

## Table of Contents

<b>1. Meaning of words</b>	<b>2</b>
1.1 Notes about these Terms:	3
<b>2. What do we need before we provide the Facility?</b>	<b>4</b>
2.1 Things we need to check	4
<b>3. The Security you agree to provide for the Facility to operate</b>	<b>4</b>
3.1 Security	4
3.2 If the Security already exists	4
3.3 If the Security does not already exist	4
3.4 Compliance with any additional requirements	4
<b>4. What you must tell us each time you drawdown</b>	<b>4</b>
<b>5. Making your Facility available</b>	<b>5</b>
5.1 When and how can you draw down?	5
5.2 Can we stop you borrowing?	5
5.3 Can I cancel or reduce the Facility Limit?	5
5.4 What you may have to pay if you cancel	6
5.5 Authority to disburse	6
<b>6. What about interest?</b>	<b>6</b>
6.1 Interest on your loan	6
6.2 Changing your Interest Rate	6
6.3 Default interest	6
<b>7. Fees and charges that apply</b>	<b>7</b>
7.1 What normal fees and charges are payable?	7
7.2 How do we charge these fees and charges?	7
7.3 What other fees and charges may be payable?	7
<b>8. Transferring to another property</b>	<b>7</b>
<b>9. What you must do during the term of your Facility</b>	<b>7</b>
9.1 Maintain the Property	7
9.2 Insurance	7
9.3 Residence in the Property	7
9.4 Outgoings	8
9.5 Inspections and valuations	8
9.6 Repairs	8
9.7 Things you must tell us	8
9.8 Further information we require	9
<b>10. When are you in default?</b>	<b>9</b>
10.1 You are in default under the Contracts if:	9
10.2 What happens if I am in default?	9
10.3 What we can do if we believe the Property is at risk?	9
<b>11. When do you have to repay?</b>	<b>9</b>
11.1 We may require the Facility to be repaid if:	9
11.2 Payments must be free and clear	10
11.3 Reinstatement	10
11.4 The sale of your Property	10
11.5 Limited Recourse	10
11.6 Lifetime occupancy guarantee	10
<b>12. Your right to cancel during the cooling off period</b>	<b>10</b>
12.1 The Cooling Off Period	10
<b>13. Complaints and Disputes</b>	<b>11</b>
13.1 Complaint and dispute process	11

13.2	Banking Ombudsman .....	11
13.3	Dispute resolution scheme and registration as Financial Service Provider .....	11
13.4	Dispute costs .....	11
<b>14.</b>	<b>General Legals.....</b>	<b>11</b>
14.1	The law that applies.....	11
14.2	Certificate of amount owing.....	11
14.3	Amendments .....	11
14.4	Time of the essence.....	11
14.5	Notices .....	12
14.6	We can choose how and when we exercise our rights .....	12
14.7	We can refuse our consent or impose conditions .....	12
14.8	Any inspection reports and valuations will be owned by us .....	12
14.9	Indemnity .....	12
14.10	Debiting another ASB account .....	12
14.11	Changes required by law .....	12
14.12	Assignment.....	13
14.13	Disclosure.....	13
14.14	Joint Borrower.....	13
14.15	Survival of Covenants.....	13
14.16	Partial Invalidity.....	14

## 1. MEANING OF WORDS

A reference in this document to the singular includes the plural and vice versa.

<b>Attorney</b>	Any person we appoint as our attorney under the mortgage.
<b>Available Money</b>	The amount available from time to time, for draw down under your Facility to your Transaction Account.
<b>Bankruptcy</b>	If you commit an act of bankruptcy and are unable to pay your debts as they fall due or legal proceedings are commenced (and not dismissed within 30 days) or an administrator or similar officer is appointed in respect of you or any of your assets.
<b>Base Rate</b>	The interest rate specified in the Facility Schedule and such other rates which we specify as our Base Rate from time to time at our sole discretion at any time including prior to drawdown.
<b>Borrower</b>	The person(s) named as the "Borrower" in the Facility Agreement and is also referred to in these Terms as "you" and "your".
<b>Business Day</b>	A day that is not: (a) a Saturday or Sunday; and (b) a public holiday in both Auckland and Wellington.
<b>CCCFA</b>	Credit Contracts and Consumer Finance Act 2003.
<b>Contracts</b>	The Facility Agreement, its Facility Schedule, the Terms, any Security Document and any other deed or agreement, present or future, required by or relating to the Facility, together and separately any one of them.
<b>Default Rate</b>	The interest rate set by us from time to time as our "Unarranged Overdraft Interest Rate" and is available at <a href="http://www.asb.co.nz">www.asb.co.nz</a> or from any branch of ASB.
<b>Drawdown</b>	The transfer of Available Money from your Facility Account to Transaction Account.
<b>Facility</b>	The credit facility we agree to give you under the Facility Agreement.
<b>Facility Account</b>	The account: (a) we keep in your name to which we make the Facility available to; (b) which you debit the Facility from and against; and (c) which any payments to third parties we make will be added to the Outstanding Balance. This account is also referred to as your ASB HomePlus account.
<b>Facility Agreement</b>	The facility agreement entered into between you and us incorporating these Terms and one or more Facility Schedules, (where the context requires, references to the Facility Agreement includes references to the Facility Schedules attached to that Facility Agreement).

<b>Facility Limit</b>	The maximum credit limit of your Facility Account specified in your Facility Schedule.
<b>Facility Schedule</b>	The schedule setting out the specific terms of each Facility attached to the Facility Agreement.
<b>Interest Rate</b>	The HomePlus Base Rate specified in your Facility Schedule and as increased or reduced in accordance with clause 6.2.
<b>Major Damage</b>	Damage that results in either a loss or claim totalling 20% or more of the full replacement value of the improvements and buildings for insurance purposes, or the Property becomes unoccupiable as a personal residence.
<b>Net Sale Proceeds</b>	The proceeds you receive from the sale of the Property less any reasonable sale expenses such as real estate and legal fees.
<b>Our</b>	Belonging to ASB Bank Limited.
<b>Outstanding Balance</b>	On any date, the aggregate of the principal amount outstanding under the Facility and all other money payable by you to us under the Facility and under the Security, outstanding at such date including all interest (including default interest) (whether charged or not), fees, indemnities, costs and expenses.
<b>Parties</b>	You and us.
<b>Property</b>	Any property stated in your Facility Agreement or any property over which we have security, including the property that is subject to any mortgage to us.
<b>Protected Equity Portion</b>	The proportion we specify in your Facility Schedule which you do not have to repay to us from the Net Sale Proceeds of the Property.
<b>Security</b>	Any security you agree to provide listed in the Facility Agreement or any security substituted for it at our request or with our prior written consent and any additional security which you acknowledge in writing secures your obligations under the Contracts.
<b>Security Document</b>	Each agreement at any time executed or delivered to evidence or secure your indebtedness under the Facility whether or not it secures other obligations as well (including any mortgage, guarantee and all other documents which the parties agree shall be a Security Document).
<b>Termination of Offer Date</b>	The "Termination of Offer Date" specified in the Facility Schedule.
<b>Terms</b>	These terms and conditions.
<b>Transaction Account</b>	An ASB account to which you may transfer any credit from your Facility to.
<b>We and Us</b>	ASB Bank Limited and its representatives, successors, assigns and transferees, Attorneys and any receiver we appoint.
<b>You</b>	The person or persons named in the Facility Agreement (other than us). If there is more than one, <i>you</i> means each of you separately and all of them together. You includes your executors, administrators and permitted assigns. When there are two or more of you, your undertakings and agreements in the Contracts bind you jointly and each of you separately.

### 1.1 Notes about these Terms:

A reference to:

- (a) the headings are inserted for convenience only and can otherwise be ignored;
- (b) a paragraph, sub clause or clause is a reference to a paragraph, sub clause or clause of the Contracts;
- (c) a document or the Contracts is a reference to the document or the Contracts as varied or replaced from time to time;
- (d) you as an executor or an administrator, is if there are two of you and one of you dies, then that person's executor or administrator who is empowered to administer their estate;
- (e) any law or legislation means that law or legislation amended from time to time, re-enacted or substituted, includes regulations, orders-in-council and other instruments from time to time issued or made under, that legislation and, unless otherwise stated, is a reference to New Zealand legislation;
- (f) the singular includes the plural and vice versa; and

- (g) tax means any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature or whatever called (including interest, penalties, fines and charges in respect of taxes) imposed, levied, collected, withheld or assessed by any governmental agency, on whomsoever imposed, levied, collected, withheld or assessed.

## 2. WHAT DO WE NEED BEFORE WE PROVIDE THE FACILITY?

We will tell you what you need to do before we make the Facility available. You must comply with our requirements before we can make your Facility Limit available.

### 2.1 Things we need to check

We will not establish your Facility Limit unless we are satisfied that all of our requirements have been met (at our sole discretion), including satisfying all of the following conditions that apply to your Facility:

- (a) **Proof of identity:** You must provide us with adequate proof of your identity;
- (b) **Financials:** You must fully and truthfully tell us your current financial position including providing us with any information we reasonably request;
- (c) **Valuation:** We must be satisfied with a current valuation of the Property, which you must obtain at your cost from an independent registered valuer;
- (d) **Facility Agreement conditions:** All the “Conditions Precedent” set out in your Facility Agreement have been met;
- (e) **Prompt execution:** Execution of the Contracts by you on or before the Termination of Offer Date;
- (f) **Security:** You must give us the Security we require in the Property. You must do all things and pay or arrange to pay all monies (including government fees, charges or taxes) necessary to do this;
- (g) **Representations and warranties:** We will ask you to make representations and warranties under clause 4 (*What you must tell us each time you draw down*) below. Your representations and warranties must be truthful, accurate and not misleading;
- (h) **Insurance:** You must insure the Property at your cost in accordance with our insurance requirements as required under the mortgage;
- (i) **Certificate:** We have received your solicitor’s completed certificate;
- (j) **Documents:** We have received the Contracts executed by you or a completed solicitor’s certificate from our solicitor; and
- (k) **Others:** Any other conditions we impose in writing during the application and approval process.

## 3. THE SECURITY YOU AGREE TO PROVIDE FOR THE FACILITY TO OPERATE

### 3.1 Security

Your obligations under the Contracts are to be secured by the Property and any other Security listed in the Facility Agreement. The Security must be in the form or forms we require.

### 3.2 If the Security already exists

If the Security is in existence at the date of the Contracts, by signing the Contracts you acknowledge that the Security extends to secure your obligations under the Contracts.

### 3.3 If the Security does not already exist

If the Security is not in existence at the date of the Contracts, you agree to give us the Security.

### 3.4 Compliance with any additional requirements

You must comply with any other conditions precedent and any other requirements listed in the Facility Agreement including any “Conditions Subsequent” for the term of your Facility.

## 4. WHAT YOU MUST TELL US EACH TIME YOU DRAWDOWN

When you debit your Facility Account or request a transfer we need to be sure that it is lawful for us to provide you with credit, taking into account any changes in your circumstances. To do this we rely on what you tell us about your circumstances – known as your representations and warranties.

You make these representations and warranties on your own behalf. Prior to you debiting your Facility Account or when you request a transfer of the Property in accordance with clause 8 (*Transferring to another Property*), you must tell us if you cannot make the following representations and warranties to us:

- (a) **Information:** All the information you have provided us was true and accurate when provided, remains so and there are no facts or circumstances which have not been disclosed to us which would make that information untrue, inaccurate or misleading, except as disclosed to, and accepted in writing by us;
- (b) **Identifier number:** You are the only owner(s) of the Property and there are no interests registered or unregistered against its identifier number (apart from our interest) to the Property which you have not informed us of;
- (c) **Bankrupt:** You are not an undischarged bankrupt;
- (d) **Assignment of your estate or entering into any arrangement or composition for the benefit of creditors:** You have not assigned your estate or entered into any arrangement or composition for the benefit of any one or more other creditors;
- (e) **Other agreements or court orders:** You are not in default (or no event has occurred which, with the giving of notice, lapse of time or fulfilment of any other requirement, would constitute a default by you), being a default that is material to the Contracts or the Security, under any agreement or undertaking to which you are a party, or any court order which binds you; and
- (f) **Lawful instructions:** In instructing us in relation to any matter or transaction, you are not in breach of the laws of New Zealand.

## 5. MAKING YOUR FACILITY AVAILABLE

### 5.1 When and how can you draw down?

You can draw down any part of your Facility on any day so long as you do not draw down more than your Facility Limit or Available Money. We will make the full amount of your Facility Limit available to your Facility Account for you to draw down during the term of your Facility by debiting your Facility Account. If you make a repayment of any part of your Facility during its term then subject to clauses 4 (*What you must tell us each time you draw down*) and 5.3 (*Can I cancel or reduce the Facility Limit?*), you can re-borrow that amount in accordance with these Terms. Debits to your Facility Account by us for fees and bank charges you have agreed to will be deemed to be a drawdown under the Facility and will reduce your Available Money.

Your monthly Facility Account statement will show your Available Money as at the last day of the statement period. Payments made to and from your Facility Account after the last day of the monthly statement will change the amount of Available Money.

If you fail to satisfy the conditions set out in clause 2.1 (*Things we need to check*) we do not have to make the Facility available to you.

### 5.2 Can we stop you borrowing?

We can stop you borrowing if any of the following events occur:

- (a) **Default:** You have not kept to the terms of the Contracts and are in default under the Contracts (see clause 10 (*When are you in default?*) to find out when this could happen); or
- (b) **Illegality:** It is or becomes illegal for us to make the Facility (or continue making it) available; or
- (c) **Cancel or reduced:** If you decide to cancel or reduce any part (or all) of the Facility Limit in accordance with clause 5.3 (*Can I cancel or reduce the Facility Limit?*) below then we will not allow you to redraw that amount; or
- (d) **Tenants in common:** If one of you dies and the Property is held as tenants in common.

### 5.3 Can I cancel or reduce the Facility Limit?

You may cancel your Facility at any time in full without penalty by repaying the amount you owe under the Facility. You must confirm to us in writing that you want us to terminate and cancel your Facility.

Subject to clause 12.1 you may be required to pay our fees and costs if you decide to terminate and cancel your Facility.

You may repay amounts you owe under your Facility at any time either in full or part without penalty to reduce your Facility Limit. You must confirm to us in writing that you want us to reduce your Facility Limit. The amount by which you reduce your Facility Limit may not be re-borrowed.

If you repay more than you owe us under the Facility, the credit balance will not earn interest.

#### **5.4 What you may have to pay if you cancel**

If you cancel your Facility you must repay the debit balance of your Facility Account and we may charge you:

- (a) the amount of any reasonable expenses we had to pay in connection with the Facility and its cancellation (including but not limited to, legal fees and fees for credit reports etc); and
- (b) interest and fees on the debit balance of your Facility Account for the period from the day of your first draw down under the Facility until the day you repay the debit balance of your Facility Account in full as provided for in the Facility Agreement.

#### **5.5 Authority to disburse**

Unless you advise us otherwise, you authorise and direct us to make the first draw down by debiting the Facility Account and issuing funds in favour of your solicitor as they direct us in writing.

### **6. WHAT ABOUT INTEREST?**

#### **6.1 Interest on your loan**

We calculate interest at the Interest Rate from the date of your first draw down of the Facility and interest will accrue on a daily basis on the Outstanding Balance from time to time. Interest due and payable will be debited to your Facility Account monthly and will add to the total amount you owe us.

With the exception of any default interest we may charge you, the interest we charge you does not reduce the Available Money.

Interest will be calculated on the basis of the number of days elapsed and a 365 day year. We divide by 365 even in leap years. We may alter the method of calculating interest at any time with prior notice.

#### **6.2 Changing your Interest Rate**

We may change the Interest Rate at any time (including at any time prior to making your Facility available). If we do, we will give you details of that change in your next monthly Facility Account statement or other direct communication with you, or by display in our branches, by notice in the media (including public notice) and by notice on our website, or otherwise in accordance with any applicable law.

#### **6.3 Default interest**

You must also pay us additional interest (both before and after judgment), at our Default Rate on any amount that:

- (a) you fail to pay by the due date under the Contracts; or
- (b) causes your Facility Limit to be exceeded.

Interest at the Default Rate begins to accrue from the date you fail to pay or the date your Facility Limit is exceeded and the Default Rate is calculated and accrues on a daily basis until that amount is paid or satisfied in full. We may change our Default Rate at any time and we will notify you of that change by direct communication with you or by display in our branches, by notice in the media (including public notice) and by notice on our website or otherwise in accordance with any applicable law.

## **7. FEES AND CHARGES THAT APPLY**

### **7.1 What normal fees and charges are payable?**

You must pay us the fees and charges that are set out in the Facility Schedule together with all other fees and charges for incidental services we provide relating to your Facility including default fees, in the amounts notified by us to you from time to time including those listed as fees for incidental services at the back of these Terms and in ASB's Guide to Fees and ASB's Home Loans and Personal Loans Guide to Fees. Details of fees and charges are also available from any ASB branch or at [www.asb.co.nz](http://www.asb.co.nz).

### **7.2 How do we charge these fees and charges?**

We will debit the fees and charges you must pay to your Facility Account so they will be part of the amount you owe us and interest will accrue on those amounts from that date.

### **7.3 What other fees and charges may be payable?**

If we incur any liability, costs or expenses (which may include administration fees (including all legal expenses on a solicitor and own client basis) associated with the preparation, early repayment, variation, your non-performance, enforcement, or exercising of any rights we may have under your Contracts) in relation to your Facility then you must reimburse us for any liability we may incur and pay us the amount of those costs or expenses on a full indemnity basis. You authorise us to debit your Facility Account with that same amount.

These costs and expenses may have been incurred by us from a third party. If they are, you authorise us to pay it to that other person and debit your Facility Account with that same amount.

## **8. TRANSFERRING TO ANOTHER PROPERTY**

You (meaning all borrowers together) may ask us in writing to permit your Facility to be secured by a substitute property. You can only do this if:

- (a) you are not in default under the Contracts;
- (b) you pay any applicable fee and sign any new documentation we require; and
- (c) we consent to the transfer.

We may impose other reasonable conditions to our consent.

## **9. WHAT YOU MUST DO DURING THE TERM OF YOUR FACILITY**

### **9.1 Maintain the Property**

You must look after the Property and its buildings and protect and maintain it in a good state of repair and condition. This means you must carry out all repairs required from time to time to keep all buildings and the land in a habitable state so as not to detrimentally affect the value of the Property.

### **9.2 Insurance**

You must maintain house insurance as required under the mortgage. It must cover the full replacement value of any building subject to the mortgage (or such other value as we agree in writing) and such insurance must continue to meet our insurance requirements at all times.

You are responsible to adequately insure the Property. If you fail to do so we may (although we do not have to), insure the Property with any insurer we choose. We will debit the costs of any insurance premium to the Facility Account reducing the Available Money and these costs will also increase the amount you owe us.

If the debiting of these costs causes your Facility Limit to be exceeded you will be charged interest at the Default Rate on that excess as described in clause 6.3 (*Default interest*). If you do not pay the amount of any such excess to us when we demand it in writing this will cause you to be in default under the Contracts as described in clause 10 (*When are you in default?*).

### **9.3 Residence in the Property**

Unless you obtain our prior written consent to reside elsewhere, you agree to live in the Property. To satisfy this requirement you (or if there are two of you, at least one of you) must reside at the Property for an aggregate of at least six (6) months in any 12 month period.

## 9.4 Outgoings

You must promptly pay all outgoings relating to the Property. These include rates, insurances and taxes.

If you fail to do so we may (although we do not have to, unless required by law) pay these outgoings. If we elect to pay these outgoings we will debit the costs of these outgoings unpaid by you to your Facility Account reducing the Available Money and these costs will also increase the amount you owe us. If the debiting of these costs causes your Facility Limit to be exceeded you will be charged interest at the Default Rate on that excess as described in clause 6.3 (*Default interest*). If you do not pay the amount of any such excess to us when we demand it in writing this will cause you to be in default under the Contracts as described in clause 10 (*When are you in default?*).

You may not request, or agree to enter into a rates reversionary, remission or postponement scheme (or similar) with any local authority for the postponement of the local authority rates payable for the Property without our prior written consent.

## 9.5 Inspections and valuations

The value of and title to the Property must be to our satisfaction at all times during the term of the Facility and you agree to do everything you can to maintain the value of, and title to, the Property. We may obtain a new valuation, at your cost, from an independent registered valuer of the Property at any time we choose and you agree to allow us to inspect or value the Property from time to time (but not more than once in any 12 month period unless an urgent valuation or inspection is required).

We will usually give you one (1) month's prior written notice before we carry out an inspection or valuation unless we have a reasonable belief that you are not protecting or maintaining the property or you are otherwise in breach of your obligations in respect of the Property, in which case after giving two (2) Business Days prior written notice, we and/or our representatives, valuers or consultants may enter the Property at any time during daylight hours (or in the event of emergency without notice, at any time), to inspect the condition of and/or value the Property.

Any valuations and inspections will be carried out by an appropriately qualified person independent of the Parties and if you do not pay us on demand you authorise us to debit your Facility Account with the cost of each valuation and inspection, reducing the Available Money and these costs will also increase the amount you owe us. If the debiting of these costs causes your Facility Limit to be exceeded you will be charged interest at the Default Rate on that excess as described in clause 6.3 (*Default interest*). If you do not pay the amount of any such excess to us when we demand it in writing this will cause you to be in default under the Contracts as described in clause 10 (*When are you in default?*).

## 9.6 Repairs

If we believe an inspection report reveals that repairs are needed to restore the Property to a good state of repair, you agree to have those repairs (specified in the inspection report) carried out at your cost, in a good and tradesperson like manner and in accordance with all relevant building codes, regulations and statutes and any approval or consent issued by the relevant authority (which if required you will obtain).

You agree those repairs must be carried out by a suitably qualified tradesperson within a reasonable time given the nature of those repairs and in any case within three (3) months (or any other period agreed by us in writing) from the date the inspection report is provided to you.

If you do not carry out the repairs to the required standard, you agree that we may carry out the repairs. You authorise us to enter the Property during daylight hours for this purpose. Any costs we incur undertaking these repairs will be debited to your Facility Account, reducing the Available Money and these costs will also increase the amount you owe us. If the debiting of these costs causes your Facility Limit to be exceeded you will be charged interest at the Default Rate on that excess as described in clause 6.3 (*Default interest*). If you do not pay the amount of any such excess to us when we demand it in writing this will cause you to be in default under the Contracts as described in clause 10 (*When are you in default?*).

## 9.7 Things you must tell us

You must tell us as soon as practicable if one or more of the following occur:

- (a) you intend to enter into an agreement to sell the Property;
- (b) you believe you have not kept to the terms of the Contracts; and
- (c) a Borrower dies.

### **9.8 Further information we require**

When we ask you, you must:

- (a) truly and accurately tell us your current financial position; and
- (b) provide us with any further information we may require about your conduct of this Facility or we may reasonably require about you.

## **10. WHEN ARE YOU IN DEFAULT?**

This clause sets out when you are in default under the Contracts, what you must, and what we can, do in those situations.

### **10.1 You are in default under the Contracts if:**

- (a) you gave us untrue, incorrect or misleading information in connection with the Contracts before or after you signed the Contracts; or
- (b) you are declared bankrupt; or
- (c) you do not protect, maintain or you wilfully damage the Property; or
- (d) a payment under the Contracts is not made by you when it is due; or
- (e) you have not kept to the terms of the Contracts; or
- (f) your Facility Account is overdrawn in excess of your Facility Limit; or
- (g) you create or permit to exist any security interest (other than the security interest to us) over or affecting the Property or any Security.

### **10.2 What happens if I am in default?**

If you realise you are in default you must inform us as soon as possible. If you advise us of a default or we become aware of a default we will write to you and ask you to remedy the default (if the default can be remedied). If the default can be remedied you must remedy the default within the time specified by us in our notice to you (or such other time period we agree with you in writing). We may also stop you drawing from your Facility Account.

### **10.3 What we can do if we believe the Property is at risk?**

If we reasonably believe that the Property is at risk of, or has sustained Major Damage, we may require you to take immediate remedial action. If you do not, we may (although we do not have to) do it on your behalf and if you do not reimburse us on demand, we will debit the cost of such action to your Facility Account.

## **11. WHEN DO YOU HAVE TO REPAY?**

This clause sets out when we can demand repayment. Our demand is subject to clause 11.5 (*Limited Recourse*) at all times.

### **11.1 We may require the Facility to be repaid if:**

- (a) it is or becomes illegal for us to make or continue making the Facility available; or
- (b) you default under clause 10.1 (a), (b), or (d) or do not remedy any default during the time we give you to remedy that default, or a default cannot be remedied under clause 10 (*When are you in Default?*) or under the Contracts; or
- (c) you or your executors sell the Property; or
- (d) you reside at the Property (or if there are two of you, neither of you reside at the Property) for less than an aggregate of six (6) months in any 12 month period without our consent; or
- (e) the Property is not sold within six (6) months (or such other period we agree in writing) of the death of the last surviving Borrower.

If we are entitled to require you to repay the Facility then subject to clause 11.5 (*Limited Recourse*) you must repay the Outstanding Balance when we demand it. You must also pay us any expenses we reasonably incur in enforcing our rights under the Contracts or Security because of your default.

## **11.2 Payments must be free and clear**

Any payment you make under the Contracts must be in New Zealand currency, unconditional and free and clear of any restriction, and shall be in full, without any deduction or withholding whatsoever (whether in respect of tax, set-off, counterclaim, charges or otherwise) unless such deduction or withholding is required by law.

## **11.3 Reinstatement**

If any payment to us under the Contracts is avoided by law, your obligation to have made such payment will be deemed not to have been affected or discharged and you shall on demand indemnify us against any costs, claim, loss, expense or liability (together with any taxes thereon) sustained or incurred by us as a result of us being required for any reason to refund all or part of any amount received or recovered in respect of such payment and in any event pay to us on demand the amount so refunded. In any such case we each will be deemed to be restored to the position in which each would otherwise have been, and will be entitled to exercise the rights we respectively would have had, if that payment had not been made.

## **11.4 The sale of your Property**

You have the right to sell the Property and repay the Facility in full at any time with our consent. In giving our consent we are required to be satisfied that the Property is being sold for its fair market value.

## **11.5 Limited Recourse**

### **Our rights are limited: your no negative equity guarantee**

Our rights of recovery against you are limited to the Property, and if your Facility Schedule shows a Protected Equity Portion you only have to pay us (or will be liable to us for) the Net Sale Proceeds less the Protected Equity Portion even if you owe us more, but we may require you to pay additional monies to us (which monies, if your Facility Schedule shows a Protected Equity Portion, we may deduct from your Protected Equity Portion) if :

- (a) you provided a representation or warranty referred to in clause 4 (*What you must tell us each time you drawdown*) that was untrue, inaccurate or misleading; or
- (b) you gave us incorrect or misleading information in connection with the Contracts before or after you signed the Contracts; or
- (c) you do not maintain, protect or you wilfully damage, the Property; or
- (d) any Major Damage occurs to the Property which is not fully covered by insurance which meets our insurance requirements; or
- (e) your Facility Account is overdrawn in excess of your Facility Limit, and you fail to immediately repay that overdrawn amount or excess (including any default interest payable); or
- (f) we incur any costs or expenses in enforcing our rights under the Contracts or Security.

## **11.6 Lifetime occupancy guarantee**

Unless we are entitled to enforce the Security pursuant to the Contracts you have the right to remain in the Property until:

- (a) the death of the last surviving Borrower; or
- (b) the last surviving Borrower leaves the Property permanently.

## **12. YOUR RIGHT TO CANCEL DURING THE COOLING OFF PERIOD**

### **12.1 The Cooling Off Period**

If you cancel your Facility and the Contracts within 90 days from the date your Facility is made available to you we will refund the loan processing fee.

## 13. COMPLAINTS AND DISPUTES

This clause sets out our complaints and dispute process to deal with any complaints and disputes you have with us under the Contracts.

If you have a complaint or a dispute with us under the Contracts you must notify us in writing to our Customer Care Team at the address below giving us the details and reasons of your complaint and/or dispute:

Customer Care Manager  
ASB Bank Limited  
PO Box 35,  
Auckland 1040

### 13.1 Complaint and dispute process

Our Customer Care Team will fully investigate and attempt to resolve your complaint.

### 13.2 Banking Ombudsman

The Banking Ombudsman is an independent party who offers a free and independent dispute resolution service that, subject to its terms of reference, may be able to review and recommend ways to resolve any disputes.

### 13.3 Dispute resolution scheme and registration as Financial Service Provider

ASB Bank Limited is a member of the Banking Ombudsman dispute resolution scheme. You can contact the Banking Ombudsman at:

Address: Freepost 218002  
PO Box 25327  
Featherston Street  
Wellington 6146  
Phone: 0800 805 950  
Email: [help@bankomb.org.nz](mailto:help@bankomb.org.nz)

We are registered on the register of financial service providers as ASB Bank Limited (registration number FSP29003).

### 13.4 Dispute costs

Our complaint and dispute resolution process through the Customer Care Team is available at no charge except where we reasonably believe that any complaint is mischievous or vexatious. In such cases we may charge for our time and debit our reasonable costs to your Facility Account.

You may be required to pay charges (which may include administration fees) for our services associated with dealing with your dispute. These will be fully disclosed to you, and we will seek your consent prior to debiting these charges to your Facility Account.

## 14. GENERAL LEGALS

### 14.1 The law that applies

The laws of New Zealand apply to the Contracts. You accept the exclusive jurisdiction of its courts.

### 14.2 Certificate of amount owing

You agree that a certificate from us setting out the amount which you owe under the Contracts is proof that you owe the amount stated, unless you prove the contrary.

### 14.3 Amendments

Except as otherwise provided in these Terms, no amendment to the Contracts will be effective unless it is in writing and signed by the Parties.

### 14.4 Time of the essence

Time is of the essence in respect of all dates and times for performance by you of your obligations under the Contracts.

## **14.5 Notices**

We can:

- deliver the document personally;
- send it to the Property through the post;
- leave it at the Property; or
- send it by fax to your last known fax number; or
- send it by email to your last known email address.

If the document is sent through the post, notice will be deemed to be received by you on the third Business Day after posting, even if it never arrived.

If the document is sent by fax or email, notice will be deemed to be received by you on the day it was sent. By being so delivered notice will be deemed to have been served on you personally, without prejudice to any other lawful means of service.

You can give notice to us by delivering, posting or leaving it at any ASB branch or faxing it to our Lending Services department or at any other address or fax number we may have given you for the purpose of you giving us notice.

## **14.6 We can choose how and when we exercise our rights**

We may exercise any right or remedy in any way we choose. If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.

## **14.7 We can refuse our consent or impose conditions**

Whenever you ask for our consent, we may give or refuse our consent as we consider appropriate without giving any reason (other than when you seek our consent to sell the Property, which is subject to clause 11.4). If we give our consent, we may impose conditions.

## **14.8 Any inspection reports and valuations will be owned by us**

Where we obtain a report or valuation as a result of an inspection or valuation of the Property by an inspector or independent valuer, any report or valuation is our exclusive property even if we agree to provide you with a copy. You cannot under any circumstances take any action against us as a consequence of the content of any report or valuation or any action we take or omit to take or against any inspector or independent valuer, nor rely on their report without their prior written approval.

## **14.9 Indemnity**

You will on demand indemnify and hold us harmless against each cost, loss (including loss of profit), expense, liability sustained or incurred by us as a result of:

- (a) the occurrence or continuance of a default under the Contracts as described in clause 10 (*When are you in default?*);
- (b) anything done or omitted, or purported to be done or omitted, by us in the proper exercise or purported proper exercise of our rights under the Contracts or conferred by law; or
- (c) a defect in your title to the Property;

by payment to us of the amount we certify is required to indemnify us for that loss, expense or other liability.

## **14.10 Debiting another ASB account**

Where these Terms allow us to debit your Facility Account to recover costs or expenses we incur we may instead debit the costs to your Transaction Account or any other account you have with us.

## **14.11 Changes required by law**

If, at any time, it is or is likely to become unlawful to provide all or part of the Facility or allow all or part of the Outstanding Balance to remain outstanding, or to accrue or charge interest or to comply with any of our obligations or exercise any of our rights under the Contracts then we will not be obliged to provide or to continue to provide the Facility and we may, at any time, by notice to you:

- (a) cancel the Facility; and/or

declare all or any part of the Outstanding Balance to be due and payable either immediately or at such later date as we may specify and you shall, on such date, repay that Outstanding Balance.

#### 14.12 Assignment

We may assign or transfer any of our rights or obligations under the Facility or the Contracts to someone else without your consent and you agree we may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom we have or may contemplate having contractual relations in connection with the Facility or the Contracts, any information about you whether or not that information was obtained in confidence and whether or not that information is publicly available. You may not assign or transfer any of your rights or obligations under the Facility or the Contracts without our prior written consent.

If we assign or transfer our rights under the Facility or the Contracts, your obligations under the Contracts will apply to the person we assign or transfer to as if they were us.

To the maximum extent allowed by law, any assignment or transfer will be free of set off, equity or cross claim which you would have had against us or our assigns or transferees of the Contracts but for this clause.

#### 14.13 Disclosure

You authorise us to disclose and discuss your financial statements and financial affairs at any time with:

- (a) **Advisers:** Both our and your respective accountants, auditors, legal and financial advisers; and
- (b) **Related Entities:** Our parent, subsidiaries or related companies.

Nothing in this clause shall oblige us to provide any of your information to any person.

#### 14.14 Joint Borrower

If more than one person is named as the Borrower, then:

- (a) in the event of a dispute arising between any of you we may, at our own discretion, refuse to allow the Facility Account to be operated until agreement has been reached between the disputing parties and notified to us by all of you;
- (b) we may, in our sole discretion, release any one of you from your obligations under the Contracts provided that:
  - (i) no release shall be of any effect unless it is in writing and signed by us;
  - (ii) the other person shall not be discharged, nor shall their obligations be affected by such release;
  - (iii) the releasing Borrower's share of the Property is transferred to the remaining person; and
  - (iv) we shall not be under any obligation to any of you in respect of such release even though your rights in subrogation, contribution or otherwise may be prejudiced as a result; and
- (c) except for instructions from you relating to a transfer provided for in clause 8 (*Transferring to another property*), in all other situations until we receive written notice from any one of you to the contrary, we may act on instructions received from any one of you as if that instruction had been given by all of you,

We are not obliged to enquire into the circumstances of any instructions you give in relation to the operation of your joint account, and we are not liable for any loss or damage you or anyone else suffers due to us acting on those instructions in good faith, unless it is proved we were negligent.

#### 14.15 Survival of Covenants

Your payment and indemnity obligations under these Terms, including, without limitation, under clause 7 (*Fees and charges that apply*) and clause 11 (*When do you have to repay?*), shall be separate and independent obligations giving rise to independent causes of action and will survive the termination of the Facility and payment of all other indebtedness under the Contracts.

#### **14.16 Partial Invalidity**

The illegality, invalidity or unenforceability of a provision of the Facility Agreement or the Contracts under any law will not affect the legality, validity or enforceability of another provision.

**FEES FOR INCIDENTAL SERVICES RELATING TO YOUR LOAN.  
EFFECTIVE FROM 1 April 2015**

These fees are intended only as a guide and will be applicable if you require any amendments over the life of your loan or in certain circumstances where we are required to make a payment on your behalf. Over the term of your loan none of these fees may be applicable, however, under legislation we must disclose these in case any do arise due to a change in circumstances.

Release or substitution of security; or Transfer with new mortgage required; or Land title changes with new mortgage required	\$200.00
Settlement statements; or Request from you to change parties to loan agreement or owners to title; or Registrations affecting land titles; or Priority arrangements	\$100.00*
Release of repaid mortgage	\$50.00
Local body rates demand notice	\$50.00**
Loan default enforcement letter fee	\$50.00

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*This additional fee will apply to urgent requests for settlement statements or changes to loan arrangements	\$25.00
**plus additional charge if we have to make a rates payment	\$60.00

These fees are current at the time of print but may change from time to time. These fees which may be charged by us, do not include any legal fees or disbursements which may be incurred in connection with any of the matters referred to above.

Current fees may be viewed on our website at [www.asb.co.nz](http://www.asb.co.nz).