

# Annexure A: Mortgage

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This is the Annexure A referred to in the Mortgage between        and        .

**DRAFTING NOTES: Add Front Page from ARNECC.**

All mortgages signed on or after 3rd March 2018 must be lodged using the [National Mortgage Form](#).

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Date:

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THIS DEED dated

2020

**PARTIES:**

[NAME] (ACN/ABN [For tax reasons, normally an ABN will be required. However if a company has no ABN, the ACN may be used in certain circumstances. See sections 153 and 1344 of the Corporations Act.]) of [ADDRESS] (Mortgagee)

OF THE FIRST PART

**AND**

[NAME] (ACN/ABN [For tax reasons, normally an ABN will be required. However if a company has no ABN, the ACN may be used in certain circumstances. See sections 153 and 1344 of the Corporations Act.]) of [ADDRESS] (Mortgagor)

OF THE SECOND PART

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this mortgage, the following terms have these meanings unless the context otherwise requires:

- (a) **'Advance'** means each amount of credit provided by the Mortgagee to the Mortgagor;
- (b) **'Association'** means a community association, a precinct association or a neighbourhood association as defined in the Community Land Management Act 1989 (NSW);
- (c) **'Attachment Notice'** means any notice or process under which a Public Authority requires the payment or transfer to it or the Crown of money that would otherwise be payable to the Mortgagor and includes notices under Section 218 or Section 255 of the Income Tax Assessment Act 1936 (Commonwealth);
- (d) **'Attorney'** means an attorney appointed under this mortgage or any Collateral Security;
- (e) **'Authorisation'** includes a consent, authorisation, approval, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption;
- (f) **'Authorised Officer'** means in relation to a Body Corporate, a person holding or acting in the office of director or secretary, or a person the title of whose office at the Body Corporate includes the word 'manager';
- (g) **'Body Corporate'** means an owners corporation as defined in the Strata Schemes Management Act 1996 (NSW).

- (h) **'Business Day'** means a day other than a Saturday or Sunday on which banks are open for general banking business in Brisbane;
- (i) **'Collateral Security'** means any current or future Guarantee, Encumbrance, negotiable instrument, agreement or other document held or taken by or given in favour of the Mortgagee or entered into by any person as security for payment of or otherwise in connection with the Secured Money;
- (j) **'Community Titles Legislation'** means:
- Community Land Development Act 1989;
  - Community Land Development Regulation 2000;
  - Community Land Management Act 1989; and
  - Community Land Management Regulation 2000;
- (k) **'Community Scheme'** includes community schemes, precinct schemes and neighbourhood schemes as defined in the Community Land Management Act 1989 (NSW);
- (l) **'Deal with'** means deal with property in any way including, without limitation, offer for sale, grant an option in respect of, create or Dispose of a right in respect of, render or permit to be subject to an Encumbrance, convert, deposit, compromise, and allow a counterclaim or right of set-off to arise in respect of;
- (m) **'Directive'** includes any present or future directive, regulation, request, requirement, rule or credit restraint programme of any Public Authority or of any self-regulating organisation (but, if not having the force of law, only if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is intended to apply);
- (n) **'Dispose of'** means sell, transfer, assign, alienate, surrender, dispose of, deposit, Lease, part with possession of and enter into any agreement or arrangement to do or allow any of these things;
- (o) **'Event of Default'** means any of the events specified in Clause **Error! Reference source not found.**;
- (p) **'Encumbrance'** means a mortgage, charge, pledge, lien, assignment, hypothecation, retention of title (other than a retention of title in the course of day-to-day trading), or any other right (including, without limitation, under a trust or agency arrangement) of a creditor to have its claims satisfied prior to other creditors with, or from the proceeds of, or by recourse to any asset and includes any agreement, arrangement or deed conferring such a right;
- (q) **'Facility'** means the credit facility where the Mortgagee has provided Financial Accommodation to the Mortgagor or to any other person at the request of the Mortgagor in consideration of which the Mortgagor has agreed to enter into this mortgage;
- (r) **'Financial Accommodation'** means any financial accommodation or form of financial accommodation including, without limitation:
- (i) an advance, loan, forbearance, or payment;
  - (ii) discounting, or drawing, accepting, endorsing, or becoming in any other way liable under, a bill of exchange, cheque, promissory note, warrant or other negotiable instrument at the request of, on behalf of, or for the benefit of another party;

- (iii) giving or allowing credit;
  - (iv) giving or paying money under a Guarantee;
  - (v) providing financial accommodation by way of:
  - (vi) entering into or performing a Lease;
  - (vii) purchasing, or giving value for a right or asset; or
  - (viii) creating, assuming or undertaking a liability;
  - (ix) The principal sum advanced to the mortgagor the date of this loan for the term and on with interest payable at the rate of and frequency shown in the Schedule;
- (s) **'Financial Indebtedness'** means indebtedness, whether present or future, secured or unsecured, or actual or contingent arising under, in relation to, or as a result of any Financial Accommodation but does not include the deferred purchase price for any goods or services where the goods or services are obtained on normal commercial terms in the ordinary course of trading and the deferral is for less than 90 days;
- (t) **'Guarantee'** means a guarantee, indemnity, letter of credit, letter of comfort giving rise to legal liabilities, or any other obligation whatever called and of whatever nature:
- (i) to pay, to purchase, or to provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services, or otherwise) for the payment or discharge of;
  - (ii) to indemnify against the consequences of default in the payment of; or
  - (iii) otherwise to be responsible for;
  - (iv) any obligation or indebtedness of any other person;
- (u) **'Improvements'** means all buildings, fixtures, fences or other structures at any time on the Mortgaged Property and includes all carpets, floor coverings, light fittings, blinds, curtains, building materials, plant, machinery, fittings and other like things of any nature at any time forming part of or attaching to those improvements or the Mortgaged Property;
- (v) **'Insolvency Event'** means the happening of any of these events:
- (i) if a person, being an individual, dies or becomes incapable of managing that person's own affairs;
  - (ii) a bankruptcy notice is issued with respect to a person or any application is made or step is taken to bankrupt a person;
  - (iii) a person enters into or proposes to enter into a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of any of its creditors;
  - (iv) a receiver or a receiver and manager is appointed to a person or the whole or part of the assets of the person;
  - (v) an application is made or a step is taken for the appointment of an administrator, controller, provisional liquidator or liquidator to a person or that person's assets, or that appointment is actually made;
  - (vi) an application is filed or an order is made or an effective resolution is passed for the winding up of a person; or

- (vii) anything analogous or having a substantially similar effect to any of the events specified above happens with respect to a person;
- (w) **'Instalment'** means a loan repayment of principal, principal and interest or interest only depending on the context and type of loan.
- (x) **'Lease'** means an agreement or arrangement under which property is or may be used, occupied, retained, operated or managed by a person ('Lessee') for consideration (of whatever form) payable or provided by the Lessee including, without limitation, a lease, licence, charter, hire purchase or hiring arrangement;
- (y) **'Marketable Securities'** has the meaning given to the expression 'marketable securities' in the Corporations Act;
- (z) **'Material Adverse Effect'** on a person means a material adverse effect:
  - (i) on its financial condition or business; or
  - (ii) on its ability to perform and comply with its relevant obligations under this mortgage or any Collateral Security;
- (aa) **'Mortgaged Property'** means:
  - (i) the property or interest in property described in the mortgage as the property mortgaged;
  - (ii) the Improvements;
  - (iii) any Authorisation relating to the Mortgaged Property and all rights and privileges of the Mortgagor to enjoy the Mortgaged Property;
  - (iv) any monies received from the sale of the Mortgaged Property or any entitlement to monies from the sale of the Mortgaged Property;
  - (v) any interest the Mortgagor has in any insurance policy or any claim it has under any such insurance policy over the Mortgaged Property;
- (bb) **'Permitted Encumbrance'** means:
  - (i) an Encumbrance:
    - (A) created with the prior consent in writing of the Mortgagee; or
    - (B) permitted, with the consent in writing of the Mortgagee, to subsist;
    - (C) over all or any part of the Mortgaged Property, subject to and in accordance with the conditions (if any) that the Mortgagee may attach to the consent; and
    - (D) liens or charges arising in respect of the Mortgaged Property by operation of law in the ordinary course of business (other than those not discharged when due);
- (cc) **'Potential Event of Default'** means any condition, act or event which, with the giving of any notice, the lapse of any period of time or the fulfilment of any requirement or any combination of the above could become an Event of Default;
- (dd) **'Public Authority'** means any government or minister, or any governmental, semi-governmental or judicial entity, department, instrumentality or authority;
- (ee) **'Receiver'** means any receiver or receiver and manager appointed under this mortgage or any Collateral Security;
- (ff) **'Secured Money'** means all amounts which the Mortgagor owes to the Mortgagee at any time, including: