

# Consumer Mortgage Memorandum of Common Provisions.





## 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 3272539.
- **NSW** Memorandum filed at the Office of the New South Wales Department of Lands as Number AT426723.
- **NT** Memorandum of Standard Terms and Conditions of Mortgage filed at the Office of the Northern Territory Registrar-General as Number 372387.
- **QLD** Memorandum filed at the Office of the Queensland Department of Natural Resources and Mines as Number 722764231.
- **SA** Memorandum of Standard Terms and Conditions of Mortgage filed at the South Australian Lands Titles Registration Office as Number 14123767.
- **TAS** Memorandum of Provisions lodged in the Office of the Tasmanian Recorder of Titles as Number M735.
- VIC Memorandum of Provisions filed at the Victorian Land Titles Office as Number AA9646.
- **WA** Memorandum of Common Provisions filed at the Office of the Western Australian Department of Land Information as Number P713906.

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

# Contents

Mortgage Provisions		3	8.5	The Bank's right to sell	12
1.	How to interpret this Mortgage	3	8.6	Removal of items from Property	12
1.1	Definitions	3	8.7	The Bank does not lose rights	12
1.2	Interpretation	4	9.	Miscellaneous	12
1.3	Multiple parties	4	9.1	Payments to the Bank	12
2.	Legislation	5	9.2	Setting off money	12
2.1	References to Legislation	5	9.3	The Bank may carry out your obligations	13
2.2	Credit Code	5	9.4	Government charges	13
3.	Your payment and other obligations	5	9.5	Exercise of the Bank's rights	13
3.1	Bank Document	5	9.6	Power of attorney	13
3.2	Enforcement Expenses	5	9.7	Who can exercise the Bank's rights	13
3.3	Other Obligations	5	9.8	The Bank may certify matters	13
4.	What this Mortgage secures	5	9.9	The Bank to hold Title Documents	13
5.	Title to Property	6	9.10	The Bank may transfer this mortgage	13
5.1	Confirm Ownership	6	9.11	Supply of information to the Bank	14
5.2	Authority to Register	6	9.12	Supply of information by the Bank	14
6.	Your obligations in relation to the Property	6	9.13	Releases do not affect your liability to the Bank	14
6.1	Maintaining the Property	6	9.14	Void or unenforceable transactions	14
6.2	Compliance with Laws	6	9.15	Mortgage to remain binding despite changes	14
6.3	Environmental Laws	7	9.16	Relationship to other documents	14
6.4	The Bank may inspect Property	7	9.17	No reliance on the Bank	14
6.5	Compulsory acquisition of the Property	7	9.18	If you are a Trustee	14
6.6	Rates and taxes	7	9.19	Continuation	15
6.7	Dealing with the Property	8	9.20	Consents	15
6.8	Property Subject to Lease	8	9.21	Variation or Waiver	15
6.9	Permanent residence	9	9.22	Governing Law and Jurisdiction	15
6.10	Protection of the Bank's interest in the Property	9	10.	Notices and communications	15
6.11	Victorian Mortgages only	9	10.1	Communications to you	15
7.	Insurance	9	10.2	Electronic communications	15
7.1	You must insure the Property	9	10.3	Time of communication	16
7.2	You must provide insurance documents	10	11.	Special provisions	16
7.3	You must notify the Bank	10	11.1	Units and community title properties	16
7.4	The Bank may exercise insurance rights	10	11.2	Crown land	16
7.5	Proceeds of claims	10	11.3	Company title	16
8.	Default	11	11.4	Building Work	16
8.1	What amounts to default	11	Schedule 1		16
8.2	Bank to give notice	11	Schedule 2		17
8.3	The Banks rights on default	11	Sche	edule 3	18
8.4	The Bank's right to enter and take possession	12	Sche	edule 4	19

### 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.

# 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;
- (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 this mortgage extends to your obligations under that Bank Document.

**Authorised Officer** means a director, secretary or an officer of the Bank whose title contains any of the words 'Chief', 'Manager', 'Counsel', 'Director', Head, Company Secretary, Legal Advisor or 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 and includes any such agreement or arrangement as varied, replaced or novated.

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

**Credit Code** means the National Credit Code in 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.

**Crown Land** means land of the Crown (ie the State or Territory) occupied by a Person not as freehold but under a lease, licence or other right granted by the Crown (for example, land described as 'State Tenure' or 'Crown Lease').

**Enforcement Expenses** means the Bank's internal expenses and the Bank's 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 for a failure to pay any insurance premium, rates and taxes payable for the Property).

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.

Land Law means any law of the State or Territory in which the Property is located applicable to this mortgage relating to the registration of mortgages, including a law adopting the "Electronic Conveyancing National Law", or to the giving of default notices prior to the enforcement of real property mortgages.

**Licence** includes any right, licence, entitlement, permit, approval, accreditation, certification, allocation, quota, certificate of registration or authority (for example, authority to develop the Property).

**Mortgage** means this mortgage of which this document forms part and any cover sheet, schedules and annexures.

**Own** in relation to land, means holding an estate or interest in land that can be mortgaged to us, for example, being the registered proprietor, the registered holder, the registered lessee or Crown lessee or the holder of an estate in fee simple, and **'Owner'** has the corresponding meaning.

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

**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;
- (d) any growing or mature or native crops on the land;
- (e) each lease described in this mortgage, all of your estate and interest in the lease and any replacement or variation of the lease; and
- (f) all rights and Licences attaching to the land or to your estate or interest in it including rights under any insurance policy, rights under any builder's warranty, guarantee or insurance relating to the Property or any Building Work, rights granted to you under any lease, and rights to claim or receive a payment of money by way of compensation because you Own or Owned the Property.

**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 which demonstrate your ownership of the Property.

You means the Person or Persons named in the mortgage as the 'Mortgagor' and 'your' has a corresponding meaning. If the Person or Persons enters into this Mortgage as trustee of any trust or trusts, then it includes them in their personal capacity and in their capacity as trustee of the relevant trust or trusts. 'You' includes your executors, administrators and assigns.

### 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) 'including' or 'for example' when introducing an example does not limit the meaning of the words to which the example relates, to that example or examples of a similar kind;
- (c) a reference to a document or agreement includes any variation, novation 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 amends, re-enacts or replaces any of them in force for the time being.

### 2.2 Credit Code

This clause 2.2 applies only to the extent 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;
- (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.

# Your payment and other obligations

### 3.1 Bank Document

You must pay the Amount Owing to the Bank at the time agreed and in accordance with the terms of a Bank Document. If a time was not agreed, you must pay the Amount Owing when the Bank asks. The Bank will act reasonably when exercising this right.

### 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 amount of those Enforcement Expenses.

### 3.3 Other Obligations

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

# What this Mortgage secures

This mortgage is security for payment to the Bank of the Amount Owing and you undertake the obligations set out in this mortgage in return for the things the Bank does when it enters into a Bank Document.

### 5. Title to Property

### 5.1 Confirm Ownership

You promise that:

- (a) except for other interests noted on the certificate of title for the Property, you Own the Property or will Own the Property which you are mortgaging to the Bank by the time this mortgage takes effect;
- (b) to the best of your knowledge no other Person, or claims, any rights in relation to the Property which are inconsistent with your own. Rights include easements, leases, beneficiary under a trust, other mortgages;
- (c) all the information you have given to the Bank in connection with this mortgage and each Bank Document is materially correct, complete and not misleading;
- (d) you have not withheld any information of which you are aware and which might have caused the Bank not to enter into this mortgage or a Bank Document (for example, material current or threatened legal proceedings relating to the Property); and
- (e) you do not breach any law, any authority or any obligation to any other Person by signing this mortgage.

You acknowledge that the Bank relies on your promises when the Bank enters into this mortgage. You repeat these promises and acknowledge that the Bank relies on them each time you:

- (a) ask the Bank for credit under a Bank Document; or
- (b) accept an extension or variation of your liabilities under a Bank Document; or
- (c) acknowledge that another agreement is to be a Bank Document.

### 5.2 Authority to Register

You authorise the Bank to do all things reasonably necessary to register this mortgage in accordance with the Land Law, including digitally signing an electronic counterpart of this mortgage to enable its electronic registration.

# Your obligations in relation to the Property

### 6.1 Maintaining the Property

You must:

- (a) keep the Property in good condition, and promptly fix any defect and damage;
- (b) take all reasonable steps to ensure that any Building Work on the Property is completed properly;
- (c) not do anything or allow anything to be done that might materially lower the value of the Property; and
- (d) comply with and maintain all Licenses.

Anything that the Bank reasonably requires You to do in relation to your obligations to the Property, will be at Your cost.

You must not do any of the following unless the Bank agrees in writing (not to be unreasonably withheld):

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

### 6.2 Compliance with Laws

You must use your best endeavours to comply with all laws, orders, notices and the requirements of all councils and other government bodies in relation to the Property.

### 6.3 Environmental Laws

You must:

- (a) promptly remedy any breach of Environmental Laws affecting the Property of which you are aware including, if required, removing any contaminant and cleaning up any unlawful contamination;
- (b) take all reasonable steps to ensure that no contaminant is released or escapes from the Property; and
- (c) tell the Bank promptly if you become aware of any breach of Environmental Laws, any notice, claim (including any native title claim) complaint or something similar which, if established, could adversely affect the value of the Property or of its interest in the Property.

### 6.4 The Bank may inspect Property

- (a) On reasonable notice and at reasonable times, the Bank, and any one or more of its' agents, may enter the Property to:
  - (i) inspect its condition or any Building Work;
  - (ii) make reasonable enquiries in order to ascertain whether you are complying with this mortgage; or
  - (iii) where reasonably necessary, carry out the Bank's rights under this mortgage including to remedy any material breach of this mortgage by you.

The requirement to provide reasonable notice may be dispensed with in cases of emergency.

(b) Acting reasonably, the Bank or its agents may do anything which you should have done under this mortgage but which you have not done reasonably promptly and to the Bank's reasonable satisfaction, but it is not obliged to.

### 6.5 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 reasonable directions that the Bank gives you in relation to any resumption or acquisition and in relation to any right to compensation. Unless the Bank informs you otherwise, you must take all reasonable steps to ensure that the compensation money is paid to the Bank, who must deal with it in accordance with this mortgage.
- (c) To reasonably protect its legitimate interests, the Bank may take over your rights to make, pursue or settle any such claim for compensation. The Bank will tell you if it wants to do so. The Bank may then exercise those rights at its discretion acting reasonably and having reasonable regard to your rights as Owner of the Property and the Bank's rights as mortgagee.
- (d) If the Bank takes over any claim, you must do everything that the Bank reasonably asks to assist the Bank with the claim and the prompt resolution of the claim. The Bank will notify you of the outcome of any negotiations for compensation.
- (e) If payment is made to you under any claim, you hold the money for the Bank and you must pay so much of that money to the Bank toward payment of the Amount Owing as the Bank reasonably requires and as soon as it asks you.

### 6.6 Rates and taxes

You must pay on time all amounts for which you are liable as the Owner of the Property, including rates, taxes, rents and levies.

### 6.7 Dealing with the Property

- (a) You must not:
  - (i) (i)sell, mortgage or grant any interest in the Property or dispose of or vary your rights in relation to the Property;
  - (ii) (subdivide or consolidate the Property;
  - (iii) create, release or vary an easement, covenant or public right of way which relates to the Property or allow one to arise;
  - (iv) grant, dispose of, deal with, vary (or allow to be varied) any rights or benefits in connection with the Property relating to rights to air space, the plot ratio, floor space ratio or other similar ratio); or
  - (v) deal in any other material way with the Property, or this mortgage which is inconsistent with the Bank's rights as mortgagee (for example, by way of trust, assignment or novation).
- (b) The prohibition in clause 6.7(a) applies unless:
  - (i) the Bank agrees in writing (not to be unreasonably withheld);
  - (ii) the Bank is prevented by law from limiting your power to do any of the prohibited things; or
  - (iii) in the case of you renting out the Property, you lease it to an individual for residential purposes and none of the following apply:
    - the Bank Document is for a loan which we advanced to you to buy or build a home to live in on the Property;
    - the term of the lease and any option for renewal, when added together, is or exceeds 3 years;
    - the rent payable is less than that which you told us you expect to receive;
    - the lease contains an option to purchase; or
    - the tenant is a relative of yours or, if you are a corporation, is one of your directors or a relative of a director;
- (c) The Bank's consent to any matter referred to in clause 6.7(a) may depend on whether the Bank are able to negotiate an acceptable agreement regarding the priority between this mortgage and the other party.
- (d) You must do everything reasonably necessary to remove any caveat placed on the Property without the Bank's consent. (A caveat is a warning, noted in the official title register, restricting dealings with the Property, for example, its sale.)

### 6.8 Property Subject to Lease

If you hold the Property under a lease or a lease is or forms part of the Property, then:

- (a) If the Bank asks, you must ensure that the lessor enters into an agreement with the Bank on terms acceptable to the Bank (acting reasonably) which will include giving the Bank the right to remedy any default by you before the lessor re-enters the leasehold premises;
- (b) you must comply with your obligations under the lease;
- (c) you must not, without first telling the Bank and obtaining our consent:
  - (i) grant or accept the surrender, forfeit or cancellation of the lease;
  - (ii) enter into or vary the lease in a way which materially adversely affects the value of the Property; and
  - (iii) if the lease includes the use of chattels, permanently remove any of the chattels from the premises (except for their repair or replacement in the ordinary course of business);
- (d) you must tell the Bank promptly if an event occurs or is likely to occur which may result in the lease being surrendered, forfeited, cancelled or otherwise materially adversely affected; and
- (e) if, under the terms of a Bank Document there will remain some of the Amount Owing at the end of the lease term, you must:
  - (i) apply for a renewal or extension of the lease:
    - (A) at the earliest date on which any option for renewal under the lease may be exercised; or
    - (B) in cases where there is no option or the time for its exercise has not arisen, no later than 12 months before the end of the lease term; and
  - (ii) do anything the Bank reasonably asks to provide us with effective Security over the renewed or extended lease or over any new lease.

### 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, acting reasonably, asks you to, you must sign any documents and take any other steps reasonably required on your part to:
  - ensure that the Bank has an enforceable 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 take such steps as the Bank reasonably requires and use your best endeavours to make sure that anyone else who claims to have an interest in the Property also takes the steps referred to in clause 6.10(a) as requested by the Bank.

### 6.11 Victorian Mortgages only

Any restraint on alienation provision in this Mortgage may only be exercised by the Bank for a valid collateral purpose.

### 7. Insurance

### 7.1 You must insure the Property

- (a) You must insure the Property and any Building Work at all times against fire, storm, tempest, flood and any other risk that the Bank reasonably requires as follows:
  - (i) with an insurance company 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 (not to be unreasonably withheld); and
  - (iii) the Bank's interest in the Property as mortgagee must be noted on the insurance policy.
- (b) Clause 7.1(a) does not apply if the Property is strata title or community title property and the owners corporation is required by law to maintain insurance over the Property. In that case, you must use your best endeavours to ensure that the owners corporation maintains whatever insurance it is required to by law and tell the Bank promptly if, for any reason, there is not adequate insurance cover over the Property.
- (c) You must do all that you reasonably can to ensure that the insurance cover remains current.
- (d) You must use your best endeavours to comply with the terms and conditions of each insurance policy.

# 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 promptly if:

- (c) you have a right to a material claim for serious damage under any insurance policy related to or connected with the Property;
- (d) anything happens which may result in the reduction, cancellation or lapsing of the insurance policy; or
- (e) any material claim has been refused either in part or in full, or if there is a real likelihood of this occurring.

# 7.4 The Bank may exercise insurance rights

Subject to any notice obligation the Bank has under clause 8, 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. The Bank will exercise its rights in a reasonable manner and taking into consideration your interests in the claim and its rights under this mortgage and the Security.

You will not do any of these things unless the Bank agrees in writing (not to be unreasonably withheld).

### 7.5 Proceeds of claims

- (a) You must ensure that the benefit of any material insurance claim proceeds to which you are entitled is received by you or the Bank. If the proceeds are for serious damage to the Property and you receive them:
  - (i) you must notify the Bank promptly;
  - (ii) you hold the proceeds for the Bank and you must pay the Bank so much of them towards the Amount Owing as the Bank reasonably requires as soon as the Bank asks you; and
  - (iii) you must use them as the Bank reasonably directs, including to reinstate the Property or carry out other Building Works.
- (b) When the insurance claim proceeds are paid to and held by an owners corporation, then:
  - you must do your best to ensure that the proceeds are used to reinstate the Property or carry out other Building Works; or
  - (ii) if the strata scheme or community title scheme is terminated and you receive your share of the proceeds following the termination, you hold your share for the Bank. When the Bank asks, you must pay the Bank so much of your share as the Bank requires towards payment of the Amount Owing.
- (c) If the Bank receives insurance claim proceeds, it may apply the proceeds of any claim towards payment of the Amount Owing as set out in clause 9 of this mortgage or towards restoration or rebuilding of the Property (including to carry out Building Work), 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 you default under a Bank Document or this mortgage.

### 8.2 Bank to give notice

- (a) If you are in default, and the Bank chooses to enforce this mortgage then, except in the cases described in clause 8.2(b), the Bank will give you written notice before doing so. The notice must:
  - (i) tell you what the default is; and
  - (ii) provide you with the opportunity to remedy your default (where permitted by law).

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 does not have to give you the notice referred to in clause 8.2(a) or wait for the periods specified above where:
  - (i) the Bank believes on reasonable grounds that:
    - (A) it was induced by fraud or misrepresentation to enter this mortgage or a Bank Document;
       or
    - (B) it is necessary for the Bank to act to manage an immediate risk (whether credit, legal or reputational in nature), for example, urgent action is necessary to protect the Property, or you or a guarantor have not complied with the law or any requirement of a statutory authority giving rise to legal or reputational risk for the Bank; or

- (C) it has made reasonable attempts to locate you without success; or
- (D) it is authorised by a Court.
- (c) For the purposes of any Land Law which requires that you must be in default for a certain period of time before the Bank gives you the notice and allows the period to be fixed in the mortgage, the period is fixed at one day. If any law 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:
  - the shortest period which is legally permissible; or
  - (ii) one day.

### 8.3 The Banks rights on default

If you default and the Bank has given you notice under clause 8.2 and you do not remedy the default within the time allowed in the notice, or you are in default and the Bank is not required to give you notice, acting reasonably, the Bank may do any of the following things, either in your name or in its name and without limiting any right the Bank has:

- (a) decide the Amount Owing is immediately due and payable without further notice to you;
- (b) exercise any right set out in this clause 8;
- (c) exercise any other right that the law gives to a mortgagee in the circumstances;
- (d) take any action in relation to the Property that you could take if the Property were not mortgaged; and
- (e) do anything that the Bank believes is reasonably necessary 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 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 reasonably 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; and
  - (ii) you are asked to do so by the Bank.
- (b) If you do not remove the things referred to in clause 8.6(a) within 30 days of the Bank asking you to do so, it will consider that you have abandoned those things and you have no further claim to those things, and the Bank may:
  - (i) remove them and place them into storage at your expense; or
  - (ii) sell them or otherwise dispose of them.

# 8.7 The Bank does not lose rights

Acting reasonably, 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.
- (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 reasonable costs, 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.
- (f) If money received represents proceeds from an insurance claim, the Bank may use the money to reinstate the Property to good condition, or carry out any other work reasonably required to reinstate the Property.

### 9.2 Setting off money

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.

### 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 reasonable 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

If the Bank does not exercise a right or remedy fully or at a given time, it can still exercise it later unless it has expressly agreed not to or it would be unconscionable to exercise that right or remedy 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. The attorney's powers are limited to those stated in clause 9.6(b). You may not revoke the power of attorney appointment.
- (b) If you are in default, each attorney may
  - do anything which you may lawfully do and anything you are required to do under this mortgage;
  - (ii) delegate their powers (including this power) and revoke a delegation; and
  - (iii) exercise their powers even if this involves a conflict of duty. In these circumstances, the attorney will act reasonably in exercising their powers.
- (c) If the Bank asks you to do so, acting reasonably, you must approve in writing anything the attorney does under this clause.

# 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 written statement signed by one of the Bank's Authorised Officers can be used as evidence of the current balance of your Facility, unless you decide to contest it.

# 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.

If it is possible to be issued with a duplicate certificate of title, you agree not to request the issue of a duplicate certificate of title for The Property until discharge of this mortgage.

# 9.10 The Bank may transfer this mortgage

The Bank may transfer or otherwise deal with its rights under this mortgage without notifying you or obtaining your consent. If you receive notice of a transfer or dealing, you can exercise against the transferee the same rights you have against the Bank under this mortgage.

# 9.11 Supply of information to the Bank

- (a) You must keep the Bank informed of all matters which are likely to significantly affect the Property or its value, or your ability to carry out your obligations under this mortgage. You must do so promptly on becoming aware of such matters.
- (b) In addition to the requirements in clause 9.11 (a), you must give the Bank any information it reasonably 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 any Person to whom the Bank proposes to transfer, or transfers, this mortgage or your obligations under it.

# 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;
- (c) your replacement as trustee (if you have entered into this mortgage as trustee); or
- (d) if, pursuant to any law, any Person asks the Bank to refund a payment it has received in relation to the Amount Owing or this mortgage, then to the extent that the Bank is obliged to, or it reasonably agrees to, make a refund, the Bank may treat the original payment as if it had not been made. The Bank is then entitled to its rights against you under this mortgage as if the payment had never been made (for example, a trustee in bankruptcy or a liquidator may ask the Bank to refund a payment, or it has to repay a mistaken payment made to an account).

# 9.16 Relationship to other documents

This mortgage contains one or more references to a Bank Document, the terms of which do not affect any of the essential terms (land, parties, or term) of this mortgage.

### 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;
- (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; and
- (e) you have disclosed to the Bank full particulars of the trust as at the date of entering into this mortgage.

### 9.19 Continuation

If any term of this mortgage is found to be illegal, void or unenforceable for unfairness or any other reason (for example, if a court or other tribunal or authority declares it so), the remaining terms of this mortgage will continue to apply to the fullest extent possible as if the void or unenforceable part were not included.

### 9.20 Consents

The Bank will only refuse its consent if it is reasonable to refuse it. If the Bank gives its consent it may impose reasonable conditions. You must comply with the Bank's conditions in any consent it gives in connection with this mortgage.

### 9.21 Variation or Waiver

A term of this mortgage, or right created under it, may not be waived, replaced or varied except in writing made by the party or parties to be bound.

### 9.22 Governing Law and Jurisdiction

- (a) This mortgage is governed by the law of the State or Territory in which The Property is located.
- (b) You accept the jurisdiction of the courts of that State or Territory and all appellate courts hearing matters from that jurisdiction.
- (c) If the court rules allow, the Bank may serve any document in a court action (including documents to commence the action) on you by delivering it to the Property or leaving it there. This clause 9.22 does not prevent any other permissible method of service.

# 10. Notices and communications

### 10.1 Communications to you

Whenever the Bank sends you a letter, notice or statement, or otherwise seek to communicate with you, the Bank will do so by any method permitted by law including by mail addressed to you at your last known address or business address known to the Bank as the case may be, or by the electronic means described in clause 10.2.

### 10.2 Electronic communications

Where you have given the Bank an email address, mobile phone number or other electronic address for contacting you, you agree that the Bank may satisfy any requirement under this mortgage or under any law or applicable code of conduct to provide you with information by any of the following means:

- (a) electronic communication to your nominated electronic address;
- (b) a SMS text message to a mobile number you have given the Bank for contacting you; or
- (c) such other means as the Bank agrees with you.

Your agreement for the Bank to communicate with you by electronic communication may be cancelled by you at any time by notice to the Bank.

You must inform the Bank immediately of any change in your name or address including changes to your nominated mobile phone number or electronic address. You can do this by notifying the Bank in any way it reasonably agrees.

While you have agreed that the Bank can communicate with you by electronic communication, paper communications may no longer be given to you and you should regularly check your electronic communications for notices and statements from us.

### 10.3 Time of communication

Unless a later date is set out in the communication, the Bank's communication to you takes effect as follows:

- (a) if given personally on the date it is received by the person to whom it is addressed;
- (b) if sent by post on the date when it would have been received in the ordinary course of post; or
- (c) if by an electronic method outlined in clause 10.2, at the time when the electronic communication enters the first information system outside of the Bank (e.g. your or your internet services provider's information systems).

### 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 and includes any:

- (a) subdivision and development of land with shared property;
- (b) subdivision of buildings;
- (c) management of land which is subdivided and has shared property; and
- (d) management of subdivided buildings.
- 1. What you must do
- (a) You must use your reasonable endeavours to comply with all laws including all relevant by laws or other owners corporation rules in relation to the Property.
- (b) You must use your best endeavours to ensure that your rights are not varied in a way that adversely affects the Security or the Property and tell the Bank promptly if they are.
- (c) You must notify the owners corporation of the Bank's interest in the Property if the Bank asks you to do so.
- (d) You must use your reasonable endeavours to ensure that the owners corporation complies with its obligations (including keeping any shared property in good condition and maintaining insurances) and, where possible, ensuring that the insurance covers the Bank's interest.
- (e) You must promptly tell the Bank of any proposal to vary, substitute or terminate the strata or community title scheme of which the Property forms part or any of its by-laws, rules or articles which may materially affect the value of the Property or the Bank's interest in the Property

- (f) You must promptly give the Bank:
  - (i) full details of any material proposal or court proceeding or dispute which involves the owners corporation, the strata, the community title scheme or plan, or otherwise materially affect the building of which the Property forms part; and
  - (ii) a copy of all notices of meetings of the owners corporation and other meetings which materially impact the Property or the strata or community title scheme of which the Property forms part.
- (g) You must take all steps and sign all documents reasonably 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 title 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. You must vote at any such meeting following any reasonable directions the Bank gives you to protect the Property, its value or shared property.
- 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 reasonably necessary 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 reasonable 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 reasonably asks you to, grant to the Bank a fresh mortgage over the Property, as security for the Amount Owing.

### 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 reasonably 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 tell 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 use your reasonable endeavours 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) You must use your reasonable endeavours to ensure that your rights are not varied in a way that adversely affects the Security or the Property and tell the Bank promptly if they are.
- (e) To the extent that it is possible to do so, you must take out any further insurance that the Bank reasonably requires in relation to:
  - (i) the Premises; or
  - (ii) the Bank's interest in them.
- (f) You must promptly give to the Bank:
  - (i) full details of any proposal or court proceeding or dispute which affects the Premises or the Building or which involves the Company; and
  - (ii) a copy of any notices of meetings of members of the Company and of other meetings in relation to the Premises or the Building reasonably requested by the Bank.

- (g) You must take steps and sign all documents reasonably 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. You must vote at any such meeting following any reasonable directions the Bank gives you to protect the Property or its value.
- 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 reasonable 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) When Building Works are undertaken, you must:
  - (i) get all necessary approvals from authorities (and the owners corporation if the Property is part of a strata scheme or community title scheme) before you carry out the Building Works or enter into a contract to have them carried out;
  - (ii) comply with all laws, requirements of authorities, easements and covenants which affect the Building Works;
  - (iii) you must use your reasonable endeavours to ensure that the cost of the Building Works is in accordance with the amount stated in the contract (or any other amount which the Bank has agreed); and
  - (iv) ensure that the Building Works are completed in a competent and workmanlike manner within a reasonable time and in accordance with the contract for the Building Works.
- (b) If the Bank lends you money for the Building Works, you:
  - must obtain the Bank's consent to the contract for the Building Works. Such consent will not be unreasonably withheld;

- (ii) agree that the Bank may enter into an agreement with the Person or Persons carrying out the Building Works on terms acceptable to the Bank (acting reasonably) including giving the Bank the right to remedy any default;
- (iii) must promptly give the Bank copies of any notices received from any Person under any contract for the Building Works;
- (iv) must promptly notify the Bank if any default occurs under any such contract;
- (v) must use reasonable endeavours to comply with the terms of each contract for Building Works;
   and
- (vi) must perform your obligations reasonably under any contract to perform Building Works.
- (c) Without limiting the other clauses of this Schedule, you must give the Bank, within the time reasonably 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.

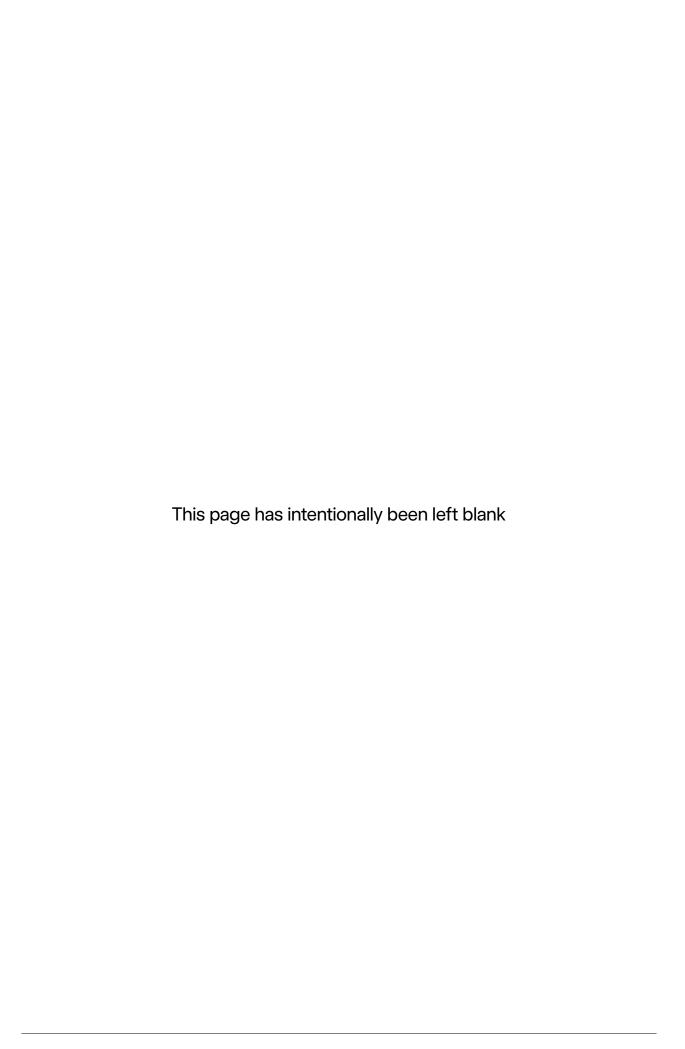
### 3. What you must not do

You must not agree to any contract to carry out Building Work being materially varied without the Bank's consent (which will not be unreasonably withheld).

### 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 and cannot be relied on by you.

- 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 reasonably necessary to maintain the value of any Building Work Right or to get the benefit of any Building Work Right.
- (c) If are you in default, the Bank may, acting reasonably ask you and you agree to:
  - promptly transfer all your interest in the Building Work Right to the Bank as further security for the Amount Owing; and
  - (ii) tell other people (such as an insurer or builder) of the transfer 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) You agree that the Bank is not liable for any loss:
  - 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, except to the extent that the loss was caused by the Bank's fraud, negligence or willful misconduct.





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