

# **Mortgage**

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**Memorandum of Common Provisions  
AG 685415S**

## MORTGAGE MEMORANDUM OF COMMON PROVISIONS

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## **1. DEFINITIONS AND INTERPRETATION**

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

**‘Advance’** means each amount of credit provided by the Mortgagee to the Mortgagor;

**‘Attorney’** means an attorney appointed under this mortgage;

**‘Authorisation’** includes a consent, authorisation, approval, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption;

**‘Business Day’** means a day other than a Saturday or Sunday on which banks are open for general banking business in Brisbane;

**‘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;

**‘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);

**‘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;

**‘Event of Default’** means any of the events specified in clause **Error! Reference source not found.**

**‘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;

**‘Facility’** means the credit facility where the Mortgagee has provided Financial Accommodation to the Mortgagor in consideration of which the Mortgagor has agreed to enter into this mortgage;

**‘Financial Accommodation’** means any financial accommodation or form of financial accommodation including, without limitation:

- (a) an advance, loan, forbearance, or payment;

- (b) 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;
- (c) giving or allowing credit;
- (d) giving or paying money under a Guarantee;
- (e) providing financial accommodation by way of:
  - (i) entering into or performing a Lease;
  - (ii) purchasing, or giving value for a right or asset; or
  - (iii) creating, assuming or undertaking a liability;

**'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;

**'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:

- (a) 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;
  - (b) to indemnify against the consequences of default in the payment of; or
  - (c) otherwise to be responsible for;
- any obligation or indebtedness of any other person;

**'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;

**'Insolvency Event'** means the happening of any of these events:

- (a) if a person, being an individual, dies or becomes incapable of managing that person's own affairs;
- (b) a bankruptcy notice is issued with respect to a person or any application is made or step is taken to bankrupt a person;
- (c) 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;