

## **GUARANTEE & INDEMNITY**

# **Lifesaver Superannuation Fund**

Our ref: 3677:154050



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THIS DEED is made on: 11<sup>th</sup> November 2015 .....(insert date of execution)

**BETWEEN:** **MARCUS KOOLEN** and **ALLANAH KOOLEN** both of 29 Freycinet Row, Buderim, Queensland 4556 ('Guarantor')

**AND:** **MA PROPERTY GROUP PTY LTD** ACN 151 478 303 ATF Lifesaver Superannuation Fund care of 29 Freycinet Row, Buderim, Queensland 4556 ('RSF Trustee')

**AND:** **KOOLEN HOLDINGS PTY LTD** ACN 163 893 605 care of 29 Freycinet Row, Buderim, Queensland 4556 ('Lender')

**RECITALS:**

- A The RSF Trustee is entering into a limited recourse borrowing arrangement ('Borrowing') with the Lender in order to acquire the asset described in the Schedule to this Deed ('Asset').
- B The Lender is desirous that the Guarantor provides a guarantee and indemnity. The Guarantor wishes to provide such a guarantee and indemnity by way of the terms of this Deed.
- C This guarantee and indemnity is intended to comply with the requirements of the *Superannuation Industry (Supervision) Act 1993* (Cth) ('SISA'), including s 67A.
- D The RSF Trustee and the Lender have or will enter into a loan agreement ('Loan Agreement') setting out the terms of the Borrowing.

**PROVISIONS:**

**Limited Recourse against RSF Trustee**

- 1. Despite anything else in this Deed, the rights of the Guarantor against the RSF Trustee for, in connection with, or as a result of, (whether directly or indirectly) default on:
  - 1.1. the Borrowing; or
  - 1.2. the sum of the Borrowing and charges related to the Borrowing;are limited to rights relating to the Asset.
- 2. Despite anything else in this Deed, if, under the Borrowing the RSF Trustee has a right relating to the Asset (other than a right described in s 67A(1)(c) of the SISA) — the rights of the Guarantor against the RSF Trustee for, in connection with, or as a result of, (whether directly or indirectly) the RSF Trustee's exercise of the RSF Trustee's right are limited to rights relating to the Asset.
- 3. To the extent that any term of this Deed would cause the Borrowing to give rise to a contravention of the SISA, then to that extent that term is void ab initio and is severed from the rest of this Deed.

**Jointly and Severally**

- 4. If a party to this Deed is comprised of more than one person, all rights and obligations contained in this Deed are joint and several rights and obligations.

**Guarantee**

- 5. The Guarantor guarantees to the Lender performance by the RSF Trustee under the Loan Agreement.

6. If the RSF Trustee defaults in either the payment of any money or in the performance of any obligations under the Loan Agreement, the Guarantor must:
  - 6.1. pay any such money to the Lender as stipulated by the Lender; and
  - 6.2. indemnify the Lender for all losses and like outgoings reasonably incurred in respect of the default as stipulated by the Lender.
7. The Guarantor has no rights of subrogation in respect of the RSF Trustee until all amounts due to the Lender and all obligations in respect of the Lender under the Loan Agreement have been fully paid and performed.
8. The Guarantor must not exercise any rights of subrogation in respect of the RSF Trustee that are in competition with the rights of the Lender.

**Indemnity**

9. The Guarantor unconditionally indemnifies the Lender in respect of all obligations and amounts payable under the Loan Agreement that are not recoverable or are unenforceable.

**Guarantor Acts in Personal Capacity Only**

10. The Guarantor executes this document only in its personal capacity and not in its capacity of any trust of which it might be the trustee.

**General Provision**

11. In this Deed, unless there is something in the subject or context inconsistent with it:
  - 11.1. words importing persons shall be deemed to include all bodies and associations, whether corporate or unincorporated and vice versa;
  - 11.2. the headings in this Deed are for convenience and reference only and shall not be construed as affecting the meaning or interpretation of this Deed;
  - 11.3. a reference to a statute or regulation, or to a provision of a statute or regulation, includes a reference to that statute, regulation or provision as amended, consolidated, replaced or re-enacted from time to time;
  - 11.4. the obligations imposed and the benefits conferred under this Deed on each of the parties shall be binding upon and shall endure for the benefit of the respective parties and each of their respective successors in title, legal personal representatives and permitted assigns; and
  - 11.5. a reference to any party to this Deed shall include that party's successors in title, legal personal representatives and permitted assigns.

**EXECUTED** as a deed.

**GUARANTOR**

SIGNED SEALED AND DELIVERED by )  
**MARCUS KOOLEN** in the presence of )  
 the following witness: )

  
 \_\_\_\_\_  
 Signature of **MARCUS KOOLEN**

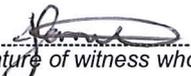
X \_\_\_\_\_  
 Signature of witness who is not a party to deed

X **JESSICA HAMILTON**  
 Name of witness

X **114 DEBORAH CLOSE MUDJIMBA RD 4564**  
 Address of witness

SIGNED SEALED AND DELIVERED by )  
**ALLANAH KOOLEN** in the presence of )  
the following witness: )

  
Signature of **ALLANAH KOOLEN**

✓   
Signature of witness who is not a party to deed

✗ **JESSICA HAMILTON**  
Name of witness

✗ **14 DEBRAH CLOSE MUDJIMBA Q 4564**  
Address of witness

**RSF TRUSTEE**

EXECUTED by **MA PROPERTY GROUP PTY** )  
**LTD** ACN 151 478 303 ATF Lifesaver )  
Superannuation Fund in accordance with s 127 )  
of the *Corporations Act 2001* (Cth): )

  
Signature of **DIRECTOR / SECRETARY**  
**Allannah Jane Koolen**  
Name of signing officeholder

  
Signature of **DIRECTOR**  
Name of signing officeholder

**LENDER**

EXECUTED by **KOOLEN HOLDINGS PTY** )  
**LTD** ACN 163 893 605 in accordance with )  
s 127 of the *Corporations Act 2001* (Cth): )  
)  
)

  
Signature of **SOLE DIRECTOR / SECRETARY \***  
**Allannah Jane Koolen**  
Name of signing officeholder

Signature of **SECRETARY \***  
Name of signing officeholder (where applicable)

\* delete as appropriate

## SCHEDULE

Description of Asset:

real property located at 17/24 Hoopers Road, Kunda Park QLD 4556 being Lot 17 on SP 195873 in the County of Canning Parish of Mooloolah contained in Title Reference 50644884

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