

# Mortgage Memorandum.

Effective 9 November 2023



Registered in

ACT	1921689
New South Wales	A1607870H
South Australia	TC 12176060
Northern Territory	372181
Tasmania	M502
Victoria	AA2444
Western Australia	M661411
Queensland	715822710

# 1. Things you must do

## 1.1 Our reliance on things you tell us

In deciding to enter into this *mortgage* and any *secured agreement*, we have relied, and will rely, upon the statements made by you in this *mortgage*.

## 1.2 Things you tell us

You declare that:

- (a) you own the *property* or are in the process of becoming the owner of it and will become the owner shortly after you sign this *mortgage*;
- (b) you have told us about all rights that affect or are likely to affect the *property* (for example, under a lease, an easement, a trust or another mortgage);
- (c) you have not withheld from us any information that might cause a reasonable person in our position not to enter into this *mortgage* or any *secured agreement*; and
- (d) all the information you have given us is true and not misleading and nothing has happened since you gave us any information which makes that information untrue or misleading.

## 1.3 Other things you tell us – companies

If you are a company, you also declare:

- (a) the giving of this *mortgage* and the entering into any *secured agreement* does not breach your constitution;
- (b) it is in your best interests to enter into this *mortgage* and any *secured agreement*;
- (c) you are able to pay all of your debts, as and when they fall due, and you will not become unable to do so because of the entering into of this *mortgage* and any *secured agreement*;
- (d) this *mortgage* and any *secured agreement* is binding upon you and enforceable against you in accordance with its terms;
- (e) you have filed or registered all documents which you are required to file or register with the Australian Securities and Investments Commission, and all those filings and registrations are current, complete and accurate; and
- (f) the most recent financial statements you have given to us have been prepared in accordance with generally accepted Australian accounting principles and standards, and the Corporations Act and give a true and clear view of your financial position.

## 1.4 Other things you tell us – trusts

If you enter into this *mortgage* or any *secured agreement* as trustee of a *trust*, you also declare:

- (a) you have given us a copy of the trust deed that constitutes the *trust*;
- (b) the *trust* has been validly created and is in existence at the date you sign this *mortgage* and any *secured agreement*;
- (c) you have been validly appointed as trustee of the *trust*;
- (d) you have power under the trust deed to enter into and perform your obligations under this *mortgage* and any *secured agreement*;
- (e) it is in the best interests of the beneficiaries of the *trust* that you enter into this

*mortgage* and any *secured agreement*;

- (f) you are personally liable to us to the full extent of your obligations under this *mortgage* and any *secured agreement* and your liability is not limited to the assets of the *trust*.

## 1.5 Telling us about changes

You must tell us immediately if anything happens which:

- (a) leads to a change in your circumstances;
- (b) makes any of those statements in clauses 1.2, 1.3 or 1.4 misleading or untrue; or
- (c) reduces the value of the *property*.

## 2. Your obligations about the *property*

### 2.1 General

In relation to the *property*, you must

- (a) pay on time all rates, taxes, charges and other outgoings payable on or in respect of it;
- (b) give us a copy of any order or notice from any *authority* which might adversely affect it as soon as you receive the order or notice;
- (c) comply with all *laws* and requirements of *authorities* in relation to it; and
- (d) comply with all restrictions, conditions or easements relating to it.

### 2.2 Repairs and maintenance

You must:

- (a) keep the *property* in good and substantial repair and condition;
- (b) keep the *property* clean and tidy;
- (c) not do anything or allow anything to be done that might lower the value of the *property*;
- (d) tell us if the *property* is contaminated, defective or seriously damaged;
- (e) have any environmental examination or audit done of the *property* at your cost if we reasonably believe it necessary, and have done any remedial work or other thing recommended in any subsequent report within such time as we may reasonably require; and
- (f) remove any contaminant and clean up any contamination, if the *property* is contaminated.

### 2.3 Encroachments

If the *property* or any part of it encroaches onto adjoining land, then you must either:

- (a) correct the encroachment; or
- (b) obtain an easement from the owner of the adjoining land to allow it to continue.

### 2.4 Building Work

If you make improvements to the *property* by doing any *works* you must:

- (a) keep the *works* in good repair and condition;
- (b) comply with all *laws* and requirements affecting any *works*; and
- (c) obtain and give us relevant certificates and permits in relation to the *works* which we reasonably require.

## 2.5 Strata Title

If the *property* is *strata title*, you must:

- (a) notify the *body corporate* of our interest and (except for in New South Wales) request that our interest be noted on the insurance policy taken out by the *body corporate*;
- (b) give all notices which we ask you to give which are required to enable us to vote at meetings of the *body corporate* or exercise any other rights which we may have under any *strata law* as mortgagee of the *property*; and
- (c) vote at any meeting of the *body corporate* in accordance with our instructions, if any.

## 2.6 Things you must not do without our consent

You must not do any of the following things without first getting our written consent:

- (a) sell, create or dispose of any other interest in all or part of the *property*;
- (b) mortgage or charge all or part of the *property* to anyone else or allow any other mortgage or charge over the *property* to exist;
- (c) grant a lease or other right to occupy all or part of the *property* other than a residential lease or licence at market rent;
- (d) do anything which reduces the value of the *property* or the effectiveness of this *mortgage*;
- (e) carry out any works (that would reduce the value of the property); or
- (f) use the *property* for a new purpose that would devalue or degrade the property.

## 3. Additional obligations if you are a company

If you are a company, you must also promptly on request give us:

- (a) such information as we reasonably require about your business or financial condition;
- (b) a statutory declaration made by two directors stating whether to the best of their knowledge the company is in breach of any requirements of this *mortgage* or any *secured agreement* and, if so, any steps that are being taken or have been taken to remedy the default.

## 4. Additional obligations if you are a trustee

If you enter into this *mortgage* as trustee of a *trust*, you must:

- (a) notify us immediately in writing if you cease to be the trustee of the *trust* or the *trust* is terminated, vests or ceases to exist;
- (b) not distribute any capital of the trust if to do so would create a material credit risk to us of you failing to repay the loan, until the *secured moneys* have been repaid in full;
- (c) give to us promptly after we ask you, copies of up to date balance sheet and profit and loss accounts for the *trust* and any other information about the business or financial condition of the *trust* that we may reasonably require; and
- (d) comply with all the terms of the *trust deed*.

## 5. Insurance

### 5.1 Keep the property insured

You must at all times keep the *property* insured for at least its full replacement and

reinstatement value against fire and other usual risks.

## **5.2 Strata title**

If the *property* is *strata title* you must ensure that the *body corporate* maintains all insurances which it is required to maintain under any relevant *strata law*. If the *body corporate* maintains insurance over the *property* this clause 5 does not require you to insure any part of the *property* comprising your share of any common property.

## **5.3 Terms of the insurance policy**

Any insurance policy referred to in this clause must be on usual terms and for an amount satisfactory to us, note our interest as mortgagee and be with a reputable insurer.

## **5.4 Evidence of insurance**

You must produce a certificate of current insurance cover to us whenever we ask for it.

## **5.5 Not prejudice insurance**

You must not do anything, or omit to do anything, which results in any insurance cover being reduced or cancelled or permits any insurer to decline or reduce a claim.

## **5.6 Notify us of any claim**

You must tell us promptly if you make any claim on an insurance policy or are entitled to do so.

## **5.7 Use of monies received**

If you receive any money in payment of a claim on an insurance policy, you must (unless you are required by any law to use that money in a different way) use that money to reinstate the *property* or carry out other *works* on the *property* approved by us or pay the money to us in reduction of the *secured moneys*.

## **5.8 Taking over your rights**

If we notify you, we may take over your rights to make, pursue or settle an insurance claim and may exercise those rights in your and our best interests. .

## **5.9 Assignment of rights**

In order to permit us to protect our right to claim proceeds under the insurance policy where the property has been damaged or destroyed, you agree to assign to us all of your rights under all insurance policies relating to the property, and to any money paid or payable under the insurance policies, to the extent that you have not repaid the loan.

# **6. Building and other works**

## **6.1 Consent for works**

You must get our written consent before you do any works that may affect our interest as mortgagee or lead to a reduction in value of the property, and any other necessary

consents or approvals from *authorities*.

## 6.2 Carrying out the works

Any works must be done properly and comply with all *laws*, requirements, easements and covenants which affect the *property* or any *works*, and must be completed within a reasonable time.

## 6.3 We may complete the works

If you do not complete the *works* or we think you are not progressing the *works* within a reasonable time, we may take over the *works* and either finish them, vary them or stop them. We may act as we think fit and provided we act in good faith we will have no liability to you.

## 7. Leases

If you lease or grant someone the right to occupy the *property*, you:

- (a) charge with repayment of the secured moneys your right to receive any rent payable under that lease or any other money payable by any such person (but you will be entitled to all rent payable unless you are in default);
- (b) agree that if you are in default, we may give notice to the lessee or other person requiring the rent or other money to be paid to us direct;
- (c) must not transfer or charge to any other person your right to receive rent or other money; and
- (d) must give to us a copy of any lease or other agreement by which you give another person the right to occupy the *property* as soon as we ask for it.

## 8. Default

### 8.1 When are you in default?

You are in default under this *mortgage* if:

- (a) you do not pay any of the *secured moneys* when you have to and have not rectified that default within 7 days;
- (b) you do something that you must not do, or don't do something you must do, under this *mortgage* or any *secured agreement*;
- (c) any of the statements you make in this *mortgage* or any *secured agreement* are untrue or misleading;
- (d) you are an individual and you die, become bankrupt or an order is made for the management of your affairs under any law relating to mental health;
- (e) you are a company, and an *event of insolvency* occurs in relation to you;
- (f) any guarantor of the *secured moneys* defaults under that guarantee or becomes bankrupt or insolvent;
- (g) all or part of the *property* is resumed, surrendered or determined or you are required by law or court order to transfer it to another person or an *authority*, and either:
  - (i) you receive no compensation or compensation which is not substantially equal to any reduction in the value of the *property* caused by the resumption, surrender,

- determination or transfer; or
- (ii) you do not pay us the amount of the compensation you received in reduction of the *secured moneys*;
- (h) the *property* is *strata title* and:
- (i) the *body corporate* ceases to exist or does not comply with any relevant *strata law*;
  - (ii) the *body corporate* fails to maintain any compulsory insurance as required by any relevant *strata law*; or
  - (iii) anything happens in relation to the *body corporate* or the *property* which reduces the value of the *property* or the effectiveness of this *mortgage*.

## 8.2 We may give you notice of default

If you are in default we may give you a notice stating:

- (a) that you are in default; and
- (b) the action you need to take to remedy the default (if it is capable of remedy); and
- (c) the period within which you must do so (which must be not less than 30 days, except when you have become insolvent or failed to pay any of the secured moneys and not rectified that within 7 days); and
- (d) any other information required by law.

## 8.3 Our rights if you default

If you do not remedy the default within the period specified in any notice we give you under clause 8.2, or if the default is not capable of remedy, then, to the extent that they are not already due for payment, the *secured moneys* become immediately due for payment at the end of that period without further notice. In addition, we may then do one or more of the following:

- (a) sue you for the *secured moneys*;
- (b) take possession of the *property*;
- (c) do anything an owner of the *property* could do, including improving, selling or leasing it;
- (d) do anything that we are permitted to do by law as mortgagee of the *property*;
- (e) appoint someone else (such as a receiver or agent) to do anything of these things;
- (f) require you to remove any personal property and, if you fail to do so, remove any such possessions, store or dispose of them and use the proceeds of sale towards repayment of the *secured moneys*, or
- (g) if you have any money on deposit with us, or we owe you any money, we may set-off the amount of your deposit or the amount we owe you against the *secured moneys*.

## 9. What happens to money we receive

### 9.1 Order of application

Money received under this *mortgage* will be used in the following order (unless we are required by any law to use them in another order):

- (a) first, in paying all costs and expenses incurred by us under or in connection with this *mortgage* and any *secured agreement*;
- (b) secondly, in paying any person with a claim which ranks ahead of us;



- (c) thirdly, in payment of the *secured moneys* in any order we choose (e.g. we may pay principal before interest or a later installment before an earlier one);
- (d) fourthly, in paying any balance to you or to any other person entitled to it (for example, a person who has a subsequent mortgage over the *property*).

## **9.2 When you get credit**

You are only credited with money from the date we actually receive it, and then only to the extent that we are not subsequently obliged to repay that money.

## **10. Interest**

This clause 10 only applies to the extent that this *mortgage* secures the performance of obligations under a *secured agreement* to which the *National Credit Code* does not apply.

### **10.1 When you must pay us interest**

You must pay us interest under this clause 10 and in accordance with our agreement when we ask for it. If you do not pay us any of the *secured moneys* due under this *mortgage* (as opposed to under a *secured agreement*) on the date on which you are obliged to do so under this *mortgage*, you must pay us interest on the amount you have not paid from the date you should have paid the amount until the date you actually pay it.

### **10.2 Rate of interest**

Interest under clause 10.1 accrues on daily balances at the *interest rate*.

### **10.3 Capitalisation of interest**

We may capitalise interest payable under clause 10.1 at any time. Capitalising interest means that we may add any unpaid interest to the amount on which the interest is accruing, and if we do, you must then pay us interest on the total amount.

### **10.4 Merger with court orders**

If any of the *secured moneys* become merged in a judgement or court order, you must, as a separate and independent obligation, pay us interest on the amount from the date of the judgement or court order until the date you actually pay the amount. The previous provisions of this clause 10 also apply to this interest, except that the rate of interest will be the higher of the rate in clause 10.2 and the rate specified in the judgement or court order.

## **11. Costs and other amounts you must pay us**

Save for clause 11.4, this clause only applies to the extent that this *mortgage* secures the performance of obligations under a *secured agreement* to which the *National Credit Code* does not apply.

### **11.1 Our costs**

You must pay all stamp duty, other taxes, registration and similar fees and charges

payable on or in connection with this *mortgage* and any *secured agreement*. If we pay any of these amounts, you must reimburse us in full as soon as we ask you to.

## **11.2 Enforcement costs**

You must pay all costs and expenses (including where we incur legal costs, our reasonable costs) which we reasonably incur in or as a result of taking any action which we are entitled to take if you fail to do anything which you are obliged to do under this *mortgage* or any *secured agreement* or if you are in default. If we pay any of these amounts, you must reimburse us in full.

## **11.3 Consents**

If you ask for our consent to do anything for which our consent is needed under this *mortgage*, you must reimburse or pay us any costs we incur (or are likely to incur) in evaluating your request. An example of these costs would be the costs of a valuer appointed by us to review the effect of proposed work on the value of the *property*.

## **11.4 Enforcement costs where the National Credit Code applies**

You must pay us the reasonable expenses we reasonably incur in enforcing this *mortgage* after you are in default. These may include expenses incurred in preserving and maintaining the *property* such as insurance, rates and taxes.

# **12. National Credit Code**

## **12.1 Application**

This clause 12 applies to the extent that the National Credit Code applies to this *mortgage*.

## **12.2 Severance**

If:

- (a) that code would otherwise make a provision of this *mortgage* illegal, void or unenforceable; or
- (b) a provision of this *mortgage* would otherwise contravene a requirement of that code or impose an obligation or liability which is prohibited by that code, this *mortgage* is to be read as if that provision were varied to the extent necessary to comply with that code or, if necessary, omitted.

## **12.3 Secured amount**

The National Credit Code makes a mortgage void to the extent that it secures certain amounts. The *secured moneys* do not include any such amounts.

# **13. Power of attorney**

You appoint each of us separately as your attorney to execute all documents and do everything:

- (a) which you must do under this *mortgage*;

- (b) which we are entitled to do under this *mortgage*; and
- (c) which are necessary to protect or preserve our interest in the *property*.

You can not revoke this power of attorney until you have paid to us all of the *secured moneys* and there are no *secured agreements* under which the *secured moneys* may become owing. If we ask, you must ratify and confirm anything that we do, acting reasonably and in good faith, in exercising this power of attorney.

## **14. General**

### **14.1 Further assurance**

You must do everything which we require at any time (for example, signing any additional documents or answering any requisitions) to make this *mortgage* more effective as a security for the *secured moneys*.

### **14.2 Our right to enter the *property***

Where you are in default, any person authorised by us may enter the property at all reasonable times for any purpose concerning the *mortgage* or any *secured agreement*.

### **14.3 Our right to transfer**

We may transfer this *mortgage* or dispose of any of our rights under it at any time and in any way we see fit. We need not tell you if we do unless it would cause detriment to you.

### **14.4 Release of this *mortgage***

We will release the *property* from this *mortgage* if all of the *secured moneys* have been repaid in full.

### **14.5 Waiver of rights**

If we do not exercise a right or remedy under this *mortgage*, any *secured agreement* or any *law*, either fully or at a given time, this does not prevent us from exercising it later, or from exercising any other rights we have.

### **14.6 Continuing security**

This *mortgage* is a continuing security for the *secured moneys*.

## **15. Notices**

### **15.1 How given**

Notices, certificates, requests and other communications under or in connection with this *mortgage* must be in writing and must be given by one of us to the other by:

- (a) delivering it personally to the address we have most recently notified to each other;
- (b) sending it by prepaid post to that address; or
- (c) sending it by email to the email address you have given us; or

(d) any other method permitted by law.

## 15.2 When notices are taken to have been given

- (a) notices delivered personally will be treated as given on the date the notice bears, or the date received by the addressee, if later;
- (b) notices sent by pre-paid post will be treated as given on the date the notice bears or the date it would have been received in the ordinary course of post, whichever is later;
- (c) notices sent by email will be treated as given on the date of transmission if the transmission occurred before 4pm on a normal working day. If transmission occurred after 4pm or not on a normal working day, it will be deemed as having been received at 9am the next normal working day.

## 16. Definitions

### 16.1 Meaning of words

The meaning of words and expressions printed in italics *like this* have the following meanings where used in this *mortgage*:

*authority* or *authorities* means any government or semigovernment authority, administrative, fiscal or judicial body, department, commission or other similar body.

*body corporate* means any association, body corporate, owners corporation or other entity for or affecting the *property* established under *strata law*.

*event of insolvency* means in relation to a company, any of the following events:

- (a) a receiver, manager, receiver and manager, administrator or similar officer is appointed to the company or any of its assets;
- (b) a liquidator or provisional liquidator is appointed to the company;
- (c) any application is made to a court of an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of appointing a person referred to in paragraph (a) or (b) above or winding up the company; or
- (d) a moratorium of any debts of the company or an official assignment or a composition or an arrangement with the company's creditors or any similar proceeding or arrangement by which the assets of the company are subjected conditionally or unconditionally to the control of a company's creditors, is ordered, declared, or agreed to; or
- (e) the company becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts.

*interest rate* means the rate of interest payable by you on the *secured moneys* under any *secured agreement* or if there is more than one such rate of interest, or more than one *secured agreement*, the highest of those rates.

*laws* means any statute, regulation, rule, ordinance, by-law, statutory instrument or order of the Commonwealth of Australia or any State or Territory, or any local or municipal council or body.

*mortgage* means this mortgage of the *property*.

*National Credit Code* means the National Credit Code in Schedule 1 to the National Consumer Credit Protection Act 2009 (cth), as amended (the NCCP), and includes regulations made under section 329 of the NCCP Act for the purposes of that Schedule, and instruments made under that Schedule.

*property* means the land (including any estate or interest in the land) mortgaged by this *mortgage*, all fixtures and improvements on it, and all rights attaching to it.

*secured agreement* means any agreement which you and we agree in writing is a *secured agreement*.

*secured moneys* means all money which one or more of you owe us, or will or may owe us in the future, in each case under this *mortgage* or any *secured agreement*.

*strata law* means any legislation that deals with:

- > the subdivision of buildings and their management; or
- > the subdivision and subsequent development and management of land with shared, common or community ownership of property.

*strata title* means a unit, flat or lot in any scheme, plan or arrangement governed by a *strata law*.

*trust* means any trust of which you are a trustee and in your capacity as trustee of which you enter into this *mortgage* and which is specified in any *secured agreement*.

*works* means any building, excavation or demolition work on or to the *property* and any renovations or repairs which affect the structure of the *property*.

*we, us* and *our* means the person named in this *mortgage* as mortgagee, being the Hume Bank Limited and its successors and assigns.

*you* and *your* means the person or persons named in this *mortgage* as mortgagor, and includes your successors and assigns. If there are more than one, *you* means each of *you* separately and every two or more of *you* jointly.

## **16.2 General interpretation**

In this *mortgage*, a reference to:

- (a) the singular includes the plural;
- (b) a document includes any variation, novation or replacement of it; and
- (c) reference to a person includes the person, and their successors in title, transferees or executors.

# General Enquiries

1300 004 863

E: [hume@humbank.com.au](mailto:hume@humbank.com.au)

W: [www.humbank.com.au](http://www.humbank.com.au)

## Branch Locations

### Albury

Head Office  
492 Olive Street,  
Albury NSW 2640

Myer Centrepont  
Shop 13A, David & Swift Streets,  
Albury NSW 2640

Lavington  
Shop 1/346 Griffith Road,  
Lavington NSW 2641

Thurgoona Plaza  
Shop 11/10 Shuter Avenue,  
Thurgoona NSW 2640

### Wodonga

Wodonga Place  
Shop 7-8, 107-117 High Street & Elgin Boulevard,  
Wodonga VIC 3690

Whitebox Rise  
Shop 12, Victoria Cross Parade  
& Kelliher Avenue,  
Wodonga VIC 3690

### Wangaratta

76 Reid Street,  
Wangaratta VIC 3677

### Wagga Wagga

Baylis Street  
115 Baylis Street,  
Wagga Wagga NSW 2650

### Regional

Corowa  
79 Sanger Street,  
Corowa NSW 2646

Culcairn  
Shop 2, 50 Balfour Street,  
Culcairn NSW 2660

Yackandandah  
35 High Street,  
Yackandandah VIC 3749

Holbrook  
39 Young Street,  
Holbrook NSW 2644

Howlong  
45 Hawkins Street,  
Howlong NSW 2643

Jindera  
Cnr Urana Road & Creek Street,  
Jindera NSW 2642

Rutherglen  
128-130 Main Street,  
Rutherglen VIC 3685



# Hume Bank

Hume Bank Limited  
ABN 85 051 868 556  
AFSL No. 244248

After Hours Emergency Numbers

Lost or stolen card or PIN

1800 808 550