

# **LOAN AGREEMENT**

made by

**MARY-ANNE CAIRNS**

**AND**

**GRAHAM PATRICK MARNING**

**("the Lenders")**

and

**MARY-ANNE CAIRNS**

**AND**

**GRAHAM PATRICK MARNING**

**As trustees for**

**MARNING CAIRNS SUPERFUND**

**("the Borrower")**



**SYDNEY WOLLONGONG**

**Suite 1, Level 8, 200 Crown Street  
Wollongong NSW 2500  
PO Box 337  
Wollongong NSW 2520  
DX 5176 Wollongong  
Tel: (02) 4220 7100  
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Ref: TWE:AC:MAR15728:gh**

## LOAN AGREEMENT

Date 27 October 2017

**This Deed is made**

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**BETWEEN MARY-ANNE CAIRNS** of 1 Virginia Terrace, Thirroul NSW 2515

And

**GRAHAM PATRICK MARNING** of 1 Virginia Terrace, Thirroul NSW 2515

('the Lenders')

**AND MARY-ANNE CAIRNS AND GRAHAM PATRICK MARNING as trustees for MARNING CAIRNS SUPERFUND** of PO Box 510, Thirroul NSW 2515

('the Borrower')

### Background

- A. The Borrower has requested the Lenders to lend to the Borrower the Loan.
- B. The Borrower will apply the proceeds of the Loan towards the acquisition of the Underlying Property.
- C. The Lenders will hold the Certificate of Title until the Loan has been repaid.
- D. The Borrower will grant to the Lenders a Mortgage over the Underlying Property as security for the Loan.

### The Parties hereby agree

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#### 1. Definitions

1.1 Any term defined for the purposes of the Security Trust Deed has the same meaning as in this Agreement.

1.2 In this Agreement:

1.2.1 '**Anniversary date**' means the date occurring annually and falling on the date of this Deed.

1.2.2 '**Draw Down Date**' means that date agreed by the Lenders and the Borrower as the date of payment by the Lenders of the Loan to either the Borrower or at the direction of the Borrower to assist in the acquisition of the Underlying Property.

- 1.2.3 **'Completion Payment'** is the final payment to be made by the Borrower as at the Maturity Date of the Loan, and includes the remaining Loan and interest payments balance as at the Maturity Date, and any costs, fees and disbursements owing by the Borrower to the Lenders.
- 1.2.4 **'Further Loan'** means any Further Loan agreed in writing to be provided by the Lenders to Borrower.
- 1.2.5 **'Interest'** means the interest payable on the Loan by the Borrower to the Lenders at the Interest Rate.
- 1.2.6 **'Interest Rate'** means the Reserve Bank of Australia Indicator Lending Rates for banks providing standard variable housing loans for investors.
- 1.2.7 **'Loan'** means the Loan provided to the Borrower from the Lenders in the amount of \$1,000.00, and to be applied for the acquisition of the Underlying Property as at the Draw Down Date.
- 1.2.8 **'Maturity Date'** means one (1) year from the date of this Loan Agreement. The Lenders retains the sole discretion to increase the term of the Loan, by agreement in writing, by way of annual extensions after the one (1) year Loan.
- 1.2.9 **'Mortgage'** means the Lenders' interest in the Underlying Property, which is secured over the Underlying Property. The Mortgage may include the granting of security over the Underlying Property, entering into a ISDA Master Agreement, entering into a derivative transactions (including, but not limited to foreign exchange contracts), and incurring all or any other type of obligations and liabilities with respect to the Underlying property. Such other obligations and liabilities may include, but is not limited to:
- (a) Giving a guarantee and giving an indemnity for the payment of money or the performance of any agreement, contract, obligation or undertaking by any person or body corporate, and
  - (b) Securing the liability arising from any such guarantee or indemnity by charging or mortgaging the whole or any part of the Underlying Property
- 1.2.10 **'Parties'** include the Borrower and, the Lenders.
- 1.2.11 **'Underlying Property'** means Unit 20/16 Quarry Street, Port Kembla NSW 2505, Certificate of Title Identifier being Unit 20 in an unregistered plan which is part of Lot 14 Plan SP81934.
- 1.2.12 **'Value'** means that amount less selling costs which the Lenders receives as a consequence of it selling the Underlying Property as authorised by a Mortgage.

## 2. Interpretation

In this Agreement unless the contrary intention appears:

- 2.1 the **singular** includes the plural and vice versa;
- 2.2 a **gender** includes all other genders;
- 2.3 where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning;
- 2.4 a reference to a **person** includes any corporation, partnership, joint venture, trust, association, government, or public authority and vice versa;
- 2.5 a reference to a **clause** or **annexure** is to a clause of or annexure to this Agreement;
- 2.6 a reference to a **request** or **notice** means a request or notice in writing;
- 2.7 a reference to any **party** to this or any other document includes the party's successors and permitted assigns;
- 2.8 a reference to a **document** is to that document as amended, novated, supplemented, varied or replaced from time to time and includes any annexures, schedules and appendices to that document, except to the extent prohibited by that document.
- 2.9 a reference to any **legislation** or legislative provision includes any statutory modification, substitution or re-enactment and any subordinate legislation issued under that legislation or provision;
- 2.10 a reference to **conduct** includes any act, omission, representation, statement or undertaking whether or not in writing;
- 2.11 mentioning anything after **include**, **includes** or **including** does not limit what else might be included;
- 2.12 a reference to a **person** that comprises two or more persons means those persons jointly and severally;
- 2.13 the **headings** are for convenience only and do not affect the interpretation of this Agreement;
- 2.14 a reference to a **month** means a calendar month;
- 2.15 a reference to **dollars** means Australian dollars;
- 2.16 a reference to **time** means Canberra time;

2.17 the **Background** is correct and forms part of this Agreement.

### 3. **Application of the Loan**

3.1 On the Draw Down Date, the Lenders will lend to the Borrower the Loan.

3.2 Although the Loan will be borrowing of the Borrower the Lenders may (at the direction of the Borrower) pay the Loan to Vendor or in accordance with the Vendor's cheque directions.

3.3 The Borrower irrevocably authorises and directs the Lenders to apply the Loan on the Draw Down Date as follows:

3.3.1 To purchase the Underlying Property;

3.3.2 To pay any interest due to the Lenders.

### 4. **Further lending by the Borrower from the Lenders**

4.1 **Clause 3** also applies to any Further Loan.

### 5. **Repayment of the Loan by the Borrower**

5.1 Subject to **clause 7** and **clause 9**, the Loan (or any part of the Loan) plus any Interest or further amounts outstanding and repayable pursuant to **clause 6**, will be repaid by the Borrower to the Lenders as follows:

5.1.1 Interest only repayments payable on the 1<sup>st</sup> of each month; and

5.1.2 Payments reducing capital in the Loan (or any part of the Loan) can be made by agreement between the Lenders and the Borrower, such agreement not to be unreasonably withheld by the Lenders.

5.2 At the Anniversary Date, the Lenders will provide the Borrower with a statement which itemises the Interest charged on the Loan for the previous year, and the payments made by the Borrower during the previous year.

5.3 Interest may be capitalised upon written agreement between the Lenders and the Borrower, and at the sole discretion of the Lenders.

5.4 As at the Maturity Date, the Borrower must:

5.4.1 Repay the Loan (or any part of the Loan outstanding) by making a Completion Payment which includes any fees, costs and disbursements owing to the Lenders; or

5.4.2 Subject to **clause 8**, sell the Underlying Property to repay the Loan and make the Completion Payment.

## 6. Payment of Interest by the Borrower

- 6.1 The Borrower will pay the Interest to the Lenders.
- 6.2 The Borrower will pay the Interest to the Lenders monthly in advance pursuant to **Clause 5.1** or as otherwise agreed in writing by the Parties.
- 6.3 The Interest will be charged at the Interest Rate or otherwise agreed in writing by the Parties.
- 6.4 In the event that the Borrower fails to pay Interest pursuant to the terms of this Clause 6, penalty interest at the rate of 10 percent per annum will be payable by the Borrower for that month in which the Interest has not been paid on time. If the Borrower fails to pay Interest pursuant to this Clause 6 for more than one payment, then penalty interest at the rate of 10 percent per annum will be payable by the Borrower, from the date of the first failure to pay Interest, until the Borrower becomes up to date with Interest payments.

## 7. Mortgage over the Underlying Property

- 7.1 For the purposes of securing payment of the Loan and any Interest according to the terms of this Agreement, the Borrower will provide the Lenders, or as the Lenders directs, with a Mortgage with respect to the Underlying Property.
- 7.2 The Borrower, as the legal owner of the Underlying Property, hereby acknowledges, agrees and consents to the Lenders, or as the Lenders direct, registering a first Mortgage over the Underlying Property.
- 7.3 For the avoidance of doubt, the Mortgage over the Underlying Property may be provided to a third party as directed by the Lenders.
- 7.4 The property which is subject to the Mortgage includes (but is not limited to):
  - 7.4.1 All of the Borrower rights in, to, under and derived from the Underlying Property; and
  - 7.4.2 Includes all accretions in the value of the Underlying Property.
- 7.5 For the avoidance of doubt, the Parties acknowledge and agree that:
  - 7.5.1 The Borrower is at all times absolutely entitled to the Underlying Property; and
  - 7.5.2 The Lenders is to retain the Certificate of Title of the Underlying Property until a Completion Payment is made and the Loan is discharged or the Mortgage is exercised.

## 8. Exercise of power

8.1 In the event that the Borrower:

8.1.1 Does not make a Completion Payment as at the Maturity Date;

8.1.2 Commits to an act of bankruptcy or becomes a bankrupt (in the case of a natural person);

8.1.3 Has a liquidator or administrator appointed (in the case of a corporation);

8.1.4 Is wound up or otherwise ceases to exist (in the case of a corporation or trust);

8.1.5 Dies;

8.1.6 Fails to make interest payments pursuant to Clause 6 for a period of 3 calendar months, and the Borrower fails to remedy that default within 14 days of receiving written demand from or on behalf of the Lenders;

then the Lenders can enforce the Mortgage and dispose of the Underlying Property.

8.2 Specifically, the Lenders may cause the Borrower to:

8.2.1 Exercise any rights with respect to the Underlying Property; and

8.2.2 Exercise any other power granted to a mortgagee, including those contained in the Mortgage, relating to the Underlying Property;

8.2.3 Apply any proceeds received in disposing the Underlying Property in repayment of the Loan (including any Interest) to the extent permitted by the law.

8.3 If this **clause 8** applies, then the Borrower will ensure that it has dispensed with any notice, or any required lapse of time, which may be required by any law for the enforcement the Mortgagee, or the exercise of any power by the Lenders, under this Agreement.

## 9. Borrower's Warranties and undertakings

9.1 The Borrower represents and warrants to the Lenders that:

9.1.1 Neither the execution or performance of this Deed will:

9.1.1.1 Conflict with, or result in any breach of, or require any consent or approval under, any mortgage, agreement or other undertaking or instrument to which the Borrower is a party or which is binding upon the Borrower or any of the Borrower's assets; or

- 9.1.1.2 Cause any limit on the powers of the Borrower in respect of borrowing, guaranteeing, raising financial accommodation or otherwise, as the case may be, to be exceeded;
- 9.1.2 The Borrower is not in default under any Deed, agreement or other document, or obligation (including obligations under guarantees or other contingent liabilities), which default is reasonably likely to adversely affect the ability of the Borrower to comply with her obligations under this Deed.
- 9.1.3 No litigation or administrative or other proceedings before, or of, any Court or Governmental authority or agency or other Tribunal has, to the knowledge of the Borrower, being initiated or threatened against the Borrower or any of the Borrower's assets which would or might have a material adverse affect upon the assets or financial condition of the Borrower;
- 9.1.4 The Borrower does not have, and will not have during the term of this loan, any right of setoff or counterclaim or any right to rescind or any other claim in respect of this Deed by way of cross action against the Lenders; and,
- 9.1.5 The Borrower is not the Trustee of any Trust, and accordingly enters into this Agreement on its own behalf.
- 9.2 For as long as the Loan remains outstanding under this Agreement, the Borrower undertakes with the Lenders as follows:
  - 9.2.1 To execute and obtain, at the expense of the Borrower, all insurances and other things as may be reasonably required or requested at any time by the Lenders for giving effect to the full benefit of the covenants contained or implied in this Deed, or to protect the Lenders' rights, powers and remedies under this Deed;
  - 9.2.2 To obtain home and contents insurance enough to secure the Lenders' interest in the Underlying Property;
  - 9.2.3 To comply with the requirements of all applicable laws, rules, regulations, orders and decrees of any person, non-compliance with which would, or might, in the Lenders' opinion, have a material adverse affect on the Borrower's ability to comply with its obligations under this Agreement;
  - 9.2.4 To notify the Lenders immediately of the occurrence of any event of Default or event which, with the giving of Notice or lapse of time or both, would become an event of Default, of which the Borrower becomes aware and which either would, or might in the Lenders' opinion, adversely affect the ability of the Borrower to fully and promptly perform its obligations under this Agreement;
  - 9.2.5 To notify the Lenders immediately of any litigation or administrative or other proceedings initiated against the Borrower or any of the Borrower's assets;
  - 9.2.6 To notify the Lenders immediately of any event or change in the Borrower's circumstances, the effect of which would or might render any representation or warranty made in this Agreement untrue or incorrect in any respect.



## **10. Application costs**

10.1 The Borrower will pay or reimburse the Lenders for:

10.1.1 All costs incurred in establishing and maintaining the Loan;

10.1.2 All costs incurred in the preparation and execution of this Agreement;

10.1.3 All costs in making and maintaining the Mortgage;

10.1.4 All costs incurred in attending on settlement; and

10.1.5 All costs associated in the registration of the Mortgage.

10.1.6 All stamp duty payable in relation to this Loan, the Mortgage and any associated documents.

10.2 This **clause 10** applies to costs which include (but are not limited to) stamp duty payable on making the Loan, the Mortgage and obtaining legal title of the Underlying Property.

## **11. Amendment of this Agreement**

11.1 The Parties may agree to vary or amend the terms of this Agreement, in writing.

## **12. Notices**

12.1 Any notice given under this Agreement must be in writing addressed to the intended recipient and will be taken to have been given and received at the time it is left at the recipients last known address, place of residence or business, three Business Days after posting in the case of mail or on the business day of transmission in the case of facsimile or email.

## **13. Assignment**

13.1 The Parties may not novate, assign, sub-participate or otherwise deal with their rights under this Agreement.

## **14. Severability**

14.1 If any provision of this Agreement is or becomes invalid or unenforceable in any jurisdiction, the provision is to be read down (if possible) so as to be a valid and enforceable clause.

14.2 If the provision cannot be read down, then this Agreement takes effect as if it did not include that provision.

**15. No waiver**

15.1 No delay or failure by any of the Parties to exercise a right operates as a waiver.

**16. Further assurances**

16.1 The Parties agree to take all steps, execute all documents and do everything that the Parties reasonably require to give effect to the transactions contemplated by this Agreement.

**17. Execution of counterparts**

17.1 This Agreement may be executed in any number of counterparts, each counterpart is an original and the counterparts together are one and the same Agreement.

**18. Governing Law**

18.1 This Agreement shall be governed by and construed in accordance with the laws of New South Wales.

**Executed as an Agreement**

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**EXECUTED AS LENDER**

Executed for and on behalf of  
Mary-Anne Cairns  
in the presence of:

R Bunn  
Signature of Witness

Rosa Bunn  
Name of Witness

13a Camden St.  
Balgownie NSW 2519.  
Address of Witness

)  
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)  
)  
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)  
M Cairns  
Mary-Anne Cairns

**EXECUTED AS LENDER**

Executed for and on behalf of  
Graham Patrick Marning  
in the presence of:

R Bunn  
Signature of Witness

Rosa Bunn  
Name of Witness

13a Camden St  
Balgownie NSW 2519  
Address of Witness

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Graham Marning  
Graham Patrick Marning

