information the mortgagee requests about the prior or subsequent Security Interest.

22.5 **(Appoint an agent)** Appoint an agent to exercise any of the mortgagee's powers, rights and remedies and fix the remuneration of the agent. If the mortgagee does so, the agent's remuneration and expenses are part of the Amount Owing.

This clause applies whether or not the mortgagee has appointed a Receiver.

22.6 **(Appoint a receiver)** Appoint a person, or two or more persons jointly or severally or jointly and severally, as receiver of all or part of the Mortgaged Property or the rent and profits of the Mortgaged Property or both.

If the mortgagee exercises the mortgagee's rights under this sub clause 22.6:

- (a) the mortgagee may remove the Receiver, appoint a replacement Receiver, fix the remuneration of the Receiver or withdraw a receivership;

- (b) the Receiver's remuneration and expenses become part of the Amount Owing;
- (c) unless excluded by the terms of appointment, without further notice to the mortgagor, the Receiver may:
  - (1) do anything the Receiver considers appropriate and exercise all the powers given by law to mortgagees in possession, receivers or receivers and managers;
  - (2) without limiting this, do anything in respect of the Mortgaged Property the mortgagee could do (except appoint a receiver); and
  - (3) exercise these powers in the mortgagor's name or otherwise; and
- (d) unless the mortgagee otherwise notifies the mortgagor, the Receiver is the mortgagor's agent alone and the mortgagor is solely responsible for the actions and defaults of, and the remuneration and expenses payable to, the Receiver.

The mortgagee may still appoint a Receiver under this clause 22.6 if the mortgagor is an externally-administered body corporate although the Receiver may not be able to act as the mortgagor's agent in some respects.

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## 23. The mortgagee's performance of the mortgagor's obligations

23.1 The mortgagee and any Receiver are not personally obliged to perform the mortgagor's obligations under an instrument forming part of or relating to the Mortgaged Property.

23.2 If the mortgagor is in default under this mortgage because the mortgagor has failed to do something the mortgagor is required to do under the terms of this mortgage, or the mortgagor has not done it fully or properly:

- (a) the mortgagee may, but is not obliged to, do it;

- (b) all reasonable costs and expenses incurred by the mortgagee in doing it form part of the Amount Owning; and
- (c) the default is not remedied until the mortgagor pays the mortgagee all reasonable costs and expenses incurred by the mortgagee in doing it.

attempted exercise, non-exercise, delayed exercise or past exercise of a right, power or remedy in relation to this mortgage, except to the extent any such loss or damage is caused by the fraud, negligence or wilful misconduct of the Receiver or the mortgagee.

25.4 The mortgagee's powers under this mortgage may be exercised by each of the mortgagee's Authorised Representatives.

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**24. Protection of purchasers**

24.1 The mortgagee, or a Receiver, Attorney or the mortgagee's agent or Authorised Representative may give valid discharges and receipts for money paid by a third party in respect of an exercise of a power under this mortgage.

25.5 Except for actual receipts, the mortgagee and a Receiver are not liable to account as mortgagee in possession or for any loss or default for which a mortgagee in possession could otherwise be liable.

24.2 No person dealing with the mortgagee, a Receiver, the mortgagee's Agent or an Attorney need enquire:

- (a) whether the mortgagee's rights under this mortgage have become exercisable;
- (b) whether the Receiver, agent or Attorney was properly appointed;
- (c) whether the exercise of a power is proper or necessary; or
- (d) about the use of money paid or property transferred to or for the mortgagee, a Receiver, agent or Attorney.

To the extent permitted by law, even if the person knows about any of these matters or there is any other irregularity or impropriety, the dealing is deemed to be authorised, within power and valid.

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**26. Power of attorney**

26.1 The mortgagor irrevocably appoints the mortgagee, each of the mortgagee's Authorised Representatives and any Receiver severally as the mortgagor's attorney and acknowledge granting this Power of Attorney for valuable consideration.

26.2 If the mortgagor fails to do anything the mortgagor is obliged to do under this mortgage or an Agreement Covered By This Mortgage, an Attorney may, without notice to the mortgagor, in the mortgagor's name and at the mortgagor's cost:

- (a) do anything the mortgagor is obliged to do under this mortgage or an Agreement Covered By This Mortgage;
- (b) exercise any of the mortgagee's powers under this mortgage;
- (c) do anything the Attorney thinks fit to give effect to the mortgagee's powers or rights (whether or not under this mortgage). For example, the Attorney may:

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**25. How the mortgagee may exercise the mortgagee's rights**

25.1 The mortgagee and any Receiver may exercise the mortgagee's rights, powers and remedies under this mortgage or give or refuse the mortgagee's consent in any way the mortgagee thinks appropriate including by imposing reasonable conditions.

25.2 The mortgagee and any Receiver are not obliged to exercise any power and if the mortgagee does not exercise a power fully or at a specific time, the mortgagee may still exercise it later.

25.3 The mortgagee and any Receiver are not liable for any loss or damage caused by the exercise,

- (1) execute a document for the mortgagor under clause 16 (Better security);
- (2) make or settle insurance claims or claims about the resumption of the Mortgaged Property;
- (3) make or defend applications under liquor licensing legislation; and

- (4) if the Mortgaged Property is part of a Shared Scheme, make claims against or defend claims by a Governing Body;
- (d) appoint a substitute Attorney for any period and remove that substitute Attorney; and
- (e) delegate the Attorney's powers (including this power of delegation) to any person and revoke any such delegation.
- 26.3 The mortgagor indemnifies and must keep indemnified any Attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any power by the Attorney under this clause 26 except any liability, loss, cost, expense or damage arising from or incurred in connection with fraud, negligence or wilful misconduct of the Attorney.
- 26.4 Any person including the Registrar of Titles of Western Australia or any other registration authority in Australia or elsewhere, dealing with an Attorney or a person purporting to be an Attorney under this power, is:
- (a) entitled to rely on execution of any document by that person as conclusive evidence that:
- (1) the person holds the office set out in the power;
  - (2) the power of attorney has come into effect;
  - (3) the power of attorney has not been revoked;
  - (4) the right or power being exercised or being purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power; and
- (b) not required to make any enquiries in respect of the above matters set out in clause 26.4(a).
- 26.5 The mortgagor must ratify anything done by an Attorney under this clause 26.
- 26.6 An Attorney may exercise the Attorney's powers for the mortgagee's benefit, even if it is not for the mortgagor's benefit.
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- 27. Application of money**
- 27.1 Subject to a law which requires otherwise and cannot be excluded, the mortgagee, a Receiver, the mortgagee's agent or an Attorney must apply money received in exercising a power under this mortgage in the following order:
- (a) first, in discharge of any claims with priority over this mortgage;
  - (b) secondly, in payment of all Enforcement Expenses;
  - (c) thirdly, in payment of all other outgoings the mortgagee, the Receiver, the agent or Attorney may consider appropriate to pay;
  - (d) fourthly, in payment of the Receiver's remuneration;
  - (e) fifthly, to be appropriated between the following categories as the mortgagee sees fit:
    - (1) towards satisfaction of any part of the Amount Owing that is presently owing;
    - (2) if any Amount Owing is payable in the future or contingently payable, in payment into an account with any person (including the mortgagee) until that Amount Owing becomes presently payable and then towards satisfaction of that Amount Owing or any part of it as the mortgagee sees fit;
  - (f) sixthly, in payment to any person who, in the mortgagee's, the Receiver's, the mortgagee's agent's or Attorney's opinion, is entitled to the Mortgaged Property in priority to the mortgagor, including subsequent mortgagees or encumbrancees (whether registered or not); and
  - (g) seventhly, in payment of any surplus to the mortgagor, without interest.
- 27.2 The mortgagee, a Receiver, the mortgagee's agent or an Attorney may pay any amount into court by way of interpleader and any surplus into a bank account in the mortgagor's name.

27.3 If, during a period to remedy a default under clause 21.1(c) an instalment of the Amount Owing becomes payable by the mortgagor and the mortgagee receives money or credits under an Agreement Covered By This Mortgage, the mortgagor irrevocably direct the mortgagee to apply that money or those credits, firstly, in satisfaction of that instalment, and, secondly, towards satisfaction of any amount the mortgagor is required to pay to remedy the default as specified in any notice given to the mortgagor under clause 21.1(a).

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## 28. Notice of subsequent Security Interest

To the extent permitted by all applicable laws, if the mortgagee receives actual notice or are deemed to receive constructive notice of a subsequent Security Interest in the Mortgaged Property, the mortgagee may open a new account for the mortgagor. If the mortgagee does not immediately open a new account, the mortgagee is deemed to do so. All subsequent financial accommodation by the mortgagee to the mortgagor is debited to the new account (or is deemed to be debited to the new account) and all subsequent payments by the mortgagor to the mortgagee are credited to the new account (or are deemed to be credited to the new account).

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## 29. Combination and set-off

29.1 The mortgagee may apply a credit balance of any account the mortgagor holds with the mortgagee (jointly or otherwise) or set-off money the mortgagee owe to the mortgagor towards payment of the Amount Owing.

29.2 In addition to any other right of set-off the mortgagee may have and in order for the mortgagee to protect its legitimate business interests, if the mortgagor is in default under this mortgage the mortgagee may, without prior notice, combine, consolidate, or merge any or all of the mortgagee accounts conducted with the mortgagor and may set-off the Amount Owing against them, even if those accounts and the Amount Owing are not in the same currency. The mortgagee may affect any currency conversion necessary or desirable for that purpose. The mortgagee will notify the mortgagor in writing as soon as practicable after doing so.

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## 30. Reinstatement of Mortgagee's rights

- 30.1 If a claim is made that a payment or transaction in respect of the Amount Owing is void or voidable under a law about bankruptcy, liquidation or protection of creditors and that claim is upheld, conceded or compromised, the mortgagee has the rights (as against the mortgagor) that the mortgagee would have had if the payment or transaction had not taken place and the mortgagor must do all things and execute all further documents required by the mortgagee to restore to the mortgagee the Security Interests the mortgagee held immediately before the payment or transaction.
- 30.2 The mortgagor must pay the mortgagee's costs and disbursements in connection with the claim and restoring the mortgagee's Security Interests.
- 30.3 This clause applies even if the mortgagee knew or should have known that the payment or transaction was void or voidable.

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## 31. Continuing security

- 31.1 This mortgage is a continuing security. It is discharged only when the mortgagee discharges it in writing.
- 31.2 The mortgagor's liability under this mortgage is unconditional and is not affected by anything including:
- (a) a concession or extension of time the mortgagee grants the mortgagor or another person;
  - (b) an act, omission, mistake or delay by the mortgagee or another person;
  - (c) a dealing with, or a variation, exchange, renewal, release, transfer or abandonment of a contract, Agreement Covered By This Mortgage or instrument;
  - (d) a failure to complete a contract;
  - (e) a failure to recover the Amount Owing, because of a failure to enforce a judgment, Agreement Covered By This Mortgage or instrument or otherwise;
  - (f) an outstanding negotiable instrument, security, contract or other obligation in respect of the Amount Owing;

- (g) a settlement of account or intervening payment, or the fact that there is no Amount Owning;
  - (h) the merger, amalgamation or reconstruction of the mortgagor or the mortgagee;
  - (i) if this mortgage secures the indebtedness of a partnership:
    - (1) an alteration in the composition of the partnership;
    - (2) the fact that the mortgagor is not or is no longer a partner; or
    - (3) cessation of business by the partnership;
  - (j) the invalidity or unenforceability of the mortgagor's obligations under or referred to in an Agreement Covered By This Mortgage;
  - (k) the mortgagor not being, or ceasing to be, authorised or empowered to enter into or perform the mortgagor's obligations under this mortgage or an Agreement Covered By This Mortgage;
  - (l) the invalid or irregular execution of this mortgage or an Agreement Covered By This Mortgage by the mortgagor;
  - (m) if the mortgagor is two or more persons, the failure by one or more of the mortgagors to execute or properly execute this mortgage or an Agreement Covered By This Mortgage.
- (c) an act or omission of the mortgagor, the mortgagor's directors, employees or agents;
  - (d) any use of the Mortgaged Property by the mortgagor or the mortgagor's directors, employees or agents;
  - (e) any claim in respect of the Mortgaged Property;
  - (f) the disclosure of any information about the mortgagor, a related body corporate, a surety or co surety for the Amount Owning, or the business or affairs of any of them (including confidential information), if the mortgagee, a Receiver, agent or Attorney thought the disclosure necessary to exercise the powers under this mortgage, even if the disclosure is in breach of any law or duty;
  - (g) a breach of a warranty in this mortgage or an Agreement Covered By This Mortgage;
  - (h) a breach of a law about the Environment in respect of the Mortgaged Property (whoever is in possession of the Mortgaged Property); and
  - (i) this mortgage, an Agreement Covered By This Mortgage or the Mortgaged Property.

32.2 Nothing in this clause 32 requires the mortgagor to indemnify the mortgagee, a Receiver, the mortgagee's agent and each Attorney (and their respective employees, officers, agents, contractors and professional advisers) for any claim, cost, liability, loss or expense arising from or incurred in connection with fraud, negligence or wilful misconduct of the mortgagee, the mortgagee's officers, employees, contractors or agents, or any Receiver or Attorney.

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## 32. Indemnity

32.1 The mortgagor indemnifies the mortgagee, a Receiver, the mortgagee's agent and each Attorney (and their respective employees, officers, agents, contractors and professional advisers), against all claims, costs, liability, losses and expenses (including, reasonable legal costs on a full indemnity basis without taxation of costs), in respect of:

- (a) the mortgagor being in default under this mortgage or an Agreement Covered By This Mortgage;
- (b) the exercise, non-exercise, attempted exercise or delayed exercise of any

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## 33. Electronic lodgement

If this mortgage is lodged for registration electronically, the mortgagor agrees with the mortgagee that the mortgage the mortgagor has executed will be considered to be on the same terms as the mortgage lodged electronically if it is to the same effect as the mortgage lodged

electronically, despite any differences there may be in formatting, appearance or words.

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### 34. No merger

34.1 The mortgagor's rights under this mortgage are not prejudiced by or merged in any other of the mortgagee's rights (present or future), including rights under a negotiable instrument, contract or judgment.

34.2 This mortgage does not affect any other Security Interest (present or future) of the mortgagee in the mortgagor's property or in the property of any other person as security for payment of the Amount Owing.

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### 35. No marshalling

The mortgagee is not obliged to marshal in favour of the mortgagor or any other person any security the mortgagee holds or any assets the mortgagee holds or is entitled to.

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### 36. No moratorium

A law that lessens the mortgagor's obligations, postpones or prevents the exercise of the mortgagee's or a Receiver's rights or protects or compensates the mortgagor is excluded from this mortgage, unless the law otherwise requires.

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### 37. No hindrance

The mortgagor must not do or allow anything that prevents or hinders the mortgagee, a Receiver, the mortgagee's agent or an Attorney from exercising any rights and powers relating to this mortgage.

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### 38. Assignment

38.1 The mortgagee may, acting reasonably and in accordance with the mortgagee's legitimate business interests, assign or novate the whole or any part of the Amount Owing or the mortgagee's rights under this mortgage or any Agreement Covered By This Mortgage (including an indemnity) and the mortgagee will notify the mortgagor in writing as soon as reasonably practical if it is reasonable to do so.

38.2 The mortgagee may disclose to a potential assignee, novatee or any other related person information about the mortgagor, the Mortgaged

Property, this mortgage and any Agreement Covered By This Mortgage.

38.3 At the mortgagee's request, the mortgagor must sign any deed or other document the mortgagee reasonably requires to give effect to or pursuant to any such assignment or dealing.

38.4 The mortgagor may not assign or transfer the mortgagor's rights or obligations under this mortgage or in relation to the Amount Owing without the mortgagee's prior written consent, which will not be unreasonably withheld.

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### 39. Time of essence

Time is of the essence in respect of the mortgagor's obligations under this mortgage and each Agreement Covered By This Mortgage.

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### 40. Consent

40.1 The mortgagee's consent or approval is valid only if in writing and signed by the mortgagee or the mortgagee's Authorised Representative.

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### 41. No waiver

41.1 A waiver by the mortgagee or a Receiver of a right under this mortgage is only effective if given by written notice.

41.2 A power or right is not impaired or waived by:

- (a) a failure to exercise that power or right;
- (b) a delay in exercising that power or right;
- (c) a partial exercise of that power or right;
- (d) a previous exercise of that power or right or another power or right;
- (e) negotiations between the mortgagor and the mortgagee or a Receiver; or
- (f) acceptance of part of the Amount Owing.

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### 42. Completion of documents

The mortgagee or the mortgagee's Authorised Representatives may:

- (a) complete or correct the date or any other detail to complete or effect registration of this mortgage; and

- (b) complete, in favour of the mortgagee or the mortgagee's nominee, any document executed by or for the mortgagor in blank and deposited with the mortgagee to further secure payment of any Amount Owing.

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**43. Right to disclose**

- 43.1 The mortgagee or a Receiver may disclose information about the mortgagor or the Mortgaged Property to any person who might enter into a contract with the mortgagee or a Receiver in respect of this mortgage or in exercising a power under this mortgage, including a potential assignee of the mortgagee's interest under this mortgage.
- 43.2 The mortgagee or a Receiver may disclose information about the mortgagor, the Amount Owing, the Mortgaged Property, this mortgage and any Agreement Covered By This Mortgage to any other person that has an interest in the Mortgaged Property to the extent that doing so is necessary or desirable to protect or exercise the mortgagee's rights under this mortgage.

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**44. Trusts**

- 44.1 This clause 44 applies if the mortgagor is a trustee of a trust (whether or not the mortgagee knows about the trust).
- 44.2 The mortgagor must give the mortgagee a true copy of the trust deed (as amended) whenever the mortgagee reasonably requests.
- 44.3 This mortgage binds the mortgagor and any succeeding trustee and any additional trustee personally and as trustee of the trust.
- 44.4 The mortgagor charges to the mortgagee the legal and beneficial interest in the Mortgaged Property.
- 44.5 The mortgagor must cause any new trustee of the trust to sign any documents the mortgagee requires to ensure that this mortgage and each Agreement Covered By This Mortgage binds that new trustee.
- 44.6 The mortgagor is liable to the mortgagee in respect of the Amount Owing and this mortgage both in the mortgagor's own right and as trustee of the trust.

- 44.7 Unless the mortgagee consents, which will not be unreasonably withheld, the mortgagor must not:
  - (a) amend the trust deed;
  - (b) retire as trustee of the trust;
  - (c) appoint a new trustee of the trust; or
  - (d) charge the trust's assets.

44.8 If the mortgagor is in default under this mortgage or an Agreement Covered By This Mortgage, at the mortgagee's request the mortgagor must exercise the mortgagor's right of indemnity against the trust assets and pay money so obtained to the mortgagee. The mortgagor holds that right and the proceeds of that right on trust for the mortgagee.

- 44.9 The mortgagor represents and warrants that:
  - (a) the mortgagor has provided to the mortgagee true copies of all documents which evidence all trusts of which the mortgagor is a trustee, and any amendments or additions to them, and any changes of their trustees;
  - (b) the mortgagor is the sole trustee of the trust;
  - (c) the mortgagor has power to execute each Agreement Covered By this Mortgage and to perform the mortgagor's obligations under this mortgage and each Agreement Covered By This Mortgage;
  - (d) the mortgagor has an unrestricted right of indemnity from trust assets;
  - (e) the mortgagor executes this mortgage as part of the proper administration of the trust and for the benefit of the beneficiaries;
  - (f) no trust assets have been or will be resettled, set aside or transferred to other trusts;
  - (g) the mortgagor has disclosed in writing to the mortgagee all information about the trust and the trust assets which may reasonably affect the mortgagee's decision to provide financial accommodation or not press for immediate payment of the Amount Owing;

- (h) no vesting date of the trust has been or will be determined;
- (i) the mortgagor is not in breach of trust;
- (j) there are no claims against the trust assets;
- (k) no notice has been or will be given under any legislation inviting claims against the trust fund before distribution; and
- (l) no capital has been or will be distributed under the trust, without the mortgagee's consent.

44.10 The mortgagor represents and warrants that each warranty and representation in this clause will be true at all times while this mortgage is in force.

44.11 The mortgagor repeats each warranty and representation in this clause whenever the mortgagee provides financial accommodation to the mortgagor or to third parties at the mortgagor's request.

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## 45. Electronic Communication

To the extent permitted by any applicable law:

- (a) A requirement under this mortgage or any applicable law to give or provide information in writing may be satisfied by giving or providing the information by means of electronic communication or by displaying the information on the mortgagee's website; and
- (b) A requirement under this mortgage or any applicable law for a signature by a person will be taken to be met if a method is used to identify the person and indicate their intention which satisfies the *Electronic Transactions Act 1999* (Cth).

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## 46. Notices

### 46.1 General

All notifications, notices, demands, certificates, consents, approvals, waivers and other communications in connection with this mortgage (all "Communications" for the purposes of this clause 46) must be in writing.

### 46.2 Delivery of Communications to the mortgagee

Communications from the mortgagor to the mortgagee may be:

- (a) left at, or sent by pre-paid post to, the mortgagee's address set out or referred to in this mortgage or such other address as the mortgagee may advise the mortgagor of in writing from time to time;
- (b) sent by fax to the mortgagee's fax number set out or referred to in this mortgage or such other fax number as the mortgagee may notify the mortgagor of in writing from time to time; or
- (c) delivered in such other manner as is allowed by law.

### 46.3 Delivery of Communications to the mortgagor

The mortgagor agrees that Communications from the mortgagee to the mortgagor may be given or provided as follows:

- (a) if the mortgagor has provided the mortgagee with an email address, sent electronically to that email address or such other email address as the mortgagor may advise the mortgagee of in writing from time to time;
- (a) if the mortgagor has access to the mortgagee's internet banking facility, made available for the mortgagor to view by using that internet banking facility;
- (b) delivered to the mortgagor personally;
- (c) left at, or sent by pre-paid post to, the mortgagor's address set out or referred to in this mortgage or such other address as the mortgagor may advise the mortgagee of in writing from time to time; or
- (d) left at or on the Mortgaged Property, subject to any different or additional requirements of any law which applies to this mortgage, or

- (e) in such other manner as is allowed by law.

Representative, stating the date and time when any notice was personally given or posted to the mortgagor, is sufficient evidence of the matter unless proved incorrect.

#### 46.4 Service

If a Communication is given by:

- (a) post, it will be deemed received seven Business Days after posting;
- (b) email, it will be deemed received at the time shown in the sender's email system as the time that the email was sent;
- (c) being made available for the mortgagor to view by using the mortgagee's internet banking facility, it will be deemed received at the time it is posted on that facility; and
- (d) fax, it will be deemed received at the time shown in the transmission report as the time that the whole fax was sent.

#### 46.5 Service after hours

If a Communication to the mortgagee is received by the mortgagee:

- (a) after 5 pm; or
- (b) on a day which is not a Business Day, it will be deemed to have been received on the next Business Day.

#### 46.6 Obligation to keep contact details updated

The mortgagor must immediately notify the mortgagee of any change to the mortgagor's contact details and notify the mortgagee if the mortgagor becomes aware that the mortgagee has or may have incorrect or outdated contact details for the mortgagor.

#### 46.7 Other

- (a) Notice to the mortgagor under this clause 46 is effective even if the mortgagor is insane, dead, an insolvent under administration or an externally-administered body corporate.
- (b) Subject to any law that requires otherwise, if two or more people comprise a party, notice or demand to one is effective notice or demand to all.
- (c) A certificate signed by the mortgagee or the mortgagee's Authorised

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#### 47. Jurisdiction

- 47.1 This mortgage is governed by the law of the state or territory where the Mortgaged Property is situated.
- 47.2 The mortgagor irrevocably submits to the non-exclusive jurisdiction of the courts of that place and the division of the Federal Court of Australia in that place, and the courts of appeal from them.
- 47.3 The mortgagor must not object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.

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#### 48. Deed

This mortgage is a deed.

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#### 49. Shared scheme

- 49.1 This clause 49 applies if the Mortgaged Property is part of a Shared Scheme.
- 49.2 The mortgagor must:
- (a) comply with the Shared Scheme Law and by-laws, rules or articles of the Shared Scheme;
- (b) at the mortgagee's reasonable request, give the mortgagee at least five days' notice of all proposed meetings of the Governing Body and of the business to be transacted at those meetings;
- (c) vote as the mortgagee reasonably directs the mortgagor in writing at any meeting of the Governing Body;
- (d) if permitted by Shared Scheme Law, at the mortgagee's request, by notice to the secretary of the Governing Body, nominate the mortgagee or the mortgagee's nominee to attend and vote at meetings on the mortgagor's behalf;
- (e) use the mortgagor's best efforts to ensure that the mortgagor's rights under the Shared Scheme are not varied and

- to ensure that the mortgagor's obligations under the Shared Scheme are not unreasonably increased;
- (f) notify the mortgagee immediately of any proposal to vary the mortgagor's rights or unreasonably increase the mortgagor's obligations under the Shared Scheme or to cancel or amend the Shared Scheme;
- (g) upon receipt, give the mortgagee any notice order or other document received from the Governing Body, the local council, a governmental authority or any court relating to the Mortgaged Property or the Shared Scheme;
- (h) if the Governing Body does not insure the Mortgaged Property, insure the Mortgaged Property in accordance with clause 14;
- (i) if the Governing Body insures the Mortgaged Property, ensure the Mortgaged Property is insured for at least the total of the Amount Owing and the amount secured by any prior mortgage over the Mortgaged Property; and
- (j) use the mortgagor's best efforts to ensure that the Governing Body complies with its obligations under the Shared Scheme Law and insures against public risk and any other risk the mortgagee requires and notifies the mortgagee if the Governing Body does not do so.
- 49.3 The mortgagor must do everything the mortgagor can reasonably do to ensure that:
- (a) members of the Governing Body do not direct the Governing Body to cancel or amend the Shared Scheme, without the mortgagee's consent;
- (b) the Governing Body does not commence proceedings against the mortgagor under the Shared Scheme Law;
- (c) a court does not order that the Shared Scheme be cancelled or amended and, as a result and, in the mortgagee's reasonable opinion, prejudice the mortgagee's security; or
- (d) the Governing Body complies with its obligations under the Shared Scheme Law.
- 49.4 The mortgagor irrevocably authorises the Governing Body to supply to the mortgagee:
- (a) the information and statements contemplated by Shared Scheme Law; and
- (b) any further information the mortgagee requires about the Shared Scheme or Governing Body.
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- 50. Liquor and gaming machine licences**
- 50.1 In this clause 50:
- Act** means a statute or regulation governing the sale, disposal or consumption of alcohol, governing gaming machines or the provision of gambling services;
- Licence** means a licence under an Act, issued in respect of the Mortgaged Property;
- Licensee** means the past, present or future holder of a Licence.
- 50.2 This clause 50 applies if there is a Licence in respect of the Mortgaged Property.
- 50.3 The mortgagor must:
- (a) comply with the Act, any notice or order under it, and the Licence, or cause the Licensee to do so;
- (b) keep the Mortgaged Property open during normal trading hours;
- (c) carry on the business for which the Licence is held, or cause it to be carried on in a proper and orderly manner;
- (d) apply for and renew all Licences necessary or desirable for that business, or cause the Licensee to do so;
- (e) oppose any application to restrict, suspend or cancel a Licence;
- (f) give the mortgagee a copy of any summons, conviction, order or notification under the Act in connection

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|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     | with the Licence or the Mortgaged Property;                                                                                                                                                                                                              |      | acquires by virtue of holding the Mortgaged Property or into which the Mortgaged Property is converted.                                                                                                                                                              |
| (g) | not change the use of the Mortgaged Property;                                                                                                                                                                                                            | 51.3 | The mortgagee may exercise the mortgagor's rights under the relevant statute including paying the balance of any purchase money, and any other money payable in respect of the Mortgaged Property or under this clause. That money becomes part of the Amount Owing. |
| (h) | not remove, or allow the removal of, the Licence from the Mortgaged Property;                                                                                                                                                                            |      |                                                                                                                                                                                                                                                                      |
| (i) | not transfer or surrender the Licence, or agree or attempt to do so, or allow the Licensee to do so;                                                                                                                                                     | 51.4 | The mortgagor warrants that, at the date of this mortgage, the mortgagor is not aware of any native title claim (proposed or made) over the Mortgaged Property.                                                                                                      |
| (j) | not create or allow any Security Interest which affects the Licence;                                                                                                                                                                                     |      |                                                                                                                                                                                                                                                                      |
| (k) | at the mortgagee's reasonable request (for example if the mortgagee exercises a relevant right under clause 22.2), use the mortgagor's best efforts to transfer the Licence to the mortgagee or the mortgagee's nominee, or cause the Licensee to do so. | 51.5 | Within two Business Days after the mortgagor becomes aware of any native title claim (proposed or made), the mortgagor must give the mortgagee notice of the claim and any information the mortgagee requires about it.                                              |
|     |                                                                                                                                                                                                                                                          | 51.6 | The mortgagee may make, pursue or settle any native title claim in any way the mortgagee chooses in the mortgagor's name, the mortgagee's name or both.                                                                                                              |

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**51. Crown land**

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|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 51.1 | This clause 51 applies if the mortgagor holds the Mortgaged Property under a statute relating to Crown land.                                                                                                                                                                                                                                 | 51.7 | The mortgagor releases the mortgagee from all claims for any act or omission under this clause 51, except to the extent that it is caused by the fraud, negligence or wilful misconduct by the mortgagee or the mortgagee's agents, contractors, employees, officers, or any receiver appointed by the mortgagee. |
| 51.2 | The mortgagor must:                                                                                                                                                                                                                                                                                                                          |      |                                                                                                                                                                                                                                                                                                                   |
| (a)  | not do or omit to do or allow an act whereby the Mortgaged Property (or the mortgagee's interest in it) could be changed, forfeited, cancelled or prejudiced;                                                                                                                                                                                |      |                                                                                                                                                                                                                                                                                                                   |
| (b)  | not surrender or exchange the Mortgaged Property;                                                                                                                                                                                                                                                                                            |      |                                                                                                                                                                                                                                                                                                                   |
| (c)  | comply with the relevant statute, including requirements about improvements;                                                                                                                                                                                                                                                                 |      |                                                                                                                                                                                                                                                                                                                   |
| (d)  | at the mortgagee's request, exercise the mortgagor's rights under the relevant statute. This may include the acquisition of additional estates or interests in land, which will then be part of the Mortgaged Property or the conversion of the Mortgaged Property to another estate, which will then be part of the Mortgaged Property; and |      |                                                                                                                                                                                                                                                                                                                   |
| (e)  | mortgage to the mortgagee, on the same terms as this mortgage, any estate or interest in land the mortgagor                                                                                                                                                                                                                                  |      |                                                                                                                                                                                                                                                                                                                   |

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**52. Leasehold land**

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|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 52.1 | This clause 52 applies if the Mortgaged Property is leasehold.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 52.2 | The mortgagor must perform the mortgagor's obligations under the lease, not surrender the lease, not do or omit anything whereby the landlord may re-enter the Mortgaged Property, give the mortgagee notice promptly after any event whereby the lease could be terminated or prejudiced, advise the mortgagee immediately of any default of the lease by the mortgagor or of receipt by the mortgagor of any notice issued by the landlord or any other person or authority which may adversely affect the mortgagor's right to quiet enjoyment of the Mortgaged Property and exercise any right to renew the lease. |
| 52.3 | The mortgagee may exercise any of the mortgagor's rights under the lease, without notice to the mortgagor.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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### 53. Rural land

53.1 This clause 53 applies if the Mortgaged Property is used for agriculture, horticulture or grazing.

53.2 The mortgagor must:

- (a) cultivate, manage and maintain the Mortgaged Property properly and efficiently;
- (b) erect and maintain adequate fences;
- (c) take reasonable action to keep the Mortgaged Property free from pests and harmful plants, infestations and diseases;
- (d) comply with all statutes about pests and harmful plants;
- (e) at the mortgagee's reasonable request, grant the mortgagee a Security Interest over any stock on the Mortgaged Property or wool clip or crop produced on the Mortgaged Property. The mortgagee may prepare the terms on which the Security Interest is granted as the mortgagee thinks fit, and stamp and register it, at the mortgagor's cost;
- (f) not grant a Security Interest over any such stock, wool clip or crop, without the mortgagee's consent;
- (g) comply with all licences and quotas regulating production on the Mortgaged Property, or the sale of produce of the Mortgaged Property, or used in conjunction with the Mortgaged Property (such as a water licence);
- (h) not deal with any such licence or quota, without the mortgagee's consent, which will not be unreasonably withheld;
- (i) not do or omit to do or allow anything whereby any such quota or contract could be forfeited, cancelled or reduced;
- (j) not, without the mortgagee's prior consent, which will not be unreasonably withheld, cut or destroy standing timber either dead or alive nor carry or allow any timber to be carried away or otherwise commit any act in respect of the Mortgaged Property which would or could in the mortgagee's reasonable

opinion lessen the value or utility of the Mortgaged Property; and

- (k) promptly pay all governmental fees for any licences or quotas.

53.3 The mortgagor must, at the mortgagor's cost and expense, and when so reasonably required by the mortgagee, grant the mortgagee by way of further security for the Amount Owing, a separate Security Interest, on terms the mortgagee thinks fit, over any Water Rights that don't form part of the Mortgaged Property but relate to the Mortgaged Property and must do all that is required to perfect such Security Interest.

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### 54. Building and other works

54.1 In this clause 54, **Contract** means any contract entered into by the mortgagor in respect of Works, including variations;

54.2 The mortgagor must not carry out Works, without the mortgagee's consent, which will not be unreasonably withheld.

54.3 If the mortgagor carries out Works, the mortgagor must:

- (a) comply with all relevant laws and the requirements of governmental authorities, easements encumbrances and covenants;
- (b) obtain and maintain the consent of any governmental authority necessary for the Works;
- (c) ensure that the Works are done competently, in accordance with plans and specifications approved by the governmental authorities and the mortgagee, and completed within a reasonable time;
- (d) not encroach on adjoining land;
- (e) protect the Mortgaged Property from damage;
- (f) insure the Works as they progress, and give the mortgagee evidence and information about that insurance, in accordance with clause 14 (Insurance);
- (g) obtain and give the mortgagee any certificates and permits the mortgagee reasonably requires (such as certificates

- of satisfactory completion or compliance or occupancy permits);
  - (h) give the mortgagee any information about the Works (including information about construction, materials and costs) the mortgagee reasonably requires;
  - (i) give the mortgagee copies of all plans, drawings, specifications, feasibility studies and other documents in respect of the Works, and cause the mortgagor's employees contractors and agents to do likewise;
  - (j) not vary or add to any plans or specifications in respect of the Works, without the mortgagee's consent. The mortgagee must not unreasonably withhold that consent and must give or refuse that consent as quickly as is reasonable;
  - (k) keep proper accounts in respect of the Works;
  - (l) allow the mortgagee and persons authorised by the mortgagee to inspect those accounts;
  - (m) perform the mortgagor's obligations under the Contract;
  - (n) promptly notify the mortgagee about anything which could affect the mortgagor's ability to perform those obligations;
  - (o) notify the mortgagee of any default under the Contract;
  - (p) at the mortgagee's reasonable request, enforce a Contract against the other party;
  - (q) give the mortgagee at least seven days' notice of any proposed variation to the Contract;
  - (r) not vary the Contract without the mortgagee's consent, which will not be unreasonably withheld;
  - (s) pay all governmental charges on the mortgagor's or the Mortgaged Property in respect of the Contract; and
  - (t) promptly on receipt, give the mortgagee copies of any notices from other parties to the Contract.
- 54.4 The mortgagee and persons authorised by the mortgagee may enter the Mortgaged Property to inspect the Works. In doing so, the mortgagee must use best efforts to minimise disruption and to comply with site safety requirements. The mortgagee will give the mortgagor reasonable notice if the mortgagee requires access to the Mortgaged Property under this clause, but the mortgagor must give the mortgagee access immediately if the mortgagee reasonably requires it.
- 54.5 If the mortgagor is in default under this Mortgage or an Agreement Covered By This Mortgage, the mortgagee is not obliged to provide more financial accommodation (even if originally intended to be part of the Amount Owing).
- 54.6 If the mortgagee takes possession of the Mortgaged Property under this mortgage, without notice to the mortgagor, the mortgagee may, but is not obliged to, take over any Works. Without limiting this, the mortgagee may
- (a) continue, vary, demolish or stop the Works;
  - (b) call for and accept tenders;
  - (c) use materials and equipment on the Mortgaged Property in the Works;
  - (d) employ any architect or other person; and
  - (e) spend any money necessary to complete the Works, which becomes part of the Amount Owing.
- 54.7 The mortgagee is not liable for any loss in connection with the Works (including loss arising from plans or specifications the mortgagee approves or from demolishing or stopping Works), except to the extent any loss is caused by the fraud, negligence or wilful misconduct by the mortgagee or the mortgagee's agents, contractors, or any receiver appointed by the mortgagee.
- 54.8 The mortgagee is not under a duty to exercise care or skill in inspecting or approving plans or specifications or Works.

54.9 The mortgagor indemnifies the mortgagee against all claims and all reasonable costs, liability and expenses incurred by the mortgagee in inspecting or approving plans, specifications or Works, except to the extent any costs, liabilities and expenses are caused by the fraud, negligence or wilful misconduct by the mortgagee or the mortgagee's agents, contractors, or any receiver appointed by the mortgagee.

54.10 There is no contractual relationship between the mortgagee and any person contracted by the mortgagor to carry out the Works, unless the mortgagee takes an assignment of the Contract and give that other person notice of that assignment.

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## 55. National Credit Code

Notwithstanding any other provision of this mortgage, to the extent that this mortgage secures the repayment of money or the performance of obligations under a credit contract, guarantee or other arrangement to which the National Credit Code applies:

- (a) each provision of this mortgage must be read subject to and, if necessary, read down to the extent necessary to comply with, the requirements of the National Credit Code. If a provision cannot be read down to that extent, it must be severed and is not enforceable in relation to credit contracts, guarantees or other arrangements to which the National Credit Code applies;
- (b) the Amount Owing only includes amounts payable in relation to a credit contract, guarantee or other arrangement to which the National Credit Code applies to the extent allowed by the National Credit Code; and
- (c) the amounts that the mortgagor is required to pay under this mortgage, and which are secured by it, are not more than the mortgagee is allowed to recover from the mortgagor, or that may be secured, under the National Credit Code.

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## 56. Mortgagee need not execute

The mortgagee may enforce this mortgage against any person who executes it even if the mortgagee does not execute it or only subsequently execute it or if the execution by any other party is defective, void or voidable.

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## 57. Chattels

57.1 All fittings and fixtures installed on or in the Mortgaged Property are deemed, as between the mortgagor and the mortgagee, to be fixtures to, and part of, the Mortgaged Property.

57.2 The mortgagor must not remove any fixtures or fittings from the Mortgaged Property without the mortgagee's prior written consent.

57.3 The mortgagor assigns to the mortgagee all of the mortgagor's rights under any hire purchase or other agreement for the purchase or hire of property affixed to or installed at the Mortgaged Property so that the mortgagee may at any time acquire the property by payment of the balance at that time owing to the owner of the goods and any money so paid will form part of the Amount Owing. The mortgagor must duly observe and perform all the terms, covenants and conditions contained in any such hire purchase agreement or other agreement.

## How to contact us

You can contact us in any of the following ways:

- Phone: 13 11 82
- [www.peopleschoice.com.au](http://www.peopleschoice.com.au)
- Post: People's Choice Credit Union  
GPO Box 1942, Adelaide S.A. 5001
- In person: At any of our branches