

# Home mortgage Memorandum of Common Provisions

January 2020

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# 1. How this mortgage works

- 1.1 For the purposes of securing to us the payment of the *amount owing*, you mortgage to us all your estate and interest in the land described in this mortgage, together with each fixture, structure or improvement on it or fixed to it.
- 1.2 You acknowledge giving this mortgage and incurring obligations under it for valuable consideration received from us.

# 2. What you undertake in this mortgage

- 2.1 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.
- 2.2 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. You includes your successors and assigns.
- 2.3 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 6.6, 8.28 or 8.29) continue even if we release *the property* from this mortgage.
- 2.4 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.
- 2.5 You declare that:
  - a) you own *the property* or are in the process of becoming the owner of it (for example, as a purchaser under a contract of sale); 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) all amounts owing to any other person which could affect *the property* have been paid or will be paid before or immediately after you sign this mortgage; and
  - h) you are not in default (see 6);
  - i) if:
    - *the property* is in the Australian Capital Territory; and
    - the crown lease of *the property* contains a building and development provision that has not been satisfied,
    - you require this mortgage for a purpose for which *the property* is capable of being mortgaged.

- 2.6 If *you own the property*, or are in the process of becoming the owner of it, as a trustee, *you* also declare that:
- a) *you* have the power as trustee of the trust to enter into this mortgage and perform your obligations under it; and
  - b) by entering into this mortgage and performing your obligations under it *you* are properly performing your obligations to the beneficiaries of the trust; and
  - c) *you* have taken all steps necessary to allow *you* to enter into and perform your obligations under this mortgage; and
  - d) *you* are the only trustee of the trust; and
  - e) no action has been taken to remove *you* as trustee or to appoint an additional trustee; and
  - f) *you* are entitled to be fully indemnified from *the property* of the trust for your obligations under this mortgage (including the obligation to pay the *amount owing*) and the trust property is sufficient to satisfy this right of indemnity; and
  - g) *you* have not breached your obligations as trustee; and
  - h) the trust is duly constituted and no action has been taken to terminate the trust; and
  - i) *you* have given us full particulars of the trust (including a copy of the signed and stamped trust deed containing all the terms of the trust certified by *you* [or, if *you* are a company, one of your directors or secretaries] as being true and up-to- date); and
  - j) the rights of the beneficiaries to the trust property rank after our rights to the trust property (including *the property*).
- 2.7 *You* must tell us if anything has happened which prevents *you* from repeating any one or more of the declarations in 2.5 and 2.6 before:
- a) *you* acknowledge that another agreement, contract or other arrangement is to be an *agreement covered by this mortgage*; or
  - b) we provide *you* with a loan or other financial accommodation under an *agreement covered by this mortgage*; or
  - c) *you* consent to us providing financial accommodation to another *person* which is guaranteed by *you* under an *agreement covered by this mortgage*.

## 3. How this mortgage affects *you* and *the property*

### Rates, taxes and levies

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

### Looking after *the property*

- 3.2 *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) not abandon *the property*; and
  - d) pay on time all money payable to any authority in connection with *the property*; and
  - e) tell us if *the property* is contaminated, defective or seriously damaged; and
  - f) remove any contaminant and clean up any contamination, if *the property* is contaminated.
- 3.3 *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*.
- 3.4 If *the property* is part of a *shared scheme* (for example a townhouse or home unit), *you* must also:
- a) comply with the by-laws, rules 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
  - 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 vary, substitute or terminate the *shared scheme* or its by- laws, rules or articles; and
  - g) do your best to ensure that your obligations under the *shared scheme* are not unreasonably increased and notify us immediately of any proposal to do this.

## Insurance

- 3.5 *You* must maintain insurance over *the property* against fire and other usual risks.
- 3.6 The insurance under 3.5 must be for the full insurable value of *the property* on a replacement and reinstatement basis, unless *the property* is part of a *shared scheme*.
- 3.7 If *the property* is part of a *shared scheme* anywhere other than Victoria, the insurance under 3.5 must be for the total amount secured by all mortgages and charges over *the property* (sometimes known as a mortgagee's protection policy).
- 3.8 If *the property* is part of a *shared scheme* in Victoria, the insurance under 3.5 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.
- 3.9 If *you* carry out or permit *works* (see 3.18 to 3.22) *you* must provide us with a certificate of currency for builder's all risk insurance in relation to the *works*.
- 3.10 Each policy under 3.5 and 3.9 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 acceptable to us acting reasonably.
- 3.11 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.
- 3.12 *You* must produce evidence satisfactory to us of current insurance cover whenever *we* ask for it.
- 3.13 *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.

3.14 The obligations in 3.12 and 3.13 apply to insurance taken out by either *you* or a *governing body*.

### Insurance claims

- 3.15 *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* which we approve; or
  - b) paid to us. (We must then use them as set out in 7).

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.

3.16 *You* must notify us if an insurance claim is refused either in part or in full.

3.17 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

3.18 *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 *works*, or enter into a contract to carry them out.

3.19 *You* must:

- a) comply with all laws, requirements of authorities, easements and covenants which affect any *works*; and
- b) comply with any reasonable directions we give *you* in connection with the *works*; and
- c) ensure that all *works* are done competently and completed within a reasonable time; and
- d) obtain and give us relevant certificates and permits we require (such as certificates of satisfactory completion or compliance or occupancy permits).

3.20 If we think *you* are not proceeding with *works* satisfactorily, we may take them over including by varying, completing, demolishing or stopping them as we see fit.

3.21 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 3.20.

3.22 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 and we need not tell *you* the results of any inspection.

### **The property and adjoining land**

- 3.23 If any part of a structure on *the property* encroaches on adjoining land, then, if we ask, you must:
- correct the encroachment; or
  - obtain an easement or other permission acceptable to us to allow it to continue; or
  - become the owner of the encroached land.
- 3.24 If we ask, you must have any encroachment on *the property* from adjoining land removed.  
Dealings – such as selling, renting or mortgaging
- 3.25 You must get our consent before you:
- rent out *the property* or allow a surrender or variation of any rental agreement; or
  - create another *security* in connection with *the property*, or allow one to arise, continue or be varied; or
  - part with possession of *the property*; or
  - subdivide or consolidate *the property*; or
  - create, release or vary an easement, encumbrance, covenant or public right of way which relates to *the property* or allow one to arise or continue; or
  - deal in any other way with *the property*, this mortgage or any interest in them, or allow any interest in them to arise, continue or be varied.

### **Other securities**

- 3.26 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*.
- 3.27 If you do not get our consent and any agreement we ask for, we:
- need not make funds available under any *agreement covered by this mortgage*; and
  - 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 (see 6).
- 3.28 You must ensure that the amount secured under any other *security* over *the property* is not increased without our consent. You must not agree to vary the terms of any other *security* over *the property* without our consent.
- 3.29 You must comply on time with any obligation in connection with any other *security* over *the property*.

### **Caveats**

- 3.30 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.)

### **Crown land and leasehold**

- 3.31 If your interest in the land is as a lessee under a lease, you must:
- comply with the terms of the lease; and
  - not do anything which might cause the lease to be surrendered, varied, forfeited or cancelled; and
  - advise us of anything which gives rise to the lessor re-entering.

## Rural land

- 3.32 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 spraying) to keep it free from pests and harmful vegetation; and
  - b) not, without our consent, give any other *security* over any stock on *the property*, or clip or crop produced on *the property*; and
  - c) not, without our consent, deal with any quota or contract for producing or selling crops or produce capable of being produced on *the property* or do anything which could cause a quota or contract to be forfeited or cancelled; and
  - d) not, without our consent, deal with any licence attached to the land or do anything which could cause a licence to be forfeited or cancelled.

## Consents

- 3.33 *You* must comply with all our requirements in any consent we give in connection with this mortgage (see also 8.11).

## Payments such as compensation

- 3.34 *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).
- 3.35 *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).
- 3.36 *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 7).

## Administrative matters

- 3.37 *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.
- 3.38 We may stamp and register this mortgage.
- 3.39 Only we can prepare a document of discharge of this mortgage.
- 3.40 *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*; and
  - b) to enable us to register this mortgage with the agreed priority; and
  - c) to enable us to exercise our rights in connection with *the property*; and
  - d) to ensure that each agreement, contract or other arrangement which is intended to be covered by this mortgage becomes an *agreement covered by this mortgage*; and
  - e) to enable us to register the power of attorney in 8.20 or a similar power; and
  - f) to show whether *you* are complying with this mortgage.

- 3.41 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.

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

### **Additional obligations if you are a company**

- 3.43 If you are a company, you must ensure that your directors, your secretaries and your constitution/memorandum of articles of association are not changed, and you must not approve or register a transfer of any shares, without our consent.

## **4. Assignment**

- 4.1 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.
- 4.2 Any mortgagee taking this mortgage by way of assignment must consent to the creation and registration of any mortgage to us over *the property* for the purpose of securing any and all monies which are or may in the future be secured by this mortgage and which debts have not been assigned to the assignee and must, on payment of the assignee's reasonable costs, produce the certificate of title relating to *the property* and this mortgage for the purpose of facilitating stamping and registration of our further mortgage.

## **5. Things we may do at any time**

- 5.1 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.
- 5.2 Unless there is an emergency, we must give you reasonable notice before entering under 5.1. You must help us to enter, such as by getting any consent necessary.
- 5.2 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.

## 6. What can happen if you are in default?

### When are you in default?

- 6.1 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, 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 2.5 or 2.6) 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) if you are a trustee:
    - an application is made to a court for the trust property to be administered by the court or an account to be taken of the trust; or
    - a receiver, or receiver and manager of the trust is appointed; or
    - any judgment is enforced against trust property; or
    - you suspend payment of the debts of the trust, you admit in writing your inability to pay these debts or you cease, or threaten to cease, to carry on the business of the trust; or
  - g) 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.
- 6.2 You must immediately tell us if you are in default or if you think that you may be in default.

### What can happen then?

- 6.3 If you are in default and we decide to enforce this mortgage, we must give you a notice stating that you are in default. (You must have been in default for one day or more before we may do this).
- 6.4 If you do not correct the default within any period given in the notice then, at the end of that period and without further notice to you the *amount owing* becomes immediately due for payment (to the extent it is not already due for payment). In addition, we may 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*;
  - c) do anything an owner or receiver of *the property* could do, including improving, selling or leasing it;
  - d) appoint a receiver to do any of those things and anything else the law allows a receiver to do, including under 6.5.
- 6.5 Where we take possession of *the property* under 6.4(b), we may remove personal possessions and either abandon them or store them without being liable to you.

## Enforcement expenses

- 6.6 When we ask, *you* must pay us the reasonable expenses we reasonably incur in enforcing this mortgage after *you* are in default (including in preserving and maintaining *the property* - such as by paying insurance, rates and taxes for *the property*). This applies to expenses we incur before or after taking action under 6.4.

## 7. What happens to money we receive?

- 7.1 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 *works* on it. We may use any money received under this mortgage towards paying any part of the *amount owing* we choose.
- 7.2 We must pay any money remaining after the *amount owing* is paid either to *you* or to another *person* entitled to it (such as another *person* with a *security* over *the property*). In particular, we may pay it to a *person* with a subsequent registered or unregistered *security* without incurring liability to *you*.

## 8. General matters

### Set-off

- 8.1 Subject to any statutory right of set-off which we cannot exclude by agreement, such as under consumer credit or trade practices legislation, *you* must pay the *amount owing* in full without setting off amounts *you* believe we owe *you* and without counter claiming amounts from us.

### Re-instatement of our rights

- 8.2 If any transaction or payment relating to the *amount owing* is void, voidable or otherwise unenforceable or refundable:
- a) our rights under this mortgage against *you* will be the same as if the transaction or payment had not occurred or been made; and
  - b) *you* must do all things necessary to restore to us our former rights and *security* under this mortgage.

### Notices, other communications and serving documents

- 8.3 Notices, certificates, consents, approvals and other communications in connection with this mortgage must be in writing.
- 8.4 Communications from us may be signed by any of our authorised employees. If *you* are a company, communications from *you* must be signed by a director.
- 8.5 Communications for us may be:
- a) given personally to one of our employees or officers at:
    - any branch we have; or
    - our registered office; or
    - such other places as we advise *you*
    - from time to time;
  - 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.

- 8.6 Communications for *you* may be given to *you*:
- a) by delivering it to *you* personally; or
  - b) by leaving it at:
    - (if *you* are an individual) your residential or business address last known to us; or
    - (if *you* are a body corporate) your registered office by leaving it with one of your officers;
  - c) by sending it by pre-paid post or electronically (such as by fax or telex) to any of these places; or
  - d) by any other means permitted by law.
- 8.7 A notice or other document is taken to be given:
- a) in the case of a notice or other document given personally - on the date it bears or the date it is received by the addressee, whichever is the later; or
  - b) in the case of a notice or other document 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) in the case of a notice or other document sent by facsimile transmission or some other form of electronic transmission - on the date it bears or the date on which the machine from which the transmission was sent produces a report indicating that the notice or other document was sent to the facsimile or other number of the addressee, whichever is the later.
- 8.8 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 (if *you* are an individual) to your residential or business address last known to us or (if *you* are a body corporate) your registered office by leaving it with one of your officers. This clause does not prevent any other method of service.

### **Our certificates**

- 8.9 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**

- 8.10 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**

- 8.11 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate including by imposing reasonable conditions but we may not refuse our consent unreasonably.
- 8.12 We may enforce this mortgage before we enforce other rights or remedies including under another *security*.
- 8.13 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.
- 8.14 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.

- 8.15 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*.
- 8.16 Our rights and remedies under this mortgage may be exercised by any of our employees or any other *person* we authorise.

### Your obligations and our rights are unaffected

- 8.17 Subject to 8.25 and 8.26, 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.
- 8.18 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.)

### Variation or waiver

- 8.19 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

- 8.20 *You* appoint us, each of our directors, each of our company secretaries, each of our employees and each receiver under this mortgage, separately as your attorney. If we ask, *you* must formally approve anything they do under 8.21. *You* may not revoke these appointments.
- 8.21 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 or otherwise dealing with *the property*, 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.

### Receiver

- 8.22 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.
- 8.23 We may set a receiver's pay, remove a receiver and appoint a new or additional receiver, as we choose.

## Inconsistent legislation

- 8.24 8.25 applies to the extent that legislation relating to consumer credit or otherwise applies to this mortgage.
- 8.25 If:
- a) that legislation 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 legislation or impose an obligation or liability which is prohibited by that legislation, this mortgage is to be read as if that provision were varied to the extent necessary to comply with that legislation or, if necessary, omitted.
- 8.26 To the extent legislation relating to consumer credit applies to this mortgage:
- a) the *amount owing* does not include any amount which exceeds the sum of:
    - your liability under each *agreement covered by this mortgage*; and
    - our reasonable enforcement expenses reasonably incurred in enforcing this mortgage;
  - b) our right to demand any amounts from *you* and to exercise our rights and remedies against *you* are subject to the limitations on enforcement of this mortgage imposed by the legislation; and
  - c) our rights and remedies under this mortgage are in addition to those given to a credit provider under the legislation.
- 8.27 To the extent allowed by law and subject to 8.25 and 8.26, this mortgage prevails to the extent it is inconsistent with any law.

## Costs and indemnities

- 8.28 To the extent this mortgage is not regulated by consumer credit legislation, when we ask, *you* must pay us for:
- a) our reasonable costs, and any receiver's costs and remuneration, in arranging, administering (including enforcing, attempting to enforce or taking any action in connection with our or any receiver's rights) and discharging this mortgage; and
  - b) all stamp and other duties, fees, taxes and charges payable in connection with this mortgage and any transaction or return relating to them and any interest, penalties, fines and expenses in connection with them.
- 8.29 To the extent this mortgage is not regulated by consumer credit legislation, *you* indemnify us for any liability, loss or costs (including consequential or economic loss) we suffer or incur:
- a) if *you* default under this mortgage (in which case *you* will be liable for any loss arising because we require repayment of the *amount owing* earlier than its due date); or
  - b) in connection with *the property* or our monitoring of *works*.

## Applicable law

- 8.30 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

- 8.31 This mortgage is a deed.

## 9. Meaning of words

### Agreement covered by this mortgage

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

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

### Amount owing

at any time, subject to 8.26(a), 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.

for example see including.

### Governing body

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

including, for example 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

being an insolvent under administration or insolvent or having a controller appointed (each as defined in the Corporations Act 2001 (Cth)), in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or otherwise unable to pay debts when they fall due.

### 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 a corresponding meaning.

### Person

includes an individual, a firm, a body corporate, an unincorporated association or an authority.

### 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
- management of subdivided buildings.

such as see including.

### The property

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

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

### We

means Bendigo and Adelaide Bank Limited (ABN 11 068 049 178) and its successors and assigns and our and us have corresponding meanings.

### 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 who are liable under 2.2 and your has a corresponding meaning. If there are more than one, you means each of them separately and every two or more of them jointly as the case requires.

The singular includes the plural and vice versa. A reference to:

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

This document was prepared and issued by Bendigo and Adelaide Bank Limited.

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BEN50ABTC0004 (S44961) (01/20)