



# Home Mortgage

Memorandum of Common Provisions

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# Home mortgage

## Key Words

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## 1 How this mortgage works

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- 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

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- 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

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#### 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:

- (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.

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*:

- (a) rent out *the property* or allow a surrender or variation of any rental agreement; or
- (b) create another *security* in connection with *the property*, or allow one to arise, continue or be varied; or
- (c) part with possession of *the property*; or
- (d) subdivide or consolidate *the property*; or
- (e) 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
- (f) 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*:

- (a) need not make funds available under any agreement covered by this mortgage; and
- (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 (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:

- (a) comply with the terms of the lease; and
- (b) not do anything which might cause the lease to be surrendered, varied, forfeited or cancelled; and
- (c) 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

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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.

5.3 *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?

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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.

7.1 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

## 7 What happens to money we receive?

*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.*

employees or officers at:

- any branch *we* have; or
- *our* registered office; or
- such other places as *we* advise *you* from time to time;

## 8 General matters

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### 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:

- our* rights under this mortgage against *you* will be the same as if the transaction or payment had not occurred or been made; and
- 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:

- given personally to one of *our*

- (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

9.1 *agreement covered by this mortgage* means:

- 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* means 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* means 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* means 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.

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