

# Consumer Mortgage Memorandum of Common Provisions

October 2012



# Important Information

The provisions contained in the following pages of this document form part of the mortgage which you are giving to Bankwest and are a copy (except as to page numbering) of the provisions of the following documents.

- ACT** Memorandum of Provisions filed at the Office of the Australian Capital Territory Registrar-General as Number 1790081.
- NSW** Memorandum filed at the Office of the New South Wales Department of Lands as Number AG836521.
- NT** Memorandum of Standard Terms and Conditions of Mortgage filed at the Office of the Northern Territory Registrar-General as Number 372156.
- QLD** Memorandum filed at the Office of the Queensland Department of Natural Resources and Mines as Number 714341223.
- SA** Memorandum of Standard Terms and Conditions of Mortgage filed at the South Australian Lands Titles Registration Office as Number 11724141.
- TAS** Memorandum of Provisions lodged in the Office of the Tasmanian Recorder of Titles as Number M455.
- VIC** Memorandum of Provisions filed at the Victorian Land Titles Office as Number AA1949.
- WA** Memorandum of Common Provisions filed at the Office of the Western Australian Department of Land Information as Number L877416.

**Please read this document carefully and seek independent legal advice before you sign the mortgage.**

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# Mortgage Provisions

The provisions contained in this document form part of any mortgage given to the Bank which, by reference, incorporates them. The provisions apply whether the mortgage is given by a borrower as security for a loan made to the borrower by the Bank and/or by a guarantor as security for a guarantee of a loan made by the Bank to another person.

## 1. How to interpret this Mortgage

### 1.1 Definitions

In this mortgage, unless the context otherwise requires:

**Amount Owing** means at any time, all money which you owe the Bank for any reason, under or in relation to a Bank Document, where the money is or becomes owed now or in the future or actually or contingently, except as follows:

- (a) if the Bank Document is regulated by the Credit Code, the Amount Owing will not include any amount in excess of the sum of your liability under that Bank Document and the Bank's Enforcement Expenses; and
- (b) if the Bank Document is entered into after the date of this mortgage, the Amount Owing will not include any amount owing under the Bank Document, unless the Bank gives you a copy of the Bank Document and you acknowledge in writing that it is a Bank Document for the purposes of this mortgage.

**Authorised Officer** means a director, secretary or an officer of the Bank whose title contains any of the words 'Chief', 'Manager', 'Counsel' or 'Director', a person performing the functions of any of them or any solicitor acting for the Bank.

**Bank** means Commonwealth Bank of Australia ABN 48 123 123 124 AFSL / Australian Credit Licence 234945 trading as Bankwest its successors and assigns.

**Bank Document** means an agreement or arrangement under which, you incur or owe obligations to the Bank or under which the Bank has rights against you and includes a guarantee and this mortgage and any other agreement which you acknowledge in writing to be a Bank Document for the purposes of this mortgage.

**Building Work** means any work carried out to construct, complete, remove, alter or demolish any improvements or any excavation or earth works on the Property.

**Credit Code** means Schedule 1 to the National Consumer Credit Protection Act 2009 (Cth) and includes any instruments made under that Schedule and regulations made under that Act for the purposes of that Schedule.

**Enforcement Expenses** means the Bank's internal and external expenses reasonably incurred in taking possession of the Property or in taking other action to enforce the mortgage and includes expenses incurred in preserving or maintaining the Property after a breach of this mortgage by you (including insurance, rates and taxes payable for the Property) and which are authorised by this mortgage.

The **Bank's internal expenses** include but are not limited to the Bank's internal lawyers' fees and expenses and internal administration costs. The Bank's external expenses include but are not limited to barristers' fees, lawyers' fees and expenses, receivers' fee and charges, valuers' fees, real estate agents' commissions, licensed debt recovery agents' fees and commissions, process servers' fees, inquiry and other Bank agents' fees and charges.

**Environmental Law** means any law which has as one of its purposes or effects the protection of the environment.

**Insolvent** means being bankrupt, being wound up, or being subject to administration or receivership or any similar thing under law or otherwise being unable to pay debts when they fall due and 'Insolvency' has a corresponding meaning.

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

- (a) the land described in this mortgage;
- (b) each fixture, structure or improvement on the land or fixed to it;
- (c) your estate and interest in the land; and
- (d) any growing or mature crops on the land.

**Security** means any interest securing the payment of money or the performance of obligations including a mortgage, charge, lien, pledge, trust or power.

**Title Documents** means all certificates of title and other documents regarded as proof of your ownership of the Property.

**You** means the person or persons named in the mortgage as the 'Mortgagor' and 'your' has a corresponding meaning.

### 1.2 Interpretation

The following rules also apply in interpreting this mortgage, unless the context otherwise requires:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other;
- (c) a reference to a document or agreement includes any variation or replacement of it; and
- (d) any thing (for example the Amount Owing) includes the whole and each part of it.

### 1.3 Multiple parties

If a party to this mortgage is made up of more than one person:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party is a reference to each of those persons separately, so that, for example, a representation, warranty or undertaking is given by each of them separately.

## 2. Legislation

### 2.1 References to Legislation

A reference in this mortgage to any particular legislation is a reference to that legislation and any regulations or rules made under it and any legislation, regulation or rule which replaces any of them in force for the time being.

### 2.2 Effect of Legislation

Any legislation having the effect of limiting the Bank's rights or powers, or requiring it to give notices or to take any other action does not apply, unless the Bank is prevented by the legislation from excluding its application. Any legislation that gives rights or protection to the Bank, or imposes obligations on you, will apply except to the extent, that it is inconsistent with this mortgage.

### 2.3 Credit Code

This clause 2.3 applies only to the extent, if any, that the Credit Code applies to this mortgage and, to that extent, it is effective despite any other provision of this mortgage.

This mortgage is not to be read as:

- (a) excluding, modifying or restricting any of the rights, powers, or duties conferred or imposed on the Bank or you by or under the Credit Code, except to the extent that the law allows, and then the mortgage is to be read so as to exclude such rights, powers, or duties to the full extent that the law allows;
- (b) varying the provisions of the Bank Document secured by this mortgage in a way not allowed by the Credit Code;
- (c) requiring or securing (or purporting to do so) the payment of an amount or the performance of an obligation beyond that allowed by the Credit Code; or
- (d) including a provision which is void under the Credit Code.

This mortgage is to be read down (interpreted) to the extent needed to prevent it having those effects. If this cannot be done, it takes effect as if it did not include that part which cannot be so read down.

## 3. Your payment and other obligations

### 3.1 Bank Document

You will pay the Amount Owing to the Bank in accordance with the terms of a Bank Document.

### 3.2 Enforcement Expenses

If you breach any term of this mortgage and the Bank or any of its agents incurs Enforcement Expenses in enforcing the Bank's rights under the mortgage, you must pay to the Bank the Enforcement Expenses.

### 3.3 Other Obligations

You will promptly perform all your other obligations under any Bank Document including this mortgage.

## 4. What this Mortgage secures

This mortgage is security for payment to the Bank of the Amount Owing and for the performance by you of all your other obligations under this mortgage.

## 5. Title to Property

You promise that, except for other interests noted on the certificate of title for the Property, you are the absolute owner of the interest in the Property which you are mortgaging to the Bank. Nobody else has, or claims, any rights in relation to the Property which are inconsistent with your own.

## 6. Your obligations in relation to the Property

### 6.1 Maintaining the Property

You must keep the Property in good condition and make sure that any Building Work on the Property is completed properly.

### 6.2 Alterations

You must not do any of the following unless the Bank agrees in writing:

- (a) make any structural alteration to the Property;
- (b) remove any structures from the Property; or
- (c) do anything else which might reduce the value of the Property.

### 6.3 Compliance with laws and government requirements

You must comply with all laws and the requirements of all councils and other government bodies in relation to the Property.

### 6.4 Environmental Laws

You must promptly remedy any breach of Environmental Laws affecting the Property.

### 6.5 The Bank may inspect Property

The Bank and its Authorised Officers may:

- (a) enter the Property for the purpose of inspecting it after giving you reasonable notice; and
- (b) do anything that the Bank considers necessary or desirable to remedy any breach of this mortgage by you.

### 6.6 Compulsory acquisition of the Property

- (a) If you become aware that the Property is or may be compulsorily acquired or resumed by any government body, you must promptly notify the Bank in writing, and keep the Bank fully informed in writing of all steps taken in relation to that resumption or acquisition.
- (b) You must comply with any directions that the Bank gives in relation to any resumption or acquisition, and take all reasonable steps to ensure that appropriate compensation is paid. You must make sure that all compensation money is paid to the Bank, who must deal with it in accordance with this mortgage.
- (c) The Bank may in its discretion conduct any negotiations with the government body in relation to a resumption or acquisition of the Property.

### 6.7 Rates and taxes

You must pay all rates and taxes in relation to the Property before their due dates.

### 6.8 Dealing with the Property

- (a) You must not:
  - (i) sell, lease, mortgage or grant any interest in the Property or dispose of your rights in relation to the Property; or
  - (ii) subdivide the Property.
- (b) The prohibition in paragraph (a) applies unless the Bank agrees in writing or unless the Bank is prevented by legislation from limiting your power to do any of the prohibited things.

### 6.9 Permanent residence

You must notify the Bank immediately if you no longer live permanently in the Property.

### 6.10 Protection of the Bank's interest in the Property

- (a) If the Bank asks you to, you must sign any documents and take any other steps reasonably required on your part to:
  - (i) ensure that the Bank has a proper mortgage over the Property;
  - (ii) overcome any problems which affect the validity or enforceability of this mortgage; and
  - (iii) enable the Bank to better exercise its rights under this mortgage.
- (b) You must make sure that anyone else who claims to have an interest in the Property also takes the steps referred to in paragraph (a) as requested by the Bank.

## 7. Insurance

### 7.1 You must insure the Property

- (a) You must insure the Property at all times against fire, storm, tempest, flood and any other risk that the Bank reasonably requires as follows:
  - (i) with an insurance company acceptable to, and on conditions acceptable to, the Bank for the Property's full insurable value;
  - (ii) the full insurable value of the Property must be assessed on the basis of the estimated cost of reinstating or replacing all improvements, whichever is the higher figure, or any other amount as agreed to by the Bank in writing; and
  - (iii) the Bank's interest in the Property as mortgagee must be noted on the insurance policy.
- (b) You must pay all premiums and other amounts owing under the insurance policy before their due dates.

### 7.2 You must provide insurance documents

- (a) Whenever a policy is taken out or renewed, you must promptly give the Bank written details of the policy together with a copy of the policy document and the receipt for the current premium payment.
- (b) You must give the Bank the following, whenever requested by the Bank:
  - (i) the original policy document;
  - (ii) a certificate of currency in relation to the insurance; and
  - (iii) any other documents that the Bank requires in relation to the insurance.

### 7.3 You must notify the Bank

You must notify the Bank immediately in writing if anything happens which might cause:

- (a) the making of a claim under the insurance policy;
- (b) the cancellation or lapsing of the insurance policy; or
- (c) the denial or reduction of any claim under the policy.

### 7.4 The Bank may exercise insurance rights

The Bank may, either in your name or its own name, make any claims, conduct any legal proceedings and settle any claims in relation to any insurance taken out under this mortgage. You will not do any of these things unless the Bank agrees in writing.

### 7.5 Proceeds of claims

You must hold the proceeds of any claim under the insurance policy on trust for, and pay them to, the Bank. The Bank may apply the proceeds of any claim towards payment of the Amount Owing or towards restoration or rebuilding of the Property, unless the law requires otherwise.

## 8. Default

### 8.1 What amounts to default

You are in default if you do not pay any part of the Amount Owing when it is due for payment or if you breach any other term of this mortgage.

### 8.2 Bank to give notice

- (a) if this mortgage is regulated by the Credit Code then, unless certain special circumstances as set out in the Credit Code apply, the Bank can take action to enforce this mortgage only if:
  - (i) it has given you written notice that you are in default;
  - (ii) the notice allows you a period of at least 30 days from the date of the notice to remedy the default; and
  - (iii) you do not remedy the default within that notice period.

You will be deemed to have failed to remedy the default specified in the notice if, at the end of the time allowed by the notice, you have remedied that default but have committed another of the same type which you have failed to remedy.

- (b) The Bank may be required by other laws to give notice before exercising some of its rights under this clause 8, and may have obligations imposed on it about what it must do when exercising

those rights. To the maximum extent allowed by law, those requirements do not apply to this mortgage. However, to the extent that the law does not allow those requirements to be excluded, the Bank must comply with them.

- (c) In addition, if any legislation requires the giving of a period of notice or the expiration of a period of time before the Bank may exercise any of its rights under this clause 8 and that requirement cannot be excluded but the period of time may be shortened, the time is shortened to the greater of:
  - (i) the shortest period which is legally permissible; or
  - (ii) one day.
- (d) To the extent that the law does not permit those requirements to be excluded or the period of time to be shortened the Bank must comply with those requirements.

### 8.3 The Banks rights on default

If you default, the Bank may do any of the following things, either in your name or in its name:

- (a) exercise any right set out in this clause 8;
- (b) exercise any other right that the law gives to a mortgagee in the circumstances;
- (c) take any action in relation to the Property that you could take if the Property were not mortgaged; and
- (d) do anything that the Bank believes is necessary or desirable to give effect to this clause 8.3.

### 8.4 The Bank's right to enter and take possession

If you default the Bank may take possession of all or any part of the Property by physically taking possession of that part, or by doing anything else that the law regards as equivalent to actually entering into possession. The Bank may withdraw from possession at any time after it has entered into possession.

### 8.5 The Bank's right to sell

If you default the Bank may sell the Property. The Bank has all of the same powers in relation to a sale of the Property that you would have if the Property was not mortgaged, and these powers extend to all arrangements that the Bank considers to be incidental to any sale.

## 8.6 Removal of items from Property

- (a) You must remove from the Property anything that is not subject to this mortgage if:
    - (i) you are in default and the Bank is entitled to take action to enforce this mortgage;
    - (ii) you are asked to do so by the Bank.
  - (b) If you do not remove the things referred to in paragraph (a) within 7 days of the Bank asking you to do so, you have no further claim to those things, and the Bank may:
    - (i) remove them and place them into storage at your expense;
    - (ii) sell them or otherwise dispose of them in any way that it wishes;
    - (iii) apply the proceeds of the sale of the things in the same way as any other money received under this mortgage.
- (d) In applying any money towards the Amount Owing, the Bank will apply the money to the Amount Owing in the following order:
    - (i) first, towards any Enforcement Expenses;
    - (ii) then, towards fees and charges;
    - (iii) then towards interest charges; and
    - (iv) then towards any other amount owing.
  - (e) The Bank may pay any remaining money to you, or into a bank account in your name and in either case has no further liability in relation to the money.

## 9.2 Setting off money and combination of accounts

- (a) You must pay the Amount Owing in full without deducting or setting off amounts you believe the Bank owes you except to the extent:
  - (i) you have a right of set off granted by law which the Bank cannot exclude by agreement; or
  - (ii) the amounts are the subject of dispute resolution proceedings or court action.
- (b) If you have two or more accounts with the Bank, the Bank may at any time without notice combine the balances of any two or more of those accounts. The Bank may refuse to pay cheques, make advances or meet obligations to or for you on the basis that the combined accounts had at all times been a single account.

## 8.7 The Bank does not lose rights

The Bank may exercise any of its rights under this clause 8 even if:

- (a) it has received money from you after your default, if that money is not enough to remedy your default;
- (b) it has negotiated with you after your default but has not agreed to postpone the exercise of its rights;
- (c) it holds any other security in relation to the Amount Owing; or
- (d) any other similar circumstances have arisen.

# 9. Miscellaneous

## 9.1 Payments to the Bank

- (a) You must make all payments due to the Bank without deducting or withholding any amount for tax or any claim that you have against the Bank, except as described in clause 9.2.
- (b) The Bank is only regarded as receiving any payment when it actually receives the amount of the payment in cash or cleared funds.
- (c) The Bank may apply any money that it receives in relation to this mortgage:
  - (i) first, to pay the Amount Owing (including the Bank's Enforcement Expenses); and
  - (ii) second, to pay any money claimed to be owing to the holder of any later mortgage or charge which is recorded on the certificate of title to the Property, in the order of priority appearing on the certificate of title or as otherwise agreed with the holder of the later mortgage or charge.

## 9.3 The Bank may carry out your obligations

If you breach this mortgage, the Bank may rectify that breach, and you must reimburse the expenses incurred by the Bank in rectifying that breach. The amount that you must reimburse to the Bank must not exceed its reasonable Enforcement Expenses.

## 9.4 Government charges

You must pay all government charges including mortgage duty, debits tax and all other taxes and duties on this mortgage and on all payments and receipts under this mortgage.

## 9.5 Exercise of the Bank's rights

The Bank can do anything permitted under this document immediately, after a time, or on more than one occasion. The fact that it does not do something does not mean that it has given up the right to do that thing later.



## 9.6 Power of attorney

- (a) You appoint the Bank and each Authorised Officer (on the basis that any person appointed may act without the others) as your attorney with power to:
- (i) sign any deed or other document, and do any other thing that the attorney believes on reasonable grounds is necessary or desirable to make sure that this mortgage is as effective as possible;
  - (ii) do anything that the Bank can do under this mortgage;
  - (iii) do anything that you can do or ought to have done under this mortgage; and
  - (iv) represent you at any meeting involving the Property.
- (b) You must confirm in writing that anything done by the attorney is binding on you, if you are asked to do so.

## 9.7 Who can exercise the Bank's rights

Any Authorised Officer may exercise the Bank's rights and powers under this mortgage.

## 9.8 The Bank may certify matters

- (a) The Bank may make a written statement about any matter in relation to this mortgage, for example:
- (i) the amount of the Amount Owing at any particular time;
  - (ii) debits, credits and balances of any of your accounts at any particular date;
  - (iii) relevant rates of interest; and
  - (iv) whether or not any particular thing has happened.
- (b) A statement under clause 9.8(a) is sufficient evidence of the matter and regarded as correct unless you prove it to be incorrect.

## 9.9 The Bank to hold Title Documents

The Bank may hold all of the Title Documents and you must ensure that they are made available to the Bank.

## 9.10 The Bank may transfer this mortgage

The Bank may transfer its rights under this mortgage and your obligations under it without notifying you or obtaining your consent.

## 9.11 Supply of information to the Bank

- (a) You must keep the Bank informed of all matters which are likely to affect significantly the Property or its value, or your ability to carry out your obligations under this mortgage.

- (b) In addition to the requirements in paragraph (a), you must give the Bank any information it requests about:
- (i) the Property; and
  - (ii) your obligations under this mortgage.

## 9.12 Supply of information by the Bank

The Bank may give information about this mortgage and your obligations under it to:

- (a) anyone who has any liability to the Bank in relation to the Amount Owing (for example a guarantor);
- (b) any person to whom the Bank proposes to transfer, or transfers, this mortgage or your obligations under it;
- (c) a related entity of the Bank to assess your total liabilities to the Bank and the related entity;
- (d) any agent, broker or contractor providing services to the Bank in connection with the mortgage; and
- (e) any person, to the extent necessary in the view of the Bank, in order to carry out any instruction you give to the Bank.

## 9.13 Releases do not affect your liability to the Bank

If the Bank releases any other person who may be liable to it in respect of the Amount Owing, that release does not affect your liability to the Bank and the Bank does not have to obtain your consent before releasing any other person. In this clause 9.13, release from liability includes any partial release.

## 9.14 Void or unenforceable transactions

- (a) If any payment, security or other transaction in favour of the Bank in relation to the Amount Owing is found to be void or unenforceable or liable to be cancelled then the Bank has the same rights under this mortgage as if that transaction had never taken place.
- (b) If the Bank has given a discharge of this mortgage on the basis of a void transaction, then the discharge is treated as having no effect and you must, if requested to do so, grant a fresh mortgage in favour of the Bank to replace the discharged mortgage.

## 9.15 Mortgage to remain binding despite changes

This mortgage continues until the Bank discharges it, and is not affected or discharged by any of the following:

- (a) any payments or credits towards the Amount Owing;
- (b) your death, bankruptcy, mental incapacity, receivership, administration, liquidation; or
- (c) your replacement as trustee (if you have entered into this mortgage as trustee).

## 9.16 Relationship to other documents

- (a) The Bank's rights under this mortgage are not affected by:
  - (i) any other Bank Document; or
  - (ii) anything that the Bank does in connection with any other Bank Document.
- (b) The Bank's rights under any other Bank Document are not affected by:
  - (i) this mortgage; or
  - (ii) anything that the Bank does under or in connection with this mortgage.
- (c) This clause 9.16 applies unless the Bank agrees otherwise in writing.

## 9.17 No reliance on the Bank

If the Bank inspects the Property or has the Property inspected on its behalf and obtains a valuation or other report about the Property that report is made or obtained for the Bank's own purposes and not for you, and you must not rely on it in any way.

## 9.18 If you are a Trustee

If you are entering into this mortgage as the trustee of a trust you make the following promises:

- (a) you are liable under this mortgage both personally and as trustee of the trust;
- (b) you are entering into this mortgage for proper purposes of the trust;
- (c) you have all necessary power and authority under the trust to enter into this mortgage; and
- (d) you have the right to be fully indemnified (reimbursed) out of the trust property in priority to the beneficiaries of the trust for all liabilities that you incur under this mortgage.

# 10. Notices

## 10.1 Form of communications

Notices, certificates, consents and other communications in connection with this mortgage must be:

- (a) in writing; and
- (b) must clearly identify this mortgage and the Property.

## 10.2 Communications from the Bank

Communications from the Bank may be signed by an Authorised Officer.

## 10.3 Communications to you

Communications to you may be:

- (a) given personally;
- (b) left at your residential or business address last known to the Bank;
- (c) sent by post to your postal or residential or business address last known to the Bank;
- (d) sent by fax to your residential or business fax number last known to the Bank; or
- (e) given in any other way permitted by law.

## 10.4 Communications to the Bank

Communications to the Bank must be:

- (a) given personally to one of its employees at:
  - (i) the office of the Bank which administers this mortgage;
  - (ii) any other place the Bank tells you; or
  - (iii) the Bank's registered office;
- (b) sent by prepaid post or electronically (such as by fax) to any of those places using the contact numbers and details provided to you by the Bank; or
- (c) given by any other means permitted by law.

## 10.5 Time of communication

A communication is taken to be given:

- (a) if 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;
- (b) if sent by post - on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later; or
- (c) if sent by facsimile transmission 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 that the communication was sent to the facsimile or other number of the person to whom it is addressed, whichever is the later.

# 11. Special provisions

## 11.1 Units and community title properties

If the Property is strata or community title, Schedule 1 applies.

## 11.2 Crown land

If the Property is crown land, Schedule 2 applies.

### 11.3 Company title

If the Property is company title, Schedule 3 applies.

### 11.4 Building Work

If Building Work is carried out on the Property, Schedule 4 applies.

## Schedule 1

Provisions which apply if the property is strata or community title property

### 1. What you must do

- (a) You must comply with all laws including all relevant by laws or other owners corporation rules in relation to the Property.
- (b) You must notify the owners corporation of the Bank's interest in the Property if the Bank asks you to do so.
- (c) You must do what you can to ensure that the owners corporation takes out any insurance in relation to the Property or the building of which the Property forms part that the owners corporation is required by law to take out, and where possible that the insurance covers the Bank's interest.
- (d) You must give the Bank, without delay, full details of:
  - (i) any proposal or court proceeding which affects the building or strata or community scheme of which the Property forms part; and
  - (ii) any dispute involving the owners corporation or that strata or community scheme or plan.
- (e) You must give the Bank, without delay, a copy of:
  - (i) all notices of meetings of the owners corporation; and
  - (ii) all notices of other meetings in relation to the Property or the strata or community scheme of which the Property forms part.
- (f) You must take all steps and sign all documents necessary to enable the Bank to attend and vote, either on its behalf or your behalf, at any meeting of the owners corporation or other meeting affecting the strata or community scheme. The fact that the Bank may appoint somebody to attend a meeting does not mean that that person has to attend or vote at that meeting.

### 2. What you must not do

- (a) You must not dispose of any interest that you have in:
  - (i) the owners corporation; or
  - (ii) the owners corporation property.

- (b) You must not dispose of any right that you have to vote in relation to:
  - (i) the owners corporation; or
  - (ii) the strata or community title scheme of which the Property forms part.
- (c) You must not support or approve of any resolution, plan or other proposal which adversely affects:
  - (i) the Property;
  - (ii) the owners corporation; or
  - (iii) any strata or community scheme of which the Property forms part.
- (d) You must not vote at any meeting contrary to any direction given by the Bank.
- (e) The Bank may agree in writing, that this clause 2 does not apply.

## Schedule 2

Provisions which apply if the property is crown land

### 1. What you must do

You must comply with all relevant legislation and do whatever is necessary or desirable to exercise any rights that you have in relation to the Property under relevant legislation.

### 2. What you must not do

You must not do or allow anything to be done which might cause your interest in the Property to be cancelled or otherwise affected or make any application or undertake any other procedure under the relevant legislation unless the Bank agrees in writing.

### 3. Conversion of interest

- (a) If you have the right under any relevant legislation to convert your interest in the Property to a different kind of interest, then if the Bank asks you to, you must take all steps required on your part to convert your interest. After conversion of your interest you must give any fresh Title Documents to the Bank.
- (b) If your interest in the Property is converted, you must, if the Bank asks you to, grant to the Bank a fresh mortgage over the Property, as security for the Amount Owed.

# Schedule 3

Provisions which apply if the property is company title

## 1. Special meanings of some words and expressions

Where this Schedule applies, the following words have the following special meanings in this mortgage (including this Schedule) although the same words and expressions have been given other special meanings in the mortgage where this Schedule does not apply:

**Building** means the building of which the Premises form part.

**Company** means the company in whose capital the Shares are held.

**Premises** means the premises that you are entitled to occupy as a result of your ownership of the Shares, being the premises more particularly described elsewhere in this mortgage.

**Property** means, depending on the context, either the Shares or the Premises, or both.

**Shares** means all of your interest in all of the company shares by which you are entitled to occupy the Premises, being the company shares more particularly described elsewhere in this mortgage, and includes any other shares in the same company which are held by you or which are acquired by you at any time in the future, and all present and future rights in relation to those shares held by you.

**Title Documents** means all share certificates and other documents regarded as proof of your ownership of the Shares or of your right to occupy the Premises.

## 2. Mortgage

As security for the Amount Owing you mortgage the Shares to the Bank.

## 3. Share certificates and share transfers

You must deposit with the Bank all Title Documents and a share transfer form (in a form acceptable to the Bank) in relation to the Shares, when you sign this mortgage. The share transfer form must leave the name of the transferee, the price and the date blank. You must do the same in relation to any Shares that you acquire in the future.

## 4. Default

- (a) If you are in default, and the Bank asks you to do so, you must do everything necessary to ensure that the Shares are registered in the Bank's name, or any other name the Bank nominates.
- (b) This clause 4 is subject to any obligation that the Bank has, to give you notice.

## 5. What you must do

- (a) You must comply with all laws in relation to the Property including the constitution of the Company.
- (b) You must notify the Company of the Bank's interest in the Property and obtain any consents to the granting of this mortgage required by:
  - (i) the Company; or
  - (ii) its constitution.
- (c) You must do what you can to ensure that the Company takes out any insurance in relation to the Premises or the Building that would normally be taken out by a prudent owner. If possible you must ensure that this insurance covers the Bank's interest.
- (d) To the extent that it is possible to do so, you must take out any further insurance that the Bank requires in relation to:
  - (i) the Premises; or
  - (ii) the Bank's interest in them.
- (e) You must give to the Bank without delay full details of:
  - (i) any proposal or court proceeding which affects the Premises or the Building; and
  - (ii) of any dispute involving the Company.
- (f) You must give to the Bank without delay a copy of:
  - (i) all notices of meetings of members-of the Company; and
  - (ii) all notices of other meetings in relation to the Premises or the Building.
- (g) You must take steps and sign documents necessary to enable the Bank to attend at any meeting of the members of the Company or other meeting affecting the Premises and vote, either on its behalf or your behalf. The fact that the Bank appoints somebody to attend a meeting does not mean that that person has to attend or vote at that meeting.

## 6. What you must not do

- (a) You must not dispose of or join in disposing of any interest that you have in any of the following:
  - (i) the Company;
  - (ii) the Company's property; or
  - (iii) any right that you have to vote in relation to the Company.
- (b) You must not support or approve of any resolution, plan or other proposal which may adversely affect:
  - (i) the Premises;
  - (ii) the Building;
  - (iii) any resolution to amend the articles of association of the Company;

- (iv) the rights of shareholders in the Company; or
- (v) occupiers of the Building.
- (c) You must not vote at any meeting contrary to any direction given by the Bank.

The Bank may agree in writing that this clause 6 does not apply.

## 7. Discharge

When the Bank is satisfied that all the Amount Owing has been paid in full, the Bank must, if requested to do so by you, sign any documents that you reasonably require to discharge the mortgage. You must pay the Bank's reasonable expenses in relation to the discharge.

## Schedule 4

Provisions which apply if building work is carried out on the property

### 1. Special meanings of some words and expressions

Where this Schedule applies, the following words have the following special meanings in this mortgage (including this Schedule):

**Building Work Right** means:

- (a) any insurance, guarantee or indemnity under any legislation; and
- (b) any contractual or other right, in relation to Building Work (whether the Building Work is carried out before or after you sign this mortgage).

### 2. What you must do

- (a) You must make sure that the Building Work:
  - (i) is done actively and continuously and competently;
  - (ii) is in accordance with plans and specifications approved by the Bank;
  - (iii) is completed within a reasonable time; and
  - (iv) is done in a good and workmanlike manner and in a way which complies with the law, anything relating to the Property in the Title Documents or the title register.
- (b) Without limiting clause 2(a) of this Schedule, you must give the Bank, by the time required by the Bank, all certificates needed to show that:
  - (i) any Building Work does comply with all these things; and
  - (ii) the Property may lawfully be used for the purpose that you have told the Bank it will be used for.
- (c) You must:
  - (i) perform your obligations under any contract to perform Building Work; and
  - (ii) promptly notify the Bank if any default occurs under any such contract.

### 3. What you must not do

You must not allow any contract to carry out Building Work to be materially varied without the Bank's consent.

### 4. Monitoring of Building Work

You agree that if the Bank monitors Building Work (such as inspecting or accepting any part of your construction or approving plans) the Bank does so for its own purposes.

### 5. Bank may enforce its rights against builders

- (a) You must tell the Bank, as soon as you become aware of it, of any problem which might allow you or the Bank to make a claim under any Building Work Right.
- (b) You must do whatever the Bank thinks is necessary or desirable to maintain the value of any Building Work Right or to get the benefit of any Building Work Right.
- (c) You must, if asked by the Bank to do so, transfer to the Bank all your interest in the Building Work Right as further security for the Amount Owing. You must tell other people (such as an insurer or builder) that you have transferred the Building Work Right to the Bank, if the Bank asks you to.
- (d) You agree that the Bank does not have any obligations in relation to the Building Work Right.

### 6. If Building Work is not carried out properly

- (a) If Building Work is carried out on the Property and the Bank believes that you are not complying with your obligations in this clause 6, the Bank may take the Building Work over at your cost, including by varying, demolishing or stopping the Building Work as the Bank sees fit.
- (b) You agree that the Bank is not liable for any loss.
  - (i) in connection with the Building Work that the Bank consents to (including loss arising out of plans or specifications which the Bank may approve); or
  - (ii) which arises because the Bank does not finish Building Work which the Bank takes over under clause 6(a) of this Schedule.

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