



Mortgage

Parties

The Council named in the Schedule ("the Council") and Commonwealth Bank of Australia ABN 48 123 123 124 ("the Bank")

Background

- The Council is empowered to seek financial accommodation to enable the Council to exercise its powers and to secure such financial accommodation by entering into the Security.
- The Council has requested the Bank to provide it with Advances from time to time.
- The Bank has agreed to provide the Advances on the terms and conditions set out in an Agreement and in this Mortgage and on the Council securing the Advances over the Mortgaged Property described as the Security.

Agreement

1. INTERPRETATION

- 1.1 The following words and expressions have the meanings assigned to them below unless the contrary intention appears:

"**Act**" means:

- (a) the Local Government Act of the state or territory referred to in the Schedule; or
- (b) if a Council is located in Queensland, the Statutory Bodies Financial Arrangements Act 1982 (Qld).

"**Administrator**" means an administrator of the Council appointed under the Act.

"**Advance**" means any loan, overdraft, bill facility, lease facility or other financial accommodation provided or to be provided to the Council by the Bank for a purpose authorised by the Act (or other authorising legislation) as provided for:

- (i) in an Agreement; and
- (ii) in the case of a Council located in any State or Territory other than South Australia or Tasmania, in connection with:

(A) any Agreement; or

(B) any other transaction, matter or event.

"**Agreement**" means any agreement, deed or other document entered into now or in the future between the Bank and the Council relating to the making of an Advance, that specifies that this Mortgage is security for the Advance.

"**Authorised Officer**" includes the secretary and any director of the Bank and every officer of the Bank the title for whose position is or includes the word "manager".

"**Business Day**" means a day on which the Bank is open for business in the state or territory referred to in the Schedule.

"**Council**" has the meaning given to it in the Act and in the case of any Advance made by the Bank means the council named and described in the Schedule to this Mortgage and in the Agreement as the Council.

"**Enforcement Proceedings**" means:

- proceedings in a court to recover payments due; and
- taking possession of the Mortgaged Property or taking other action to enforce our rights under this Mortgage.

"**Large Business Customer**" means the total of your Facility Limits under the Agreement exceeds \$5,000,000.

"**Mortgaged Property**" means those assets or income described in the Schedule and all proceeds from the sale or any other dealings with those assets or income (including any proceeds within the meaning of that term in the PPS Act).

"**Nominated Account**" means the account specified in the Schedule or any account specified in the Agreement or any account that the Council notifies the Bank in writing for the purposes of paying the proceeds of the Advance and from which any payments to be made under the Agreement or this Mortgage (as the case may be) are to be debited.

"**PPS Act**" means the Personal Property Securities Act 2009 (Commonwealth).

"Obligations" means:

- (a) if the Council is located in South Australia or Tasmania, all liabilities and obligations of the Council relating to an Advance and includes any liabilities or obligations which constitute:
 - (i) interest (including without limitation, capitalised interest, whether or not the capitalised interest is deemed to be an advance, and interest on overdue amounts);
 - (ii) costs and charges payable under the relevant Agreement relating to an Advance including, without limitation, the costs of contemplated, attempted or actual enforcement and any application for the appointment of, and exercise of rights and powers by, a Receiver; and
- (b) otherwise, all liabilities and obligations of the Council to the Bank under or by reason of:
 - (i) any Agreement; or
 - (ii) any other transaction, matter or event,and includes any liabilities or obligations which constitute:
 - (iii) interest (including without limitation, capitalised interest, whether or not the capitalised interest is deemed to be an advance, and interest on overdue amounts);
 - (iv) costs and charges payable under the relevant Agreement relating to an Advance including, without limitation, the costs of contemplated, attempted or actual enforcement and any application for the appointment of, and exercise of rights and powers by, a Receiver.

"Purpose" means the purpose described in the Agreement as the Purpose being a purpose for which or circumstances in which the Council is permitted to obtain advances under the Act from a Bank.

"Receiver" means any Receiver appointed on application to the Supreme Court by the Bank

and where there is more than one person appointed as the Receiver, a reference to the Receiver includes each such person.

"Secured Moneys" means all money the payment or repayment of which from time to time forms part of the Obligations.

"Security" means the Security created by clause 2 in relation to the Mortgaged Property described in the Schedule which the Council is permitted by the Act to enter into as the Security in relation to the Advance.

1.2 In this Mortgage unless the context otherwise requires:

- (a) a reference to this Mortgage or any other instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law including regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, body corporate, an unincorporated association or an authority whether established under a statute or otherwise and includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (e) an agreement, representation or warranty in favour of two or more persons is for the benefit of them both jointly and severally;
- (f) an agreement, representation or warranty on the part of two or more persons binds each of them severally and all of them jointly;
- (g) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (h) a reference to a clause, schedule or annexure is a reference to a clause of,

schedule or annexure to, this Mortgage;
and

- (i) headings are inserted for convenience and do not affect the interpretation of this Mortgage.

1.3 Where the day on or by which any act, matter or thing is to be done under this Mortgage is not a Business Day, that act, matter or thing may be done on the next day which is a Business Day.

2. SECURITY

2.1 In consideration of the Advance the Council as beneficial owner and as security for the timely payment and performance of the Secured Moneys mortgages to the Bank its interest in the Mortgaged Property described in the Schedule or relevant Annexure.

2.2 The security interest created by this clause 2 is a continuing security interest over the Mortgaged Property.

2.3 If the state specified in the Schedule is South Australia or Tasmania:

- (a) the Security takes effect as a Debenture under the Act;
- (b) the Security is numbered as set out in the Agreement; and
- (c) this Mortgage is deemed to be a Debenture.

3. COVENANT TO REPAY

3.1 The Council covenants with the Bank to repay the Advance in the manner set out in the Agreement.

3.2 The Council covenants to pay to the Bank interest on the Advance and all other moneys payable under the Agreement comprising the Secured Moneys including, without limitation, all Government duties and charges payable under the Agreement or this Mortgage whether or not the obligation to pay those Government duties and charges is imposed on the Bank or the Council.

4. THE ADVANCE

4.1 The Bank will provide the Advance subject to:

- (a) the execution and delivery of this Mortgage to the Bank;
- (b) the execution and delivery of the Agreement to the Bank; and
- (c) no event of default under clause 6 having occurred or is continuing.

4.2 Subject to clause 4.1, the Council authorises and directs the Bank:

- (a) to complete the Schedule;
- (b) to credit the Advance (except in relation to any Commonwealth Bank Business Card facility) to the Nominated Account or as otherwise directed in writing and acknowledges that payment by the Bank as directed in this clause shall be a full and sufficient discharge of the Bank's obligations under the Agreement and under this Mortgage; and
- (c) to debit the Nominated Account for the purpose of effecting any payments to be made under the Agreement or under this Mortgage unless the Council notifies the Bank in writing that it wishes to make all payments manually.

5. WARRANTIES

5.1 The Council represents and warrants to the Bank as follows:

- (a) the Council is empowered by the Act to enter into this Mortgage and the Agreement and to comply with this Mortgage and the Agreement;
- (b) the Council has resolved at a properly constituted meeting of the Council to grant this Mortgage;
- (c) the procedures, policies and guidelines set out in the Act have been complied with in relation to the Advance, and any required governmental consents have been obtained in relation to the Advance;
- (d) the Advance is to enable the Council to exercise the powers conferred on the Council under the Act or any other applicable legislation and will be used for a purpose authorised by the Act, and the Mortgaged Property is over an asset or the income authorised for that purpose;
- (e) the Advance together with all other financial accommodation obtained from any other person does not exceed nor will it have the effect of exceeding any borrowing and security limitations set out in the Act or other relevant legislation; and
- (f) any person executing this Mortgage on behalf of the Council is properly authorised to do so and has full power

and authority to bind the Council to the terms of this Mortgage.

6. EVENTS OF DEFAULT

6.1 This Mortgage will become enforceable, on the happening of any of the following events:

- (a) the Council fails to pay when due Secured Moneys or any part of those monies; or
- (b) an Event of Default occurs as defined in the Agreement.

If the Council is not a Large Business Customer and the above event of default can be fixed, the Bank will give the Council notice of the event of default and 10 Business Days to fix it before the Mortgage becomes enforceable, unless a shorter notice period, or no notice period, is reasonable to manage a material and immediate risk relating to the event of default, the Bank's rights or the Council's circumstances.

7. RECEIVER

7.1 At any time after the security constituted by this Mortgage becomes enforceable the Bank, if permitted by the Act or by operation of law generally, may apply to the Supreme Court for the appointment of a Receiver over the Mortgaged Property.

7.2 The Receiver will have the powers conferred by the Act, in addition to any other powers conferred by law on a Receiver and any powers conferred by order of the Supreme Court.

8. GOVERNING LAW AND JURISDICTION

The parties agree that this Mortgage will be governed by the law of the state or territory referred to in the Schedule and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of that state or territory.

9. NOTICES

All notices to be given under this Mortgage are to be in writing, signed by or on behalf of the relevant party and served upon the other party:

- (a) by hand (including by courier), in which case delivery is taken to have been effected upon actual delivery;
- (ii) by email in which case delivery is taken to be effected on production of a

'delivery receipt' (or an equivalent expression) by the sender's electronic transmission system stating that the message was delivered to the recipient or at the time of transmission where no return electronic message is received by the sender stating that the transmission was not delivered or effected, provided such time is within business hours on a Business Day in the city of the addressee (and if not, will be taken to be effected on the opening of business on the next Business Day in such city); or

- (c) by post in which case delivery is taken to have been effected on the fifth Business Day after having being posted.

as specified in the Provision of Notices contained in the Schedule.

10. NO WAIVER

10.1 No time or indulgence given by the Bank to the Council nor any failure on the part of the Bank to take action in respect of any particular breach or default or series of breaches or defaults in the performance by the Council of the Council's obligations arising under this Mortgage, or under the Agreement, constitutes a waiver of all or any of the provisions of this Mortgage in relation to any subsequent or continuing breach or default.

10.2 The failure refusal or neglect by the Bank to exercise any right power or option given to it under this Mortgage will not, unless otherwise agreed by the Bank, constitute a waiver by the Bank of its right at any time afterwards to require exact and strict compliance with the provisions of this Mortgage.

11. SEVERANCE

11.1 If any one or more of the provisions of this Mortgage (whether contained in a separate paragraph or otherwise) are held to be illegal void or voidable at the option of the Council, that provision will be severable from the remaining provisions of this Mortgage.

12. CERTIFICATES

12.1 A certificate signed by an Authorised Officer of the Bank or its solicitor about a matter (including without limitation the applicable rate of interest) or about a sum payable to the Bank in connection with this Mortgage is sufficient evidence of the matter unless the matter or sum is proved to be false.

13. COUNTERPARTS

This Mortgage may consist of a number of counterparts and the counterparts taken together constitute one instrument.

14. EXCLUSION OF PPS ACT PROVISIONS

14.1 No right to receive notices

You agree that, except as otherwise expressly provided in this Mortgage, we do not need to give you any information in relation to, or any form of notice, which we would otherwise be required to provide under the PPS Act:

- (a) of our intention to remove any property (whether or not that property is part of the Mortgaged Property) from any part of the Mortgaged Property;
- (b) if we, as permitted by any law, make a decision to enforce our interest in the Mortgaged Property in the same way as, under land law, we may enforce any interest in land that you have granted to us;
- (c) if we give a notice to any person to pay the proceeds of, or amounts owing in respect of, any negotiable instrument (as defined in the PPS Act), account or chattel paper forming part of the Mortgaged Property to us or if we take possession or control of any of those proceeds or amounts;
- (d) of our intention to dispose of, or purchase, the Mortgaged Property;
- (e) of any amount paid to another person that holds an encumbrance over the Mortgaged Property;
- (f) if we have not disposed of the Mortgaged Property within 6 months of taking possession or control of the Mortgaged Property, stating that we have not disposed of the Mortgaged Property or stating:
 - (i) the total amounts received in relation to the Mortgaged Property after we took possession or control of that Mortgaged Property, or commenced any other Enforcement Proceedings;
 - (ii) any expenses incurred in relation to the retention of the Mortgaged Property before the disposal;
- (g) if we dispose of the Mortgaged Property under a statutory right and you request a written statement of account, however only to the extent of specifying in that

statement any amounts paid to other secured parties;

- (h) if, after an Event of Default (as specified in clause 6.1(a) to (h) of this Mortgage), we exercise a right to seize the Mortgaged Property and propose to exercise any statutory right we may have to retain the Mortgaged Property.

14.2 Exclusion of rights

You agree that, except as otherwise expressly provided in this Mortgage, you do not have a right (which you would, but for this clause, have under the PPS Act):

- (a) to reinstate the security interest created by this Mortgage prior to us exercising a right to dispose of or to retain the Mortgaged Property; or
- (b) to redeem the Mortgaged Property after we have seized the Mortgaged Property as a result of a default by you, but prior to us exercising a right to dispose of the Mortgaged Property.

14.3 Waiver of other provisions

You agree to, except to the extent restricted by law, waive any right you may have to require the Mortgaged Property to be dealt with in accordance with the PPS Act if, as a result of any Enforcement Proceedings, we obtain possession or control of the Mortgaged Property.

14.4 Controllers

You agree that the provisions of the PPS Act concerning seizure and disposal or retention of the Mortgaged Property do not apply in relation to the Mortgaged Property while a person is in possession or has control of the Mortgaged Property for the purposes of enforcing an encumbrance.

14.5 Verification statements

You waive any right that you have at any time to receive notice of any verification statement we are given in relation to registration under the PPS Act of security interest created by this Mortgage, or changes to any registration relating to such a security interest under the PPS Act.

Schedule

Details of Council, Provision of Notices and State or Territory

Name of Council:	Shire of Wyndham East Kimberley of 20 Cooliabh Drive WA 6743	
Provision of Notices:	To the Council	
	Postal Address:	PO Box 614, Kununurra WA 6743
	Email No:	Meredith.Blair@swek.wa.go.au
	To the Commonwealth Bank of Australia of	
	Postal Address:	Level 5, Bankwest Place, 300 Murray Street, Perth WA 6000
	Email No:	Tanya.Morris@cba.com.au
	Attention:	Local Government Banking Group, Western Australia
State or Territory:	Western Australia	

Details of Mortgaged Property and Nominated Account

Mortgaged Property:	The general funds of the Council
Nominated Account:	All accounts

EXECUTED as an agreement.

SIGNED for and on behalf of Shire) _____
 of Wyndham East Kimberley by)
 who is the) Signature
 of Council and) _____
 who is authorised to sign by virtue of a) Name
 Council resolution dated)
 in the presence of) _____
)
 _____)
 Signature)
 _____)
 Name)
 _____)

