



regional australia **bank**

REGIONAL AUSTRALIA BANK LTD
ABN 21 087 650 360

GUARANTEE AND INDEMNITY DEED

Dated: 2021

WilliamJohn Williamson, Alison Sarah Williamson, Albitom Pty Ltd ACN 654 010 429

(Guarantor)

RE

Tombal Pty Ltd ACN 640 503 582

(Borrower)

Warning

- You should seek independent legal and financial advice on the effect of this Guarantee before you agree to sign it.
- You can refuse to sign this Guarantee.
- There are financial risks involved in signing this Guarantee.
- You have the right to limit your liability under this Guarantee and Indemnity in accordance with the Customer Owned Banking Code of Practice and as allowed by law;
- You should consider all information and documents we the Lender have provided to the Guarantor.

Details of Guarantee

The Credit Provider is:	Regional Australia Bank Ltd ABN 21 087 650 360
The Guarantor is:	William John Williamson Alison Sarah Williamson Albitom Pty Ltd ACN 654 010 429
Guaranteed Amount:	\$200,000.00 in accordance with clause 10
Security:	98 Talbragar Street Dubbo NSW 2830 being Lot 1 Deposited Plan 745647

BY:

William John Williamson and Alison Sarah Williamson both of 5 Dalton Street Dubbo NSW 2830 and Albitom Pty Ltd ACN 654 010 429 of 5 Dalton Street Dubbo NSW 2830 (each a **Guarantor**)

IN FAVOUR OF:

Regional Australia Bank Ltd ABN 21 087 650 360 (**Lender**)

INTRODUCTION

- A. The Lender proposes to grant funding to Tombal Pty Ltd ACN 640 503 582 as trustee for B & A Williamson Superannuation Fund (**Borrower**).
- B. In this deed, each Guarantor guarantees and indemnifies the Lender on account of Guaranteed Money due or to become due from the Borrower to the Lender.

TERMS

- 1. A (each) Guarantor guarantees the payment of the Guaranteed Money due or to become due from the Borrower to the Lender.
- 2. As a separate promise, a (each) Guarantor indemnifies the Lender against any loss the Lender suffers because either:
 - 2.1 the Borrower fails to pay any Guaranteed Money when due;
 - 2.2 the Lender is unable to recover any Guaranteed Money from the Borrower by operation of law; or
 - 2.3 the Lender considers that a payment by the Borrower or another person on account of any Guaranteed Money might be void or voidable.
- 3. A Guarantor's liability to the Lender under this deed is a personal and continuing obligation, unlimited in time and not affected by:
 - 3.1 the Guarantor ceasing to be associated with the Borrower or the Borrower's enterprise;
 - 3.2 the Guarantor and / or the Borrower ceasing to be trustee of a trust of which now trustee,
 - 3.3 any change, suspension or withdrawal of credit terms the Lender might extend to the Borrower;
 - 3.4 the Lender obtaining or releasing any other security or surety for payment of any Guaranteed Money;
 - 3.5 the making, modification, breach or termination of any contract or other arrangement between the Lender and the Borrower with or without the Guarantor's knowledge;
 - 3.6 a concession or waiver by the Lender or a compromise or compounding binding on the Lender;
 - 3.7 the insolvency, legal incapacity or death of any individual;
 - 3.8 the insolvency, deregistration or dissolution of any company;
 - 3.9 the insolvency, vesting, winding up or termination of any trust; or
 - 3.10 anything else that under principles of equity might otherwise prejudice or terminate the Guarantor's liability.

4. If the Borrower becomes a Chapter 5 body corporate (within the meaning of the *Corporations Act 2001*), each Guarantor must:
 - 4.1 prove against the Borrower for any claim that Guarantor may have;
 - 4.2 at the same time, execute and deliver to the Lender any instruments that the Lender requires to enable the Lender to receive the benefit of dividends or other benefits payable in respect of that claim; and
 - 4.3 pay any stamp duty, costs or expenses incurred in respect of any of those instruments.

Unless the Lender otherwise agrees in writing, a Guarantor receives any dividend or benefit received in respect of that claim on trust for the Lender.

5. This deed is in addition to, and not in derogation of, any present or future guarantee, indemnity or security interest granted or to be granted by a Guarantor on account of any Guaranteed Money.
6. If the Lender releases any surety for payment of any Guaranteed Money (such as any Guarantor under this deed), this deed is effective to release any right of contribution a continuing surety (such as another Guarantor under this deed) might otherwise have against that person released.
7. A Guarantor is discharged from this deed only when the Lender discharges that Guarantor in writing.
8. The *Customer Owned Banking Code of Practice* applies to this deed, and accordingly:
 - 8.1 the Lender must inform the Guarantor if any existing loan or other facility the Lender has given the Borrower will be cancelled, or if the loan or other facility will not be provided, if this deed is not provided;
 - 8.2 **each Guarantor is informed:**
 - 8.2.1 **they can refuse to enter into this deed;**
 - 8.2.2 **before they enter into this deed, they have right to limit liability as regards Guaranteed Money in accordance with the Code and / or as allowed by law;**
 - 8.2.3 **there are financial risks involved in entering into this deed;**
 - 8.2.4 **they should consider the information and documents the Lender provides to the Guarantor, and seek further information or clarification if required;**
 - 8.2.5 **they should seek independent legal and financial advice before entering into this deed;**
 - 8.3 a Guarantor should not enter into this deed until:
 - 8.3.1 with the Borrower's consent, the Lender has given to that Guarantor a copy of:
 - (a) the credit contract/s, or proposed credit contract/s, to which this deed would relate; and
 - (b) details of any security to be provided by the Borrower in support of the Facility;
 - 8.3.2 with the Borrower's consent, the Lender has provided to the Guarantor all the information available to the Lender that, in the Lender's reasonable view, a careful and prudent prospective guarantor might wish to consider regarding:
 - (a) the financial position of the Borrower;

- (b) the Borrower's credit history for the previous 12 months (including details of any notices of demand, defaults, overdrawn accounts or other evidence of borrower distress known to the Lender); and
- 8.3.3 if requested by the Guarantor, with the Borrower's consent, the Lender provides the Guarantor with copies of relevant account statements and other reasonable documents;
- 8.3.4 the Guarantor has had at least 1 business day to consider all that above information;
- 8.4 after this deed is entered into, with the Borrower's consent, the Lender will provide the Guarantor/s with copies of the Borrower's relevant account statements and documents on request;
- 8.5 after this deed is entered into, the Lender must send to the Guarantor/s:
 - 8.5.1 any formal demand or default notice the Lender sends to the Borrower; and
 - 8.5.2 if the particular Guarantor so asks, a copy of the latest account statement (if any) provided to the Borrower;
- 8.6 a particular Guarantor may at any time extinguish their liability under this deed by:
 - 8.6.1 paying the outstanding Guaranteed Money (including any future or contingent liability);
 - 8.6.2 paying any lesser amount to which the liability of that Guarantor is limited by the terms of this deed; or
 - 8.6.3 making other arrangements satisfactory to the Lender for the release of this deed as regards that Guarantor;
- 8.7 this deed is immediately enforceable against any Guarantor on demand, without need for the Lender to make prior demand to, or have recourse against, the Borrower or any third party (including any other Guarantor or other surety of any Guaranteed Money), provided that the Lender must not enforce a judgment against a Guarantor under this deed unless the Lender has obtained judgment against the Borrower, and the judgment debt remains unpaid 30 days after the Lender demands payment from the Borrower in writing, provided that the Lender may enforce immediately a judgment against a Guarantor under this deed if:
 - 8.7.1 any delay in enforcement against that Guarantor is likely to prejudice the Lender's interests;
 - 8.7.2 the Lender has made reasonable attempts to locate the Borrower without success;
 - 8.7.3 the Borrower is insolvent or deregistered; or
 - 8.7.4 recovery of the Guaranteed Money from the Borrower is otherwise untenable;

however, a failure of the Lender to comply with any above provisions of this clause does not of itself prejudice the continuing validity of this deed.

9. In this deed:

Bare Trustee means Albitom Pty Ltd ACN 654 010 429 as bare trustee under a *Bare Trust Deed* dated 28th September 2021 made between the Borrower (as fund trustee) and the Bare Trustee.

Facility means a cash advance facility to a limit of \$200,000.00 the subject of a 2021 Facility (Loan) Agreement so titled now made, or intended to be made, between the Lender and the Borrower, the proceeds of which facility are to be used towards defraying the purchase price payable by the Bare Trustee to purchase the Land under the Purchase Contract.

Guaranteed Money means the money that the Borrower owes or comes to owe to the Lender for:

- (a) money advanced by the Lender under the Facility;
- (a) interest, including interest on capitalised interest, under the Facility; and / or
- (b) costs and expenses of the Lender in connection with the Facility.

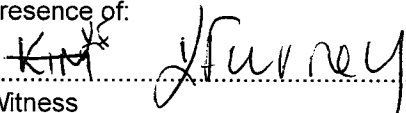
Land means the property at the date of this deed comprised in Title Reference Lot 1 Deposited Plan 745647 known as 98 Talbragar Street Dubbo NSW 2830.

Purchase Contract means a *Contract for Sale of House and Land* dated 12th October 2021 for Therese Porter Super Pty Ltd ACN 616 459 897 as trustee for R & T Porter Superfund ABN 89 138 084 861 sell the Land to the Bare Trustee for a price of \$462,000.00 (before customary adjustments).


SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

- 10. In addition to Guaranteed Money, the Lender may recover from a Guarantor any proper costs and expenses incurred by the Lender in enforcing this deed against that Guarantor.
- 11. In this deed: neuter includes masculine and feminine; singular includes plural and *vice versa*; no rule of construction applies to the disadvantage of the Lender because the Lender put forward this deed.
- 12. This deed may be executed in any number of counterparts; each executed counterpart is deemed an original of this deed. A fax / email attachment of a counterpart copy of this deed executed by a party is proof of signature of the original, and the executed fax / email attachment is to be taken as an original.
- 13. Each Guarantor acknowledges that before commitment to this deed that Guarantor had fair opportunity to read, understand, take independent advice on, and to negotiate with the Lender on the terms and conditions of this deed.
- 14. **Despite any rule of common law, principle of equity or legislation, the rights of a Guarantor against the Borrower for, or in connection with, or as a result of, (whether directly or indirectly):**
 - 14.1 **default on the borrowing under the Facility; or**
 - 14.2 **the sum of the borrowing and charges related to the borrowing under the Facility,****are limited to rights relating to the Land within the meaning of section 67A of the SIS Act. This limitation extends to any right of contribution or indemnity a Guarantor (in that capacity) might otherwise have against the Borrower by reason of the Guarantor having granted to the Lender a mortgage or other security interest in support of that Guarantor's obligations under this deed.**
- 15. This deed binds a Guarantor executing this deed even if another person named as a Guarantor fails to execute or be bound by this deed.

SIGNED by WILLIAM JOHN WILLIAMSON in the)
presence of:


.....
Witness

KIM FURNEY
.....
Name of Witness


.....
William John Williamson

SIGNED by **ALISON SARAH WILLIAMSON** in the)
presence of:)

Witness

K. Furney

Name of Witness

KIM FURNEY

Alison Williamson

Alison Sarah Williamson

EXECUTED by **ALBITOM PTY LTD ACN 654 010**)
429 in accordance with s.127 of the Corporations Act)
2001:

Director

William John Williamson

W. Williamson

Alison Williamson

Director/Secretary

Alison Sarah Williamson

THINGS YOU SHOULD KNOW ABOUT GUARANTEES

This information tells you about some of the rights and obligations of yourself and the credit provider. It does not state the terms and conditions of your guarantee.

Guarantees

1 What is a guarantee?

A promise by you that the person who is getting credit under a facility agreement (the **debtor**) will keep to all the terms and conditions. If that person does not do so, you promise to pay the credit provider all the money owing on the contract (and any reasonable enforcement expenses) as soon as the money is asked for, up to the limit, if any, stated in the guarantee. If you do not pay, then the credit provider can take enforcement action against you which may result in the forced sale of any property owned by you such as your house.

2 How do I know how much the debtor is borrowing and how the credit charges are worked out?

These details are on the copy of the facility agreement or proposed facility agreement that you should be given before you sign the guarantee.

3 What documents should I be given?

Before you sign the guarantee you should get—

- the document you are reading now; and
- a copy of the facility agreement or proposed facility agreement.

Your guarantee is not enforceable unless you get a copy of the facility agreement or proposed facility agreement before you sign.

4 Can I get a statement of the amount that the debtor owes?

Yes. You can ask the credit provider at any time for a statement of the amount the debtor currently owes or any amounts credited or debited during a period you specify or any amounts which are overdue and when they became overdue or any amount payable and the date it became due.

You may be charged a fee for the statement.

You are not entitled to more than 1 written statement every 3 months.

5 How can I find out the payout figure?

You can write to the credit provider at any time and ask for a statement of the amount required to pay out the facility agreement as at any date you specify. You can also ask for details of the items that make up the amount.

6 What other information can I get?

You can write to the credit provider and ask for a copy of—

- the guarantee; or
- any credit-related insurance contract (such as insurance on mortgaged property) the credit provider has; or
- a notice previously given to you, the debtor or the mortgagor.

The credit provider may charge you a fee.

Your request can be made any time up to 2 years after the end of the facility agreement.

7 Can I withdraw from my guarantee?

You can withdraw from your guarantee at any time by written notice to the credit provider if the final facility agreement is materially different from the proposed facility agreement given to you before you signed the guarantee.

8 Can I limit my guarantee?

Yes, if it relates to a continuing facility agreement (such as a credit card contract or an overdraft). In that case you can give the credit provider a notice limiting the guarantee so that it only applies to—

- credit previously given to the debtor; and
- any other amount you agree to guarantee.

9 If my guarantee says I have to give a mortgage, what does this mean?

A mortgage means that you give the credit provider certain rights over any property you mortgage. If you default under your guarantee, you can lose that property and you might still owe money to the credit provider.

10 Should I get a copy of my mortgage?

Yes. A copy of your mortgage will be part of your guarantor information documentation.

11 Is there anything that I am not allowed to do with the property I have mortgaged?

The law says you can not assign or dispose of the property unless you have the credit provider's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or can not do with the property.

12 What can I do if I find that I can not afford to pay out the facility agreement and there is a mortgage over my property?

See the answer to question 21. Otherwise you may—

- if the mortgaged property is goods—give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;
- sell the property, but only if the credit provider gives permission first;

OR

- give the property to someone who may then pay all amounts owing under the guarantee or give a similar guarantee, but only if the credit provider gives permission first.

If the credit provider won't give permission, you may contact the credit provider's external dispute resolution scheme for help. You should understand that you may owe money to the credit provider even after mortgaged property is sold.

External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Your credit provider's external dispute resolution provider is the Australian Financial Complaints Authority and can be contacted at **1800 931 678**, info@afca.org.au, www.afca.org.au or GPO Box 3, Melbourne VIC 3001.

13 Can the credit provider take or sell the mortgaged property?

Yes, if you have not carried out all of your obligations under your guarantee.

14 If the credit provider writes asking me where the mortgaged goods are, do I have to say where they are?

Yes. You have 7 days after receiving the credit provider's request to tell the credit provider. If you do not have the goods you must give the credit provider all the information you have so they can be traced.

15 When can the credit provider or its agent come into a residence to take possession of mortgaged goods?

The credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing.

16 If the debtor defaults, do I get any warning that the credit provider wants to take action against the debtor?

In most cases both you and the debtor get at least 30 days from the date of a notice in writing to do something about the matter. The notice must advise—

- why the credit provider wants to take action; and
- what can be done to stop it (if the default can be remedied); and
- that if the same sort of default is committed within 30 days of the date of the notice and is not remedied within that period, the credit provider can take action without further notice.

You should immediately discuss any warning notice with the debtor and consider getting independent legal advice and/or financial advice.

However, there will be no warning notice if—

- there is a good reason to think the debtor committed a fraud to persuade the credit provider to enter into the contract; or
- the credit provider has been unable to locate the debtor after making reasonable efforts to do so; or
- the court says so; or
- there is a good reason to think that the debtor has, or will, remove or dispose of mortgaged goods without the credit provider's consent, or that urgent action is necessary to protect mortgaged property.

17 When can the credit provider enforce a judgment against me?

When—

- the credit provider has judgment against the debtor and if the judgment amount has still not been met 30 days after the credit provider has asked the debtor in writing to pay it; or
- the court says so because recovery from the debtor is unlikely; or
- the credit provider has been unable to locate the debtor after making reasonable efforts to do so; or
- the debtor is insolvent.

18 If the debtor can not be found and the credit provider intends to take legal action against me do I get any warning?

You may not. See the answer to question 16.

19 Can the credit provider take action against me without first taking action against the debtor?

Yes, but the credit provider will not be able to enforce any judgement against you except in the circumstances described in the answer to question 17.

20 How much do I have to pay the credit provider if the debtor defaults?

You have to pay what the debtor owes the credit provider, subject to any limit provided in the guarantee, plus the credit provider's reasonable expenses in making you honour your contract of guarantee.

General

21 What can I do if I am asked to pay out the facility agreement and I can not pay it all at once?

Talk to the credit provider and see if some arrangement can be made about paying.

If you can not come to a suitable arrangement, contact your credit provider's external dispute resolution scheme.

There are other people, such as financial counsellors, who may be able to help.

22 If I pay out money for a debtor, is there any way I can get it back?

You can sue the debtor, but remember, if the debtor can not pay the credit provider, he or she probably can not pay you back for a while, if at all.

23 Do I have any other rights and obligations?

Yes. The law does give you other rights and obligations. You should also **READ YOUR GUARANTEE** carefully.

IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.

EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS THE AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY AND CAN BE CONTACTED AT 1300 931 678, info@afca.org.au, www.afca.org.au, OR GPO BOX 3 MELBOURNE VIC 3001.

PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.