



Westpac Banking Corporation
ABN 33 007 457 141

Commercial mortgage memorandum

Registered Number	State or Territory
AG439907V	New South Wales
AA1795	Victoria
714022772	Queensland
1758711	Australian Capital Territory
TC 11631062	South Australia
L711728	Western Australia
372143	Northern Territory
M442	Tasmania

www.westpac.com.au

Copyright ©

Not to be copied or used (including for reference purposes) without written permission

Contents

1	What you undertake in this mortgage	2	7	Default - and what can happen	9
2	How this mortgage affects you and the property - general	2		When are you in default?	9
	Rates, taxes and levies	2		What can happen if you are in default?	10
	Looking after the property	2		Receivers	10
	Insurance	3		Exclusion of time periods	11
	Insurance claims	3	8	Disposal of the property is final	11
	Building and other work	4	8	What happens to money we receive?	11
	The property and adjoining land	4	9	General	12
	Dealings - such as selling, renting or mortgaging	4		Currency conversions	12
	Other encumbrances	5		Payment in full	12
	Caveats, notifications or dealings	5		Notices and other communications	12
	Consents	5		Certificates	12
	Payments such as compensation	5		Prompt performance	12
	Administrative matters	5		How we may exercise our rights	12
3	How this mortgage affects you and the property - specific types of property	6		Your obligations and our rights are unaffected	13
	Shared schemes	6		Reinstatement of rights	13
	Crown land	6		Indemnities	13
	Rural land	6		Variation and waiver	13
	Licences	6		Power of attorney	13
	Mining	7		Trustee provisions	14
4	Security over related property	7		Inconsistent law	14
5	Costs, indemnities and interest	7		Applicable law and serving documents	14
	What you must pay	7		Deed	15
	Interest	8	10	Meaning of words	15
6	Things we may do at any time	8			

Important notice

You need to read this mortgage.

By signing this mortgage you undertake certain obligations. 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 or otherwise deal with it, and sue you for any remaining money you owe us.

Key words

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

1 What you undertake in this mortgage

- 1.1 You are liable for all of 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.
- 1.2 You must ensure that you are not in default under this mortgage. You must also carry out on time all your obligations to us.
- You agree to pay us the *amount owing* in accordance with the terms of any agreement in writing to do so. However, if either:
- (a) there is no such agreement; or
 - (b) you are in default,
- we may declare at any time by notice to you that the *amount owing* is either payable on demand or immediately due for payment.
- These obligations and your other obligations under this mortgage (such as under clause 5) continue even if we release the property from this mortgage.
- 1.3 You may require us to release the property from this mortgage if 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.
- 1.4 You declare that:
- (a) you own the property or are in the process of becoming the owner of it; and
 - (b) you have notified us about all rights that affect, or are proposed or likely to affect, the property (such as easements, leases, *encumbrances*, the rights of a beneficiary under a trust, proposals to compulsorily acquire the property or any native title right or interest, aboriginal land claim or sacred site); and
 - (c) you do not breach any law or any obligation to any other person (including, if you are a corporation, under your constitution) by signing this mortgage; and
 - (d) to the best of your knowledge (having made proper enquiries), nothing has occurred which has

resulted in, or may result in, an *environment event*; and

- (e) your obligations under this mortgage are valid and binding and enforceable in accordance with its terms; and
 - (f) all the information you have given us is correct and not misleading; and
 - (g) you have not withheld any information that might have caused us not to enter into this mortgage or any *arrangement with us*; and
 - (h) 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; and
 - (i) you are not in default (see clause 7).
- 1.5 You must notify us whenever anything happens which would mean you could not truthfully repeat all the declarations in clause 1.4.

2 How this mortgage affects you and the property - general

Rates, taxes and levies

- 2.1 You must pay on time all amounts for which you are liable as owner of the property, including rates, *taxes* and *shared scheme* levies.

Looking after the property

- 2.2 You must:
- (a) keep the property in good condition and correct any defect; and
 - (b) not do anything that might lower the value of the property; and
 - (c) tell us if the property is defective or seriously damaged.
- 2.3 You must:
- (a) give us a copy of any order or notice from an authority, such as a 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
 - (b) comply with all laws and requirements of authorities (including *environmental laws*) and

- any *governing body* and your other obligations in connection with the property; and
- (c) ensure that each person who uses or occupies the property complies with all laws and requirements of authorities in connection with the property; and
 - (d) if a law requires that a guarantee be given in connection with any person's activities in relation to any *works* completed prior to the date of this mortgage, ensure that the required guarantee has been given and is valid and enforceable.
- 2.4 You must:
- (a) if you fail to comply with any *environmental law* which is likely to result in an *environmental event*, immediately do your best to remedy it; and
 - (b) if we ask, arrange at your expense, an audit of your environmental management procedures, compliance with *environmental law* and any circumstance which is likely to result in an *environmental event*. We may make this request if we reasonably believe that you have failed to comply with an *environmental law*.
- 2.5 Unless we consent, you must ensure that the purpose for which the property is used does not change.
- Insurance**
- 2.6 You must maintain insurance over the property and any *works* against fire and other usual risks.
- 2.7 The policy under clause 2.6 must cover the full insurable value of the property and any *works* on a replacement and reinstatement basis with additional amounts for the *costs* of demolition and removal of debris and consultant's fees, unless the property and the *works* are insured by a *governing body* as part of a *shared scheme*.
- 2.8 If the property and the *works* are insured by a *governing body* as part of a *shared scheme* anywhere other than Victoria and the Northern Territory of Australia, the insurance you take out under clause 2.6 must be for the total amount secured by all mortgages and charges over the property (sometimes known as a mortgagee's policy).
- 2.9 If the property is part of a *shared scheme* in Victoria or the Northern Territory of Australia, the insurance you take out under clause 2.6 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 all of the *shared scheme* 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 (sometimes known as a mortgagee's policy).
- 2.10 You must maintain insurance against public liability risk (except if insured by a *governing body* as part of a *shared scheme*) and any other risk we reasonably require.
- 2.11 Each policy under clauses 2.6 and 2.10 (except if the policy holder is the *governing body*) must:
- (a) be expressed to insure our interest as mortgagee; and
 - (b) be on terms and for an amount satisfactory to us; and
 - (c) be with an insurer approved by us acting reasonably.
- 2.12 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.
- 2.13 You must maintain each policy under clause 2.6 and 2.10 for the duration of this mortgage and must produce evidence of current cover (including a certified copy of each policy wording and schedule) whenever we ask.
- 2.14 You must ensure, in relation to each policy under clauses 2.6 and 2.10, that:
- (a) the cover is not reduced or cancelled (and you must notify us if it is or could be); and
 - (b) nothing happens that could permit an insurer to decline a claim (and you must notify us if anything would permit an insurer to do this).
- Insurance claims**
- 2.15 If you receive proceeds from an insurance claim (including a claim by a *governing body* if the property is part of a *shared scheme*) of more than \$20,000 relating to the loss of or damage to the property, you

must pay those proceeds to us. (We must then use them as set out in clause 8.) All other insurance proceeds must be used to reinstate the property.

However, if we direct you to use or hold any insurance proceeds in a particular way, you must use or hold them as we direct.

- 2.16 You must notify us if an insurance claim is refused either in part or in full.
- 2.17 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.

Building and other work

- 2.18 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 major *works*, or enter into a contract to carry them out.
- 2.19 You must:
- (a) comply with all laws, requirements of authorities, easements and covenants which affect any *works*; and
 - (b) conduct all *works* actively and continuously; and
 - (c) ensure that all *works* are done competently and completed within a reasonable time and in accordance with any plans and specifications approved by us; and
 - (d) obtain and give us relevant certificates that we require (such as certificates indicating that satisfactory completion of the *works* has occurred or certificates or permits confirming that the *works* may be occupied); and
 - (e) ensure that any contract to carry out *works* is not materially varied, perform your obligations under any such contract and promptly notify us if any default occurs under any such contract; and
 - (f) keep separate and proper books of account in connection with the *works*.
- 2.20 If we or a *receiver* think you are not proceeding with *works* satisfactorily, we or the *receiver* may take them over at your *cost*, including by varying, demolishing or

stopping them as we or the *receiver* see fit.

- 2.21 Neither we nor any *receiver* are liable for any loss:
- (a) in connection with *works* that we or a *receiver* consent to (including loss arising out of plans or specifications which we or the *receiver* may approve); or
 - (b) which arises because we or a *receiver* do not finish *works* which we or a *receiver* take over under clause 2.20.
- 2.22 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.

The property and adjoining land

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

Dealings - such as selling, renting or mortgaging

- 2.25 Without our consent you may not, and may not agree to, attempt or take any step to, do any of the following:
- (a) sell or dispose of the property; or
 - (b) lease or license the property for more than one year, or allow a surrender or variation of any lease or licence (other than leases or licences entered into for less than one year); or
 - (c) create or allow to exist another *encumbrance* in connection with the property or any property referred to in clause 4; or
 - (d) part with possession of the property; or
 - (e) subdivide or consolidate, or call for an apportionment of, the property; or

- (f) create, release or vary an easement, covenant or public right that relates to the property, or allow one to arise; or
- (g) create a trust, power or lien in connection with the property, or allow one to arise; or
- (h) 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.

2.26 If a law entitles you to create another *encumbrance* in connection with the property or any property referred to in clause 4 without our consent, clause 2.25 and this clause do not operate to require you to obtain our consent before creating that other *encumbrance*. However:

- (a) if you intend to create another *encumbrance*, you agree to notify us at least seven days before you propose to do so; and
- (b) if we request an agreement under clause 2.27 and you have not complied with that request by the time the *encumbrance* is created, we need not make funds available under any *arrangement with us*.

Other encumbrances

- 2.27 If we ask, then you must enter into an agreement acceptable to us regulating the priority between this mortgage and any other *encumbrance* over the property.
- 2.28 You must ensure that the amount secured under any other *encumbrance* over the property is not increased without our consent.
- 2.29 You must comply with any obligation in connection with any other *encumbrance* over the property.
- 2.30 We may rely on a certificate from any other person with an *encumbrance* over the property as to the amount that is owed to that other person.

Caveats, notifications or dealings

- 2.31 You must do everything necessary to remove any caveat, notification or dealing placed on the title to the property without our consent.

Consents

- 2.32 You must comply with all conditions in any consent we give in connection with this mortgage.

Payments such as compensation

- 2.33 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).
- 2.34 You must claim payment in the manner that we direct you to. But, 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).
- 2.35 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 8.

Administrative matters

- 2.36 You must deposit with us:
 - (a) any documents of title and leases; and
 - (b) any other documents we request relating to the property. But you need not deposit them with us if another person is holding them under an *encumbrance* over the property to which we have consented and which has priority over this mortgage.
- 2.37 We may, at your expense, do anything necessary to register this mortgage with the priority we require.
- 2.38 You must do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which we ask and consider necessary:
 - (a) to provide more effective security over the property for payment of the *amount owing*; or
 - (b) to ensure that an *encumbrance* created under any *arrangement with us* is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
 - (c) to enable us to register, or give any notification in connection with, this mortgage or any other *encumbrance* so that it has the priority we require; or
 - (d) to enable us to exercise our rights in connection with the property or any *arrangement with us*; or

- (e) to enable us to register the power of attorney in clauses 9.26 to 9.28(b) or a similar power; or
 - (f) to bind you and any other person intended to be bound under any *arrangement with us*; or
 - (g) to show whether you are complying with each *arrangement with us*.
- 2.39 You agree that we may fill in any blanks in this mortgage.
- 2.40 If we ask, you must supply us with any information about or documents affecting:
- (a) the property, any *works* or any *licence*; or
 - (b) the *shared scheme*, if the property is part of a *shared scheme*; or
 - (c) any lease, tenancy or other arrangement connected with the property; or
 - (d) this mortgage.

3 How this mortgage affects you and the property - specific types of property

Shared schemes

- 3.1 If the property is part of a *shared scheme* (for example, a townhouse or home or commercial unit), you must:
- (a) comply with the by-laws, rules, service agreement or articles of the *shared scheme*; and
 - (b) vote at any *governing body* meeting following any directions we give you; and
 - (c) do your best to ensure that the *governing body* complies with its obligations (such as keeping the shared property in good condition and maintaining adequate reserves or insurance); and
 - (d) tell us if the *governing body* does not comply with its obligations (including its insurance obligations); and
 - (e) do your best to ensure that your rights under the *shared scheme* are not varied; and
 - (f) tell us of any proposal to substitute, terminate or materially vary the *shared scheme* or its by-laws, rules, service agreements or articles or

- distribute any surplus funds of the *governing body*; and
- (g) notify the *governing body* of any changes you propose to make to any shared property.

Crown land

- 3.2 If the property is held under law relating to Crown land:
- (a) you must not allow your existing estate or interest in the property to change without our consent; and
 - (b) you must get our consent before applying to convert any existing estate or interest; and
 - (c) we may pay any purchase money or other amount payable in connection with the property (and if we do this, you must reimburse us when we ask).

Rural land

- 3.3 If any of the property is used for grazing, farming, horticultural or agricultural purposes, you must:
- (a) manage and preserve it properly and efficiently, including by taking reasonable action (such as fencing and reasonable spraying) to keep it free from pests and harmful vegetation; and
 - (b) not, without our consent, deal with or surrender any quota or contract for producing or selling crops or produce capable of being produced on the property or do anything that could cause a quota or contract to be forfeited, cancelled or reduced.

Licences

- 3.4 If a *licence* is required for any activity carried out on or in connection with the property, then you must:
- (a) when carrying out that activity, do so in a proper and orderly manner; and
 - (b) comply with all laws and requirements of authorities in connection with the *licence*; and
 - (c) obtain and renew on time the *licence* and each authorisation necessary to carry on the activity for which the *licence* is necessary and oppose any application to restrict or cancel the *licence*; and
 - (d) not, without our consent:

- (i) remove or apply to remove the *licence* from the property; or
 - (ii) surrender or attempt to surrender the *licence*; or
 - (iii) deal in any way with any interest in the *licence*; or
 - (iv) amend the *licence*; or
 - (v) do anything which could cause the *licence* to be suspended, forfeited or cancelled; or
 - (vi) allow an *encumbrance* to arise over the *licence*; and
- (e) give us a copy of each notice, order, summons or conviction in connection with the *licence*.
- 3.5 You authorise us to apply for information from authorities and to inspect any file held by an authority relating to the property or the *licence*.
- 3.6 If you are not the holder of the *licence*, you must ensure that:
- (a) the holder complies with the obligations set out in clause 3.4 as if it were you; and
 - (b) the holder gives us an authority to apply for information from authorities and a power of attorney relating to the *licence*, each in a form satisfactory to us.
- 3.7 After a default has occurred, if we ask, you must do your best to ensure that the *licence* is transferred to us or our nominee.
- 3.8 You acknowledge that, despite this mortgage:
- (a) you remain liable to perform your obligations under the *licence*; and
 - (b) we have no obligations under the *licence* and no liability under the *licence* if you are in default under it.

Mining

- 3.9 Unless we consent, you must not:
- (a) mine or consent to mining on the property; or
 - (b) enter into any compensation agreement in connection with mining on the property.

4 Security over related property

If we ask, you must secure to us on terms we require as further security for the payment of the *amount owing*:

- (a) your rights to insurance proceeds and insurance contracts over or in connection with the property and (if the property is part of a *shared scheme*) any shared property;
- (b) your rights under any contract to carry out *works* and under any warranty, guarantee, indemnity or builder's insurance relating to the property or the *works* (whether carried on before or after this mortgage is signed);
- (c) any encroached land of which you become the owner;
- (d) any further estate or interest you acquire in the property;
- (e) any stock on the property, or clip or crop produced on the property;
- (f) any compensation agreement in connection with mining on the property and any cash received in connection with a compensation agreement or mining on the property.

5 Costs, indemnities and interest

What you must pay

- 5.1 You must pay us for:
- (a) our reasonable *costs*, and any *receiver's costs* and remuneration, in arranging, administering (including giving and considering consents, variations, discharges and releases, producing title documents, or enforcing, attempting to enforce or taking any other action in connection with our or any *receiver's* rights) and terminating this mortgage or another *arrangement with us*; and
 - (b) all *taxes*, fees and charges payable in connection with this mortgage, any other *arrangement with us* and any transaction under them and any interest, penalties, fines and expenses in connection with them.

You must pay us these amounts when we ask. We can also debit any of these amounts to any account you have with us

- even if we do not expressly ask you to pay us.
- 5.2 You agree to compensate us on demand if we determine that, as a direct or indirect result of the imposition of *GST*, our *costs* in connection with this mortgage are increased. If we:
- (a) reasonably decide that we are liable to pay *GST* on a supply made in connection with this mortgage; and
 - (b) certify that we have not priced the supply to include *GST*,
- then you agree to pay us an additional amount equal to the consideration payable for the supply multiplied by the prevailing *GST* rate.
- 5.3 You indemnify us against, and you must therefore pay us on demand for, liability, loss or *costs* (including consequential or economic loss) we suffer or incur:
- (a) if you are in default; or
 - (b) in connection with any person exercising, or not exercising, rights under this mortgage; or
 - (c) in connection with the property, the monitoring of *works* or this mortgage; or
 - (d) under any indemnity we give a *controller* or administrator appointed:
 - (i) in respect of you; or
 - (ii) over any of the property.
- 5.4 You must pay us an amount equal to any liability, loss or *costs* (including consequential or economic loss) of a kind referred to in clauses 5.3(a) to (c) suffered or incurred by:
- (a) any *receiver* or *attorney* appointed under this mortgage; or
 - (b) any of our employees, officers, agents, or contractors; or
 - (c) any lessee, purchaser or occupier of the property.
- 5.5 If a judgment, order or proof of debt in connection with the *amount owing* is expressed in a currency other than that in which the *amount owing* is due, then you indemnify us against, and you must therefore pay us on demand for:
- (a) any difference arising from converting the other currency if the exchange rate we use for converting currency when we receive a payment in the other currency is less favourable to us than the exchange rate used for the purpose of the judgment, order or acceptance of proof of debt; and
 - (b) the *costs* of conversion.
- You acknowledge that it might be necessary to convert the other currency through more than one currency to determine the exchange rate available to us.
- 5.6 You must pay for anything that you must do under this mortgage.
- Interest**
- 5.7 You must pay interest on any part of the *amount owing* which is due for payment but which is not otherwise incurring interest. The interest accrues daily from (and including) the due date up to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days, even in a leap year. You must pay interest owing under clauses 5.7 to 5.10 on demand from us.
- 5.8 The rate of interest applying to each daily balance is the rate specified by us from time to time or (if no rate is specified) our *unarranged lending rate*.
- 5.9 Each month (or any other period, we choose), we may add to the amount you owe us any interest under clauses 5.7 to 5.10 which has not been paid. You will then be liable for interest under clauses 5.7 to 5.10 on the total amount.
- 5.10 If any amount you must pay under this mortgage becomes covered by a court order, you must pay interest on that amount as a separate obligation. The interest accrues from and including the date we first ask you for the amount until but excluding the date that amount is paid. This obligation is not affected by the court order. The rate is the rate in clause 5.8 or the rate in the court order (whichever is higher). You must pay interest under this 5.10 on demand from us.
- 6 Things we may do at any time**
- 6.1 We may assign, or otherwise deal with our rights under this mortgage or another *arrangement with us* in any way we consider appropriate. If we do this, you may not claim against any assignee (or any other person who has an interest in this mortgage or the *arrangement with us*)

- any right of set-off or other rights you have against us.
- 6.2 Information you provide to us may be disclosed:
- (a) if you consent (you may not unreasonably withhold your consent); or
 - (b) if we reasonably believe the disclosure is required by any law, stock exchange or rating agency (except this paragraph does not permit us to disclose any information of the kind referred to in section 275(1) of the *PPSA* unless section 275(7) of the *PPSA* applies); or
 - (c) to any person in connection with our exercising rights or dealing with rights or obligations (including preparatory steps such as negotiating with any potential assignee of our rights or other person who is considering contracting with us or a *receiver* in connection with this mortgage); or
 - (d) to our officers and employees, to *receivers* and to legal advisers, auditors and other advisers; or
 - (e) to any of our *related entities*; or
 - (f) if the information is generally and publicly available; or
 - (g) to any other *debtor/guarantor*.
- 6.3 We may enter the property to:
- (a) inspect its condition or any *works*; or
 - (b) find out whether you are complying with this mortgage; or
 - (c) carry out our rights under this mortgage; or
 - (d) inspect and copy records relating to you or the property; or
 - (e) investigate your financial affairs or business or the financial affairs or business of any *debtor/guarantor*.
- 6.4 Unless there is an emergency, we must give you reasonable notice before entering under clause 6.3. You must help us to enter, such as by getting any consent necessary.
- 6.5 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 *costs* when we ask.
- 6.6 We do not become a mortgagee in possession because we enter the property under clause 6.3 or exercise our rights under clause 6.5.
- 6.7 If we ask, you must ensure that rent and other income from the property is 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 money we receive as set out in clause 8.
- 6.8 If we reasonably believe you are or may be in default or we reasonably believe that circumstances exist which could lead to you being in default, we may appoint a person to investigate whether this belief is accurate. You must co-operate with and comply with every reasonable request made by this person. You must pay to us all *costs* in connection with the investigation.

7 Default - and what can happen

When are you in default?

- 7.1 You are in default if:
- (a) you do not pay the *amount owing* on time; or
 - (b) you do something you agree not to do under this mortgage, or you don't do something you agree to do under this mortgage; or
 - (c) you are, or a *debtor/guarantor* or another person is, in default under any *arrangement with us* or an event of default, however described, occurs under an *arrangement with us*; or
 - (d) you are, or a *debtor/guarantor* is, in default under any arrangement (including an agreement or *encumbrance*) under which either of you has or could in the future have monetary obligations to any other person; or
 - (e) you give, or a *debtor/guarantor* or another person gives, us incorrect or misleading information (including through any declaration you make) in connection with this mortgage or another *arrangement with us*; or
 - (f) you do not, or a *debtor/guarantor* or another person does not, carry out in full an undertaking given in connection with this mortgage or

- another *arrangement with us*, within the period specified, or within seven days if no period is specified; or
- (g) a *controller* is appointed to any part of your or a *debtor/guarantor's* property; or
- (h) this mortgage is, becomes or is claimed to be void or unenforceable or this mortgage does not have or loses the priority it is intended to have; or
- (i) an event occurs which (in our reasonable opinion) has, or is likely to have (or a series of events which, together, have or are likely to have) a *material adverse effect*; or
- (j) we believe on reasonable grounds that urgent action is necessary to protect the property; or
- (k) a person is appointed to investigate or manage your affairs or the affairs of a *debtor/guarantor*; or
- (l) you do not, or a *debtor/guarantor* does not, meet all your or their monetary obligations (whether present or future) on time or within any applicable grace period or any of these obligations become, or can be rendered, payable early otherwise than at your or the *debtor/guarantor's* election; or
- (m) if you or any *debtor/guarantor* are a corporation:
- (i) you do not inform us that:
- a change takes place in your directors; or
 - a transfer of shares in your capital is registered; or
 - new shares, convertible notes or options for shares in your capital are issued;
- (However, this does not apply to a corporation listed on a stock exchange); or
- (ii) you or any of your subsidiaries become *insolvent* or steps are taken to make you or them *insolvent*; or

- (iii) you or any *debtor/guarantor* are or become deregistered, or steps are taken to deregister you or the *debtor/guarantor*; or
- (iv) you cease to be a subsidiary of the company which is your holding company at the date of this mortgage or a company ceases to be your subsidiary.

What can happen if you are in default?

- 7.2 If you are in default, the *amount owing* is payable on demand.
- 7.3 After a default has occurred, we may do one or more of the following in addition to anything else the law allows us to do as mortgagee:
- (a) sue you for the *amount owing*;
- (b) appoint one or more *receivers*;
- (c) do anything that a *receiver* could do under clause 7.7.

Receivers

- 7.4 In exercising our power to appoint a *receiver* we may:
- (a) appoint any *receiver* to all or any part of the property or its income; and
- (b) set a *receiver's* remuneration at any figure we determine as appropriate, remove a *receiver* and appoint a new or additional receiver.
- 7.5 If we appoint more than one *receiver*, they may act independently unless we specify that they must act together.
- 7.6 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* remuneration and costs.
- 7.7 Unless the terms of appointment restrict a *receiver's* powers, the *receiver* may do one or more of the following:
- (a) improve the property;
- (b) sell, transfer or otherwise dispose of the property or any interest in it;
- (c) lease or license the property or any interest in it, or deal with any existing lease or licence (including allowing a surrender or variation);

- (d) take or give up possession of the property as often as it chooses;
- (e) sever, remove and sell fixtures attached to the property;
- (f) if you are not a corporation to which the Corporations Act applies, anything the law would allow a *receiver* to do if you were a corporation incorporated (or deemed to be incorporated) under the Corporations Act);
- (g) anything else the law allows an owner or a *receiver* of the property to do.

Exclusion of time periods

7.8 Neither we nor any *receiver* need give you any notice or demand or allow time to elapse before exercising a right under this mortgage or conferred by law (including a right to sell) unless the notice, demand or lapse of time is required by law and cannot be excluded.

7.9 If the law requires that a period of notice must be given or a lapse of time must occur or be permitted before a right under this mortgage or conferred by law may be exercised, then:

- (a) when a period of notice or lapse of time is mandatory, that period of notice must be given or that lapse of time must occur or be permitted by us; or
- (b) when the law provides that a period of notice or lapse of time may be stipulated or fixed by this mortgage, then one day is stipulated and fixed as that period of notice or lapse of time including, if applicable, as the period of notice or lapse of time during which:
 - (i) a default must continue before a notice is given or requirement otherwise made for payment of the *amount owing* or the observance of other obligations under this mortgage; and
 - (ii) a notice or request for payment of the *amount owing* or the observance of other obligations under this mortgage must remain not complied with before we or a *receiver* may exercise its rights.

Disposal of the property is final

7.10 You agree that if we or a *receiver* sell or otherwise dispose of the property:

- (a) you will not challenge the acquirer's right to acquire the property (including on the ground that we or the *receiver* were not entitled to dispose of the property or that you did not receive notice of the intended disposal) and you will not seek to reclaim the property; and
- (b) the person who acquires the property need not check whether we or the *receiver* had the right to dispose of the property or whether we or the *receiver* exercise that right properly.

8 What happens to money we receive?

8.1 Subject to clause 7.2, money we receive in connection with 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 relating to the loss of or damage to the property, we may use it to reinstate the property or carry out work on it.

8.2 We may retain any money we receive in connection with this mortgage for as long as we think appropriate. We may hold it in an interest bearing account. We may use it (and any net interest after tax - including income tax) towards paying the *amount owing*.

8.3 We may use any money we receive in connection with this mortgage towards paying any part of the *amount owing* we choose, including by paying a later instalment before an earlier instalment. This applies even if that part falls due after we give a notice of demand.

8.4 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 an *encumbrance* over the property). In particular, we may pay it to a person who we consider on reasonable grounds has a subsequent registered or unregistered *encumbrance* without incurring liability to you. We do not pay you interest on any money remaining after the *amount owing* is paid.

8.5 We only credit payments as soon as practicable after we receive them

(including, where we have appointed a *receiver*, as soon as practicable after we receive the payment from the *receiver*).

9 General

Currency conversions

- 9.1 You must make each payment in the currency in which it is due.
- 9.2 If we receive an amount in a currency other than that in which it is due:
- (a) we may convert the amount received into the due currency (to do this it might be necessary to convert through a third currency) on the day and at such rates as we consider appropriate. We may deduct our usual *costs* in connection with the conversion; and
 - (b) you satisfy your obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the *costs* of the conversion.

Payment in full

- 9.3 You must pay us the *amount owing* in full without set off, counterclaim or deduction.
- 9.4 However, we may set off against the *amount owing* any money we owe you (whether or not due for payment).

Notices and other communications

- 9.5 Notices, certificates, consents, approvals and other communications in connection with this mortgage must be in writing. If you are a corporation, communications from you must be signed by a director or another person we approve.
- 9.6 They may be:
- (a) given personally (if they are for you and you are a corporation, to one of your directors; if they are for us, to one of our employees at the office where you arrange this mortgage or any other office we tell you); or
 - (b) left at the address last notified; or
 - (c) left at the property; or
 - (d) sent by prepaid post to the address last notified; or
 - (e) sent by fax to the fax number last notified; or
- given in any other way permitted by law.

- 9.7 They take effect from the time they are received unless a later time is specified in them.
- 9.8 If they are sent by post, they are taken to be received three days after the date of posting.
- 9.9 If they are sent by a fax machine that produces a transmission report, they are taken to be received at the time shown in a transmission report that indicates that the whole fax was sent.

Certificates

- 9.10 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.
- 9.11 We may rely on certificates provided by any other person with an *encumbrance* over the property as to the amount that is owed to them.

Prompt performance

- 9.12 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.

How we may exercise our rights

- 9.13 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate, including by imposing conditions.
- 9.14 We may enforce this mortgage before we enforce other rights or remedies:
- (a) against any other person; or
 - (b) under another document, such as another *encumbrance*.

If we have more than one *encumbrance*, we may enforce them in any order we choose.

- 9.15 If we or a *receiver* do not exercise a right or remedy fully or at a given time, then we or the *receiver* can still exercise it later.
- 9.16 Neither we nor a *receiver* are liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy, whether or not caused by our or the *receiver's* negligence.
- 9.17 If we or a *receiver* exercise any right under this mortgage or at law to enter or take possession of the property, we or the *receiver*:

- (a) have complete and unfettered discretion as to how the property is managed; and
- (b) are liable to account only for rents and profits actually received by us or the *receiver*.

9.18 Our and any *receiver's* rights and remedies under this mortgage:

- (a) are in addition to other rights and remedies given by law independently of this mortgage; and
- (b) may be exercised even if this involves a conflict of duty or we, or the *receiver*, have a personal interest in their exercise.

9.19 Our rights and remedies under this mortgage may be exercised by any of our directors, any of our employees whose job title includes the word "manager", "counsel", "head of", "team leader", "director" or "supervisor", or any other person we authorise.

Your obligations and our rights are unaffected

9.20 Rights given to us under this mortgage and your liabilities under it are not affected by anything that might otherwise affect them at law.

9.21 This mortgage does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) another *encumbrance* or right or remedy to which we are entitled; or
- (b) a judgment or order which we obtain against you in respect of any of the *amount owing*.

We can still exercise our rights under this mortgage as well as under the judgment, order, other *encumbrance*, right or remedy.

9.22 This mortgage binds each person who signs as mortgagor even if another person who was intended to sign does not sign it or is not bound by it.

Reinstatement of rights

9.23 Under law relating to *insolvency* a person may claim that a transaction (including a payment) in connection with the *amount owing* is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) we are immediately entitled, as against you, to the rights in respect of the *amount owing* to which we

were entitled immediately before the transaction; and

- (b) on request from us, you agree to do anything to restore to us any *encumbrance* we held from you immediately before the transaction.

Indemnities

9.24 The indemnities in this mortgage are continuing obligations, independent of your other obligations under this mortgage. They continue even after we have released the property from this mortgage. It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this mortgage.

Variation and waiver

9.25 A provision 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.

Power of attorney

9.26 You appoint us, each of our employees whose job title includes the word "manager", "counsel", "head of", "team leader", "director" or "supervisor", each *receiver* under this mortgage and any other person we authorise as your *attorney*. Each *attorney* may act independently or together. If we ask, you must formally approve anything an *attorney* does under clause 9.27. You may not revoke these appointments.

9.27 An *attorney* may:

- (a) do anything which you can lawfully authorise an *attorney* to do in connection with this mortgage, the property or a *licence* or which the attorney believes is expedient to give effect to any of our rights or a *receiver's* rights (these things may be done in your or the *attorney's* name and they include signing and delivering deeds, selling, transferring or leasing the property, selling, transferring or surrendering any lease, lodging or withdrawing caveats, otherwise dealing with the property and starting, conducting and defending legal proceedings, and dealing with a *licence* and sending any communications by which the property can be transferred or otherwise dealt with); and

- (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.
- 9.28 You acknowledge that any person, including the Registrar of Titles of Western Australia or any other registration authority in Australia or elsewhere dealing with any *attorney* or a person purporting to be an attorney under this power, is:
- (a) entitled to rely on execution of any document by that person as conclusive evidence that:
 - (i) the person holds the office set out in the power;
 - (ii) that the power of attorney has come into effect;
 - (iii) that the power of attorney has not been revoked; and
 - (iv) that the right or power being exercised (or purportedly exercised) is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power; and
 - (b) not required to make any enquiries in respect of any of the matters set out in paragraph (a).

Trustee provisions

Clauses 9.29 to 9.31 apply if you enter into this mortgage, or own any of the property, as trustee of any trust or settlement.

- 9.29 You declare that:
- (a) this mortgage is for the benefit of the trust;
 - (b) you are the sole trustee of the trust (together with anyone else who signs this mortgage as trustee);
 - (c) you have authority to enter into this mortgage and comply with its terms;
 - (d) you are not, and never have been, in default under the trust deed;
 - (e) you have the right to be fully indemnified out of the trust assets for obligations incurred under this mortgage and the trust property is sufficient to satisfy that right of indemnity and all other obligations

- for which you are entitled to be indemnified out of trust property;
- (f) no action has been taken or proposed to terminate the trust nor has any event for the vesting of the trust property occurred;
- (g) true copies of the trust deed and other documents relating to the trust have been provided to us and disclose all the terms of the trust; and
- (h) you have not delegated any of your powers as trustee or exercised any power of appointment.

You must tell us whenever anything happens which would mean you could not truthfully repeat all these declarations.

9.30 You must:

- (a) comply with your obligations as trustee of the trust; and
- (b) ensure that you remain the sole trustee of the trust (with anyone else who signs this mortgage as trustee).

9.31 You must not do anything, or permit anything to be done or fail to do anything, which may:

- (a) effect or facilitate the variation of the trust deed;
- (b) resettle, set aside or distribute any of the trust property; or
- (c) result in the trust property being mixed with other property.

Inconsistent law

9.32 To the extent permitted by law, this mortgage prevails to the extent it is inconsistent with any law.

9.33 If the Superannuation Industry (Supervision) Act 1993 (Cwlth) prohibits you from creating an *encumbrance* over any of the property, this mortgage does not extend to that property.

Applicable law and serving documents

9.34 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.

9.35 We may serve any document on you in a court action (including a writ of summons, other originating process or third or other party notice) by delivering it to the property or by leaving it there. This

clause does not prevent any other method of service.

Deed

9.36 This mortgage is a deed.

10 Meaning of words

amount owing means all money which:

at any time;

for any reason or circumstance in connection with any agreement (including a loan agreement, guarantee, lease or other facility document), transaction, engagement, document, instrument (whether or not negotiable), event, act, omission, matter or thing whatsoever;

whether arising under law or otherwise (including liquidated or unliquidated damages for default or breach of any obligation);

and whether or not of a type within the contemplation of the parties at the date of this mortgage:

- you are or may become actually or contingently liable to pay to us; or
- we have advanced or paid on your behalf or on your express or implied request; or
- we are liable to pay by reason of any act or omission on your part, or that we have paid or advanced in the protection or maintenance of the property or this mortgage following an act or omission, on your part; or
- you would have been liable to pay to us but the amount remains unpaid by reason of your *insolvency*.

This definition applies:

- irrespective of the capacity in which you or we became entitled to the amount concerned;
- irrespective of the capacity in which you or we became liable in respect of the amount concerned;
- whether you or we are liable as principal debtor, as surety, or otherwise;
- whether you are liable alone, or together with another person;

- even if you owe an amount or obligation to us because it was assigned to us, whether or not:

the assignment was before, at the same time as, or after this mortgage is executed; or

you consented to or were aware of the assignment; or

the assigned obligation was secured;

- even if this mortgage was assigned to us, whether or not:
 - you consented to or were aware of the assignment; or
 - any of the *amount owing* was previously unsecured;
- if you are a trustee, whether or not you have a right of indemnity from the trust fund.

arrangement with us means an arrangement (including an agreement or an *encumbrance*) under which a *debtor/guarantor* has or could in the future have obligations to us or any of our *related entities*.

attorney means each attorney appointed by you under clauses 9.26 to 9.28(b).

controller has the meaning given to it in the Corporations Act.

costs includes charges and expenses; and costs, charges and expenses in connection with advisers (in the case of legal advisers) on a full indemnity basis or solicitor and own client basis, whichever is higher.

debtor/guarantor means:

- you; and
- any person who guarantees payment of any part of the *amount owing*; and
- if any part of the *amount owing* includes obligations you owe under a guarantee, the person whose obligations you guarantee and any other person who guarantees that other person's obligations; and
- any other person you and we agree is to be a "*debtor/guarantor*" for the purpose of this mortgage.

encumbrance means any:

- security interest under the *PPSA* or security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, or title retention or flawed deposit arrangement; or
- right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- right that a person (other than the registered proprietor) has to remove something from land (known as a *profit à prendre*), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy; or
- third party right or interest or any right arising as a consequence of the enforcement of a judgement,

or any agreement to create any of them or allow them to exist.

environmental event means:

- a proceeding, investigation or claim against you;
- a request that you incur expenditure; or
- a request that you cease or change an activity you carry on,

in connection with an *environmental law* where that proceeding, investigation, claim, expenditure or request (in our reasonable opinion) has had or is likely to have a *material adverse effect*.

environmental law means any law in connection with planning or the protection of the environment, heritage, health or safety (including any authorisation issued in connection with it).

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

GST has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

A person is **insolvent** if:

- they are (or state they are) an *insolvent* under administration or *insolvent* (each as defined in the Corporations Act); or

- they have had a *controller* appointed, are in liquidation, in provisional liquidation, under administration or wound up or have had a *receiver* appointed to any part of their property; or

- they are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by us); or

- an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above; or

- they are taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand; or

- they are the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or they make a statement from which we reasonably deduce they are so subject); or

- they are otherwise unable to pay their debts when they fall due; or

- something having a substantially similar effect to any of the things referred to above happens in connection with them under the law of any jurisdiction.

licence means any right, licence, permit allocation, quota or authorisation (including to sell liquor, to discharge hazardous waste, to draw water or manage water rights, to keep gaming or poker machines or to develop and use the property) which allows activity to be carried out on or in connection with the property. It also includes a lease or any other allocation or right and any interest in a company, trust, joint venture, co-operative or irrigation scheme you use or hold in connection with the use or supply of water on or to the property.

material adverse effect means a material adverse effect on:

- your ability to comply with your obligations under this mortgage; or
- our rights under an *arrangement with us*; or
- your business or financial condition; or
- the value of the property.

PPSA means the Personal Property Securities Act 2009 (Cwlth).

receiver includes receiver, or receiver and manager.

related entity has the meaning given to it in the Corporations Act.

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

shared scheme law means any legislation that provides for the:

- subdivision and development of land with shared property; or
- subdivision of buildings; or
- management of land that is subdivided and has shared property; or
- management of subdivided buildings.

taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on our overall net income.

the property means each one or more of the following which the context allows:

- the land described in this mortgage;
- each fixture, structure or improvement on the land or fixed to it;
- your estate and interest in the land.

unarranged lending rate means the rate we publish from time to time as our unarranged lending rate, or a name we substitute for that name.

we means the person or persons named in the mortgage as mortgagee. If there are more than one, **we** means each of them separately and every two or more of them jointly. **We** includes our 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. **You** includes your successors and assigns. In the description of the *amount owing* it also refers to **you** as so defined whether alone or jointly or jointly and separately and whether as a principal or as a surety.

The singular includes the plural and vice versa.

A reference to:

- a document or agreement includes any variation or replacement of it;
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- a **guarantee** includes an indemnity;
- **including, such as 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;
- **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;
- **payable**, in relation to an amount, means an amount which is currently payable or will or may be payable in the future;

- **person** includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- any thing (including the *amount owing* and the property) includes the whole and each part of it;
- the Corporations Act means the Corporations Act 2001 (Cwth).