

# Memorandum of Mortgage Provisions



Over Fifty Seniors Equity Release Pty Limited

ABN 12 095 362 388 Australian Credit Licence 384614

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

<b>State or Territory</b>	<b>Registered Number</b>
SOUTH AUSTRALIA	10069345
VICTORIA	AA853
TASMANIA	M274
AUSTRALIAN CAPITAL TERRITORY	1390169
NEW SOUTH WALES	AA971887D
QUEENSLAND	708074006
NORTHERN TERRITORY	371974
WESTERN AUSTRALIA	J334251

**AND FORMS PART OF THE MORTGAGE.**

The meaning of words printed *like this* and some other key words is explained at the end of the memorandum.

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## 1 What you undertake in this mortgage

- (a) By this mortgage you mortgage the *property* to us to secure the payment in full of the *amount owing* to us and the performance of all your obligations under this mortgage and every *agreement covered by this mortgage*.
- (b) This mortgage is made on the day that it is signed and delivered to us.
- (c) By making this mortgage you undertake certain obligations as mortgagor. You also give us rights concerning you and the *property* - for example, if you do not comply with your obligations, we may take possession of the *property*, sell it and sue you for any remaining money you owe us.
- (d) 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.
- (e) You must ensure that you are not in default under this mortgage. You must also carry out on time all your obligations under every *agreement covered by this mortgage* including the obligation to pay any of the *amount owing*. These obligations and your other obligations under this mortgage (such as under "Enforcement expenses") continue even if we release the *property* from this mortgage.
- (f) You may require us to release the *property* from this mortgage when there is no *amount owing*. However, even if the *amount owing* is repaid, the *property* remains mortgaged to us until we actually release it from this mortgage.
- (g) In deciding to enter into any *agreement covered by this mortgage*, we have relied and will rely upon the declarations made by you in clause 1(h).
- (h) You declare that:
  - (i) you own the *property* or are in the process of becoming the owner of it; and
  - (ii) you have told us about all rights that affect the *property* or are proposed or likely to affect it (such as easements, leases, securities, the rights of a beneficiary under a trust or plans to compulsorily acquire the *property*); and
  - (iii) you do not breach any law or any obligation to any other person by signing this mortgage; and
  - (iv) you are not entering into this mortgage in your capacity as a trustee; and
  - (v) the *property* is not contaminated and no claim (other than those already notified to us in writing) has been made against you or to the best of your knowledge against previous owners for non-compliance with environmental laws; and
  - (vi) all the information you have given us is correct and not misleading; and
  - (vii) you have not withheld any information that might have caused us not to enter into this mortgage or an *agreement covered by this mortgage*; and
  - (viii) 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.
- (i) You must tell us if:
  - (i) there is a change in your circumstances or in your financial condition or affairs from those which you have told us about in clause 1(h); or
  - (ii) anything happens which makes any of the statements made by you in clause 1(h) untrue or misleading; or
  - (iii) anything happens which reduces the value of the property or the value of this mortgage as a security for the *amount owing*; or

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- (iv) anything else has happened which prevents you from repeating any one or more of the declarations in clause 1(h) before:
    - A. we provide you with a loan or other financial accommodation under an *agreement covered by this mortgage*; or
    - B. you acknowledge that another agreement is to be an *agreement covered by this mortgage*.

## How this mortgage affects you and the property

### 2 Rates, taxes and levies

You must pay on time all amounts for which you are liable as owner of the *property*, including rates, taxes and *shared scheme* levies and if we ask, provide us with copies of notices for and receipts evidencing such payment. If these amounts are not paid by you, we may decide to pay them and such amounts spent by us will be an enforcement expense in accordance with clause 20.

### 3 Looking after the property

- (a) You must:
  - (i) keep the *property* in good condition and correct any defect or damage; and
  - (ii) not do anything that might lower the value of the property; and
  - (iii) not change the use of the *property* except with our prior written consent; and
  - (iv) not carry on any noisy, illegal or offensive activity on the *property*; and
  - (v) tell us if the *property* is contaminated, defective or seriously damaged; and
  - (vi) remove any contaminant and clean up any contamination, if the *property* is contaminated; and
  - (vii) give us a copy of any order or notice from an authority, such as the local council, or a *governing body* concerning the use or condition of the *property* (or the shared property, if it is part of a *shared scheme*) as soon as you become aware of it; and
  - (viii) comply with all laws and requirements of authorities and your other obligations in connection with the *property*.
- (b) If the *property* is part of a *shared scheme* (for example a townhouse or home unit), you must also:
  - (i) comply with the by-laws, rules or articles of the *shared scheme*; and
  - (ii) tell us if there is any proposed meeting of the *governing body* and vote following any directions we give you; and
  - (iii) give us copies of any notices received from the *governing body* or its executive committee and, if we ask, confirm the accuracy of that information; and
  - (iv) give all notices which we ask you to give us which are required to enable us to vote at a meeting of the *governing body* or exercise any other right which we may have under any *strata law* as mortgagee of the *property*; and
  - (v) do your best to ensure that the *governing body* complies with its obligations (such as keeping the *shared property* in good condition); and
  - (vi) tell us if the governing body does not comply with *shared scheme laws*, shared scheme by-laws or any other obligations (including its insurance obligations); and

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- (vii) if we ask, perform the duties and obligations of the *governing body* which it has failed to properly perform so far as you can; and
  - (viii) assist us, if we ask, to obtain any information or statutory certificate from the *governing body*; and
  - (ix) pay all contributions or other moneys to the *governing body* on time; and
  - (x) direct the *governing body* to make any distribution to us; and
  - (xi) not, without our consent, make any application to any authority or to the board in respect of the *shared scheme*; and
  - (xii) do your best to ensure that your rights under the *shared scheme* are not varied; and
  - (xiii) tell us of any proposal to vary, substitute or terminate the *shared scheme* or its by-laws, rules or articles.
- (c) If the *property* is to be brought within a *shared scheme* by you (for example the construction of duplexes or the development of a unit complex), you must also pay all money and take all steps (including completing any *works*) to obtain registration of the *shared scheme* and take all steps required in relation to the *shared scheme* by any *shared scheme law* (for example insuring the *property*, setting up books and records for the *shared scheme* and calling any necessary meetings).

## 4 Insurance

- (a) You must maintain insurance over the *property* and any *works* against fire and other usual risks.
- (b) The insurance under clause 4(a) must be for the full insurable value of the *property* and any *works* on a replacement and reinstatement basis, unless the *property* is part of a *shared scheme*.
- (c) If the *property* is part of a *shared scheme* anywhere other than Victoria, the insurance under clause 4(a) must be for the total amount secured by all mortgages and charges over the *property* (sometimes known as a mortgagee's protection policy). If the *governing body* maintains insurance cover over the common *property*, we do not require you to insure that property comprising your share of the common property.
- (d) If the *property* is part of a *shared scheme* in Victoria, the insurance under clause 4(a) must be for the full insurable value of the *property* and any *works* on a replacement and reinstatement basis, unless the *governing body* has insured the *property* and the shared property. In that case, you need only take out insurance for any sum by which the *amount owing* exceeds the amount of the *governing body* insurance attributable to the *property* and its share in the shared property.
- (e) Clauses 4(f) and 4(g) only apply to the extent that this mortgage secures the performance of obligations under an *agreement covered by this mortgage* to which a Consumer Credit Code does not apply.
- (f) If you carry out or permit *works* (see clause 6) you must also maintain insurance of the following types:
  - (i) a contractor's all risks policy; and
  - (ii) a policy of insurance covering the liability of you or the builder in respect of warranties implied by law relating to the *works*; and
  - (iii) a policy covering loss which might result from you or the builder being insolvent; and
  - (iv) a policy required by any authority.

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- (g) You must maintain insurance against public liability risk and any other risk we reasonably require in connection with the *property*.
  - (h) As additional security for the *amount owing* you assign to us all of your rights under all insurance policies referred to in clauses 4(a) to 4(g), and to any money paid or payable under such insurance policies.
  - (i) Each policy under clauses 4(a) to 4(g) must:
    - (i) note our interest as mortgagee; and
    - (ii) be on terms and for an amount satisfactory to us; and
    - (iii) be with an insurer approved or nominated by us acting reasonably.
  - (j) If the *property* is part of a *shared scheme*, you must also do your best to ensure that the *governing body* maintains whatever insurance it is required to by law.
  - (k) You must produce copies of all insurance policies and evidence satisfactory to us of current insurance cover within 14 days of us asking for it.
  - (l) You must:
    - (i) ensure that the insurance cover is not reduced or cancelled, and notify us if it is or could be; and
    - (ii) not vary the insurance without first obtaining our consent; and
    - (iii) ensure that nothing happens that could permit an insurer to decline a claim, and notify us if anything would permit an insurer to do this; and
    - (iv) tell us promptly if you make any claim on an insurance policy or are entitled to do so.
  - (m) The obligations in clauses 4(k) and 4(l) apply to insurance taken out by either you or a *governing body*.

## **5 Insurance claims**

- (a) You must do your best to ensure that proceeds from an insurance claim (including a claim by a *governing body* if the *property* is part of a *shared scheme*) are:
  - (i) used to reinstate the *property* or carry out other works; or
  - (ii) paid to us. We may then use them as set out in clause 21.However, if we direct you to use or hold insurance proceeds you receive in a particular way, you must use or hold them as we direct.
- (b) You must notify us if an insurance claim is refused either in part or in full.
- (c) If we notify you, we may take over your rights to make, pursue or settle an insurance claim. We may exercise those rights in any manner we choose.

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## 6 Building and other work

- (a) You must get our consent and all necessary approvals from authorities (and the *governing body* if the property is part of a *shared scheme*) before you carry out or permit *works*, or enter into a contract to carry them out.
- (b) You must:
  - (i) comply with all laws, requirements of authorities, easements and covenants which affect any *works*; and
  - (ii) comply with any reasonable directions we give you in connection with the *works*; and
  - (iii) complete the *works* quickly and efficiently in accordance with the best skills and practices to our satisfaction; and
  - (iv) ensure that all *works* are done competently and completed in accordance with any *agreement covered by this mortgage* or otherwise within a reasonable time; and
  - (v) obtain and give us relevant certificates and permits we require (such as certificates of satisfactory completion or compliance or occupancy permits).
- (c) If we think you are not proceeding with *works* satisfactorily, we may take them over including by varying, completing, demolishing or stopping them as we see fit. We may also appoint a *receiver* or agent to these things. We may do any of these things as we see fit, and will have no liability to you provided that we act in good faith.
- (d) We are not liable for any loss:
  - (i) in connection with *works* we consent to (including loss arising out of plans or specifications we may approve); or
  - (ii) which arises because we do not finish *works* we take over under clause 6(c).
- (e) If we monitor *works* (such as inspecting or accepting any part of their construction or approving plans), we will be doing so for our own purposes. We do not owe you any duty to exercise care or skill in doing so and we need not tell you the results of any inspection.
- (f) Clause 6(g) only applies to the extent that this mortgage secures the performance of obligations under an *agreement covered by this mortgage* to which a Consumer Credit Code does not apply.
- (g) You indemnify us for all money we spend, losses we suffer or costs we incur as a result of taking over the *works* or as a result of appointing a receiver or agent under clause 6(c) above.
- (h) For the purposes of securing to us the payment of the *amount owing*, you transfer to us all your rights under any warranty, guarantee or builders' insurance relating to the *property* or to any *works* carried out before or after this mortgage is signed.

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

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## 7 The property and adjoining land

- (a) If any part of a structure on the *property* encroaches on adjoining land, then, if we ask, you must:
  - (i) correct the *encroachment*; or
  - (ii) obtain an easement or other permission acceptable to us to allow it to continue.
- (b) 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.
- (c) If we ask, you must have any *encroachment* on the property from adjoining land removed.

## 8 Dealings - such as selling, renting or mortgaging

- (a) You must get our written consent before you:
  - (i) sell all or part of the *property*; or
  - (ii) rent out the *property* or allow a surrender or variation of any rental agreement; or
  - (iii) create another *security* in connection with the property, or allow one to arise or continue; or
  - (iv) part with possession of the *property*; or
  - (v) subdivide or consolidate the *property*; or
  - (vi) create, release or vary an *easement*, covenant or public right of way which relates to the *property* or allow one to arise; or
  - (vii) deal in any other way with the *property*, this mortgage or any interest in them, or allow any interest in them to arise or be varied; or
  - (viii) remove any fixtures or improvements on the *property*; or
  - (ix) do anything which reduces the value of the *property* or the effectiveness of this mortgage as a security to us; or
  - (x) use the *property* for a new purpose.

## 9 Leases

You need our consent before you rent out the *property* or give another person the right to occupy it (see clause 8(a)(ii)). If we consent, you:

- (a) assign to us the right to receive any rent payable under the rental agreement and any other money payable by any such person; and
- (b) agree that if you are in default under this mortgage we may give notice to the lessee or other person requiring the rent or other money to be paid to us direct; and
- (c) must not transfer or give a *security* to any other person over your right to receive rent or other money; and
- (d) must give to us, as soon as we ask you to, a copy of any rental agreement, lease or other agreement by which you give another person the right to occupy the *property*.



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## 10 Other securities

- (a) If we consent to another *security* over the *property* and if we ask, then you must get an agreement acceptable to us regarding the priority between this mortgage and the other *security*.
- (b) If you do not get our consent and any agreement we ask for, we:
  - (i) need not make funds available under any *agreement covered by this mortgage*; and
  - (ii) may exercise any other rights that arise because you do not do so, such as the right to take possession of the *property* or to sell it.
- (c) You must ensure that the amount secured under any other *security* over the *property* is not increased without our consent. You must not agree to vary the terms of any other *security* over the *property* without our consent.
- (d) You must comply on time with any obligation in connection with any other *security* over the *property*.

## 11 Caveats

You must do everything necessary to remove any *caveat* placed on the title to the *property* without our consent.

## 12 Rural land

- (a) If any of the *property* is used for grazing, farming, horticultural, agricultural, pastoral or forestry purposes, you must:
    - (i) use your best skill and devote all necessary time and effort to its cultivation and management; and
    - (ii) cultivate and manage the *property* in accordance with best methods and practices; and
    - (iii) comply with all the directions and requirements which we give you in respect of its cultivation and management; and
    - (iv) erect all necessary rabbit-proof and other fencing, and keep them in good repair; and
    - (v) take all reasonable action to keep it free from rabbits and other pests, insects and harmful vegetation; and
    - (vi) not, without our consent, give any other *security* over any stock on the *property*, or woolclip from sheep on the *property*, or agriculture or horticulture crop you produce on the *property*; and
    - (vii) not, without our consent, deal with any quota or contract for producing or selling crops or produce capable of being produced on the *property* or do anything which could cause a quota or contract to be forfeited or cancelled; and
    - (viii) comply with the conditions of any statutory or other licence affecting or regulating production on the *property* or the sale of its produce; and
    - (ix) not, without our consent, deal with any licence attached to the land (such as a water licence) or do anything which could cause a licence to be forfeited or cancelled.
  - (b) Clause 12(c) only applies to the extent that the mortgage secures the performance of obligations under an *agreement covered by this mortgage* to which a Consumer Credit Code does not apply.
  - (c) If we ask, you must secure to us on terms we require as further *security* for payment of the *amount owing* any stock on the *property* or woolclip from sheep on the *property* or agriculture or horticulture crop you produce on the *property*.
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## 13 Consents

You must comply with all our requirements in any consent we give in connection with this mortgage.

## 14 Payments such as compensation

- (a) You must notify us if you have a right to claim or receive a payment in connection with your ownership of the *property* (such as compensation if the *property* is acquired for a road widening scheme).
- (b) You must claim payment in the manner we direct you to.
- (c) If we notify you, we may take over your rights to make, pursue or settle your claim. We may then exercise those rights in any manner we choose (including signing releases for the payment in your name or ours).
- (d) You must do your best to ensure that any payments are paid to us. If, despite this, they are paid to you, you must pay them to us. (In each case, we must then use the payments as set out in clause 21.)

## 15 Administrative matters

- (a) You must deposit with us:
    - (i) any documents of title and leases; and
    - (ii) any other documents we requestrelating to the *property*. But you need not deposit them with us if another person is holding them under a *security* over the *property* to which we have consented and which has priority over this mortgage. We may prepare, stamp and register this mortgage at your expense.
  - (b) You must do anything we ask (such as obtaining consents, signing and producing documents, replying to questions, producing receipts and getting documents completed and signed):
    - (i) to provide more effective *security* over the *property* (or any other *property* you are required to mortgage under this mortgage) for the payment of the *amount owing*; or
    - (ii) to enable us to register this mortgage with the agreed priority; or
    - (iii) to enable us to exercise our rights in connection with the *property*; or
    - (iv) to ensure that each agreement which is intended to be covered by this mortgage becomes an *agreement covered by this mortgage*; or
    - (v) to enable us to register the power of attorney in clause 30 or a similar power; or
    - (vi) to show whether you are complying with this mortgage.
  - (c) You agree that we may fill in any blanks in this mortgage.
  - (d) You must supply us with any information or documents we ask for about or affecting:
    - (i) the *property* or any *works*; or
    - (ii) the *shared scheme*, if the *property* is part of a *shared scheme*; or
    - (iii) any lease, tenancy or other arrangement connected with the *property*; or
    - (iv) this mortgage.
  - (e) You must pay for anything that you must do under this mortgage.
  - (f) Anything you are required to do under this clause must be done within a reasonable time.
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## 16 Additional obligations

You must give to us promptly after we ask for it any information we require about you (including your financial condition) or the *property*.

## 17 Things we may do at any time

- (a) We may assign or otherwise deal with our rights under this mortgage or any *agreement covered by this mortgage* in any way we consider appropriate. You agree that we may disclose any information or documents we consider desirable to help us exercise this right. You also agree that we may disclose information or documents at any time to a person to whom we assign our rights under this mortgage.
- (b) We may enter the *property* to:
  - (i) inspect its condition or any *works*; or
  - (ii) find out whether you are complying with this mortgage; or
  - (iii) carry out our rights under this mortgage; or
  - (iv) inspect and copy any business records and investigate your financial affairs.
- (c) Unless there is an emergency, we must give you reasonable notice before entering under clause 17(b). You must help us to enter, such as by getting any consent necessary.
- (d) We may do anything which you should have done under this mortgage but which you have either not done or in our opinion have not done properly. If we do so, you must pay our expenses in accordance with clause 20.

## What can happen if you are in default?

### 18 When are you in default?

- (a) You are in default if:
  - (i) you do not pay the *amount owing* on time; or
  - (ii) you do something you agree not to do, or you don't do something you agree to do, under this mortgage or an *agreement covered by this mortgage*; or
  - (iii) you fail to answer any requisition relating to lodgement or registration of this mortgage or any other dealing affecting the *property*; or
  - (iv) you give, or another person gives, us incorrect or misleading information (including through your declarations under clause 1(h)) in connection with this mortgage or an *agreement covered by this mortgage*; or
  - (v) we reasonably believe you or another person has acted fraudulently in connection with this mortgage or an *agreement covered by this mortgage*; or
  - (vi) you do not, or another person does not, carry out in full an undertaking given in connection with this mortgage or an *agreement covered by this mortgage*, within the period specified, or within seven days if no period is specified; or
  - (vii) you are in default under any other contract you have entered into with us; or

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- (viii) you default under any monetary obligation to any other person or a judgment or order is enforced against you or your other *property* or distress is levied against it; or
  - (ix) you become *insolvent* or steps are taken to make you so or, if you are a company, there is an investigation of your affairs; or
  - (x) if another person has guaranteed or given us another *security* for the *amount owing* and that person defaults under that guarantee or *security*, becomes *insolvent*, or in the case of an individual, an order is made for the management of his or her affairs under any law relating to mental health; or
  - (xi) this mortgage or any *agreement covered by this mortgage* or other guarantee or *security* held by us as security for the *amount owing* is, or is claimed to be, or becomes unenforceable or loses its priority; or
  - (xii) a change occurs in your financial circumstances which may have a material adverse effect on your ability to observe your obligations under this mortgage or any *agreement covered by this mortgage*; or
  - (xiii) there is a material reduction in the value of the *property* or we believe the *property* is in jeopardy of being materially reduced in value; or
  - (xiv) you have taken steps which seriously affect our rights in relation to the *property* or the effectiveness of this mortgage as a *security* to us for payment of the *amount owing*; or
  - (xv) all or part of the *property* is resumed, surrendered or determined or you are required by law or court order to transfer it to another person or an authority, and either:
    - A. you receive no compensation or compensation which is not substantially equal to any reduction in the value of the *property* caused by the resumption, surrender, determination or transfer; or
    - B. you do not pay us the amount of the compensation you receive in reduction of the amount owing; or
  - (xvi) the *property* is part of a shared scheme and:
    - A. the *governing body* brings proceedings against you; or
    - B. the *governing body* performs work which you should have done; or
    - C. the *governing body* does not comply with its obligations under any *shared scheme law*; or
    - D. the *shared scheme* is varied, added to or terminated without our consent; or
    - E. anything happens (for example, a consolidation, subdivision or severance, a surrender of lease, an authorised dedication or transfer, the making of a contract, a change in management, the passing of a resolution, the giving of a notice or the making of a court order) in relation to the *shared scheme* or the *governing body* which reduces the value of the *property* or affects or changes the use of any common property or the effectiveness of this mortgage as a security to us.

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## 19 What can happen then?

- (a) If you are in default, then subject to any law (including requirements as to notice) the *amount owing* becomes immediately due for payment and we can enforce this mortgage. In addition, we may then do one or more of the following as well as anything else the law allows us to do as mortgagee:
- (i) sue you for the *amount owing*; and
  - (ii) enter into possession of the *property*. We may remove personal possessions and either abandon them or store them without being liable to you; and
  - (iii) eject you or any other occupants from the *property*; and;
  - (iv) direct any and all tenants to pay rent to us; and
  - (v) do anything which you should have done under this mortgage but have not; and
  - (vi) do anything an owner or receiver of the *property* could do, including improving, selling or leasing it; and
  - (vii) appoint a receiver to do any of those things and anything else the law allows a receiver to do; and
  - (viii) obtain an up-to-date valuation of the *property* from a qualified valuer acceptable to us (which costs will be an enforcement expense under clause 20).
- (b) If the property is part of a *shared scheme*, we may also:
- (i) call a meeting of the *governing body* or its executive committee; or
  - (ii) move any motion on your behalf at a meeting of the *governing body* or its executive committee; or
  - (iii) vote on any motion moved at a meeting of the governing body or its executive committee.

## 20 Enforcement expenses

- (a) Clause 20(b) does not apply to the extent that this mortgage secures the performance of obligations under an *agreement covered by this mortgage* to which a Consumer Credit Code does not apply.
- (b) You must pay us the reasonable expenses we reasonably incur in enforcing this mortgage after you are in default (including in preserving and maintaining the *property* – such as by paying insurance, rates and taxes for the *property*). We do not need to ask you for them first.
- (c) Clauses 20(d) and 20(e) apply to the extent that this mortgage secures the performance of obligations under an *agreement covered by this mortgage* to which a Consumer Credit Code does not apply.
- (d) If you ask for our consent to do anything for which our consent is needed under this mortgage, you must reimburse or pay us any costs we incur (or are likely to incur) in evaluating your request. An example of these costs would be the costs of a valuer appointed by us to review the effect of proposed *work* on the value of the *property*.
- (e) You indemnify us for all money we spend, losses we suffer, or costs we incur (including where we incur legal costs, our costs on a full indemnity basis) as a result of:
- (i) your defaulting under this mortgage; and
  - (ii) us doing what we are entitled to do under the mortgage if you default.

The indemnity in this clause 20(e) continues even if we release the property from this mortgage.

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- (f) If money received represents proceeds of an insurance claim, we may use it to reinstate the *property* or carry out other work on it. If we do not use it for this purpose then we will use it in accordance with clause 21.
  - (g) If, at the time we receive the money, any part of the *amount owing* is not then due for payment, we may retain an amount equal to that part.
  - (h) Under law, a trustee in bankruptcy or liquidator may ask us to refund a payment we have received in connection with this mortgage. To the extent we are obliged to, or we agree to, make a refund we may treat the 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. This applies despite anything in the mortgage.

## 21 What happens to money we receive?

- (a) Money received under this mortgage is to be used towards paying the *amount owing* unless we are obliged to pay the money to anyone with a prior claim. However, if money received represents proceeds of an insurance claim, we may use it to reinstate the *property* or carry out other work on it.
- (b) If, at the time we receive the money, any part of the *amount owing* is not then due for payment, we may retain an amount equal to that part.
- (c) We may use any money received under this mortgage towards paying any part of the *amount owing* we choose, such as by:
  - (i) paying principal before interest or a later instalment before an earlier instalment; or
  - (ii) applying the payment under one *agreement covered by this mortgage* before another.
- (d) We must pay any money remaining after the amount owing is paid either to you or to another person entitled to it (such as another person with a *security* over the *property*). In particular, we may pay it to a person with a subsequent registered or unregistered *security* without incurring liability to you.
- (e) You are only credited with money from the date we actually receive it.

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## General matters

### 22 Setting off money

- (a) Except to the extent you have a right of set-off granted by law which we cannot exclude by agreement (such as under a Consumer Credit Code), you must pay the *amount owing* in full without setting off amounts you believe we owe you and without counter-claiming amounts from us.
- (b) Clause 22(c) only applies to the extent that this mortgage secures the performance of obligations under an *agreement covered by this mortgage* to which a Consumer Credit Code does not apply.
- (c) We may set off against the *amount owing* any money on deposit with us or we owe you.

### 23 Notices, other communications and service of documents

- (a) Notices, certificates, consents, approvals and other communications in connection with this mortgage must be in writing and in the English language.
- (b) Communications from us may be signed by any of our employees. If you are a company, communications from you must be signed by a director.
- (c) Communications to you may be:
  - (i) given personally (if you are a company, to one of your directors) or left at:
    - A. any address specified by you; or
    - B. your residential or business address last known to us; or
  - (ii) sent by post to any of these places; or
  - (iii) sent by facsimile to your residential or business facsimile number last known to us; or
  - (iv) given in any other way permitted by law.
- (d) Communications for us must be:
  - (i) given personally to one of our employees at, or sent by post or facsimile to, our registered office; or
  - (ii) given by any other means permitted by law.
- (e) The communications take effect from the time they are received unless a later time is specified in them.

If they are sent by post, they are taken to be received on the date it would have been delivered in the ordinary course of post. If they are sent by facsimile or some other form of electronic transmission, they are taken to be received on the date on which the machine from which it was sent produces a report indicating the communication was sent to the fax or other number of the person to whom it is addressed.

- (f) We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you by delivering it to the *property* or your address last known to us or by leaving it at either of those places. This clause does not prevent any other method of service.

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## 24 Our certificates

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

## 25 Prompt performance

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

## 26 How we may exercise our rights

- (a) We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate by imposing conditions.
- (b) Our consent to anything under this mortgage will only be effective if we give it in writing, and will only cover the specific purposes for or the circumstances in which it is given.
- (c) We may enforce this mortgage before we enforce other rights or remedies including under another *security*.
- (d) If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.
- (e) We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.
- (f) Our rights and remedies under this mortgage are in addition to other rights and remedies provided by law independently of it or by any other security.
- (g) Our rights and remedies under this mortgage may be exercised by any of our directors, any of our company secretaries, any of our employees or any other person we authorise.
- (h) Subject to the requirements of any law, we may exercise our rights under this mortgage and any *agreement covered by this mortgage* in any way and in any order we see fit.

## 27 Continuing security

This mortgage is a continuing security for the *amount owing*.

## 28 Your obligations and our rights are unaffected

- (a) Subject to clause 32, any present or future law that would otherwise vary your obligations under this mortgage is excluded (to the extent allowed by law) if it affects our rights or remedies adversely.
- (b) This mortgage does not merge with or adversely affect, and is not adversely affected by, any of the following:
  - (i) another *security* or right or remedy to which we are entitled; or
  - (ii) a judgment or order which we obtain against you in respect of any of the *amount owing*.
- (c) We can still exercise our rights under this mortgage as well as under the judgment, order, *security*, right or remedy.



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## 29 Variation or waiver

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

## 30 Power of attorney

- (a) You appoint us, each of our directors, each of our company secretaries, each of our employees and each receiver under this mortgage, separately as your attorney. If we ask, you must formally approve anything they do under clause 30(b). You may not revoke these appointments.
- (b) If we have served a notice stating that you are in default, each attorney may:
  - (i) do anything which you can do as owner of the *property* (including executing deeds, selling or leasing the *property*, selling or surrendering any lease, lodging or withdrawing caveats and starting, conducting and defending legal proceedings); and
  - (ii) delegate their powers (including this power) and revoke a delegation; and
  - (iii) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.

## 31 Receiver

- (a) If we appoint a receiver, the receiver is your agent unless we notify you that the receiver is to act as our agent. You are solely responsible for anything done, or not done, by a receiver and for the receiver's pay and costs.
- (b) We may set a receiver's pay, remove a receiver and appoint a new or additional receiver, as we choose.

## 32 Consumer Credit Code

- (a) This clause 32 does not apply to the extent that this mortgage secures the performance of obligations under an *agreement covered by this mortgage* to which a Consumer Credit Code does not apply.
- (b) If:
  - (i) that Code would otherwise make a provision of this mortgage or, as a consequence of a provision of this mortgage, a provision of an *agreement covered by this mortgage*, illegal, void or unenforceable; or
  - (ii) a provision of this mortgage or, as a consequence of a provision of this mortgage, a provision of an *agreement covered by this mortgage*, would otherwise contravene a requirement of that Code or impose an obligation or liability which is prohibited by that Code,    this mortgage is to be read as if that provision were varied to the extent necessary for it or an *agreement covered by this mortgage* to comply with that Code or, if necessary, omitted.
- (c) This mortgage does not secure (and the *amount owing* does not include) any amount (in relation to an *agreement covered by this mortgage* which is a credit contract, guarantee or indemnity to which that Code applies) that exceeds the sum of:
  - (i) your liability under that credit contract, guarantee or indemnity; and
  - (ii) our reasonable enforcement expenses reasonably incurred in enforcing this mortgage.

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### **33 Costs**

- (a) Clause 33 only applies to the extent that this mortgage secures the performance of obligations under an *agreement covered by this mortgage* to which a Consumer Credit Code does not apply.
- (b) You must pay all stamp duty, other taxes, registration and similar fees and charges payable on or in connection with this mortgage and any *agreement covered by this mortgage*. If we pay any of these amounts, you must reimburse us in full as soon as we ask you to.
- (c) If you ask for our consent to do anything for which our consent is needed under this mortgage, you must reimburse or pay us any costs we incur (or are likely to incur) in evaluating your request. An example of these costs would be the costs of a valuer appointed by us to review the effect of proposed *work* on the value of the *property*.
- (d) We may require you to pay a reasonable fee for processing any request you make for our consent. We will notify you of these fees when you make a request for our consent.

### **34 Inconsistent law**

To the extent allowed by law and subject to clauses 32 and 37, this mortgage prevails to the extent it is inconsistent with any law.

### **35 Applicable law**

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

### **36 Deed**

This mortgage is a deed.

### **37 Severance**

Subject to clause 32, any provision of this mortgage that is illegal, void or unenforceable shall be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provision of this mortgage.

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## 38 Meaning of words

**“agreement covered by this mortgage”** means:

- (a) an agreement or other arrangement (including a deed) under which one or more of you incurs or owes obligations to us or under which we have rights against you, including any such agreement or arrangement which all of you acknowledge in writing to be an *agreement covered by this mortgage*; and
- (b) each variation of it.

Without limiting this definition, it includes an agreement or arrangement which is assigned to us and any agreement or arrangement which you acknowledged to another person to be an *agreement covered by this mortgage* before the agreement or arrangement was assigned to us.

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

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

**“caveat”** means a warning, noted in the official title register, restricting dealings with the *property*, such as its sale.

**“easement”** means a right enjoyed by the owner of land over the land of another, such as a right of way, rights of light, rights of support and rights to a flow of air or water.

**“encroachment”** means encroachment by a building or by overhang of any part of a building or by intrusion of any part of a building in or onto any land.

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

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

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

**“interest rate”** means the rate of interest payable on the amount owing under any agreement covered by this mortgage, or if there is more than one such rate of interest, or more than one agreement covered by this mortgage, the highest of those rates.

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

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

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**“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) your estate and interest in the land.

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

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

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

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

**“such as”** see **“including”**.

**“we”** 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, removing or altering any part of the property, or any building or development work required by an authority in connection with the property.

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

The singular includes the plural and vice versa.

A reference to:

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