

**IMPORTANT!**

YOU SHOULD READ THIS DOCUMENT CAREFULLY, ENSURE YOU UNDERSTAND IT AND OBTAIN PROFESSIONAL LEGAL AND FINANCIAL ADVICE BEFORE YOU SIGN ANY DOCUMENT THAT REFERS TO THIS DOCUMENT.

# Memorandum of Common Provisions of Mortgage

Australian Capital Territory	3379452
New South Wales	AV3807
Northern Territory	372465
Queensland	723993786
South Australia	14510466
Tasmania	M831
Victoria	AA010833
Western Australia	Q386643
NSW (Water Rights)	AV20198

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## MEMORANDUM OF COMMON PROVISIONS OF MORTGAGE

The covenants in this memorandum are incorporated in any mortgage that refers to this memorandum.

The meaning of certain capitalised words and of other common words is set out in **clause 21**.

### 1. Mortgage

- 1.1 By signing this Mortgage, You mortgage to Us the Mortgaged Property as security for the payment to Us of the Secured Money and the performance of Your obligations under any Relevant Document.
- 1.2 You enter into this Mortgage in return for Us providing a loan or other banking or financial services.

### 2. Your payment obligations

#### 2.1 The Secured Money

You must pay the Secured Money to Us when it is due in accordance with Your obligations under any Relevant Document. If there is no agreed time for payment of any of the Secured Money in this Mortgage or any Relevant Document, You must pay it to Us on demand.

#### 2.2 Interest

- (a) We can charge You interest on any part of the Secured Money which is due for payment. Interest on that amount accrues daily. We work out the daily rate by dividing the relevant rate by 365 days (and We may divide the rate by 366 days in a leap year).

You must pay interest under this clause on demand from Us.

- (b) The rate of interest applying to each daily balance under **clause 2.2(a)** is:
- if this Mortgage secures an NCC Contract, the default or overdue rate (however defined) under the NCC Contract;
  - if this Mortgage secures a Relevant Document that is not an NCC Contract the default or overdue rate (however defined) under that Relevant Document.

#### 2.3 Manner of payment

All payments required to be made under or in connection with this Mortgage must be made in cleared funds and free of any set-off, counterclaim or deduction (except Tax You are legally required to deduct) in Australian Dollars.

#### 2.4 Taxes

If any law requires You to deduct or withhold an amount in respect of Tax from any payment You are required to pay Us You must:

- (a) advise Us in writing of that obligation;
- (b) pay the relevant Tax to the appropriate Government Body and provide evidence of payment to Us; and
- (c) increase the amount payable to Us so that We receive the full amount payable as though no deductions or withholdings had been required.

### 3. Your obligations in relation to the Mortgaged Property

#### Looking after the Mortgaged Property

##### 3.1 You must:

- (a) keep the Land and Improvements in good condition and repair any serious defects;
- (b) not allow any Improvements to be pulled down, removed or altered by anyone without Our prior written consent;
- (c) protect and maintain the value of the Mortgaged Property, Your title and Our right and interest in it and not do anything that might reasonably be expected to reduce the value of the Mortgaged Property;
- (d) comply with all laws and any other obligations relating to the Mortgaged Property (including all applicable Environmental Legislation) and any requirements imposed by Government Bodies;
- (e) promptly rectify any encroachment by or on the Mortgaged Property;

- (f) ensure that:
- there is no Environmental Damage;
  - You do not make, store, use or otherwise deal with pollutants on the Land, or allow any other person to do so, other than in connection with use for agricultural purposes on Agricultural Land; and
  - the Land is not used for the storage, treatment or disposal of waste;
- (g) if there is any Environmental Damage, immediately notify Us, take such steps that are necessary to remedy the Environmental Damage and implement such reasonable precautions as are necessary to prevent the Environmental Damage from spreading or occurring again; and
- (h) not change or allow to be changed any existing use of the Mortgaged Property or apply for or consent to any application to re-zone, re-categorise or change the use of the Mortgaged Property under any applicable law unless You have obtained Our prior written consent (which We will not unreasonably withhold).

### **Property rates, Taxes and levies**

- 3.2 You must pay all rents, instalments of purchase money, interest, rates, Taxes, levies and any other money You are required to pay in respect of the Mortgaged Property on time and, if We ask for it, provide Us with evidence of payment.

### **Dealing with the Mortgaged Property**

- 3.3 You must not sell, agree to sell, assign, transfer, give any option to purchase, lease, agree to lease, part with possession, surrender, partition, divide, subdivide, consolidate, share-farm, mortgage, charge, licence, further encumber, dispose of, grant, or allow to come into existence, any other rights of any kind, or deal with any interest in, the Mortgaged Property or any rights and benefits attached or relating to the Mortgaged Property without Our prior written consent (which We will not unreasonably

withhold) other than in relation to a Permitted Security Interest.

- 3.4 If the Mortgaged Property is subject to a Lease to another person, You must:

- (a) not allow any variation, extension, surrender, transfer, sub-lease, mortgage or other dealing relating to the Lease without Our prior written consent (which We will not unreasonably withhold);
- (b) collect all rent and other amounts payable under the Lease and use reasonable efforts to ensure the lessee complies with the Lease;
- (c) if We ask You to, following an Event of Default (and after allowing for any applicable remedy period under a Relevant Document), direct the lessee to pay all rents and payments in relation to the Lease to Us for the purposes of repayment of the Secured Money; and
- (d) if We ask You to, give Us a copy of the Lease or any other document relating to the Lease.

### **General**

- 3.5 You must:

- (a) perform all of Your obligations under each Relevant Document on time;
- (b) perform all of Your obligations to any other person under any agreement or document on time; and
- (c) carry on and conduct Your businesses (if applicable) in a proper and efficient manner.

- 3.6 You must promptly notify Us if:

- (a) You have any right or interest in the Mortgaged Property that can or will be converted into a new right or interest; or
- (b) You acquire or will acquire any new right or interest in the Mortgaged Property,

either automatically by law or by exercising any right You have under any law and, if We request, exercise that right. By signing this Mortgage You mortgage to Us (where permitted by law) all such new and/or

additional rights and interests held by You in respect of the Mortgaged Property.

### Other Security Interests

- 3.7 You must not grant or allow a Security Interest in the Mortgaged Property to any other person or increase the amount secured by a Security Interest held by any other person in the Mortgaged Property which ranks in priority to or equally with this Mortgage without Our prior written consent (which We will not unreasonably withhold).
- 3.8 Despite anything in any other Relevant Document, if We become aware of the existence of any Security Interest over the Mortgaged Property to which We have not consented, We are not required to advance any money or provide any further financial accommodation to You, or at Your request, until priority arrangements acceptable to Us are entered into with all relevant persons.

### Providing Us with information and access

3.9 You must promptly:

- (a) give Us any information or documents We reasonably request in relation to the Mortgaged Property;
- (b) give Us any documents relating to any material court proceedings affecting You or the Mortgaged Property (including family law proceedings which may alter Our rights, liability or interests in relation to the Mortgaged Property) no later than 7 days before any hearing;
- (c) notify Us if You change Your name or address or You intend on doing so; and
- (d) notify Us in writing if You become aware of:
  - an Event of Default or a Potential Event of Default;
  - any litigation or dispute relating to You or the Mortgaged Property which is likely to Increase Our Credit Risk;
  - any Compensation Event or native title claim affecting the Mortgaged Property;

- any other notice or order affecting the Mortgaged Property issued by a court or Government Body;
- any change in the zoning or categorisation of the Mortgaged Property or any order or notice under applicable law relating to the use of the Mortgaged Property, and give Us all details of the change, order or notice; or
- anything else, acting reasonably, which We tell You We require notice of in connection with the Mortgaged Property, a Relevant Document, Your financial affairs, identification or other similar procedures necessary to comply any with law or meet Our regulatory and compliance obligations.

3.10 You must at any time allow Us and Our Authorised Officers and agents access to enter the Land and any Improvements to:

- (a) view their condition;
- (b) exercise any right or power We have;
- (c) inspect the Mortgaged Property for the purpose of determining compliance with Your obligations under this Mortgage or any Relevant Document;
- (d) obtain a valuation; or
- (e) perform any of Your obligations which You should have performed under this Mortgage or any Relevant Document but did not.

These things are done at Your cost. However, we agree not to charge You for the costs of a valuation if We have obtained it because We believed there is or may be an Event of Default or Potential Event of Default and it is shown that there is no Event of Default or no Potential Event of Default.

You must provide Us with such assistance as We reasonably require for these purposes.

We agree that any inspection under this **clause 3.10** will be during normal business

hours (and We agree to give You reasonable notice before we enter) unless:

- i. there is an emergency;
- ii. there is an Event of Default; or
- iii. We reasonably believe that the inspection may confirm that an Event of Default has occurred.

## Insurance

### 3.11 You must:

- (a) insure and keep insured all insurable Mortgaged Property (including all Improvements) and Works to Our satisfaction against loss or damage caused by:
  - fire, storm and tempest;
  - such other risks against which a prudent owner would insure; and
  - any other risks We require that You insure,for an amount at least equal to its full replacement cost, unless We specify otherwise;
- (b) maintain Insurance against public liability risk and any other Insurance We reasonably require (which may include environmental impairment insurance if You conduct a business on the Land) in connection with the Mortgaged Property;
- (c) ensure that each Insurance policy relating to the Mortgaged Property is with an insurer appropriately licensed in Australia;
- (d) ensure that Our interest under this Mortgage is noted on each Insurance policy You arrange in respect of the Mortgaged Property;
- (e) pay all Insurance premiums on time;
- (f) comply with Your obligations under each Insurance policy and not do anything which might cause any Insurance policy to be cancelled or any claim under it to be refused or denied; and

- (g) notify Us immediately if anything happens which causes or might cause an Insurance policy to be cancelled or a claim under it to be rejected or denied.

3.12 If We ask You to, You must provide Us with a copy of the certificate of currency or a copy of the Insurance policy for any Insurances and must provide Us with any information We request in relation to the Insurances.

3.13 All Insurance must be to a level and on terms satisfactory to Us. If We do not specify, it must be at least to a level and on terms that a prudent person with Your Mortgaged Property and (if applicable) business would obtain;

3.14 Despite the above provisions, You are not required to arrange Insurance in relation to any of the Mortgaged Property which is part of a Group Title Scheme if the Body Corporate has obtained effective and adequate Insurance coverage in relation to the Mortgaged Property. If We consider that the amount of Insurance coverage obtained by the Body Corporate in relation to the Mortgaged Property is not sufficient, We may ask You to, and You must, obtain separate Insurance, at Your cost, for the shortfall.

3.15 If You fail to obtain or maintain any Insurance in relation to the Mortgaged Property, or if You do not pay a premium for any Insurance, We may arrange Insurance for Our benefit, or pay the relevant premium, as applicable. If any Insurance which You have failed to maintain covers items or risks in addition to those which We require in relation to the Mortgaged Property, then any insurance which We arrange or pay for under this clause may also cover any of those additional items or risks. You must pay Us the amount of any premium paid by Us if We do so and that amount will become part of the Secured Money. We may debit the premium cost to any account You have with Us or demand immediate payment from You.

3.16 You must notify Us if anything happens which gives rise or might give rise to a material claim under an Insurance policy relating to the Mortgaged Property.

3.17 In relation to any claim or potential claim under any Insurance:

- (a) You must not enforce, settle, compromise, make demand, sue for, recover or give discharges for payments without Our prior written consent;
- (b) if We notify You, We may take over Your rights to make, pursue or settle the claim, in which case We may exercise those rights as We choose;
- (c) subject to the terms of the Insurance policy, provided there is no current Event of Default, the proceeds of the Insurance claim must be applied as agreed with Us either towards repairing or replacing the Mortgaged Property or towards payment of the Secured Money. If there is a continuing Event of Default the proceeds must, subject to the terms of the policy, be applied as We direct.

### 3.18 Protecting Our interest

You must:

- (a) provide Us with all relevant Title Documents by physically depositing them with Us or providing Us (or someone else we nominate) with Electronic Control, (unless We agree otherwise in writing);
- (b) do whatever We ask (including signing anything) to better secure the Mortgaged Property or protect Our interests under this Mortgage, and if this Mortgage is a Consumer Contract or a Small Business Contract, We will provide a reasonable period for You to review and comply with any request We make. We may give You a shorter period of notice, or no notice, if We need to act quickly to avoid or reduce something that would Increase Our Credit Risk or Our loss, or if Our request is necessary to comply with the requirements of a third party;
- (c) not lodge, consent to, or allow to be lodged, a caveat affecting Our interest in the Mortgaged Property;
- (d) promptly do everything You can to remove any caveat over the Mortgaged Property which has been lodged without Our consent; and
- (e) if Your rights or interest in the Mortgaged Property are extinguished by law and are not replaced by new

rights or interests which form part of the Mortgaged Property, and We ask You to, provide Us with additional security to secure the Secured Money to Our satisfaction.

### 3.19 Registration of this Mortgage

You must promptly provide Us with any assistance and sign all other documents We require to register this Mortgage with any Government Body or Water Licensing Authority with such priority as We may reasonably require.

### 3.20 Assistance You must provide

You must do anything We request to provide more effective security over the Mortgaged Property to Us, to facilitate the realisation of the Mortgaged Property, to help in the execution or exercise of any of Our rights, powers, remedies or authorities under this Mortgage and to perfect or preserve the priority or enforceability of this Mortgage.

### 3.21 Further security

Subject to any law that requires otherwise, You must, if We ask You to, assign to, or secure in favour of Us as security for payment of the Secured Money, any Authorisation, Licence or Water Rights (whether obtained before or after the date of this Mortgage) and for this purpose You must execute and deliver to Us any document We may request. If this Mortgage is a Consumer Contract or a Small Business Contract, We will provide a reasonable period for You to review any document We require You to execute under this clause. We may give You a shorter period of notice, or no notice, if We need to act quickly to avoid or reduce something that would Increase Our Credit Risk or Our loss, or if Our request is necessary to comply with the requirements of a third party. You must keep each Authorisation, Licence and Water Rights free from liability to forfeiture, cancellation, avoidance or loss. You charge to Us all moneys received from the sale, disposal, Resumption or cancellation of any Authorisation, Licence and Water Rights including any entitlement to compensation, as further security for payment of the Secured Money.

## 4. Your assurances

- 4.1 You promise the following statements are true at the time You sign this Mortgage and must ensure they remain true at all times while there is any Secured Money:

- (a) You alone own the Mortgaged Property or will do so on completion of the purchase which We are financing and You have the ability to mortgage the Mortgaged Property in the manner expressed by this Mortgage;
- (b) You do not own the Mortgaged Property as trustee except to the extent that You have notified Us in writing;
- (c) the Mortgaged Property is not subject to any:
  - notice of intention to forfeit, terminate, surrender, restrict, suspend or reclassify the Mortgaged Property or to show cause why any of those things should not happen;
  - adverse possession application or claim;
  - public or private right of way; or
  - easement or restriction on use, except as is specifically described in this Mortgage or which We have unequivocally accepted in writing;
- (d) except for any restrictions upon use as have been disclosed on a Title Document or in writing to Us prior to execution of this Mortgage, the use of the Mortgaged Property for its current purpose is allowed and unrestricted under all applicable laws;
- (e) You have taken all necessary steps, and have all requisite power, to execute and enter into the transactions evidenced by this Mortgage;
- (f) You do not breach any law or other obligation You have by signing this Mortgage;
- (g) Your obligations under this Mortgage and any other Relevant Document are valid, binding and enforceable subject only to laws relating to bankruptcy and insolvency;
- (h) all information provided by You to Us at any time is true and correct and is not false or misleading in a material way;
- (i) You are not bankrupt or insolvent and no Insolvency Event has occurred in relation to You or is anticipated;
- (j) You have disclosed to Us all information (including copies of any notices issued by any Government Bodies or Water Licensing Authorities) which You have or which You have access to and which are relevant to Our assessment of the nature and amount of the risk We undertake by becoming a creditor of You or taking a Security Interest from You over the Mortgaged Property;
- (k) except to the extent You have advised Us in writing:
  - no litigation or dispute is now current or, to Your knowledge, anticipated against You which has or is likely to Increase Our Credit Risk;
  - no Compensation Event has occurred or is anticipated; and
  - there are no Security Interests or other interests or claims other than Permitted Security Interests over the Mortgaged Property;
- (l) no Event of Default has occurred and is continuing;
- (m) each Security Interest which this Mortgage purports to create is effective security as a first ranking security in the Mortgaged Property unless We have agreed otherwise in writing;
- (n) Your obligations under this Mortgage and each other Relevant Document rank at least equally with all Your other unsecured and unsubordinated obligations except obligations mandatorily preferred by law;
- (o) neither You, nor the Mortgaged Property are the subject of any right of immunity from set-off, proceedings or execution;
- (p) We have recommended that You obtain independent professional legal and financial advice before You sign this Mortgage and any other Relevant



Document and You have had an opportunity to obtain such advice;

- (q) You have complied with all laws, conditions and directions of any Government Bodies and Water Licensing Authorities relating to the Mortgaged Property;
- (r) You have obtained all necessary consents from Government Bodies and Water Licensing Authorities for:
  - the execution, delivery and registration (if applicable) of this Mortgage and all other Relevant Documents and to comply with Your obligations under this Mortgage and all Relevant Documents; and
  - Your use and ownership of the Mortgaged Property;
- (s) any approval or Authorisation in relation to the Mortgaged Property remains current and has not been altered or changed by the relevant Government Bodies or Water Licensing Authority;
- (t) You have complied with all Environmental Legislation which affects You and the Mortgaged Property;
- (u) there are no Environmental Liabilities affecting You or the Mortgaged Property; and
- (v) the Land is not listed on any register relating to contamination under any Environmental Legislation

#### 4.2 We rely on Your assurances

You understand and acknowledge that We rely on the statements, assurances, promises and acknowledgements You make or give in this Mortgage and the other Relevant Documents in agreeing to provide financial accommodation to You or at Your request and that We would not have done so if those statements, assurances, promises and acknowledgements were not given.

#### 4.3 Repetition of assurances

Each assurance and promise in **clause 4.1** and elsewhere in this Mortgage survives the execution of this Mortgage and is deemed to

be repeated with reference to the facts and circumstances then existing on the first Business Day of each month and on each date that We provide financial accommodation to, or at the request or direction of, You.

## 5. Additional terms and conditions

### 5.1 Companies

If You are a company or other incorporated entity, **Schedule 1** also applies.

### 5.2 Trusts

If at any time any part of the Mortgaged Property is property of a Trust, then **Schedule 2** also applies.

### 5.1 Group Title

If at any time any Land is subject to a Group Title Scheme, then **Schedule 3** also applies.

### 5.3 Works

If at any time You propose to carry out Works on any Land, then **Schedule 4** also applies.

### 5.4 Crown Land

If at any time any Land is subject to any of the Crown Land Acts, then **Schedule 5** also applies.

### 5.5 Leasehold Interest

If at any time Your interest in any Land is a Leasehold Interest, then **Schedule 6** also applies.

### 5.6 Licensed premises

If at any time any Land is or becomes licensed premises, then **Schedule 7** also applies.

### 5.7 Agricultural Lands

If at any time any Land is Agricultural Land, then **Schedule 8** also applies.

### 5.8 Water Rights

**Schedule 9** also applies in relation to any Water Rights that form part of the Mortgaged Property.

## 6. Compensation Events

- 6.1 You must notify Us promptly if You become aware of any proposal by any person which constitutes a Compensation Event.
- 6.2 We may take over Your rights to make, pursue or settle any claim You have in relation to a Compensation Event. If We want to do so, We will tell You and then may exercise those rights at Our discretion having regard to Your rights under the claim and Our rights under this Mortgage.
- 6.3 Until We notify You that We want to take over Your rights in relation to a Compensation Event You must:
- (a) keep Us informed of all matters relating to the Compensation Event and do anything which We require You to do;
  - (b) not settle, conduct, enforce or compromise any claim without Our prior written consent (which We will not unreasonably withhold); and
  - (c) do Your best to ensure that any compensation payment You become entitled to is paid to Us or, if it is paid to You, You hold it for Us and must pay as much of it to Us as We ask You to, as soon as We ask You to, towards the Secured Money.

## 7. When You are in default

### 7.1 Events of Default – Regulated Arrangements

If, and to the extent this Mortgage is, or is being relied upon as security for, a Regulated Arrangement, each of the following is an Event of Default (whether or not it is caused by You):

- (a) You do not pay on time any of the Secured Money;
- (b) You are in default under, or there is an event of default (however described) under any Relevant Document;
- (c) You, or another person providing information to Us on Your behalf, give Us information or makes a representation or warranty to Us which is materially incomplete or misleading (including by omission);

- (d) an Insolvency Event occurs in relation to You or any other party to a Relevant Document;
- (e) another creditor takes Enforcement Proceedings against You or any other party to a Relevant Document;
- (f) We exercise a legal or contractual right We have under a separate financing arrangement against You or due to an event of default (however described) described in this **clause 7.1**;
- (g) You do not comply with a Core Security Obligation;
- (h) if You are a natural person, You die; or
- (i) if You are a company or other incorporated body, each of the Events of Default described in **clause 3** of **Schedule 1**.

### 7.2 Events of Default – Unregulated Arrangements

If and to the extent this Mortgage is, or is being relied upon as security for, an Unregulated Arrangement, each of the following is an Event of Default (whether or not it is caused by You):

- (a) You fail to pay when due any of the Secured Money (after allowing for any applicable grace period under a Relevant Document);
- (b) any other event of default or default event (however described) occurs under a Relevant Document;
- (c) You fail to meet any of your obligations under this Mortgage or any Relevant Document; and
- (d) if You are a company or other incorporated body, any of the Events of Default described in **Schedule 1** occur.

### 7.3 Ensure no default

You must ensure that no Event of Default occurs.

## 8. What can happen if You are in default

### 8.1 Performance of Your obligations

If You fail to perform any of Your obligations under this Mortgage, We may, if We choose to, perform the obligation or make good that failure or appoint someone to do so. You must pay Us any costs We incur in performing Your obligations and all costs We incur will form part of the Secured Money. We may debit any such cost to any account You have with Us or demand immediate payment from You. To the extent this Mortgage is a Consumer Contract or a Small Business Contract, the costs referred to in this clause will not include costs incurred as a result of Our (or any of Our officers', employees', contractors', agents' or Receivers') fraud, negligence or wilful misconduct.

### 8.2 Exercising Our enforcement powers – NCC Regulated Arrangements

If We are relying on this document as security for a Regulated Arrangement that is an NCC Contract, and an Event of Default occurs, We will give You at least 30 days' notice to rectify the Event of Default before We require you to immediately pay all amounts You owe Us, We take Enforcement Proceedings against You or We do anything specified in **clause 9**.

However, We do not have to give You notice (or We can give You shorter notice) if We believe on reasonable grounds that We were induced by fraud to enter into the NCC Contract or this Mortgage, or where We have made reasonable attempts to locate You without success or where a court authorises Us to do so.

### 8.3 Exercising Our enforcement powers – other Regulated Arrangements

If We are relying on this document as security for a Regulated Arrangement that is not an NCC Contract, and an Event of Default occurs, We will give You at least 30 days' notice to rectify the Event of Default before We require you to immediately pay all amounts You owe us, We take Enforcement Proceedings against You or We do anything specified in **clause 9**.

However, We do not have to give You any period to rectify an Event of Default (or we can give You shorter notice) if:

- (a) it cannot be rectified (but only if it is a non-monetary Event of Default);
- (b) an Insolvency Event has occurred in relation to You or a Guarantor;
- (c) You or a Guarantor no longer have legal capacity;
- (d) it is reasonable for Us to act to manage a material and immediate risk relating to the Event of Default, Your particular circumstances, or the value of the Mortgaged Property.

Even if the matter is not rectified, We will only take action in connection with a non-monetary Event of Default if the matter by its nature is material or We reasonably consider it will have a material impact on:

- (e) Your or another party to a Relevant Document's ability to meet Your or their financial obligations to Us (or Our ability to assess this);
- (f) Our security risk (or Our ability to assess this);
- (g) Our legal or reputation risk (but only where the event of default relates to Your compliance with law, You or another person providing Us with information or giving Us a representation or warranty which is materially incomplete or misleading, or You using a loan for an unapproved purpose).

### 8.4 Exercising Our enforcement powers – Unregulated Arrangements

If We are relying on this document as security for an Unregulated Arrangement, and an Event of Default occurs (and after allowing for any applicable remedy period under a Relevant Document), We may exercise all Our enforcement powers under this Mortgage or conferred by law on mortgagees (including doing anything specified in **clause 9**) and are not required to give You any notice or wait for any period before exercising Our rights unless a law which cannot be excluded requires otherwise.

### 8.5 Notice period and lapse of time before exercising rights

Subject to **clause 8.2**, if a law requires that We must give You a period of notice or a lapse of time must occur or be permitted

before We can exercise any right, power or remedy under this Mortgage or conferred by law, then:

- (a) where a particular period of notice or lapse of time is compulsory, We must give You that period of notice or allow that lapse of time; or
- (b) where a law provides that the relevant period of notice or lapse of time may be stipulated or fixed by this Mortgage, one day is stipulated and fixed as that period of notice or lapse of time. .

## 9. Our enforcement powers

### 9.1 Powers

Subject to **clauses 8.2 and 8.4** and any laws which cannot be excluded, after an Event of Default (and after allowing for any applicable remedy period under this Mortgage or a Relevant Document), We may immediately or later, in addition to any powers, rights or remedies given to Us by applicable law, demand the immediate payment of the Secured Money and have power to do anything You could do as owner of the Mortgaged Property including the following:

- (a) take possession of the Mortgaged Property;
- (b) manage the Mortgaged Property;
- (c) lease the Mortgaged Property in one or more lots or with other property, or accept the surrender of any Lease of the Mortgaged Property, on terms determined by or acceptable to Us;
- (d) sell or otherwise dispose of the Mortgaged Property whether We or a Receiver has taken possession of it or not, on terms acceptable to Us;
- (e) collect, get in and receive rents, profits and other income from the Mortgaged Property;
- (f) farm or share farm the Land;
- (g) carry on or concur in carrying on any business of You in relation to the Land and for this purpose use any Authorisation, Licence and any Water Rights;
- (h) acquire any property or an interest in any property which, if We do, will become part of the Mortgaged Property;
- (i) acquire for such consideration as We or a Receiver thinks fit the whole or any part of any interest claimed by any person (other than Us) in the Mortgaged Property whether such interest ranks, or would rank if established, prior to or subsequent to this Mortgage and whether it is registered or unregistered;
- (j) exchange any of the Mortgaged Property for any other asset which will then be included as part of the Mortgaged Property;
- (k) maintain the Improvements and effect other Improvements to the Mortgaged Property;
- (l) all things necessary to rescind, vary or complete any contracts relating to the Mortgaged Property;
- (m) grant an option to purchase any of the Mortgaged Property to any person on any terms;
- (n) sever fixtures;
- (o) surrender or transfer any of the Mortgaged Property;
- (p) commence, defend, prosecute, settle, discontinue and compromise proceedings relating to the Mortgaged Property in Your name or otherwise for all or any of the purposes of this Mortgage;
- (q) have access to and make use of the premises, plant, servants, agents, accounts and other services of You for the purposes of exercising any of the powers set out in this **clause 9.1**;
- (r) complete and execute any documents on behalf of You for any of the purposes of this Mortgage;
- (s) do all things We think expedient to protect Our interests or exercise Our rights under this Mortgage; and
- (t) do anything incidental to the exercising of any of Our powers or rights.

Each of the above powers are independent of each other and no power limits the generality of any other.

## 9.2 Appointment of Receiver

Subject to **clause 8.5**, at any time after an Event of Default has occurred (and after allowing for any applicable remedy period under a Relevant Document), We may appoint any person or any two or more persons severally, jointly or jointly and severally as Receiver or Receiver and manager of all or any of the Mortgaged Property who can do anything We can do in relation to the Mortgaged Property. We may set the conditions and remuneration relating to that appointment and the remuneration together with any costs, charges and expenses incurred by the Receiver will become part of the Secured Money. We may also remove any Receiver. To the extent this Mortgage is a Consumer Contract or a Small Business Contract, the costs, charges and expenses incurred by the Receiver will not become part of the Secured Money if they are incurred as a result of Our (or any of Our officers', employees', contractors', agents' or Receivers) fraud, negligence or wilful misconduct.

## 9.3 Our rights not affected

Even if a Receiver is appointed, We may continue to exercise all or any of the rights, powers and remedies conferred on Us under this Mortgage or under any applicable law.

## 9.4 Receiver Your agent

Unless the law provides otherwise, any Receiver will be Your agent and You alone are responsible for the Receiver's acts, defaults and remuneration until We otherwise direct in writing. To the extent this Mortgage is a Consumer Contract or a Small Business Contract, You will not be responsible for any fraud, negligence or wilful misconduct of the Receiver.

## 9.5 Power to appoint

We may exercise Our power to appoint a Receiver even if:

- (a) at the time this Mortgage becomes enforceable or at the time when an appointment is made, an Insolvency Event may have occurred; and

- (b) a Receiver appointed in those circumstances may not, or may not in some respects, act as Your agent.

## 9.6 Protection of third parties

Any person We deal with in relation to the Mortgaged Property (including any registration authority, Government Body, Water Licensing Authority or purchaser) can rely on an assurance from Us (or any equivalent assurances from a Receiver) that We are entitled to exercise Our rights under this Mortgage and is not required to make any enquiries to confirm that is the case. Except where there is any manifest error or impropriety, any exercise of a right, power or remedy in relation to this Mortgage will, as regards the protection of such persons, be deemed to be authorised by the powers and authorities in this Mortgage and will be valid. Unless this Mortgage is a Consumer Contract or a Small Business Contract, a receipt given by Us or a Receiver discharges such persons from any misappropriation of funds paid or Mortgaged Property delivered to them.

## 9.7 Liability

- (a) We and any Receiver will not be liable to You for any loss or damage suffered by You as a result of Us or a Receiver taking possession of the Mortgaged Property or exercising any right, power or remedy in relation to this Mortgage.
- (b) We are not liable to account as mortgagee in possession or for anything except actual receipts and will not be liable for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.
- (c) Notwithstanding **clauses 9.7(a) and (b)**, to the extent this Mortgage is a Consumer Contract or a Small Business Contract, nothing in this clause limits our liability to You in respect of loss or damage caused by Our (or any of Our officers', employees', contractors', agents' or Receivers') fraud, negligence or wilful misconduct.

## 9.8 Your assets on the Land

You irrevocably authorise Us, Our Authorised Officers, any Attorney, any Receiver and their respective employees

and agents to, at any time after an Event of Default has occurred (and after allowing for any applicable remedy period in a Relevant Document), use all Improvements and other plant, equipment, machinery, vehicles, implements, chattels and stock on the Land in the course of exercising any rights or powers under this Mortgage. You are responsible for any cost associated with such use. Where this Mortgage is a Consumer Contract or a Small Business Contract, you are not responsible for costs arising from Our or Our Authorised Officers, Attorney's, Receiver's, or their respective employees' or agents' fraud, negligence or wilful misconduct.

If We take possession of any Land, You must remove anything on the Land that is not Mortgaged Property if We ask You to. We will normally give you 28 days to do this. If You do not do so within this time period We may remove those things from the Land and deposit them in Your name and at Your expense in a warehouse or similar storage location or treat those things as having been abandoned by You and dispose of them in whichever way We decide. If We dispose of those things, We will deal with any sale proceeds in accordance with the law.

We are not liable for conversion of, or for any loss of or damage to, anything that We dispose of under this clause.

#### 9.9 Give up possession

We may give up possession of the Mortgaged Property and may withdraw any receivership at any time.

#### 9.10 No obligation to perform

We, and any Receiver, are not personally obliged to perform or observe any term binding You in any agreement or other instrument forming part of the Mortgaged Property.

### 10. Application of money received

#### 10.1 Application

Subject to any law which requires otherwise and cannot be excluded, We will apply all money We or a Receiver receives in relation to this Mortgage or any Collateral Security as follows:

- (a) first, in payment of all Our costs, charges and expenses and those of the Receiver and any Attorney

incurred in relation to or incidental to exercising or performing or attempting to exercise or perform any right, power or remedy in relation to this Mortgage or any Collateral Security;

- (b) second, in payment of any outgoings We or the Receiver or any Attorney thinks fit to pay;
- (c) third, in payment of the Receiver's remuneration;
- (d) fourth, in discharge of any Security Interests in the Mortgaged Property of which We are aware which have priority over this Mortgage, in order of priority;
- (e) fifth, in payment to Us of the Secured Money and to the holder of any Security Interest in the Mortgaged Property which ranks equally with this Mortgage; and
- (f) sixth, in payment to any person who, in Our opinion, is the holder of a Security Interest in the Mortgaged Property ranking after this Mortgage,

and the surplus, if any, will belong to You. We will not be required to pay any interest to You in relation to the surplus. We, a Receiver or Attorney may pay any surplus to the credit of an account in Your name with any authorised deposit-taking institution carrying on business in Australia and will then be under no further liability in respect of the surplus.

#### 10.2 Credit only for actual receipts

In applying any money towards satisfaction of the Secured Money You will be credited only with so much of the money available for that purpose as We actually receive. The credit will date from the time of receipt of cleared and immediately available funds.

#### 10.3 Contingent obligations

If, at the time of distribution of any money under this clause, any part of the Secured Money is not yet due for payment, We or the Receiver may (if We or they reasonably consider it necessary to protect Our legitimate interests) retain any part of that amount and hold it in a short term interest bearing deposit account until the amount becomes due for payment and then pay to Us the amount actually due and apply any surplus in accordance with this clause.

#### 10.4 Foreign currency

In applying any payment We receive in a foreign currency, We or any Receiver or Attorney may purchase any currency with another, whether direct or through an intermediate currency to convert the payment to Australian Dollars in such manner and at such time as We or the Receiver or Attorney thinks fit.

#### 10.5 Appropriation

We may appropriate any payment We receive towards payment of the Secured Money in any way We deem reasonably necessary to manage Our risk. Any law in respect of appropriation does not apply to the maximum extent it can legally be excluded by law, and any direction from You does not apply..

#### 10.6 Other interests over the Mortgaged Property

If We or a Receiver or Attorney receive a certificate from a person who appears to have an interest in the Mortgaged Property, We or any Receiver or Attorney may rely on that certificate and pay the amount certified by that person as necessary to discharge all or part of that interest or acquire that person's interest. You must indemnify Us against the amount paid.

If We receive actual or constructive notice of a subsequent interest over the Mortgaged Property, then the following applies:

- (a) We may open a separate account in Your name in Our books;
- (b) If We do not open a new account We will be treated as if We had done so at the time We received the notice; and
- (c) From the time the new account is opened or taken to be opened the following amounts will be, or will be taken to be, debited or credited, as applicable, to the new account:
- (d) All advances and accommodation made available to You by Us;
- (e) All payments and repayments made by You to Us; and
- (f) Amounts to be applied towards paying the Secured Money under **clause 10.1**.

Payments, repayments and other moneys will only be applied in reduction of other amounts to the extent that there is no debit balance in that account.

### 11. Power of attorney

#### 11.1 Appointment

For valuable consideration by way of security You irrevocably appoint Us and each of Our Authorised Officers severally as Your Attorney to:

- (a) do anything You are required to do but have failed to do under this Mortgage;
- (b) complete and date or correct any details, errors or omissions in any Relevant Document and any blank instruments executed by You and deposited with Us;
- (c) make any amendment to this Mortgage or any other document relating to the Mortgaged Property which We consider necessary for registration with any Government Body or to make sure that the document is as effective as possible;
- (d) do everything which in the Attorney's opinion is necessary or expedient to ensure this Mortgage is as effective as possible or to enable the exercise of any right of Us or any Receiver in relation to any Relevant Document;
- (e) appoint substitutes and otherwise delegate its rights (including this right of delegation); and
- (f) after an Event of Default has occurred (and after allowing for any applicable remedy period in a Relevant Document), do everything that You may lawfully authorise an agent to do in respect of this Mortgage, the Mortgaged Property and any other Relevant Document.

#### 11.2 General

- (a) Any Attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty.
- (b) You must from time to time and at all times ratify any exercise of a right by

an Attorney, except in cases of the Attorney's fraud, negligence or wilful misconduct.

- (c) You may not revoke this power.

### 11.3 Reliance by third parties

Any person, including the Registrar of Titles of Western Australia or any other registration authority in Australia or elsewhere, dealing with the Attorney or a person purporting to be an Attorney under this power, is:

- (a) entitled to rely on execution of any document by the Attorney as conclusive evidence that:
- the Attorney holds the office set out in the power;
  - the power of attorney has come into effect;
  - the power of attorney has not been revoked;
  - 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 inquiries in respect of any of the above matters.

## 12. Liability and Indemnities

### 12.1 No responsibility for exercise of powers

Except in the case of deliberate misconduct (or, where this Mortgage is a Consumer Contract or a Small Business Contract, Our or Our officers', employees', contractors', agents' or Receiver's fraud, negligence or wilful misconduct), neither We, nor any Receiver or Attorney, will be responsible for any negligence or delay or any loss incurred by You in Our exercise or non-exercise of relevant powers, unless a law which cannot be excluded states otherwise.

### 12.2 Valuations, reports and opinions

All inspections, valuations, reports, opinions or certificates made or received by Us or a Receiver (in this clause, "documents") are for Our purposes only. We are not required

to give copies of any documents to You, even if doing so would be of assistance to You (unless the law or the Banking Code of Practice requires us to do so). If the contents or effect of any document or any oral statement becomes known to You, You must not rely on it for any purpose.

Documents do not constitute a representation or warranty by Us or a Receiver as to the state or value of the Mortgaged Property, the financial position of any person, or any other matter. Neither We nor a Receiver is responsible for any false, negligent, defamatory or misleading statements in the documents or oral statements should they become known to or relied on by You.

If this Mortgage secures a Relevant Document to which the Banking Code of Practice applies We agree to give You a copy of any property valuation report We obtain to the extent required by the Banking Code of Practice (for example, if the valuation is in relation to commercial or agricultural property). However, the report We obtain is for Our use only and You cannot rely on it. We may also need You to sign an acknowledgement when We give You the report.

### 12.3 Indemnity

**IMPORTANT:** If an NCC Contract expressly requires You to make a payment of a type referred to in this clause 12.3 You must pay that amount in accordance with the NCC Contract and it will form part of the Secured Money.

Otherwise, this clause 12.3 applies to this Mortgage only to the extent it secures an Arrangement that is not an NCC Contract.

You indemnify Us, every Receiver and every Authorised Officer and Attorney and their respective agents and employees against all liabilities, claims, actions, suits, costs, losses and expenses (including claims by You) incurred by or arising against Us or any such person arising out of:

- (a) any Event of Default;
- (b) any act or omission of Us or such person described above concerning this Mortgage or a Relevant Document;
- (c) the exercise, attempted exercise or non-exercise of any rights in or



incidental to this Mortgage or a Relevant Document;

- (d) any tenancy or agreement affecting the Land; and
- (e) the entry by any person upon or into occupation of the Land.

This includes reasonable legal fees.

To the extent this Mortgage is a Consumer Contract or a Small Business Contract, You will not be required to indemnify Us, any Receiver and any Authorised Officer or Attorney or their respective agents and employees for costs or liabilities incurred as a result of the fraud, negligence or wilful misconduct of Us or any such persons.

This obligation continues despite the release of this Mortgage and the repayment of the Secured Money.

#### 12.4 Enforcement Expenses

**IMPORTANT:** This clause 12.4 only applies if this Mortgage secures an Arrangement that is an NCC Contract

You must pay us any Enforcement Expenses we incur.

#### 12.5 Preservation of rights

Your obligations under this Mortgage and any other Relevant Document or other arrangement are unconditional and are not discharged, terminated, reduced, modified or otherwise affected by anything which might release You from all or any part of those obligations including by any of the following:

- (a) the giving by any person of, or terms of, any Collateral Security from time to time;
- (b) any delay, failure, neglect or refusal by Us to exercise Our rights or to recover any of the Secured Money under this Mortgage or any Collateral Security, Relevant Document, judgment or specialty;
- (c) the failure to obtain, register or perfect, or loss, inadequacy, invalidity or unenforceability of, any Collateral Security whether given at the time of this Mortgage or otherwise;
- (d) Us granting You or any other person any time, waiver, credit, forbearance,

indulgence or other concession (either for or without consideration or by operation of law);

- (e) any partial, or absolute release, discharge, abandonment, surrender, waiver, variation, transfer, exchange, relinquishment or renewal (either with or without consideration) of rights against You or any other person;
- (f) Us becoming party to or bound by any compromise, assignment of property, scheme of arrangement, composition of debts, scheme of reconstruction or other arrangement relating to You or any other person;
- (g) any variation of this Mortgage or of any Collateral Security, or any variation of, termination of or additional Relevant Document, arrangement or understanding between Us, You, or another person or any two or more of those people (with or without others), except to the extent that such thing is unequivocally expressed to amend or overrule this Mortgage;
- (h) any act, omission, acquiescence, default, mistake or delay of Us or any other person in respect of You or any other person;
- (i) any payment by You of, or any obligation to pay, the Secured Money becoming void, voidable or otherwise unenforceable;
- (j) this Mortgage or any Collateral Security becoming void, voidable or otherwise unenforceable in whole or in part;
- (k) the death, mental incapacity, bankruptcy, assignment for the benefit of creditors, winding up, reconstruction, administration, receivership or other incapacity, Insolvency or demise of You and/or any other person;
- (l) where You are or become a partnership or firm, any change that may be made, whether by death, winding up, dissolution, retirement or otherwise to the partnership or firm or any persons now or in the future constituting or trading under the name of the firm and the Secured Money

will include all amounts owed by the partnership or firm even if any of the above events have occurred;

- (m) You or any other person not being or ceasing to be authorised or empowered to enter into this Mortgage, a Relevant Document, a Collateral Security or any relevant transaction;
- (n) Us transferring or assigning this Mortgage or any Collateral Security;
- (o) Us obtaining judgment against You or any other person;
- (p) any negotiable or other instrument or document for the time being outstanding;
- (q) any freeholding, subdivision, strata plan, Resumption, dedication, amalgamation, partial surrender, surrender subject to a renewed grant, realignment of boundaries, accretion, decretion, destruction, development, construction or other circumstances which may affect the nature, dimensions, description or other characteristics of the Mortgaged Property;
- (r) any variation in or alteration to the status, nature or composition (including takeover, merger, amalgamation and reconstruction) of Us, You or any other person or the constitution, rules, Trusts or other documents relating to Us, You or other person; or
- (s) any other thing which, but for this **clause 12.5**, might abrogate, prejudice or limit them or the effectiveness or priority of this Mortgage,

except (where this Mortgage is a Consumer Contract or a Small Business Contract, but not otherwise) to the extent caused by Our or our officers', employees', contractors', agents' or Receiver's fraud, negligence or wilful misconduct.

## 13. Notices and other communications

### 13.1 General

All notices, notifications, demands, certificates, consents, approvals, waivers and other communications given or provided under this Mortgage (all "communications" for the purposes of this clause) must be given or provided in writing.

### 13.2 Delivery of communications to Us

Communications from You to Us may be:

- (a) left at, or sent by pre-paid post to, Our address set out in any Relevant Document or such other address as We advise You of in writing from time to time;
- (b) sent by fax to Our fax number set out in any Relevant Document or such other fax number as We advise You of in writing from time to time; or
- (c) given or provided in such other manner as is provided for by any law which applies to this Mortgage.

### 13.3 Delivery of communications to You

You agree that communications from Us to You may be given or provided as follows:

- (a) if You have provided Us with an email address, sent electronically to that email address or such other email address as You may advise Us of in writing from time to time;
- (b) if You have access to an internet banking facility provided by Us, made available by Us for You to view by using that internet banking facility;
- (c) by such other method of Electronic Communication as is permitted by law;
- (d) delivered to You personally;
- (e) left at, or sent by pre-paid post to, the address for You set out in this Mortgage or the address of Your place of residence or business last known to Us; or
- (f) left at the Land,

subject to any different or additional requirements of any law which applies to this Mortgage; or

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

In addition, You agree that any document in an action in connection with this Mortgage may be served on You by being delivered to, or left at, the Mortgaged Property or by being sent electronically to You. This does not prevent or limit any other method of service.

If You are neither an Australian citizen nor have permanent residency in Australia (or You do not have a co-borrower or co-mortgagor who is an Australian citizen or who has permanent residency in Australia), You must appoint an attorney (under an Enduring Power of Attorney) if We ask You to do so that is both an Australian resident and has the ability to receive legal notices. Where such an attorney has been appointed You agree that We may serve You with documents by delivering them to that attorney at their address provided to Us.

#### 13.4 Service

If a communication is given or provided by:

- (a) post, it will be taken to be received five Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia);
- (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 to view by using Our 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.

### 14. Electronic Communications

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 an Electronic Communication or by displaying the information on Our 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 requirements of the Electronic Transactions Act.

### 15. Electronic lodgement

If this Mortgage is lodged for registration electronically, You agree with Us that this Mortgage You have 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.

### 16. Personal Property Securities Act

To the extent the Mortgaged Property constitutes 'personal property' under the PPSA and the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
  - We do not need to comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 142 or 143 of the PPSA; and
  - sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA We do not need to comply with sections 132 and 137(3);
- (c) if the PPSA is amended after the date of this Mortgage to permit You and Us to agree to not comply with or to exclude other provisions of the PPSA We may notify You that any such provision is excluded or that We don't need not comply with any such provision;
- (d) You agree not to exercise Your rights to make any request to Us under section 275 of the PPSA, to authorise the disclosure of any information

under that section or to waive any duty of confidence that would have otherwise permitted non disclosure under that section;

(e) You waive:

- Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or Receiver exercises a right, power or remedy; and
- any time period that must otherwise lapse under any law before a secured party or Receiver exercises a right, power or remedy.

However, nothing in this clause prohibits Us or any Receiver from giving a notice under the PPSA or as required or permitted by any other law.

## 17. Costs

**IMPORTANT:** If an NCC Contract expressly requires You to make a payment of a type referred to in this clause 17 You must pay that amount in accordance with the NCC Contract and it will form part of the Secured Money.

Otherwise, this clause 17 applies to this Mortgage only to the extent it secures an Arrangement that is not an NCC Contract.

Subject to any applicable law, You must pay to Us all costs, charges, duties and expenses including legal costs, stamp duty and other government charges reasonably incurred by Us in connection with:

- (a) the preparation, negotiation and execution of this Mortgage;
- (b) the stamping and, where possible, registration of this Mortgage;
- (c) the conduct of any searches and enquiries including obtaining any valuation or other report We require in connection with this Mortgage;
- (d) the preparation and, where necessary, registration of a discharge of this Mortgage;

(e) Us exercising or contemplating exercising or attempting to exercise or preserving Our rights under this Mortgage or relating to the Mortgaged Property;

(f) any consent, approval, waiver, variation, release or discharge relating to this Mortgage;

(g) any advice obtained, or assessment undertaken, in connection with this Mortgage and Our rights and duties under it;

(h) any enquiry by a Government Body or any legal proceedings relating to You, the Mortgaged Property, this Mortgage or any Relevant Document; and

(i) where You are a company or other incorporated body, any indemnity We give to a Controller appointed by Us to, or any Administrator of, You.

This includes expenses incurred in any review or environmental audit, conducting property valuations or in retaining consultants to evaluate matters of material concern to Us (however, We will not charge You for the costs of a valuation in accordance with this Mortgage).

If any account or amount is in a currency other than Australian Dollars, all fees and charges and other amounts referred to in this clause payable or incurred in Australian Dollars which We determine are to be converted to that other currency at the rate We determine before being debited.

To the maximum extent permitted by law, each of the costs referred to in this clause forms part of the Secured Money.

However, to the extent this Mortgage is a Consumer Contract or a Small Business Contract, the costs referred to above do not include costs incurred as a result of Our or Our officers', employees', contractors', agents' or Receiver's fraud, negligence or wilful misconduct.

## 18. GST

### 18.1 Consideration GST exclusive

Unless otherwise expressly stated, all amounts payable or consideration to be

provided under this Mortgage is exclusive of GST.

#### 18.2 Payment of GST

If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under this Mortgage, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

#### 18.3 Timing of GST payment

The recipient will pay the amount referred to in **clause 18.2** in addition to and at the same time that the consideration for the supply is to be provided under this Mortgage.

#### 18.4 Tax invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 18.2**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

#### 18.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this Mortgage, the amount payable by the recipient under **clause 18.2** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

#### 18.6 Reimbursements

Where a party is required under this Mortgage to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

## 19. National Credit Code

To the extent that this Mortgage secures an NCC Contract and the National Credit Code applies to this Mortgage, the following applies:

- (a) Our rights and powers and those of Our Authorised Officers and any Receiver or Attorney under this Mortgage are limited as required by the National Credit Code;
- (b) the Secured Money only includes amounts payable in relation to an NCC Contract to the extent allowed by the National Credit Code; and
- (c) the amounts that You are required to pay under this Mortgage, and which are secured by it, are not more than We are allowed to recover from You, or that may be secured, under the National Credit Code.

This clause applies despite anything else in this Mortgage or any NCC Contract.

## 20. General

### 20.1 Consents and approvals

We may give, give with Our conditions or withhold approvals and consents. We may exercise Our rights at Our discretion except where this Mortgage states otherwise. You must comply with any conditions We specify. If this Mortgage is a Consumer Contract or a Small Business Contract, We will provide a reasonable period for You to review and comply with any additional conditions that We specify. We may give You a shorter period of notice, or no notice, if We need to act quickly to avoid or reduce something that would Increase Our Credit Risk or Our loss, or if Our request is necessary to comply with the requirements of a third party.

### 20.2 No hindrance

You must not do or cause anything that prevents or hinders Us, a Receiver or an Attorney from exercising rights and powers under this Mortgage.

### 20.3 Completion of blank securities

We, any of Our Authorised Officers or any Receiver or Attorney may complete this Mortgage and any other document issued in connection with this Mortgage in Our favour

or in favour of another person appointed by Us.

#### 20.4 Continuing security and discharge

This Mortgage is a continuing security and it is not to be considered as wholly or partially discharged until We have given a final discharge to You. We are not required to discharge this Mortgage until You have paid all of the Secured Money to Us and in Our opinion:

- (a) it is unlikely that any further Secured Money will become owing by You to Us; and
- (b) no payment You have made to Us is likely to be void, voidable or refundable under any law.

A release of this Mortgage or a transfer of the Mortgaged Property does not release You from any debt or other obligation still owing to Us or to be performed. **Clause 10** (*Application of Money Received*) and **clause 12.3** (*Indemnity*) continue in effect even after a release of this Mortgage or transfer of the Mortgaged Property.

#### 20.5 Set-off and combination

- (a) We may at any time set-off against, or combine with any money, any amount standing to the credit of any account You have with Us in or towards satisfaction of any amount due but unpaid by You in relation to this Mortgage.
- (b) We have no obligation to exercise Our rights under this clause.
- (c) To the extent legally permissible, You give up and may not exercise against Us any right of set-off available to You in respect of future claims or amounts that are not presently payable by Us that You believe We owe You.

#### 20.6 Other securities

Nothing in this Mortgage adversely affects, or is adversely affected by, any other Security Interest or other right or remedy We may have against You or any other person.

#### 20.7 Other legal rights and remedies

The rights We have under this Mortgage are in addition to and not exclusive of any other rights We have at law.

#### 20.8 No waiver or variation

Any waiver under, or variation of, this Mortgage is only effective if it is in writing.

#### 20.9 Exercise of rights

Our rights, powers and remedies under this Mortgage are not affected by any delay in exercising or any dealing with them. We are not required to exercise any right, power or remedy. No single or partial exercise of any of Our rights, powers or remedies prevents Us from exercising them again or any other rights, powers or remedies.

#### 20.10 Assignment

We may assign or transfer this Mortgage or Our rights or obligations under this Mortgage to any person at any time without Your consent. You may not assign or transfer any of Your rights or obligations under this Mortgage without Our prior written consent (which We will not unreasonably withhold).

#### 20.11 Delegation

We may delegate some or all of Our powers, including delegations, to someone else ('the delegate'). If We do so, then anything done by the delegate, or a representative of the delegate, will be effective as if done by Us or Our Authorised Officer.

#### 20.12 Governing law

This Mortgage is governed by the laws of:

- (a) if the Mortgaged Property includes any land, the jurisdiction in which the Land is situated;
- (b) if the Mortgaged Property does not include any Land but includes Water Rights, the jurisdiction in which the Water Rights have been granted; or
- (c) otherwise, the jurisdiction in which Our registered office is located,

and You and We submit to the non-exclusive jurisdiction of the courts of that place.

#### 20.13 Severance

- (a) Any part of this Mortgage that is prohibited or unenforceable in any jurisdiction is to be ignored in that jurisdiction to the extent that it is prohibited or unenforceable but in all

other respects this Mortgage continues with full effect.

- (b) Despite any other provision of this Mortgage, this Mortgage does not secure any liability or mortgage any property which would invalidate this Mortgage or otherwise render it ineffective.

#### 20.14 Effect of laws

All laws varying, delaying, preventing or prejudicially affecting Us, any Receiver or Attorney exercising any right, power or remedy under this Mortgage is, to the maximum extent permitted by law, excluded.

#### 20.15 No merger

If, at any time, We obtain a judgment against You or any other party to a Relevant Document in relation to the Secured Money, this Mortgage does not merge in the judgment, the judgment is collateral to this Mortgage as security for the payment of the Secured Money and interest will accrue on the judgment at the higher of the rate that applies under this Mortgage or the rate fixed by the relevant court.

#### 20.16 Time of the essence

Time is of the essence in relation to any obligation You have to pay money under this Mortgage.

#### 20.17 Authorised Officers

A determination by, or an opinion of, any of Our Authorised Officers which is given to You is deemed to be Our determination or opinion.

#### 20.18 Disclosure

We may disclose to any person any information in Our possession relating to You and the Mortgaged Property if:

- (a) We are legally required or permitted to do so;
- (b) We are otherwise permitted under the Relevant Documents to do so;
- (c) the information is publicly available;
- (d) it is in accordance with any judgement, directive of or in response to a request of a Government Body, including a court or other judicial body

- (e) that person proposes to enter, or has entered, into a contract with Us in connection with this Mortgage or the Mortgaged Property;

- (f) We assign or transfer, or propose to assign or transfer, this Mortgage or Our rights or obligations under this Mortgage to the person; or

- (g) the disclosure is necessary or desirable to enable Us to:

- notify or register with that person Our interests under this Mortgage; or
- exercise or deal with Our rights or obligations under this Mortgage.

#### 20.19 Independence and survival

Each Relevant Document is separate to the others and any termination or discharge of this Mortgage or any other Relevant Document will not affect the continuation of any other.

#### 20.20 Essential terms

This Mortgage may contain one or more references to an off-register document, the provisions of which do not affect any of the essential terms (Land, parties or term) of this Mortgage.

## 21. Definitions and Interpretation

### 21.1 Definitions

In this Mortgage:

**"Administrator"** has the same meaning as in the Corporations Act;

**"Agricultural Land"** means any part of the Land which is used for farming, horticultural, agricultural, grazing, pastoral or similar purposes;

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

**"Attorney"** means any attorney appointed under this Mortgage and any person who by delegation, directly or indirectly, derives a right from any such attorney;

**"Australian Dollars"** and **"\$"** means the currency of Australia;

**“Authorised Officer”** means each of Our directors, secretary, attorneys and lawyers and each of Our employees whose title is or includes the word “manager”;

**“Authorisation”** means any right, licence, quota, authorisation or authority conferred on You under which You may:

- (a) deal with any asset;
- (b) carry on a business or activity; or
- (c) perform any act,

which has a connection with the Mortgaged Property or the use to which the Mortgaged Property is put;

**“Banking Code Contract”** means:

- (a) a Credit Contract in respect of which You are the borrower if You were, at the time the Credit Contract was entered into, a “small business” (as that term is defined in the Banking Code of Practice);
- (b) a guarantee given by You in favour of Us if and to the extent that You are a “guarantor” (as that term is defined in the Banking Code of Practice) in respect of that guarantee; or
- (c) a document which We have agreed with You in writing is a ‘Banking Code Contract’ for the purposes of this definition;

**“Banking Code of Practice”** means the Australian Banking Association's Banking Code of Practice adopted by Us, as updated from time to time;

**“Body Corporate”** has the same meaning as “Body Corporate”, “strata company”, “strata corporation”, “community corporation” or similar terms in the relevant Group Title Legislation;

**“Business Day”** means a day on which banks in general are open for business in Australia;

**“Collateral Security”** means any document or instrument other than this Mortgage which now or in the future creates an obligation to pay, or which is entered into as security for payment of, any of the Secured Money and includes any indemnity, guarantee or guarantee and indemnity;

**“Compensation Event”** means:

- (a) a Resumption; or
- (b) the imposition or variation of a planning instrument or an order affecting the Mortgaged Property; or
- (c) the restriction of a right to use or develop the Mortgaged Property;
- (d) the cancellation, restriction or variation or anything else which causes a reduction in entitlements or rights in relation to the Mortgaged Property or Water Rights; or
- (a) any other event relating to the Mortgaged Property,

in relation to which You have a right to compensation or any other payment;

**“Consumer Contract”** has the meaning given in section 12BF(3) of the ASIC Act;

**“Controller”** has the same meaning as in the Corporations Act;

**“Core Security Obligation”** means clauses 3, 5 and 6 and each schedule to this Mortgage.

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

**“Credit Contract”** means any agreement by Us to provide financial accommodation;

**“Crown Land Acts”** means all legislation under which the State or Territory in which the Land is located may dispose of any estate or interest in, or rights to occupy or use, land it owns;

**“Crown Land”** means land which is subject to any of the Crown Lands Acts;

**“Electronic Communication”** has the meaning given in the Electronic Transactions Act;

**“Electronic Control”** means controlling or having been registered as the controller of a Title Document in electronic format;

**“Electronic Transactions Act”** means the *Electronic Transactions Act 1999* (Cth);



**"Enforcement Expense"** means any reasonable amount We reasonably spend or incur in relation to:

- (a) the actual or contemplated enforcement or exercise of Our powers under this Mortgage;
- (b) the actual or contemplated preservation or maintenance of any Mortgaged Property,

after a breach of this Mortgage or any NCC Contract occurs.

This includes expenses incurred in any review or environmental audit, conducting property valuations or in retaining consultants to evaluate matters of material concern to Us, and administrative costs including overheads It also includes expenses reasonably incurred by the use of Our staff and facilities.

**"Enforcement Proceeding"** means a person:

- (a) commencing proceedings in a court to recover a debt or to recover possession of property subject to a Security Interest; or
- (b) otherwise enforcing a Security Interest by taking possession (or seeking to take possession) of security property, exercising a power of sale over Mortgaged Property, appointing Receivers, appointing voluntary administrators, or making application to a court for the appointment of provisional liquidators or the appointment of a trustee in bankruptcy; or
- (c) enforcing a judgment against You, or another party to a Relevant Document, or Your or their assets.

**"Environmental Damage"** means any contamination, pollution (including any pollution within the meaning of the Water Legislation) or harm to the physical surroundings affecting the Mortgaged Property or coming from the Mortgaged Property including land, water, atmosphere, climate, sound, odours, creatures and plants;

**"Environmental Legislation"** means any law, regulation, statute, code, treaty, licence, condition or ordinance relating to

environmental matters including land use and development, planning, pollution, waste disposal, toxic and hazardous substances, conservation of natural or cultural resources, resource allocation, rehabilitation, contamination, health, safety and occupational health, safety and welfare;

**"Environmental Liability"** means any obligation, expense, fine, penalty, cost, damage and expense which could be imposed on Us or You directly or indirectly arising from a breach of any Environmental Legislation by any person;

**"Event of Default"** means any event referred to as an Event of Default in this Mortgage;

**"Government Body"** means any person, body politic or other thing exercising an executive, legislative or other governmental function or any judicial function, and any person deriving by delegation a right directly or indirectly from any other government body;

**"Group Title Legislation"** means any legislation of any state or territory which allows or provides for Group Title Schemes or the management of subdivided land or buildings;

**"Group Title Scheme"** means strata title, unit title, community title, company title or similar title with or without common property and any lot on a plan of subdivision which includes common property for the benefit of all lots on the plan;

**"GST Law"** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**"Improvements"** means any buildings, crops, fixtures, fences, plant or machinery now or in the future affixed to, or growing on, the Land including all dams, bores, pumps, irrigation pipes, yards and rural improvements and, in respect of Agricultural Land, also includes the types of Improvements described in **Schedule 8**;

**"Increase Our Credit Risk"** means a material increase in the risk that:

- (a) You might not comply with Your financial obligations to Us;
- (b) We might not be able to fully recover from the Mortgaged Property

everything You owe us under this Mortgage; or

- (c) We are unable to assess either of (a) or (b) above.

**"Insolvency Event"** means, in relation to a person:

- (a) the appointment of a liquidator, provisional liquidator (as those expressions are defined in the Corporations Act), Administrator or Controller to it or over the whole or any part of its property;
- (d) being, or stating that the person is, unable to pay all the person's debts as and when they become due and payable;
- (e) being, or stating that the person is, an insolvent under administration (as defined in the Corporations Act) or is otherwise deemed insolvent under the Corporations Act;
- (f) committing an act of bankruptcy (as defined in the *Bankruptcy Act 1996* (Cth)) or becoming a bankrupt;
- (g) they are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved or deregistered (except to carry out a solvent reconstruction or amalgamation);
- (h) being taken under Section 459F of the Corporations Act to have failed to comply with a statutory demand;
- (i) any event described in Section 461 of the Corporations Act occurs in relation to it; or
- (j) any action is taken to make an appointment referred to in this definition
- (k) something having a substantially similar effect to any of the things described above happens to that person;

**"Insurance"** means the insurance which You are obliged to take out and maintain pursuant to this Mortgage or any other Relevant Document;

**"Land"** means the land described in this Mortgage;

**"Land Legislation"** means legislation that deals with the registration of ownership rights, and other rights and interests, in land or the exercising of rights in relation to Land.

**"Lease"** means:

- (a) any lease, sub-lease, licence or other right to use or occupy the Land;
- (b) any equivalent rights relating to Water Rights as permitted by Water Legislation; and
- (c) any agreement to grant any of those things;

**"Leasehold Interest"** means an interest as lessee in any Land (other than of Crown Lands);

**"Licence"** means a licence or other Authorisation issued by a Government Body to sell alcohol and/or to operate gaming machines on or from the Land;

**"Mortgage"** means the mortgage that refers to this memorandum of common provisions, and includes any schedules, annexures, appendices and covers to that mortgage;

**"Mortgaged Property"** means all Your right, title, estate and interest in or arising under:

- (a) the Land;
- (b) the Improvements;
- (c) all Authorities, Water Rights, Licences and Your other rights relating to the Land;
- (d) any Lease of the Land; and
- (e) all rentals, insurance, compensation and other income or moneys of any kind payable relating to the above;

**"National Credit Code"** means Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cth);

**"NCC Contract"** means:

- (a) a credit contract between You and Us;
- (b) a guarantee given by You in Our favour; or

(c) any other agreement or arrangement, to which the National Credit Code applies.

**"Notified Encumbrance"** means any encumbrance registered on any instrument of title to the Land prior to the execution of this Mortgage to which We have consented;

**"Permitted Security Interest"** means a Security Interest which:

- (a) is in favour of Us or We have approved in writing; or
- (b) arises by operation of law to secure the payment of Taxes or other moneys to a Government Body, provided those Taxes or moneys are not due for payment;

**"Potential Event of Default"** means anything that, with the giving of notice or lapse of time or both, would become an Event of Default;

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

**"Receiver"** means any receiver or receiver and manager appointed under this Mortgage or any Collateral Security;

**"Regulated Arrangement"** means:

- (a) an NCC Contract;
- (b) a Consumer Contract or a Small Business Contract; or
- (c) a Banking Code Contract.

**"Relevant Document"** means this Mortgage, any Collateral Security and any Security Interest given by You (whether alone or jointly with any other person) to Us and any facility agreement or other document, agreement or instrument under which You (whether alone or jointly with any other person) owe Us money or have obligations to Us;

**"Resumption"** means a resumption, appropriation or compulsory acquisition of the Mortgaged Property under a statute or otherwise and any restriction or order in relation to the Mortgaged Property;

**"Secured Money"** means, if this Mortgage secures obligations under an NCC Contract:

- (a) all amounts that You are required to pay under the NCC Contract; and
- (b) Enforcement Expenses.

**IMPORTANT:** This Mortgage will only secure obligations in relation to an NCC Contract if You acknowledge or agree the NCC Contract will be covered by this Mortgage.

Otherwise, if this Mortgage secures an Arrangement that is not an NCC Contract, Secured Money means, at any time, all moneys and damages:

- (a) which You owe Us now or may owe Us in the future (whether actually or contingently);
- (b) which having become owing cease to be owing under any law relating to Insolvency or bankruptcy and remain unpaid by You and unreleased by Us;
- (c) that now or in the future there is a chance may become owing by You to Us,

for any reason and includes moneys and damages payable:

- (a) by You alone or jointly and severally with any other person;
- (b) if You are more than one person, by all or any of You;
- (c) whether You are liable as principal debtor or surety;
- (d) by You in Your own right or in any capacity;
- (e) to Us in Our own right or in any capacity;
- (f) to Us as a result of any assignment, transfer or other dealing with or without Your consent; and
- (g) whether payable before or after the date of this Mortgage or the date of any assignment or transfer of this Mortgage.

**"Security Interest"** means any security or preferential interest or arrangement of any kind in any property or other right or arrangement of any kind with any creditor to

have its claim satisfied before other creditors with or from the proceeds of any property, any deposit of money by way of security and any retention of title and includes, without limitation, an interest granted by way of mortgage, bill of sale, pledge, lien, encumbrance, hypothecation or charge;

**"Small Business Contract"** means:

- (a) a 'small business contract' (as defined in section 12BF(4) of the ASIC Act) to which Subdivision BA, Division 2 of Part 2 of the ASIC Act applies; or
- (b) a document which We have agreed with You in writing is a 'Small Business Contract' for the purposes of this definition;

**"Taxes"** means all present and future taxes, levies, imposts, stamp and other duties, fees, compulsory loans, withholdings or deductions and penalties and interest imposed in relation to any of them, but does not include a tax on Our net income or GST;

**"Title Documents"** means any paper or electronic certificates of title and other title documents relating to the Mortgaged Property;

**"Trust"** means any trust or settlement of which You are trustee, whether or not We have been notified or are aware of its existence;

**"Trust Deed"** means each instrument establishing or varying a Trust;

**"Unregulated Arrangement"** means:

- (a) a facility agreement or other credit contract between You and Us;
- (b) a guarantee given by You in Our favour; or
- (c) this Mortgage or any other document, agreement or arrangement,

which is not a Regulated Arrangement.

**"Water Legislation"** means any legislation relating to the management, use, regulation, licensing, administration, sale, disposal and allocation of water resources and Water Rights;

**"Water Licensing Authority"** means a Department, Minister, Government Body or

other person that administers any Water Legislation;

**"Water Rights"** means rights, holdings, quotas, approvals, entitlements, licences, permits, allocations, shares, leases and other Authorities under Water Legislation (including any interest in an irrigation scheme) relating to the use, abstraction, supply, sharing in, access to or delivery or taking of water:

- (a) attached or related to the Land;
- (b) held or used by You in connection with the Land; or
- (c) described in this Mortgage,

and includes any right to use works, access rights and rights of easement over or any other right relating to the property (including land) of another person which is at any time associated with Water Rights;

**"We", "Us" or "Our"** means or refers to the mortgagee under this Mortgage and its successors and assigns;

**"Works"** means construction or demolition work or earthworks on the Land;

**"Works Contract"** means a contract or other document in connection with Works including, plans, specifications and approvals;

and

**"You" and "Your"** means or refers to each person described in this Mortgage as a mortgagor and, if more than one person is so described, a reference to "You" or "Your" is reference to them jointly and each of them severally.

## 21.2 Interpretation

In this Mortgage:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any gender includes the other genders;
- (c) "person" includes a partnership, a corporation, an unincorporated association and an authority;
- (d) the whole includes any part;

- (e) headings and notes do not affect interpretation;
- (f) a reference to a document or instrument includes a reference to that document or instrument as varied, amended, supplemented or replaced from time to time;
- (g) a reference to legislation includes a modification or re-enactment of it, legislation substituted for it and a regulation or statutory instrument issued under it;
- (h) a reference to a person includes that person's executors, administrators, successors and permitted assigns;
- (i) where an example of something is given, it does not limit what else may be included and 'including', 'includes' and 'for example' are not words of limitation; and
- (j) words and expressions which are not defined in this Mortgage but which have a defined meaning in GST Law have the same meaning as in the GST Law.

## SCHEDULE 1

### – Companies

1. You promise the following statements are true at the time You sign this Mortgage and must ensure they remain true at all times while there is any Secured Money:

- (a) You are duly incorporated in accordance with the law of the place of Your incorporation, You validly exist under those laws and have the capacity to sue and be sued in Your own name and to own Your property and conduct Your business as it is being conducted;
- (b) You will obtain a commercial benefit from entering into this Mortgage and the transactions it contemplates;
- (c) Your directors and secretary have complied with all the requirements of Your constitution and the Corporations Act (or equivalent legislation) to enter into and execute this Mortgage and carry out the transactions it contemplates; and
- (d) You have the corporate power to enter into and execute this Mortgage and perform the transactions it contemplates.

2. You must:

- (a) tell Us if, at any time, any of the statements in **clause 1** of this **Schedule 1** are no longer correct;
- (b) comply with the provisions of the Corporations Act;
- (c) do everything necessary to maintain Your corporate existence; and
- (d) not, without Our prior written consent (which We will not unreasonably withhold):
  - enter any merger or consolidation;
  - permit the registration of a transfer or transfers of any share or shares, or make allotments of shares in Your capital which has or will have the effect of changing effective control of You; or

- change the general character of any business carried on by You.

3. It is also an Event of Default if, without Our prior written consent (which We will not unreasonably withhold):

- (a) there is a change in the identity of the person or persons who control You;
- (b) You reduce or attempt to reduce Your capital;
- (c) You pass or attempt to pass a resolution under Section 254N of the Corporations Act ;
- (d) You buy or take any action to buy shares in Yourself.

We will only exercise enforcement rights in respect of the Events of Default in **clause 3** of this **Schedule 1** subject to **clauses 8.2** and **8.4** of this Document.

4. If, and to the extent this Mortgage is, or is being relied upon as security for, a Unregulated Arrangement, it is also an Event of Default if, without Our prior written consent (which We will not unreasonably withhold):

- (a) You attempt to pass a resolution under Section 260B of the Corporations Act or any similar statutory provision;
- (b) You amend Your constitution in a way that is likely to Increase Our Credit Risk;
- (c) an investigation is instituted under the Corporations Act or other legislation, or an inspector is appointed, to investigate Your affairs;
- (d) any step (including any preparatory step) is taken under the Corporations Act to deregister You.

## Schedule 2

### – Trusts

1. You promise the following statements are true at the time You sign this Mortgage and must ensure they remain true at all times while there is any Secured Money:
  - (a) the Trust was validly formed and the Trust Deed has been validly executed;
  - (b) You have been validly appointed as the trustee of the Trust and are the only trustee(s) of the Trust;
  - (c) You have not breached any of Your duties and obligations as trustee and nothing has happened that could lead to You being removed as trustee;
  - (d) You have the power to execute this Mortgage as trustee of the Trust, You have done everything You are required to do under the Trust Deed to execute this Mortgage and You are executing this Mortgage for a proper purpose that does or will benefit the Trust or the beneficiaries of the Trust;
  - (e) You are entitled to be fully indemnified out of the assets of the Trust for any liability You have under this Mortgage and have not charged Your right of indemnity to any other party;
  - (f) You are the legal owner of all the assets of the Trust and none of the assets of the Trust have been re-settled or set aside;
  - (g) there is no dispute between You and any other person in relation to the Trust or the assets of the Trust;
  - (h) the Trust has not terminated and no event for the vesting of the assets of the Trust has occurred; and
  - (i) any copies of the Trust Deed supplied to Us are true and complete copies of the originals and no other documents exist which affect the terms of the Trust.
2. You must not, without Our written consent:
  - (a) retire or otherwise cease to be the trustee of the Trust or do anything which would cause or enable Your removal as trustee of the Trust;
  - (b) cause or permit the Trust to be determined or a vesting date to be appointed;
  - (c) do or permit anything which adversely affects Your right of indemnity against the assets of the Trust;
  - (d) re-settle, set aside or distribute any of the assets of the Trust unless required to do so by the Trust Deed;
  - (e) in any way vary or permit to be varied the terms of the Trust Deed;
  - (f) make any distribution of the capital of the trust fund of the Trust or, whilst any Event of Default or Potential Event of Default subsists, the income of the Trust;
  - (g) if the Trust is a unit trust, issue, redeem, cancel, transfer or otherwise deal with any units issued under the Trust Deed;
  - (h) mix or blend the assets of the Trust with any other assets; or
  - (i) delegate any of Your powers or obligations as trustee of the Trust or exercise any power of appointment.
3. You must:
  - (a) tell Us if at any time the statements in **clause 1** of this **Schedule 2** are no longer correct;
  - (b) properly sign this Mortgage, and any Relevant Document to which You are expressed to be a party, under the terms of the Trust and in accordance with Your duties and powers as trustee, or if there is any doubt and all the beneficiaries are over 18, obtain their consent.
  - (c) ensure that any person who becomes a trustee of the Trust (whether in replacement of or in addition to You) enters into a deed with Us under which the person agrees to perform obligations identical to Yours under this Mortgage and any other Relevant Document;
  - (d) comply with all of Your duties and obligations as trustee of the Trust; and

- (e) if We ask You to, exercise Your right of indemnity against the assets of the Trust or any rights You have against the beneficiaries for the purpose of repaying the Secured Money to Us. We may exercise all the rights that You may have against the Trust assets or the beneficiaries.

4. You acknowledge and agree that:

- (a) Your liability under this Mortgage is not limited or otherwise affected because You are the trustee of the Trust or by the extent to which You are able to indemnify Yourself out of the assets of the Trust; and
- (b) You are liable under this Mortgage personally and as trustee of the Trust.

5. If under the terms of any Relevant Document there is any Secured Money that You do not owe in Your capacity as trustee of the Trust, then:

- (a) Except where (b) below applies, the Mortgaged Property that You hold as trustee is not security for that Secured Money and You will not be liable in Your capacity as trustee of the Trust to pay that Secured Money under this Mortgage.
- (b) If You did not notify Us in writing before You signed this Mortgage that You owned any Mortgaged Property as trustee of a Trust, then unless We have agreed otherwise in writing:
  - by signing this Mortgage, You agree, despite the terms of the Relevant Document, that You do owe that Secured Money in Your capacity as trustee of the Trust as well as in Your personal capacity; and
  - the Mortgaged Property that You hold as trustee is security for that Secured Money.



## Schedule 3

### – Group Title Scheme

1. You must:
    - (a) pay all contributions and any other money which You are required to pay in respect of the Mortgaged Property to the Body Corporate and must provide evidence of payment to Us if We ask for it;
    - (b) comply with all applicable Group Title Legislation and any rules or by-laws of the Group Title Scheme;
    - (c) do everything You can to ensure that the Body Corporate complies with all its obligations under Group Title Legislation, notify Us if it does not do so and take such action as We request to compel the Body Corporate to comply or appoint an Administrator to the Body Corporate;
    - (d) do everything You can to ensure any building which forms part of the Mortgaged Property together with any common property that is part of the Group Title Scheme is insured by the Body Corporate for its full insurable value;
    - (e) ensure Our interest in the Mortgaged Property is entered in the records and registers of the Group Title Scheme;
    - (f) vote at any meeting of the Body Corporate in accordance with any directions We give to You;
    - (g) if We ask You to, appoint Us or one of Our Authorised Officers as Your proxy to attend, speak and vote in person at any meeting of the Body Corporate and not exercise Your right to vote at any meeting of the Body Corporate at which We are present. If We ask You to do this, We will have the right to exercise Your vote but are not required to do so;
    - (h) promptly give Us any notice You receive from the Body Corporate relating to any proposal to amend, replace or terminate the Group Title Scheme or its rules or by-laws or of anything that could change the common property of the Group Title Scheme or cause Your obligations
  - under the Group Title Scheme to materially increase; and
  - (i) give Us any information or documents We request in relation to the Body Corporate.
  2. You irrevocably authorise Us to obtain from the Body Corporate, and consent to the Body Corporate providing to Us, all information and documents which We request in relation to the Body Corporate, the Group Title Scheme or the Mortgaged Property.
  3. Where You are entitled to shares in the Body Corporate You must:
    - (a) take up the shares You are or may be entitled to;
    - (b) not dispose of or otherwise deal with any shares in the Body Corporate without Our prior written consent; and
    - (c) if We ask You to do so, transfer or mortgage on the same terms as this Mortgage any interest that You have in any shares in the Body Corporate to Us as further security for the Secured Money.
  4. It is an Event of Default if for any reason:
    - (a) the Body Corporate commences legal proceedings against You;
    - (b) an Administrator is appointed to the Body Corporate or an application is made for the appointment of an Administrator to the Body Corporate; or
    - (c) there is a change to the unit entitlements relating to the Group Title Scheme or the rules or by-laws of the Group Title Scheme and the change has an adverse effect on the value of the Mortgaged Property.
- We will only exercise enforcement rights in respect of the Events of Default in **clause 4** of this **Schedule 3** subject to **clauses 8.2 and 8.4** of this Document.

## Schedule 4

### – Works

**Schedule 4** applies to Works other than those specifically dealt with in any other Relevant Document. To the extent of any inconsistency between this **Schedule 4** and another Relevant Document, the other Relevant Document prevails.

1. You must not do any Works (other than repairs or maintenance) unless You have:
  - (a) Our prior written consent (which We will not unreasonably withhold);
  - (b) where the Works relate to Land that is part of a Group Title Scheme, the consent of the Body Corporate (where required); and
  - (c) all necessary approvals and consents from applicable Government Bodies.
2. You must:
  - (a) ensure all Works are completed properly in a workmanlike manner in accordance with the plans and specifications approved by the relevant Government Bodies and Us within a reasonable time; and
  - (b) comply with all laws, official directives, easements and restrictive covenants which affect Works.
3. On completion of the Works, You must:
  - (a) do Your best to promptly obtain any certificates required under any relevant legislation from the applicable Government Bodies evidencing satisfactory completion; and
  - (b) give a copy of the certificates to Us.
4. We are not responsible for anything in any plans and specifications in connection with the Works even if We approve the plans and specifications or inspect, approve or accept any aspect of the construction of the Works. Any consent, approval or acceptance We give:
  - (a) does not imply the exercise of any care or skill by Us or for Us; and
  - (b) does not relieve You from any of Your obligations in relation to the Works.
5. You must reimburse Us any costs, expenses, liability or loss We incur in connection with any inspection, approval or acceptance of any plans and specifications or the construction of any Works. To the extent this Mortgage is a Consumer Contract or a Small Business Contract, the costs, expenses, liabilities or losses referred to in this clause will not include those that are incurred as a result of Our (or any of Our officers', employees', contractors', agents' or Receivers') fraud, negligence or wilful misconduct.
6. You must give Us all information and documents We request in relation to any Works including any books of account, Works Contract, invoices, receipts and plans and specifications.
7. You must:
  - (a) comply with Your obligations under each Works Contract on time and promptly notify Us of anything which occurs which might negatively affect Your ability to perform those obligations;
  - (b) notify Us promptly of any event of default under a Works Contract or event which is likely to become an event of default under a Works Contract;
  - (c) enforce each Works Contract against any other party to it in the manner directed by Us; and
  - (d) pay all amounts payable in connection with each Works Contract on time.

## SCHEDULE 5

### – Crown Lands

1. You must:
  - (a) not apply under any Crown Land Acts or another law which provides for the protection, curtailment, postponement, defeat, extinguishment or suspension of rights in respect of any Land for, or consent to any alteration, modification, addition to or revocation, of:
    - the conditions attaching to Your interest; or
    - the purpose of Your interest,
 in the Mortgaged Property if that alteration, modification, addition to or revocation would or could decrease the value of that interest;
  - (b) comply with all applicable requirements of the Crown Land Acts including conditions and requirements which relate to Improvements and the operation of any business on the Land in full and on time;
  - (c) not do or allow anything to happen which results or may result in the holding, tenure or licence in respect of the Land being surrendered, cancelled, forfeited or otherwise adversely affected;
  - (d) apply in good time for the renewal or extension of the term of the holding, tenure or licence in respect of the Land and, at Our request, execute in favour of Us a mortgage in respect of such renewal or extension (on the same terms as this Mortgage or on similar terms acceptable to Us);
  - (e) not apply to convert any existing tenure or right to occupy the Land without Our written consent; and
  - (f) if We ask You to, grant Us a mortgage over any holding into which the Land is converted or which You acquire because of Your holding of the Land as security for the Secured Money (on the same terms as this Mortgage or on similar terms acceptable to Us).
2. You must promptly give Us full details of any notification of forfeiture of Your interest on becoming aware of it and:
  - (a) if Your interest is forfeited, do everything You can do to ensure the reversal of the forfeiture; and
  - (b) do everything necessary to ensure that any conditions of any reversal of a forfeiture are fulfilled.
3. You must:
  - (a) promptly give Us a copy of any notice of a determination or a redetermination of rent payable under the Crown Land Acts in relation to Your interest;
  - (b) if We ask You to, object in accordance with the Crown Land Acts against any increase in that rent and, if the Government Body does not allow that objection, appeal against the Government Body's decision; and
  - (c) not cause the cancellation of any permit to enclose a road or watercourse or part of a road or watercourse, relating to the Land.
4. If the consent of any Government Body is required under the Crown Land Acts before this Mortgage is effective, You must promptly seek that consent and this Mortgage is subject to that consent being given.

## Schedule 6

### – Leasehold Interest

1. If any part of the Mortgaged Property is or becomes a Leasehold Interest the provisions in this **Schedule 6** apply despite any conflict or ambiguity with any other provisions or clauses of this Mortgage.
2. You promise the following statements are true:
  - (a) the Lease is current and valid;
  - (b) You have complied with all Your obligations under the Lease and nothing has happened which is, or could be, a default by You under the Lease; and
  - (c) if the consent of any person is required to this Mortgage or for this Mortgage to be legally effective, You have obtained that consent.
3. You must:
  - (a) comply with all Your obligations under the Lease and all laws relating to the Lease;
  - (b) not do anything which would or could result in the Lease being terminated, surrendered, forfeited, cancelled or negatively affected in any way;
  - (c) promptly notify Us of any dispute between You and the lessor in relation to the Lease and give Us copies of any notice, demand or other communication received from the lessor in relation to the Lease;
  - (d) not grant, or attempt to grant, any sub-lease or sub-licence of that Leasehold Interest without Our prior written consent; and
  - (e) if You take a new lease of the property which is subject to the Lease, mortgage that new lease to Us.
4. This Mortgage will continue to apply to any renewal or extension of the Lease.

## Schedule 7

### – Licensed premises

If any part of the Land is or becomes Licensed premises or are premises in relation to which any Licence is held, the covenants in this **Schedule 7** apply notwithstanding any conflict or ambiguity with any other covenants or clauses in this Mortgage.

1. You must:

- (a) ensure that nothing happens which may result in the Licence expiring, becoming void or liable to be forfeited, suspended, cancelled, revoked or not renewed, or which may reduce the value of the Licence, the Mortgaged Property or any business conducted on the Land;
- (b) give Us a copy of any notice from any Government Body in relation to the Licence;
- (c) inform Us of anything which You are or become aware which may adversely affect the Licence;
- (d) comply with all requirements of any legislation affecting or relating to the Licence and the Licensed premises and/or any business carried on or authorised to be carried on at the Licensed premises or any order or notice under such legislation.
- (e) apply for all licenses, permits and renewals of the Licence and all other Licences and permits necessary or desirable for the conduct of the business carried on at the Licensed premises and oppose any application to restrict or cancel any such Licence; and
- (f) if We take possession of the Licensed premises and ask You to, do everything You can to transfer any relevant Licence and/or permit to Us or someone else We nominate.

2. You must not, without Our prior written consent (which We will not unreasonably withhold):

- (a) change the use of the Land;
- (b) remove or apply to remove the Licence or allow the Licence to be

moved from the Land to other premises;

- (c) transfer, vary or amend the Licence or any quotas or entitlements attached, or relating, to the Licence; or
- (d) surrender or attempt to surrender the Licence or any quotas or entitlements attached, or relating, to the Licence.

3. It is an Event of Default if for any reason the Licence is surrendered, cancelled, forfeited, encumbered or otherwise ceases to be in full force and effect. We will only exercise enforcement rights in respect of this Event of Default subject to **clauses 8.2 and 8.4** of this Document.

## Schedule 8

### – Agricultural Lands

1. In relation to Agricultural Land, Improvements also includes Your right, title and interest to or in any of the following items now or at any time in the future situated on or brought onto the Land whether or not they are fixtures:
  - (a) dairies and plant and equipment relating to the operation of a dairy including milking platforms, milking machines, pumps, motors, plate coolers and vats;
  - (b) irrigation works and reticulation systems including pipes, sprinklers and pumps;
  - (c) bird and hail protection mesh;
  - (d) trellising; and
  - (e) cool stores and plant and equipment which relates to the operation of a cool store including electrical motors, compressors and switchboards.
2. You must:
  - (a) cultivate, manage, superintend and otherwise operate the Agricultural Land in accordance with the best industry methods and practices appropriate to the type of Agricultural Land and devote all reasonable time and attention to doing so;
  - (b) comply with any directions and requirements We give You in relation to the cultivation, management and superintendence of the Agricultural Land;
  - (c) maintain all fencing, gates, bores, wells, dams, irrigation equipment and other facilities of or related to the Mortgaged Property;
  - (d) keep the Agricultural Land in good condition and use all reasonable precautions and measures having regard to good practices for the type of Agricultural Land to prevent the entrance of and to exterminate noxious animals, insects, pests and weeds and to keep the Agricultural Land free from them; and
  - (e) maintain Authorities and arrangements and perform and observe Your obligations in relation to all Authorities and arrangements or quotas affecting or regulating production at or from the Agricultural Land or the sale of the produce of that Agricultural Land.
3. You must not without Our prior written consent (which We will not unreasonably withhold), give or allow creation of any Security Interest over:
  - (a) any crop of agricultural or horticultural produce now or in the future on the Land;
  - (b) any stock or wool now or in the future on the Land; or
  - (c) any quotas for producing or selling livestock or crops on the Land or associated with any Authorisation relating to the Land or any business conducted on the Land.
4. Whenever We ask You to, You must grant Us a Security Interest over any wool clip of any animals owned from time to time by You on or usually located on the Agricultural Land and any crop of agricultural or horticultural produce of the Agricultural Land.

## Schedule 9

### – Water Rights

1. You must:

- (a) comply with and perform all Your obligations under Water Legislation including any mandatory requirements of the Water Licensing Authority concerning the Mortgaged Property;
- (b) pay all amounts payable under Water Legislation;
- (c) do everything necessary to obtain all extensions, renewals, approvals and authorities necessary for the maintenance of the Mortgaged Property and the Water Rights, including the lodgement of any necessary documents with and payment of any fees to a Government Body or Water Licensing Authority prior to their due date;
- (d) maintain and preserve the Water Rights and not, without Our prior written consent (which We will not unreasonably withhold), permit any Water Rights to be sold, amended, encumbered, surrendered, cancelled, rescinded, revoked, suspended, varied, restricted or otherwise dealt with or allow anything to happen that is likely to Increase Our Credit Risk;
- (e) do all things necessary to register this Mortgage under any legislation which allows it to be registered;
- (f) immediately provide Us with any notice, advice, determination, declaration or document received or obtained by You from any Government Body or Water Licensing Authority relating to the Water Rights;
- (g) promptly notify Us in writing of any:
  - cancellation, suspension or non-extension by the Water Licensing Authority of any Water Right and every proposal by the Water Licensing Authority to cancel, suspend or not extend;
  - reduction, amalgamation, allocation of, or change to the conditions attaching to the Water Rights; or

- notification You receive in relation to any proposal to compulsorily acquire the Water Rights;

- (h) if We ask You to after an Event of Default has occurred, transfer the Water Rights to Us or someone else We nominate;
- (i) give Us all original, duplicate or counterpart documents of title to the Water Rights; and
- (j) pay to Us all payments You receive under a term transfer, licence or other dealing in respect of any of the Water Rights whether or not We have consented to the dealing. Acceptance of any such payment does not require Us to consent to the dealing or limit Our rights in relation to any related Event of Default.

2. You promise the following statements are true at the time You sign this Mortgage and must ensure they remain true at all times while there is any Secured Money:

- (a) You have provided Us with all instruments and other documents of or evidencing title to the Water Rights including any declarations, consents, sharing plans and approvals or any document varying such instruments or documents; and
- (b) complied with all requirements and conditions in relation to the Water Rights imposed by any Water Legislation, or Government Authority.

3. You irrevocably appoint Us as Your agent to do, in Your name or otherwise, anything in respect of the Water Rights that is necessary to protect Our interests under this Mortgage including representing You in dealings before any Government Body or Water Licensing Authority.

4. If We agree to lodge any transfer or other dealing in respect of the Water Rights for registration with any Government Authority or Water Licensing Authority We will not be liable to You for any loss suffered by You as a result of any failure or delay in lodging the transfer or other dealing.

5. If, at any time, You:

- (a) are not the owner of any land the Water Rights are, at any time, associated with;

- (b) are not the owner of any other Water Rights which are at any time associated with the Land; or
- (c) own the Water Rights jointly with other persons who are not a party to this Mortgage,

You must ensure that any such other owner of the relevant land or Water Rights complies with Your obligations in respect of the Water Rights under this Mortgage to the maximum extent possible.