

LAND MORTGAGE

THIS DOCUMENT CONTAINS THE PROVISIONS FOR MORTGAGES THAT REFER TO ANY ONE OF THE FOLLOWING:

The Memorandum filed at the **New South Wales** Land Registry Services as number **AP112170**;

The Memorandum of Common Provisions retained by the **Victorian** Registrar of Titles as number **AA4944**;

The Document filed in the **Queensland** Department of Natural Resources, Mines and Energy as number **719298437**;

The Memorandum filed in the **Australian Capital Territory** Access Canberra as number **2205179**;

The Memorandum of Standard Terms and Conditions deposited at Land Services SA as number **13075993**;

The Memorandum filed and registered at the **Western Australian** Land Information Authority as number **O105372**;

The Memorandum of Common Provisions retained by the **Northern Territory** Land Titles Office as number **372271**;

The Memorandum of Provisions filed at the Land Titles Office, **Tasmania** as number **M606**;

The Memorandum of Provisions filed at the Office of the Registrar of Titles, **Norfolk Island** as number **013**;

AND FORMS PART OF THE MORTGAGE.

The part of the mortgage which you sign may contain clauses which either alter or conflict with some of the terms in this document. In such a case, the clauses in the part of the mortgage which you sign prevail.

NOTE:

This mortgage can be used to secure lending covered by Consumer Credit Law and unregulated lending. Please refer to the beginning of Part A for an understanding of how this works.

Key words

The meaning of words printed Like This and of some other common key words is explained in clause A1.

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PART A – All mortgages

- ***This mortgage secures all Amounts Owing under any Secured Agreement.***
- ***Once you enter into a Secured Agreement with us relating to credit to which no Consumer Credit Law applies, then Part B applies and this mortgage also secures all other Amounts Owing as set out in Part B.***

A1. Meaning of words

'Amount Owing' means, when Part B does not apply, all money which one or more of you owe us, or will or may owe us in the future, under a Secured Agreement and this mortgage or either of them.

When Part B applies, Amount Owing has the meaning set out in Part B.

'Authorised Officer' includes each of our officers within the meaning given to that word in the Corporations Act, *for example* each of our officers whose position title is or includes the word 'manager' or the word 'executive'.

'Consumer Credit Law' means the National Consumer Credit Protection Act 2009 (Commonwealth) (*including* the National Credit Code) and the regulations made under that Act (all as amended from time to time).

'Corporations Act' means the Corporations Act 2001 (Cth) and any regulations made under the Act.

'Crown Land' means land of the Crown (ie the State or Territory) occupied by a Person not as freehold but under a lease, licence or other right granted by the Crown (*for example*, land described as 'State Tenure' or 'Crown Lease').

'Governing Body' means each entity which administers any Shared Scheme of which The Property is part.

'Guarantee' includes a guarantee, guarantee and indemnity, indemnity, letter of credit or legally binding letter of comfort, suretyship, performance bond, acceptance or endorsement, or other undertaking or obligation.

'Land Law' means any law of the State or Territory in which The Property is located applicable to this mortgage relating to the registration of mortgages, *including* a law adopting the "Electronic Conveyancing National Law", or to the giving of default notices prior to the enforcement of real property mortgages.

'Licence' includes any right, licence, entitlement, permit, approval, accreditation, certification, allocation, quota, certificate of registration or authority (*for example*, liquor licence, authority to develop The Property).

'Own', when it is used in relation to land, means holding an estate or interest in land that can be mortgaged to us, *for example* being the registered proprietor, the registered holder, the registered lessee or Crown lessee or the holder of an estate in fee simple, and 'Owner' has the corresponding meaning.

'Person' includes an individual, a firm, a body corporate, an unincorporated association or an authority.

'The Property' means each one or more of the following which the context allows:

- (a) the land described in this mortgage;
- (b) each fixture, structure or improvement on the land or fixed to it;
- (c) all of your estate and interest in the land *including* any growing or native crops on the land;
- (d) each lease described in this mortgage, all of your estate and interest in the lease and any replacement or variation of the lease;
- (e) all rights and Licences attaching to the land or to your estate or interest in it. *For example* rights under any insurance policy, rights to use water on rural land, rights under any builder's warranty, guarantee or insurance relating to The Property or any Works, rights to purchase or convert title, rights granted to you under any lease, and rights to claim or receive a

payment of money by way of compensation because you Own or Owned The Property; and

- (f) all rights you hold as licensee under the law for sale of liquor, operation of gaming machines or conduct of a club on The Property, *including* any right to claim or receive a payment of money because you hold or held such Licence.

'Relative' means any of the following in relation to an individual:

- (a) a spouse (*including* a former spouse, a de facto spouse and a former de facto spouse);
- (b) a child or an adult child (*including* an adopted child, a step-child or an ex-nuptial child);
- (c) a parent, grandparent, grandchild or sibling;
- (d) an aunt or uncle who is a sibling of a parent of the individual or of the individual's legally appointed guardian.

'Secured Agreement' means:

- (a) an agreement between one or more of you and us (*including* a Guarantee given by one or more of you) whenever made, under which you undertake to pay or repay us money or indemnify us;
- (b) any agreement which you acknowledge in writing (*including* by electronic communication) to be an agreement to which this mortgage extends; and
- (c) any such agreement as varied, replaced or novated.

'Security' means any security for the payment of money or performance of obligations *including* a mortgage, charge, lien, security interest, pledge or flawed asset arrangement.

'Shared Scheme' means each scheme or plan which is regulated by a Shared Scheme Law and which affects The Property. *For example* home units, strata titles, town houses and properties in integrated developments are properties that are often part of a Shared Scheme.

'Shared Scheme Law' means any law which provides for the:

- (a) subdivision and development of land with shared property;
- (b) subdivision of buildings;
- (c) management of land which is subdivided and has shared property; or
- (d) management of subdivided buildings.

'we', 'our' and 'us' means the Person named in this mortgage as mortgagee and its successors and assigns.

'Works' means building work, excavation or earthworks on The Property, work demolishing any part of The Property, or any building or development work required in connection with The Property by an authority.

'you' and 'your' means the Person or Persons named in this mortgage as mortgagor. If there is more than one, 'you' means each of them separately and every two or more of them jointly. If the Person or Persons enters into this mortgage as trustee of any trust or trusts, then it includes them in their personal capacity and in their capacity as trustee of the relevant trust or trusts. 'You' includes your executors, administrators and assigns.

A reference in this mortgage to:

- (a) the singular includes the plural and vice versa;
- (b) '*including*' or '*for example*' when introducing an example does not limit the meaning of the words to which the example relates, to that example or examples of a similar kind;

- (c) a document includes any variation, novation or replacement of it;
- (d) law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under laws made by parliament and consolidations, amendments, re-enactments or replacements of any of them);
- (e) any thing includes the whole and each part of it.

A2. How this mortgage affects you and The Property

- A2.1 By signing this mortgage, you mortgage The Property to us to secure the punctual payment of the Amount Owing and you undertake the obligations set out in this mortgage in return for the things we do when we enter into a Secured Agreement. You also give us rights concerning you and The Property.
- For example, we can take possession of and sell The Property if you fail to do what you must do under this mortgage. If the proceeds from the sale of The Property are not enough to repay what you owe us, then, unless we have told you otherwise in writing, we can ask you to pay the difference between the sale proceeds and what you owe us, even after The Property is released from this mortgage. The same applies if The Property is forfeited or compulsorily acquired by an authority.*
- A2.2 You authorise us to do all things reasonably necessary to register this mortgage in accordance with the Land Law, *including* digitally signing an electronic counterpart of this mortgage to enable its electronic registration.
- A2.3 You are liable for all the obligations under this mortgage both separately on your own and jointly with any one or more other Persons named in this mortgage as mortgagor, except where clause A2.4 applies.
- A2.4 Where there is more than one of you and only some of you are liable for a part of the Amount Owing, then only the interest in The Property of those who are liable secures that liability. We may vary the agreement under which that liability arises by agreement with those Persons without

the consent of the rest of you and this will not discharge or affect this mortgage.

- A2.5 This mortgage remains in effect despite the death or bankruptcy of any one of you or (if you are a corporation) the making of an order for winding up or the appointment of an administrator.

- A2.6 When there is no Amount Owing, we will release The Property from this mortgage when you ask us to do so.

(If the Secured Agreement is a Guarantee, it is a term of the Guarantee that we have the right to refuse to give a discharge of this mortgage in certain circumstances.)

A3. Your declarations

- A3.1 You declare that:
- (a) you Own The Property or will Own it by the time this mortgage takes effect;
 - (b) you have told us about all rights affecting The Property and those which are proposed to affect The Property of which you are aware or ought reasonably to be aware. Rights affecting The Property include easements, leases, other mortgages and the rights of any beneficiary under a trust, of a tenant in The Property, of any other person in possession of The Property and of a purchaser of The Property (*including* under a contract where the purchase price is payable by two or more payments besides the deposit);
 - (c) you do not breach any law, any authority or any obligation to any other Person by signing this mortgage;
 - (d) all the information you have given us in connection with this mortgage and each Secured Agreement is materially correct, complete and not misleading;
 - (e) you have not withheld any information of which you are aware or ought reasonably to be aware and which might have caused us not to enter into this mortgage or a Secured Agreement (*for example, material current or threatened legal proceedings relating to The Property*);

- (f) you have told us about any structure on adjoining land that encroaches on The Property and any structure on The Property that encroaches on adjoining land;
 - (g) The Property is free from any unlawful contamination, of which you are aware or ought reasonably to be aware, and your use and occupation of The Property does not breach any law;
 - (h) if you hold The Property under a lease or a lease is or forms part of The Property:
 - (i) you have complied with all your obligations under the lease;
 - (ii) the lease is legally binding on you and the lessor; and
 - (iii) at the time this mortgage takes effect, you have not surrendered the lease, and the lessor has no cause or right to re-enter the leased premises;
 - (i) there is no pending or existing claim or declaration, of which you are aware or ought reasonably to be aware, that The Property is of significance to aboriginal peoples or subject to native title, or of any circumstances which would give rise to such a claim or declaration;
 - (j) if you sign this mortgage as trustee of a trust:
 - (i) this mortgage binds you both personally and as trustee of the trust and secures Secured Agreements entered into by you both personally and as trustee of the trust;
 - (ii) your right to a full indemnity out of the trust fund is continuing and you have not released or disposed of your equitable lien over the trust fund;
 - (iii) you have complied with all fiduciary obligations as trustee of the trust and signing this mortgage is within your authority as trustee; and
 - (iv) you have disclosed to us full particulars of the trust as at the date of this mortgage;
 - (k) you exercise due care and take all necessary precautions to detect and prevent breaching any law which results in pollution of or harm to the environment or to any Person or property, *including* The Property; and
 - (l) except for vacant land:
 - (i) all certificates and approvals in respect of The Property are held, or will be held by the time this mortgage takes effect, to enable you to occupy and use The Property; or
 - (ii) you need this mortgage to be able to carry out the work required to obtain such certificates or approvals.
- You acknowledge that your declarations induced us to enter into this mortgage.
- A3.2** You repeat all the declarations in clause A3.1, and you acknowledge that we rely on them, each time:
- (a) you ask us for credit under a Secured Agreement;
 - (b) you acknowledge that another agreement is to be a Secured Agreement; or
 - (c) you accept an extension or variation of your liabilities under a Secured Agreement.

What you undertake in this mortgage

A4. Complying with this mortgage

- A4.1 You must pay us the Amount Owing for which you are liable at the time agreed by you, or if no time has been agreed, when we ask (which we may do on one or more occasions).
- A4.2 You must ensure that you are not in default under this mortgage. You must also carry out on time all your obligations under every Secured Agreement.
- A4.3 When we release The Property from this mortgage, your following obligations continue:
 - (a) to pay the Amount Owing except to the extent we have told you otherwise in writing (*for example* if we told you that your liability in respect of the

Secured Agreement is limited to the value of The Property);

- (b) under clause A27.2 and clause B6(a); and
- (c) under clauses A18.2 and A29, but only to the extent necessary to ensure we can exercise our rights under clause A27.2 or where you induced us to give the release by making an incorrect statement.

A5. Rates, taxes and levies

You must pay on time all amounts for which you are liable as Owner of The Property, *including* rates, taxes, rents and Shared Scheme levies.

A6. Looking after The Property

A6.1 You must:

- (a) keep The Property in good condition and promptly fix any defect and damage;
- (b) not do anything or allow anything to be done that might lower the value of The Property or put at risk our security interest in The Property;
- (c) tell us if The Property is seriously damaged or is defective;
- (d) remove any contaminant and clean up any unlawful contamination. If The Property is contaminated, take all reasonable steps to ensure that no contaminant is released or escapes from The Property;
- (e) comply with all laws, requirements, orders and notices of authorities in connection with or relating to The Property;
- (f) comply with and maintain all Licences;
- (g) tell us promptly of:
 - (i) the existence of any unlawful contamination of or emanating from The Property and details of any clean up undertaken or to be undertaken;
 - (ii) the receipt of any penalty notices or directions to 'clean-up' The Property issued by any authority or regulator;

- (iii) the receipt of any notice or complaint from any authority or regulator that has not been answered to the satisfaction of the complainant, alleging that your activities on The Property are polluting the environment or that the carrying on of your business on The Property causes any public or private nuisance;
- (iv) any revocation, suspension, modification or refusal or failure to renew any authorisation or approval under any law relating to The Property or the conduct of your business;
- (v) any notice or claim (*including* any native title claim) or any condition imposed under law which could adversely affect the value of The Property; and
- (vi) the commencement of any proceedings, claims or suits, the issue of any orders or the imposition of any penalty for a contravention of a law relating to The Property.

A6.2 If The Property is part of a Shared Scheme (*for example*, a townhouse or home unit), you must:

- (a) comply with the by-laws, rules or articles of the Shared Scheme;
- (b) vote at any Governing Body meeting following any reasonable directions we give you to protect The Property, its value or the shared property;
- (c) use your best endeavours to ensure that the Governing Body complies with its obligations (*for example* keeping the shared property in good condition and maintaining insurances);
- (d) tell us if the Governing Body does not comply with its obligations (*including* its insurance obligations);
- (e) use your best endeavours to ensure that your rights under the Shared Scheme are not varied in a way that adversely affects our security interest in The Property and tell us promptly if they are; and

	(f) tell us promptly of any proposal which may affect the value of The Property or the shared property to vary, substitute or terminate the Shared Scheme or its by-laws, rules or articles.	(A) at the earliest date on which any option for renewal under the lease may be exercised; or
A6.3	If you hold The Property under a lease or a lease is or forms part of The Property, then:	(B) in cases where there is no option or the time for its exercise has not arisen, no later than 12 months before the end of the lease term; and
	(a) if we ask, you must ensure that the lessor enters into an agreement with us on terms acceptable to us (acting reasonably) which will include giving us the right to remedy any default by you before the lessor re-enters the leasehold premises;	(ii) do anything we reasonably ask to provide us with effective Security over the renewed or extended lease or over any new lease.
	(b) you must comply with your obligations under the lease;	
	(c) you must not, without our consent:	
	(i) grant or accept the surrender, forfeit or cancellation of the lease;	
	(ii) enter into or vary the lease in a way which materially adversely affects the value of The Property;	
	(iii) cause or permit the rent payable under the lease to be varied to an amount which adversely affects the value of The Property; and	
	(iv) if the lease includes the use of chattels, remove any of the chattels from the premises or otherwise (except for their repair or replacement in the ordinary course of business);	
	(d) you must tell us promptly if an event occurs or is likely to occur which may result in the lease being surrendered, forfeited, cancelled or otherwise materially adversely affected; and	
	(e) if, under the terms of a Secured Agreement there will remain some of the Amount Owed at the end of the lease term, you must:	
	(i) apply for a renewal or extension of the lease:	
A7. Insurance		
A7.1	(a) You must maintain insurance over The Property and any Works against fire and other usual risks for the full insurable value of The Property and any Works on a replacement and reinstatement basis;	
	(b) Each policy must note our interest as mortgagee and be on terms and for an amount which are to our reasonable satisfaction; and	
	(c) You must comply with the terms and conditions of each policy.	
A7.2	Clause A7.1 does not apply if The Property is part of a Shared Scheme and the Governing Body is required by law to maintain insurance over The Property. In that case, you must use your best endeavours to ensure that the Governing Body maintains whatever insurance it is required to by law and tell us promptly if, for any reason, there is no adequate insurance cover over The Property.	
A7.3	You must produce evidence to our reasonable satisfaction of current insurance cover whenever we ask for it.	
A7.4	You must do all that you reasonably can to ensure that the insurance cover remains current and is not reduced, cancelled or allowed to lapse and you must tell us promptly if it is or could be.	
A7.5	If we reasonably require, you must assign to us your interest under the policy of insurance referred to in clause A7.1(a).	

A8. Insurance claims

A8.1 You must tell us promptly if you have a right to claim under any insurance policy relating to or connected with The Property.

A8.2 You must ensure that the benefit of any insurance claim proceeds to which you are entitled is received by you or us. If the proceeds are for serious damage to The Property and you receive them:

- (a) you must tell us promptly;
- (b) you hold the proceeds for us and you must pay us so much of them towards the Amount Owing as we reasonably require as soon as we ask you; and
- (c) you must use them as we reasonably direct, *including* to reinstate The Property or carry out other Works.

A8.3 When the insurance claim proceeds are paid to and held by a Governing Body, then:

- (a) you must do your best to ensure that the proceeds are used to reinstate The Property or carry out other Works; or
- (b) if the Shared Scheme is terminated and you receive your share of the proceeds following the termination, you hold your share for us. When we ask, you must pay us so much of your share as we require towards payment of the Amount Owing.

A8.4 You must tell us if an insurance claim is refused either in part or in full.

A8.5 If we notify you, we may take over your rights to make, pursue or settle an insurance claim. We will exercise our rights in a reasonable manner and taking into consideration your interests in the claim and our rights under the Security.

A8.6 If we receive insurance claim proceeds, we may use them to reinstate The Property or use the proceeds as set out in clause A23.

A9. Building and other work

A9.1 When Works are undertaken, you must:

- (a) get all necessary approvals from authorities (and the Governing Body if The Property is part of a Shared Scheme) before you carry out the Works or enter into a contract to have them carried out;

(b) comply with all laws, requirements of authorities, easements and covenants which affect the Works;

(c) ensure that the Works are done competently and completed within a reasonable time and in accordance with the contract for Works;

(d) obtain and give us relevant certificates which we reasonably require (*for example*, certificates of satisfactory completion or compliance); and

(e) ensure that the cost of labour and materials required for the Works is in accordance with the amount stated in the contract for the Works or any other amount to which we have agreed.

A9.2 Any monitoring of the Works by us will be for our own purposes. We do not hold ourselves out as exercising care or skill in doing so. Your obligations under clause A9.1(c) are not affected by this clause A9.2.

A9.3 If we lend you money for Works:

(a) you must obtain our consent to the contract for the Works. Such consent will not be unreasonably withheld;

(b) you agree that we may enter into an agreement with the Person or Persons carrying out the Works on terms acceptable to us (acting reasonably) *including* giving us the right to remedy any default;

(c) you must not agree to a material variation in any contract for the Works without our consent (which will not be unreasonably withheld);

(d) you must promptly give us copies of any notices received from any Person under any contract for the Works; and

(e) you must comply with the terms of each contract for the Works.

A10. The Property and adjoining land

A10.1 If any part of a structure on The Property encroaches on adjoining land, then, if we ask, you must, as we reasonably require:

(a) correct the encroachment;

(b) obtain an easement or other permission acceptable to us to allow it to continue; or

(c) become the Owner of the encroached land.

A10.2 As further Security for payment of the Amount Owing, you must mortgage to us on the same terms as this mortgage any encroached land of which you become the Owner.

A10.3 If we reasonably require, you must have any encroachment on The Property from adjoining land removed.

A11. Dealings - *for example* selling, renting or mortgaging

Unless you first get our written consent (see clause A16), you must not:

- (a) sell The Property;
- (b) rent out The Property or agree to a surrender or variation of any rental agreement we consent to. Our consent to your renting out The Property will not be required if the lease is to an individual for residential purposes unless any one or more of the following apply:
 - (i) the Secured Agreement is for a loan which we advanced to you to buy or build a home to live in on The Property;
 - (ii) the term of the lease and any option for renewal, when added together, is or exceeds 3 years;
 - (iii) the rent payable is less than that which you told us you expect to receive;
 - (iv) the lease contains an option to purchase; or
 - (v) the tenant is a Relative of yours or, if you are a corporation, is one of your directors or a Relative of a director;
- (c) create another Security over The Property, or allow one to arise (unless by law our consent is not required, in which case, before you do so, you must tell us and if required by us ensure that a priority deed in a form acceptable to us is entered into by the party to whom you grant the Security);
- (d) dispose of, deal with, vary (or allow to be varied) or part with possession of:
 - (i) any estate or interest in The Property; or
 - (ii) any rights or benefits in connection with The Property (*including* rights to air space,

plot ratio, floor space ratio or other similar ratio); or

- (iii) any estate or interest in connection with any lease or Licence to use or occupy The Property;

- (e) subdivide or consolidate The Property;
- (f) consent to the grant of a mining tenement over or in relation to The Property;
- (g) create, release or vary an easement, covenant or public right of way which relates to The Property or allow one to arise; or
- (h) deal in any other way with The Property or this mortgage or any interest in them.

A12. Other securities

Our consent to another Security over The Property may depend on whether we are able to negotiate an agreement reasonably acceptable to us regarding the priority between this mortgage and the other Security (see clause A16).

A13. Caveats

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

A14. Crown Land

If The Property is held under any law relating to Crown Land, you must:

- (a) mortgage to us on the same terms as this mortgage and as further Security for payment of the Amount Owing, any estate or interest in land or other property which the rights you have from the Crown are converted into or which you become Owner of because you Own the Crown Land property; and
- (b) if it is permissible to do so and we ask you, convert or join with us in converting the Crown Land property into another form of land tenure, *for example* into freehold tenure. We will only ask you to do this if it is reasonable to do so.

A15. Rural land

If any of The Property is used for grazing, farming, horticultural or agricultural purposes, you must:

- (a) do all things reasonably necessary to manage and preserve it properly and efficiently, *including* by taking suitable action (*for example*, fencing and spraying) to keep it free from pests and harmful vegetation;
- (b) if we reasonably require, secure to us any crop produced on The Property on terms we reasonably require, as further Security for payment of the Amount Owing;
- (c) not give Security over any crop produced on The Property without our consent (see clause A16); and
- (d) not deal with any quota or contract for producing or selling crops or produce capable of being produced on The Property or do anything which could cause a quota or contract to be forfeited or cancelled without our consent (see clause A16).

A16. Consents

We will only refuse our consent if it is reasonable to refuse it. If we give our consent we may impose reasonable conditions. You must comply with all our requirements in any consent we give in connection with this mortgage.

A17. Payments as compensation, for example for compulsory acquisition of The Property

A17.1 You must tell us if you have a right to claim or receive a payment of money by way of compensation because you Own The Property.

A17.2 We may take over your rights to make, pursue or settle your claim. We will tell you if we want to do so. We may then exercise those rights at our discretion (*including* signing releases for the payment in your name or ours) having regard to your rights under the claim and our rights under the Security. If we leave it to you to claim payment, you must do so as we direct. When we do anything under this clause A17.2, we must act reasonably.

A17.3 If we take over a claim under clause A17.2 you must do everything that we reasonably require to assist us with the claim and the prompt resolution of the claim.

A17.4 You must do your best to ensure that any compensation payment is made to us. If the payment is made to you, you hold the money for us and you must pay so much of that money to us toward payment of the Amount Owing as we reasonably require and as soon as we ask you. (In each case, we must then use the money as set out in clause A23.)

A18. Administrative matters

A18.1 You must deposit with us any documents of title, leases or tenancy agreements relating to The Property. But you need not deposit them with us if another Person has a Security over The Property which has priority over this mortgage and that Person is holding those documents or agreements.

A18.2 You must do anything we reasonably ask (*for example* obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

- (a) to provide more effective Security over The Property for the payment of the Amount Owing;
- (b) to enable us to register this mortgage with the agreed priority;
- (c) to enable us to exercise our rights in connection with The Property;
- (d) to ensure that each agreement which is intended to be covered by this mortgage becomes a Secured Agreement;
- (e) to enable us to register the power of attorney in clause A29 or a similar power; or
- (f) to show us whether you are complying with this mortgage.

A18.3 If we ask, you must give us any information or documents we reasonably require about or affecting:

- (a) The Property or any Works;
- (b) the Shared Scheme, if The Property is part of a Shared Scheme;
- (c) any lease, Licence, tenancy or other arrangement in connection with The Property; or
- (d) this mortgage.

A19. How you must comply with this mortgage

A19.1 Everything you must do under this mortgage must be done reasonably promptly and to our reasonable satisfaction.

A19.2 You must pay for anything which you must do under this mortgage.

A19.3 If you are prohibited from doing anything under this mortgage, you are also prohibited from:

- (a) allowing or causing it to be done;
- (b) doing or omitting to do anything which results in it happening.

A20. Things we may do at any time

A20.1 We may assign or otherwise deal with our rights under this mortgage or any Secured Agreement in any way we consider appropriate. If you receive notice of such assignment, you can exercise against the assignee the same rights you have against us under this mortgage or Secured Agreement.

A20.2 On reasonable notice and at reasonable times, we or any of our agents may enter The Property to:

- (a) inspect its condition or any Works;
- (b) make reasonable enquiries in order to ascertain whether you are complying with this mortgage; or
- (c) where reasonably necessary, carry out our rights under this mortgage.

The requirement to provide reasonable notice may be dispensed with in cases of emergency.

A20.3 You must give us and our agents all reasonable help to enter, *for example* by getting any consent necessary.

A20.4 Acting reasonably, we or our agents may do anything which you should have done under this mortgage but which you have

not done reasonably promptly and to our reasonable satisfaction, but we are not obliged to.

What can happen if you are in default

A21. When are you in default?

You are in default if:

- (a) you do not pay on time any of the Amount Owed; or
- (b) you default under a Secured Agreement.

A22. What can happen then?

A22.1 If you are in default, we need not make funds available under any Secured Agreement.

A22.2 If you are in default and we choose to enforce this mortgage, then, except in the cases described in clause A22.3, we will give you a notice before doing so. The notice must:

- (a) tell you what the default is; and
- (b) give you not less than 30 days to fix the default (if it can be fixed).

A22.3 We need not give you a notice referred to in clause A22.2 or wait for the periods specified above where:

- (a) you are insolvent, or go into bankruptcy, administration or another insolvency process, or enforcement action is taken against you by us or another credit provider, unless we are required by a Consumer Credit Law or some other law to give you notice;
- (b) we believe on reasonable grounds that:
 - (i) we were induced by fraud or misrepresentation to enter this mortgage or a Secured Agreement; or
 - (ii) it is necessary for us to act to manage an immediate risk (whether credit, legal or reputational in nature), *for example*, urgent action is necessary to protect The Property, or you or a guarantor have not complied with the law or any requirement of a statutory authority giving rise to legal or reputational risk for us;

(c) we have made reasonable attempts to locate you without success; or

(d) we are authorised by a court.

A22.4 For the purposes of any Land Law which requires that you must be in default for a certain period of time before we give you the notice and allows the period to be fixed in the mortgage, the period is fixed at one day.

A22.5 If we have given you a notice under clause A22.2 and you do not fix the default within the time allowed in the notice, or you are in default and we are not required to give you a notice, we may:

(a) decide, without further notice to you, that the Amount Owning is due and payable immediately provided that, if this mortgage is subject to a Consumer Credit Law, in any default notice we have also told you the amount required to pay out the Secured Agreement and that we can exercise our acceleration rights under this clause if you do not remedy the default;

(b) take possession of The Property;

(c) manage The Property, *including* pay rent and receive rents and profits and any other payments which may be derived from The Property;

(d) sell, lease, subdivide or, where it is reasonable to do so, improve The Property;

(e) acting reasonably, do anything else with or to The Property that an Owner of The Property could do *including* compromise with or make concessions to lessees and licensees or accept the surrender, extension or renewal of a lease; and

(f) appoint any Person or any two or more Persons jointly and separately to be a receiver or receiver and manager to do such of the things in paragraphs (b), (c), (d) and (e) of this clause A22.5 as are set out in the receiver's terms of appointment and to exercise all powers of a receiver set out in the Corporations Act.

We may do any or all of the above things in any order and we may do them at any time after the time stated in the notice elapses or, if we are not required to give you a notice, at any time.

A22.6 If we enter into possession of The Property:

(a) we may carry out Works on The Property if we decide that it is reasonably necessary to do so for us to:

(i) manage The Property;

(ii) restore The Property to good condition, *including* to make it safe;

(iii) prepare The Property for sale, lease or subdivision; or

(iv) do any combination of the above;

(b) if we ask, you must promptly remove all goods (such as furniture, or plant and equipment) which are not part of The Property and over which we do not have Security. If you do not do so, we may remove the goods from The Property and:

(i) store them in another place; or

(ii) if the goods have little or no value, dispose of them without notice to you.

A22.7 In determining how to dispose of the goods, we may have them independently appraised or valued. Unless you can produce satisfactory evidence to the contrary, the independent appraisal or valuation is sufficient evidence of the condition or value (or both) of the goods.

A22.8 If we store the goods in another place, we will give you notice promptly of the location of the goods. If you do not claim the goods within 30 days of the date of our notice we may:

(a) leave the goods in storage and the manager of the place where your goods are stored may sell those goods to meet its charges for storing those goods; or

(b) sell those goods on your behalf and we will pay any proceeds of such sale into an account that we open with us in your name; or

(c) dispose of the goods in any other manner we choose, if the likely costs of sale exceed the value of the goods.

A22.9 The reasonable costs of removal, delivery, storage, sale, or disposal are part of the Amount Owing. We may use the proceeds deposited in the account referred to in clause A22.8(b) to pay our reasonable costs of removal, delivery, storage, sale or disposal of the goods. After the goods have been sold or disposed of under this clause A22 and, if applicable, we have paid any proceeds into an account in your name or paid them to you by some other method (*for example*, by bank cheque), we will have no more liability to you for them.

A22.10 We will act reasonably where we do anything under this clause A22.

A22.11 You must pay us any reasonable amount reasonably incurred or spent by us in exercising any powers whilst we are in possession of The Property. *For example*, you must pay us the cost of Works we carry out on The Property. These costs are part of the reasonable enforcement expenses we may charge you under this mortgage (see clause A22.13).

A22.12 If you are in default and we need not give you notice to fix it, then at any time we may do any of the things set out in paragraphs (a) to (f) of clause A22.5 and any of the things set out in clause A22.6.

A22.13 You must pay us our reasonable enforcement expenses reasonably incurred or spent by us in exercising our rights in relation to your default.

A23. What happens to money we receive

A23.1 We use any money we receive under this mortgage (other than any money we deal with under clause A22.8(b)) towards paying:

- (a) first, anyone with a prior claim;
- (b) second, the Amount Owing to the extent that any part of the Amount Owing is due for payment. If there are amounts due on more than one account, we may, acting reasonably, apportion the payment between those accounts or decide on the order of payment in any way we choose.

However, if money received represents proceeds of an insurance claim, we may use the moneys to reinstate The Property to good condition, or carry out any other work reasonably required.

We deal with the balance (if any) under clauses A23.2 and A23.3.

A23.2 The balance we refer to in clause A23.1 will be paid by us into an interest bearing account in your name. Until the Amount Owing is paid in full:

- (a) we are under no obligation to pay any of the money in the account to you;
- (b) we may apply the whole or any part of the balance of the account to pay any part of the Amount Owing which is then due for payment; and
- (c) you cannot operate on the account, encumber or assign your interest in the account.

A23.3 We must pay to you reasonably promptly or to another Person entitled to it (*for example* another Person with a Security over The Property), any money remaining after the Amount Owing is paid but reduced by any amount we are entitled to claim and be paid under clause A27.2. If we choose, we may do this by crediting your or that other Person's account with us. We are then under no further liability to you for that money.

A23.4 Our obligations to deal with the money we receive under this mortgage only arise from the date when we actually receive it.

General matters

A24. Notices and other communications

A24.1 Notices *including* certificates, consents and demands given or made under this mortgage must be in writing.

A24.2 They may be:

- (a) given personally (if they are for us, to one of our employees at the branch or office where you arrange this mortgage or any other branch or office we tell you); or
- (b) left at the address last notified; or
- (c) sent by prepaid post to the address last notified; or
- (d) sent by facsimile transmission to the fax number last notified; or
- (e) given in any other way permitted by law.

- A24.3 They take effect from the time they are received unless a later time is specified in them.
- A24.4 If they are sent by post, they are taken to be received on the day they would be received in the ordinary course of post.
- A24.5 If they are sent by facsimile machine which produces a transmission report, they are taken to be received at the time shown in a transmission report which indicates that the whole facsimile transmission was sent.
- A24.6 Any information which we provide in exercising our rights or fulfilling our obligations under this mortgage may be provided:
- (a) by electronic communication to your nominated electronic address (ie email address); or
 - (b) by being made available at our website for retrieval following electronic communication to you, on the condition that we:
 - (i) promptly notify you by electronic communication that the information is available for retrieval at our website, and the nature of the information; and
 - (ii) provide you with the ability to readily retrieve the information by electronic communication (*for example*, by providing an electronic link to the relevant information on our website, or the Universal Resource Locator (URL) of our website).
- A24.7 A notice sent by electronic communication takes effect at the time the electronic communication enters your or your internet service provider's system.
- A24.8 A notice provided on our website takes effect at the time you receive an electronic communication telling you the notice is on our website.
- A24.9 Where we have provided, or are treated as having provided, information to you under clause A24.6, we will provide a paper copy of that information to you, if you so request, within 7 years of the electronic communication.

- A24.10 Any such mode of service will be fully effective despite that at the date of such service you may be lacking in mental capacity, dead, bankrupt, insolvent or absent from your place of domicile or usual residence or (if you are a corporation) that you are in the course of liquidation or have had an administrator or receiver appointed.

A25. Statements of amount payable

A written statement made up from our books and signed by one of our Authorised Officers about an amount payable under this mortgage, is sufficient evidence of the amount and of any other matter referred to in the statement in connection with the amount, unless you provide satisfactory evidence to the contrary.

A26. How we may exercise our rights

- A26.1 We may exercise a right or remedy in any way we consider appropriate and reasonable, *including* by imposing conditions.
- A26.2 We may enforce this mortgage before we enforce our rights under another Security.
- A26.3 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later unless we have expressly agreed not to or it would be unconscionable to exercise that right or remedy later.
- A26.4 We are not liable for loss caused by or resulting from:
- (a) the exercise or attempted exercise of a right or remedy under this mortgage except where the loss is caused by our fraud, negligence or wilful misconduct; or
 - (b) any failure to exercise, or delay in exercising a right or remedy under this mortgage.
- A26.5 Our rights and remedies under this mortgage may be exercised by any of our Authorised Officers or any lawyer or agent we authorise and they may give good discharge to any Person who pays money to them.

A26.6 If any term of this mortgage is found to be illegal, void or unenforceable for unfairness or any other reason (*for example*, if a court or other tribunal or authority declares it so) the remaining provisions of this mortgage will continue to apply to the fullest extent possible as if the void or unenforceable term had never existed.

A27. Your obligations and our rights are unaffected

A27.1 The rights and remedies we have under this mortgage are independent of those we have under any other Security or what the law says we have and they can still be exercised by us even if we obtain an order or judgment against you.

A27.2 If, pursuant to any law, any Person asks us to refund a payment we have received in relation to the Amount Owing or this mortgage, then to the extent that we are obliged to, or we reasonably agree to, make a refund, we may treat the original payment as if it had not been made. We are then entitled to our rights against you under this mortgage as if the payment had never been made (*for example*, a trustee in bankruptcy or a liquidator may ask us to refund a payment, or we have to repay a mistaken payment made to an account).

A27.3 (a) If we, or any Person engaged by us, carries out any inspection or valuation of The Property, they do so for our purposes only. Any reports made as a result of the inspection or valuation are our exclusive property. However, if you have paid for the valuation on The Property:

- (i) a copy of the associated report can be made available to you on request except where enforcement proceedings have commenced against The Property. In those circumstances, we will provide a copy of the report to you on request after the enforcement process is finalised; and
- (ii) where it is reasonably practicable for you to do so, you may choose the valuer from a range of valuers on our panel.

(b) When we inspect or value The Property, lend against it or do anything as a result of the inspection or valuation, we are not responsible for and make no representation to you about:

- (i) the condition of the land;
- (ii) the quality of the title;
- (iii) the location of the boundaries;
- (iv) the construction of any building or the standard or value of the land or any building on The Property; or
- (v) the uses to which The Property may be put.

It is your responsibility to make necessary enquiries regarding all such matters.

A28. Variation or waiver

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

A29. Power of attorney

A29.1 You appoint us and each of our Authorised Officers separately as your attorney. The attorney's powers are limited to those stated in clause A29.2. If we ask, you must formally approve anything they do. You may not revoke these appointments.

A29.2 If you are in default, each attorney may:

- (a) do anything which you may lawfully do and anything you are required to do under this mortgage;
- (b) delegate their powers (*including* this power) and revoke a delegation; and
- (c) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so. In these circumstances, the attorney will act reasonably in exercising their powers.

A30. Receiver

- A30.1 If we appoint a receiver after a court order for your bankruptcy (or, if you are a corporation, while you are in the course of winding up), the receiver is our agent. In any other case, the receiver is your agent, not ours, unless we notify you otherwise.
- A30.2 We may set a receiver's reasonable pay and expenses, remove a receiver and appoint a new or additional receiver, as the circumstances reasonably require. You are liable for the receiver's pay and expenses as part of our reasonable enforcement expenses. We may authorise a receiver to appoint a delegate with our consent.

A31. Governing law and jurisdiction

- A31.1 This mortgage is governed by the law of the State or Territory in which The Property is located.
- A31.2 You accept the jurisdiction of the courts of that State or Territory and all appellate courts hearing matters from that jurisdiction.
- A31.3 If the court rules allow, we may serve any document in a court action (*including* documents to commence the action) on you by delivering it to The Property or leaving it there. This clause A31.3 does not prevent any other permissible method of service.

A32. Certificate of title

If it is possible to be issued with a duplicate certificate of title, you agree not to request the issue of a duplicate certificate of title for The Property until discharge of this mortgage.

PART B – Mortgage securing unregulated credit

This Part applies, in addition to Part A, once you have entered into a Secured Agreement with us relating to credit where no Consumer Credit Law applies. From that time, the extended definition of Amount Owing applies and this Part operates to the extent that this mortgage secures an Amount Owing to which no Consumer Credit Law applies.

B1. Extended definition of Amount Owing

When Part B applies, Amount Owing means, at any time, all money which one or more of you owe us, or will or may owe us in the future, alone or with others.

For example, this may include:

- (a) the amount owing under any Secured Agreement;
- (b) the principal amount of any loan;
- (c) interest;
- (d) any fees and charges, *including* government charges and duties;
- (e) the cost of early repayment of principal;
- (f) costs and expenses referred to in a Secured Agreement;
- (g) damages for breach of a Secured Agreement;
- (h) amounts contingently owing (that is, amounts which may become owing if something happens or is discovered);
- (i) if you are a corporation, money owing (*including* contingently owing) under any Guarantee;
- (j) if you are an individual, money owing (*including* contingently owing) under a Guarantee which you have acknowledged in writing to be secured by this mortgage;
- (k) amounts to reimburse or indemnify us;
- (l) amounts you owe as a trustee;
- (m) amounts you owe as a member of a partnership;
- (n) amounts you owe as a member of an unincorporated association;
- (o) amounts you owe because you become a party to a negotiable instrument; and
- (p) amounts you owe under this mortgage.

B2. Interest on Amount Owing

If any part of the Amount Owing is owing on an account which is:

- (a) covered by a Secured Agreement, you must pay interest on that amount in accordance with the terms of the Secured Agreement; or
- (b) not covered by a Secured Agreement, you must pay us interest on that amount whilst it remains unpaid.

Interest:

- (i) is charged at the rate agreed by you and us. If no rate is agreed, then the applicable rate is the prevalent rate which we charge from time to time to our other customers on similar accounts;
- (ii) accrues daily;
- (iii) is calculated on the unpaid daily balance of the account at the daily percentage rate then applying to the relevant part of the Amount Owing. We calculate the daily percentage rate by dividing the annual percentage interest rate then applying by 365 (even in a leap year);
- (iv) becomes part of the Amount Owing as it accrues; and
- (v) the accrued amount is debited to the account monthly, and on the day the Amount Owing is paid in full.

B3. No merger upon judgment

If any obligation to pay us an amount under this mortgage becomes merged in a court order, you must pay interest on that amount as a separate obligation. The interest rate we apply from time to time is the higher of the rate we may charge under clause B2 and the rate payable under the court order. We calculate and accrue the interest and debit the account with the frequency and in the manner described in clause B2.

B4. [Deleted]

B5. Indemnity upon default

- (a) If you or another Person give us materially incorrect or misleading information (*for example*, when you make your declarations under clause A3) in connection with this mortgage or a Secured Agreement before or after you sign this mortgage, then you must indemnify us against any loss

we incur as a result of that default, except where any such loss arises as a result of our fraud, negligence or wilful misconduct.

- (b) You agree to indemnify us against all claims which may be made against us by any Person having any interest in all or any part of any goods we deal with under clause A22.6 or clause A22.8 (or both clauses), except where any such claim arises as a result of our fraud, negligence or wilful misconduct.

B6. Additional rights on default

In addition to any other rights we may have under this mortgage, any Secured Agreement and under any law, if you are in default we may, without any demand or prior notice:

- (a) set off against, hold or appropriate for the purpose of applying towards payment of the Amount Owing, any liability (whether due, owing, contingent or otherwise) owing to you (*for example*, we could set off money we owe you on an unmatured term deposit against the Amount Owing);
- (b) have access to and make use of your fixtures, plant and equipment on The Property for the purposes set out in clause A22.6(a);
- (c) where it is reasonable to do so, at any time we choose, surrender to the Crown all or any part of The Property; and
- (d) where it is reasonable to do so, exchange with the Crown or with any Person all or any part of The Property for other lands of any tenure either with or without giving or receiving any cash for the purpose of equalising the exchange, and in any such event:
 - (i) any land so acquired will be held by us on your behalf as further Security for the Amount Owing; and
 - (ii) the power of sale we have under this mortgage and all other rights and remedies will apply to and be capable of being enforced in respect of such land.

B7. Protection of third parties

Subject to the provisions of any Land Law, you agree that if anyone presents an instrument for registration under law (*for example*, registration of a transfer of The Property in a land title registry) or takes any action and claims that the instrument has been prepared or signed or the action has been taken under powers or rights derived from this mortgage:

- (a) it will not be necessary for any Person authorised under law or taking an interest under the instrument (*for example*, the registry or a purchaser or lessee) to enquire whether the facts and circumstances by which those powers or rights are derived, have occurred. *For example*, they need not enquire whether:
 - (i) any money is in fact owing on this mortgage;
 - (ii) you are in default; or
 - (iii) the power of sale has arisen under this mortgage;
- (b) those Persons will not be affected by notice or by failure to enquire whether any Amount Owing has actually been paid or that you are not in default or that other facts and circumstances necessary for powers or rights to be exercised under this mortgage have not occurred.

B8. Application of moneys received by a receiver

Any receiver appointed by us under this mortgage in respect of an Amount Owing which is not regulated by a Consumer Credit Law will apply all money received by the receiver in the following order, after payment of any priority claims, if any:

- (a) in payment of all debts, costs, charges and expenses reasonably incurred in or incidental to the exercise or performance or attempted performance of the powers conferred by this mortgage or otherwise in relation to this mortgage;
- (b) in discharge of all rents, taxes, rates and outgoings whatever affecting The Property which are owing or are required to be paid;

- (c) in keeping down all annual sums or other payments and the interest on all principal sums having priority to this mortgage;
- (d) in payment of the receiver's reasonable remuneration and the premiums and other moneys necessary for keeping current all policies of insurance included in this mortgage or effected by us or the receiver for the protection of The Property, and the cost of effecting such repairs to The Property as are reasonably necessary for the purposes of clause A22.6(a) as the receiver may be directed in writing by us to execute;
- (e) in payment of the interest accruing due in respect of any principal money due under this mortgage; and
- (f) in or towards discharge of the Amount Owing.

The receiver shall pay the residue of the money obtained to the Person who, but for the possession of the receiver, would have been entitled to it or is otherwise entitled to The Property.

B9. Costs, charges and expenses

By signing this mortgage, without your having to sign any other document, you agree to pay and you authorise us from time to time to debit and charge any account of yours with all reasonable costs, charges and expenses, legal or otherwise (*including* premiums for insurance costs, legal costs on a solicitor and client as well as party and party basis, duties, taxes and other moneys paid or payable by us or any agent of ours) which we shall pay, incur, sustain or be put to in connection with:

- (a) any account of yours;
- (b) The Property or any part of The Property;
- (c) the exercise of any rights of purchase or conversion of title connected with The Property;
- (d) this mortgage;
- (e) the preparation, completion or release of this mortgage, *including* the release in whole or in part of this mortgage; or

- (f) the exercise or attempted exercise of any right, power, authority, discretion or remedy conferred on us or on any attorney of ours under or by virtue of this mortgage or by law.

B10. This mortgage not affected by changes in mortgagor

If:

- (a) you are a partnership, firm, committee, trustee or unincorporated body; or
- (b) any of the Amount Owing is owing or payable on a joint account,

this mortgage remains effective and continues binding on each Person named in this mortgage as mortgagor notwithstanding any change by death, retirement, accession, addition, amalgamation, incorporation or otherwise to that partnership, firm, committee, trustee or body of Persons or any change in its name or style.

B11. Licensed premises

If a Licence is held under law for the sale of liquor or operation of gaming machines or the conduct of a club on The Property, then:

- (a) you declare that the Licence is valid and current;
- (b) you undertake to maintain the Licence and comply with all the requirements of the Licence, *including* paying any fees;
- (c) you undertake to apply for the renewal of the Licence before it expires and to apply for any other Licence or authorisation necessary to conduct the activity on The Property;
- (d) you must tell us promptly if:
 - (i) the Licence is revoked, suspended, modified or not renewed; or
 - (ii) any action is taken or threatened which could result in the loss of the Licence, or part of the Licence, or a material reduction in the value of the Licence, or the imposition of any penalty for an offence in connection with the Licence or for amalgamation with another club; or
- (e) if you are in default, you must transfer the Licence to us or to any Person we nominate when we ask you to do so.

B12. Suspension of mortgagor's rights

As long as any Amount Owing remains unpaid or any obligations have not been performed under this mortgage, you may not:

- (a) claim any amount in the insolvency of any Person; or
- (b) exercise any rights as surety or guarantor,

where the result of which is or is likely to be a reduction in the amount payable to us in payment of the Amount Owing compared with the amount that would have been payable to us if the claim or exercise of rights was not made except to the extent that you have a right granted by law which cannot be excluded by agreement.

B13. Nature of obligations and enforcement

Your obligations in this mortgage:

- (a) are principal obligations, and not ancillary or collateral to any other right or obligation; and
- (b) may be enforced against you without us first being required to:
 - (i) exhaust any remedy we may have against any other Person; or
 - (ii) enforce any other Security,

except to the extent that any law or code requires us to act otherwise (*for example*, we may in certain circumstances be required to enforce any mortgage from the borrower before enforcing any mortgage from you if you are a guarantor).

B14. Exclusion of laws

You agree that any law which limits our rights and remedies under this mortgage is excluded except for those laws which do not allow that exclusion.