

Secure Funding Pty Ltd

Tasmania

**Residential Mortgage
Memorandum**

No M299

Residential mortgage memorandum

Key words

The meaning of words printed *like this* and of some other common key words is explained in clause 41 at the end of this mortgage.

Contents

What you undertake in this mortgage 2

How this mortgage affects you and the property

Rates, taxes and levies	3
Looking after the property	3
Insurance	3
Insurance claims	4
Building and other work	4
The property and adjoining land	4
Dealings - such as selling, renting or mortgaging	5
Other securities	5
Caveats	5
Consents	5
Payments such as compensation	5
Administrative matters	5
Additional obligation if you are a company	6

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

Shared schemes	6
Crown land	6
Rural land	6

Security over related property 7

Things we may do at any time 7

What can happen if you are in default?

When are you in default?	7
What can happen then?	7

Mortgagee's and receivers' powers 8

Costs and GST

Costs	8
GST	9

What happens to money we receive? 9

General matters

Setting off money	10
Notices, other communications and service of documents	10
Our certificates	10
Prompt performance	10
How we may exercise our rights	10
Your obligations and our rights are unaffected	11
Reinstatement of rights	11
Variation or waiver	11
Power of attorney	11
National Credit Code	12
Inconsistent law	12
Applicable law	12
Deed	12

Meaning of words 12

What you undertake in this mortgage

- 1.1 By signing 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.
- 1.2 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.
- 1.3 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 *Costs*) continue even if we release the property from this mortgage.
- 1.4 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.
- 1.5 You declare that:
 - (a) you own the property or are in the process of becoming the owner of it; and
 - (b) 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
 - (c) you do not breach any law or any obligation to any other person by signing this mortgage; and
 - (d) all the information you have given us is correct and not misleading; and
 - (e) 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

- (f) you have told us about any structure on adjoining land that encroaches on the property and any structure on the property that encroaches on adjoining land; and
 - (g) you are not in default.
- 1.6 You must tell us if anything has happened which prevents you from repeating any one or more of the declarations in clause 1.5 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

Rates, taxes and levies

2. 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

3.1 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 contaminated, defective or seriously damaged; and
- (d) remove any contaminant and clean up any contamination, if the property is contaminated;
- (e) 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.

3.2 You must:

- (a) give us 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

- (b) comply with all laws and requirements of authorities 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.

Insurance

- 4.1 You must maintain insurance over the property and any *works* against fire and other usual risks.
- 4.2 The insurance under clause 4.1 must be for the full insurable value of the property and any *works* on a replacement and reinstatement basis, unless the property and the *works* are insured by a *governing body* as part of a *shared scheme*.
- 4.3 If the property and the *works* are insured by a *governing body* as part of a *shared scheme* anywhere other than Victoria or the Australian Capital Territory, the insurance under clause 4.1 must be for the total amount secured by all mortgages and charges over the property (sometimes known as a mortgagee's policy).
- 4.4 If the property is part of a *shared scheme* in Victoria or the Australian Capital Territory, the insurance under clause 4.1 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 your share in the *shared property* (sometimes known as a mortgagee's policy).
- 4.5 You must maintain insurance against public liability risk and any other risk we reasonably require in connection with the property.
- 4.6 Each policy under clauses 4.1 to 4.5 must:
 - (a) note 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.
- 4.7 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.
- 4.8 You must produce evidence satisfactory to us of current insurance cover whenever we ask for it.
- 4.9 You must:
- (a) ensure that the insurance cover is not reduced or cancelled, and notify us if it is or could be; and
 - (b) 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.
- 4.10 The obligations in clauses 4.8 and 4.9 apply to insurance taken out by either you or a *governing body*.

Insurance claims

- 5.1 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:
- (a) used to reinstate the property or carry out other *works*; or
 - (b) paid to us. (We must then use them as set out in clause 27.)

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.

- 5.2 You must notify us if an insurance claim is refused either in part or in full.
- 5.3 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

- 6.1 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.
- 6.2 You must:
- (a) comply with all laws, requirements of authorities, easements and covenants which affect any *works*; and

- (b) ensure that all *works* are done competently and completed within a reasonable time; and
- (c) obtain and give us relevant certificates and permits that we require (such as certificates of satisfactory completion or compliance or occupancy permits).

- 6.3 If we think you are not proceeding with *works* satisfactorily, we may take them over including by varying, demolishing or stopping them as we see fit.
- 6.4 We are not liable for any loss:
- (a) in connection with *works* we consent to (including loss arising out of plans or specifications we may approve); or
 - (b) which arises because we do not finish *works* we take over under clause 6.3.
- 6.5 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.
- 6.6 For the purpose 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 consent to us giving notice of the transfer under this clause to any relevant insurer.

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.

The property and adjoining land

- 7.1 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.

7.2 If we ask, you must have any encroachment on the property from adjoining land removed.

Dealings - such as selling, renting or mortgaging

8. You must get our consent before you:
- (a) sell the property; or
 - (b) rent out the property or allow a surrender or variation of any rental agreement; or
 - (c) create another *security* in connection with the property, or allow one to arise or continue; or
 - (d) part with possession of the property; or
 - (e) subdivide or consolidate the property; or
 - (f) create, release or vary an easement, covenant or public right of way which relates to the property or allow one to arise; or
 - (g) 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.

Other securities

- 9.1 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*.
- 9.2 If you do not get our consent and any agreement we ask for, we:
- (a) need not make funds available under any *agreement covered by this mortgage*;
 - (b) 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.
- 9.3 You must ensure that the amount secured under any other *security* over the property is not increased without our consent.
- 9.4 You must comply on time with any obligation in connection with any other *security* over the property.

Caveats

10. You must do everything necessary to remove any caveat placed on the title to

the property without our consent. (A caveat is a warning, noted in the official title register, restricting dealings with the property, such as its sale.)

Consents

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

Payments such as compensation

- 12.1 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).
- 12.2 You must claim payment in the manner 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).
- 12.3 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 27.)

Administrative matters

- 13.1 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 a *security* over the property to which we have consented and which has priority over this mortgage.
- 13.2 We may register this mortgage.
- 13.3 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):
- (a) 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
 - (b) to enable us to register this mortgage with the agreed priority; or

- (c) to enable us to exercise our rights in connection with the property; or
- (d) to ensure that each agreement which is intended to be covered by this mortgage becomes an *agreement covered by this mortgage*; or
- (e) to enable us to register the power of attorney in clause 36 or a similar power; or
- (f) to show whether you are complying with this mortgage.

13.4 You agree that we may fill in any blanks in this mortgage.

13.5 You must supply us with any information or documents we ask for about or affecting:

- (a) the property or any *works*; 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.

13.6 You must pay for anything that you must do under this mortgage.

Additional obligation if you are a company

14. If you are a company, you must ensure that your directors and your secretary are not changed, and you must not approve or register a transfer of any shares, without our consent.

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

Shared schemes

15. If the property is part of a *shared scheme* (for example, a townhouse or home unit), you must:
- (a) comply with the by-laws, rules, service agreement or articles of the *shared scheme*; and
 - (b) vote at any *governing body* meeting in accordance with any directions we give you. (However, this requirement does not apply if it would be a breach of a *shared scheme law*); 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

- (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

16. 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

17. 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; and
- (c) 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.

Security over related property

18. 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*;
 - (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.

Things we may do at any time

- 19.1 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.
- 19.2 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.
- 19.3 Unless there is an emergency, we must give you reasonable notice before entering under clause 19.2. You must help us to enter, such as by getting any consent necessary.
- 19.4 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* in accordance with this mortgage.

What can happen if you are in default?

When are you in default?

20. 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, or you don't do something you agree to do, under this mortgage or an *agreement covered by this mortgage*; or
 - (c) you give, or another person gives, us incorrect or misleading information (including through your declarations under clause 1.5) in connection with this mortgage or an *agreement covered by this mortgage*; or
 - (d) we reasonably believe you or another person has acted fraudulently in connection with this mortgage or an *agreement covered by this mortgage*; or
 - (e) if you are a company, you become *insolvent* or steps are taken to make you so; or
 - (f) 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.

What can happen then?

If the National Credit Code applies to this mortgage clause 21 applies.

- 21.1 If you are in default and we choose to enforce this mortgage, we must give you a notice. (You must have been in default for one day or more before we may do this.) The notice must:
- (a) state that you are in default; and
 - (b) specify a period of grace of at least 31 days.
- 21.2 The law (including law governing the exercise of our power of sale as mortgagee and, if applicable, a National Credit Code requires us to give you certain information before enforcing this mortgage. We may include that information in the notice under clause 21.1 or another notice.
- 21.3 During the period of grace given under clause 21.1, you are allowed to correct any default that can be corrected. If

you do not correct that default within that period or if there is a default that cannot be corrected, then, to the extent it is not already due for payment, the *amount owing* becomes immediately due for payment at the end of the grace period without further notice. In addition, we may then do anything set out in clause 23.

If the National Credit Code does not apply to this mortgage clause 22 applies.

- 22.1 If you are in default, the *amount owing* is payable on demand. In addition, after a default has occurred, we may do anything else set out in clause 23.
- 22.2 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.
- 22.3 If 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 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.

Mortgagee's and receivers' powers

- 23.1 In addition to our rights under clause 21 or clause 22, we may then do one or more of the following as well as anything else the law allows us to do as mortgagee:
- (a) sue you for the *amount owing*;
 - (b) take possession of the property (we may remove personal possessions and either abandon them or store them without being liable to you. If we store them and you do not reclaim them within a reasonable time, we may dispose of them and use the proceeds towards paying the *amount owing*);
 - (c) sever, remove and sell fixtures;
 - (d) do anything an owner or *receiver* of the property could do, including improving, selling or leasing it; and
 - (e) appoint a *receiver* to do any of those things and anything else the law allows a *receiver* to do.

If we take possession of the property, we are not liable as an owner-builder unless required by law.

- 23.2 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.
- 23.3 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* pay at any figure we determine as appropriate, remove a *receiver* and appoint a new or additional *receiver*.

Costs and GST

Costs

If the National Credit Code applies to this mortgage clause 24 applies.

24. When we ask, you must pay us the reasonable *costs* we reasonably incur in enforcing this mortgage after you are in default (including:
- (a) in preserving or maintaining the property - such as by paying

insurance, rates and taxes for the property; and

- (b) unless it is prevented by law (such as under a National Credit Code), in relation to our staff and facilities).

This clause applies to costs we incur before or after taking action under clause 21 or clause 23.

If the National Credit Code does not apply to this mortgage clause 25 applies.

25.1 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; and
- (b) all taxes, fees and charges payable in connection with this mortgage and any transaction under it and any interest, penalties, fines and costs 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.

25.2 You indemnify us against, and you must therefore pay us on demand for, liability, loss or costs we suffer or incur:

- (a) if you default under this mortgage; 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) any indemnity we give a controller (as defined in the Corporations Act) or administrator appointed:
 - (i) in respect of you; or
 - (ii) over any of the property.

25.3 You must pay us an amount equal to any liability, loss or costs of a kind referred to in clauses 25.2(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.

GST

26. Unless it is prevented by the National Credit Code, 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.

What happens to money we receive?

27.1 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.

27.2 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.

27.3 We may use any money received under this mortgage towards paying any part of the amount owing we choose, such as by:

- (a) paying a later instalment before an earlier instalment. (This applies even if that later instalment falls due after we give a default notice or notice of demand); or
- (b) applying the payment under one agreement covered by this mortgage before another.

27.4 We must pay any money remaining after the amount owing is paid in full 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.

27.5 We only credit payments as soon as practicable after we actually receive them.

General matters

Setting off money

28. Except to the extent you have a right of set-off granted by law which we cannot exclude by agreement (such as under a National Credit Code), you must pay the *amount owing* in full without setting off amounts you believe we owe you and without counterclaiming amounts from us.

We may set off against the *amount owing* any money we owe you.

Notices, other communications and service of documents

29.1 Notices, certificates, consents, approvals and other communications in connection with this mortgage must be in writing.

29.2 Communications from us may be signed by any of our employees who we have authorised to sign such communications. If you are a company, communications from you must be signed by a director.

29.3 Communications to you may be:

- (a) given personally (if you are a company, to one of your directors); or
- (b) left at your residential or business address last known to us; or
- (c) sent by post to your postal or residential or business address last known to us; or
- (d) sent by fax to your residential or business fax number last known to us; or
- (e) given in any other way permitted by law.

29.4 Communications to us must be:

- (a) given personally to one of our employees at:
 - the branch where you arrange this mortgage; or
 - any other branch we tell you; or
 - our registered office; or

(b) sent by prepaid post or electronically (such as by fax or telex) to any of those places; or

(c) given by any other means permitted by law.

29.5 A communication is taken to be given:

- (a) in the case of a communication given personally - on the date it bears or the date it is received by the person to whom it is addressed, whichever is the later; or
- (b) in the case of a communication sent by post - on the date it bears or the date it would have been delivered in the ordinary course of post, whichever is the later; or
- (c) in the case of a communication sent by fax or some other form of electronic transmission - on the date it bears or 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, whichever is the later.

29.6 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 by leaving it there. This clause does not prevent any other method of service.

Our certificates

30. 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.

Prompt performance

31. 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

32.1 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate including by imposing conditions.

32.2 We may enforce this mortgage before we enforce other rights or remedies including under another *security*.

32.3 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.

32.4 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.

32.5 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*.

32.6 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 or any other person we authorise.

Your obligations and our rights are unaffected

33.1 Subject to clause 37, 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.

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

- (a) another *security* 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, *security*, right or remedy.)

Reinstatement of rights

34. 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 *security* we held from you

immediately before the transaction.

Variation or waiver

35. 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.

Power of attorney

36.1 You appoint us, each of our directors, each of our employees whose job title includes the word manager, and each receiver under this mortgage, separately as your attorney. If we ask, you must formally approve anything they do under clause 36.2. You may not revoke these appointments.

36.2 If we have served a notice stating that you are in default, each attorney may:

- (a) do anything which you can do as owner of the property (including executing deeds, selling or leasing the property (including land in Western Australia), selling or surrendering any lease, lodging or withdrawing caveats and starting, conducting and defending legal proceedings); 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.

36.3 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 being purported to be exercised is properly exercised and that the circumstances have

arisen to authorise the exercise of that right and power;

- (b) not required to make any enquiries in respect of any of the matters set out in paragraph (a).

National Credit Code

37.1 This clause 37 applies to the extent that a National Credit Code applies to this mortgage.

37.2 If:

- (a) that Code would otherwise make a provision of this mortgage illegal, void or unenforceable; or
- (b) a provision of 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 to comply with that Code or, if necessary, omitted.

37.3 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:

- (a) your liabilities under that credit contract, guarantee or indemnity; and
- (b) our reasonable enforcement expenses reasonably incurred in enforcing this mortgage.

Inconsistent law

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

38.2. If the Superannuation Industry (Supervision) Act 1993 (Cwlth) prohibits you from mortgaging any of the property, this mortgage does not extend to that property.

Applicable law

39. 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.

Deed

40. This mortgage is a deed.

- 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.

receiver includes receiver or receiver and manager.

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:

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

Meaning of words

41. **agreement covered by this mortgage** means:

- an agreement or other arrangement (including a deed) under which one or more of you incur or owe 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
- 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:

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

costs includes charges and expenses; and costs, charges and expenses in connection with advisors (in the case of legal advisors) on a full indemnity basis.

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

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 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 regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them);
- the Corporations Act means the Corporations Act 2001 (Cwlth);
- any thing (including the *amount owing* and the property) includes the whole and each part of it.