

# Guarantor's Indemnity Waiver

## Dated

## Parties

1. **How Heavenly Pty Ltd** ACN 169 433 587 as trustee for The HB and AP Superannuation Fund c/- Heather Byrne Accountant, 175 Argyle Street, Moss Vale NSW 2577 (**Borrower**).
2. **Mews Bowral Pty Ltd** ACN 603 671 487 as trustee for The Holding Trust – 8/11 Bundaroo Street, Bowral NSW c/- Heather Byrne Accountant, 175 Argyle Street, Moss Vale NSW 2577 (**Property Trustee**).
3. **Andrew Robert Pierce and Heather Lynne Byrne** both of 48 Highland Drive, Bowral NSW 2576 and the Property Trustee (**Guarantor**).

## Background

- A. Westpac Banking Corporation ABN 33 007 457 141 (**Lender**) has made or will make a loan to the Borrower (**Loan**).
- B. The security for repayment of the Loan includes a guarantee by the Property Trustee supported by a mortgage (**Mortgage**) granted by the Property Trustee over the property located at The Mews 8/11-13 Bundaroo Street, Bowral NSW 2576 (**Purchased Property**).
- C. The Guarantor has guaranteed and indemnified or intends to guarantee and indemnify the Lender in respect of the Loan (**Guarantee**).
- D. The Guarantor has agreed to limit its right to indemnity against the Borrower to the Purchased Property.

## Operative provisions

### 1. Limited Recourse

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Despite any other provision of any document or any right conferred by law or statute, the Guarantor's rights against the Borrower in respect of any payment, cost, expense or anything else arising from or relating to the Guarantee are limited to the Purchased Property. For example, if the Guarantor pays any money to the Lender in response to a demand for payment by the Lender, the Guarantor will only be entitled to recourse against the Purchased Property and will not be entitled to claim any amount back from any other assets of the Borrower.

### 2. Contribution by Guarantor

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Despite any other provision of any document or any right conferred by law or statute, if under the Guarantee the Guarantor makes any payment (in cash or in kind – for example as a result of any security provided by the Guarantor being sold by the mortgagee), the Property Trustee

will not transfer the Purchased Property to the Borrower unless and until the Guarantor has been repaid the amount of that payment. (This clause is inserted to ensure that by making any payment under the Guarantee, the Guarantor is not deemed to have made a contribution to the superannuation fund).

### 3. Interpretation

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In this document unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) reference to a person includes any other entity recognised by law and vice versa;
- (d) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (e) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;

**Executed as a deed.**

**Signed sealed and delivered by Andrew Robert  
Pierce** in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Andrew Robert Pierce

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print address

**Signed sealed and delivered by Heather Lynne  
Byrne** in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Heather Lynne Byrne

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print address

**Signed sealed and delivered** on behalf of **Mews Bowral Pty Ltd** in its capacity as **Property Trustee and Guarantor** by:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

**Signed sealed and delivered** on behalf of **How Heavenly Pty Ltd** by:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name