



regional* australia *bank

REGIONAL AUSTRALIA BANK LTD
ABN 21 087 650 360

2021 FACILITY (LOAN) AGREEMENT

Dated: 2021

B & A Williamson Super Fund

FACILITY SCHEDULE

Item 1 Borrower	Tombal Pty Ltd ACN 640 503 582 as trustee for B & A Williamson Super Fund of 5 Dalton Street Dubbo NSW 2830.
Item 2 Permitted Use	Towards defraying the purchase price payable by the Bare Trustee (see later) under the Purchase Contract (see later).
Item 3 Type of facility	A once-only, fully drawn, non-revolving, cash advance.
Item 4 Facility Limit	\$200,000.00
Item 5 Lower Rate	At any time, the Variable Mortgage Secured Self-Managed Super Fund (Commercial Property Security) interest rate last advised by the Lender to the Borrower, and initially 6.17% per annum.
Item 6 Higher Rate	At any time, 300 basis points (3%) per annum greater than the Lower Rate.
Item 7 Review Date/s	Each November (commencing November 2022).
Item 8 Maturity Date	The day before the 15 th anniversary of the date the advance under the Facility occurs.
Item 9 Interest Payment Dates	The Borrower must pay interest in arrears, on the 1 st Business Day of each calendar month, the first payment in December 2021. Interest not paid when due will then form part of the Outstanding Balance upon which further interest is calculated.
Item 10 Principal Repayment Dates	The Borrower must pay monthly instalments of principal and interest of \$1,705.82 (or such amounts as at any time last estimated by the Lender and notified to the Borrower sufficient to repay the whole of the principal outstanding no later than the Maturity Date), the first payment in December 2021.
Item 11 Initial Costs	<ul style="list-style-type: none">• Loan Establishment Fee - \$1,500.00• PEXA Processing Fee-\$59.07• Valuation Fee - \$2,256.65• Registration fee for the Mortgage (see later) - \$295.40• Title Search Fee - \$19.93• Company Search Fee-\$40.84
Item 12 Transaction Fees	<ul style="list-style-type: none">• \$250.00 (plus GST) to discharge the Mortgage• If a Transaction Party defaults under a Transaction Document, reasonable legal costs (on an indemnity basis) incurred by the Lender in taking legal advice, and / or in preparing and / or serving a notice of default on any Transaction Party• Any other fee, cost or expense payable by a Transaction Party to the Lender under a Transaction Document
Item 13 Security	<ol style="list-style-type: none">1. A guarantee and indemnity (unlimited in time, and in form prepared by the Lender) on account of the Outstanding Liability from each of William John Williamson and Alison Sarah Williamson (persons at the date of this Agreement directors of the Borrower).2. A guarantee and indemnity (unlimited in time, and in form prepared by the Lender) on account of the Outstanding Liability from the Bare Trustee,

supported by a first registered mortgage (in form prepared by the Lender) of the Land (**Mortgage**).

Each above guarantee and indemnity must contain a promise by the Surety concerned that their rights of indemnity against the Borrower for, or in connection with, or as a result of, (whether directly or indirectly):

- default on the borrowing; or
- the sum of the borrowing and charges related to the borrowing,

are limited to rights relating to the Land within the meaning of section 67A of the SIS Act (see later).

Item 14
Conditions
Precedent

That prior to any funds being drawn under the Facility (or such later date as the parties may agree in writing):

1. The Lender completes to its satisfaction 'know your customer' verification procedures required under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
2. The Lender is provided and approves each of the following:
 - 2.1 as regards each Transaction Party that is a company, copies of the following:
 - (a) its Constitution (if any);
 - (b) most recent income tax return (if any);
 - (c) most recent financial report (if any);
 - 2.2 as regards any Transaction Party who is an individual, an up-to-date statement of his or her financial position (in form provided by the Lender); and
 - 2.3 evidence of insurance this Agreement requires.
3. The grant of the Security, registered if capable of registration.
4. Payment of the Initial Costs to the Lender.

Item 16
Reports

1. Financial reporting

No later than a 31 October the Borrower must give to the Lender (by email) a copy of:

- (a) the Borrower's statement of financial position and operating statement (and SMSF auditor's report thereon) for the immediately preceding year of income in form section 35B of the SIS Act requires; and
- (b) its annual return for the immediately preceding year of income under section 35D of the SIS Act.

2. Insurances

At least once every 12 months, the Borrower must provide to the Lender evidence of insurance this Agreement requires.

Note: If at any time:

- the Lender allows any particular report to not be given, at any time the Lender may require that report be given; and / or
- the Lender allows extension of time for any particular report to be given, such is limited to that particular report and for that occasion only.

Item 17
Special conditions -
property acquisition
by a SMSF

Dictionary

In this Agreement:

Bare Trustee means at any time Albitom Pty Ltd ACN 654 010 429 or other company as substitutes as bare trustee under the Bare Trust Deed.

Bare Trust Deed means a document so titled, made between the Borrower (as fund trustee) and the Bare Trustee (as bare trustee), as such document may be at any time amended or replaced.

Conditions Precedent include the Lender is provided and approves each of the following:

- (a) each Lease as in force;
- (b) the Purchase Contract;
- (c) the deed establishing the Fund;
- (d) the Bare Trust Deed;
- (e) written opinion from the Lender's lawyers to the effect that the Borrower as trustee of the Fund has power to:
 - (i) acquire the beneficial interest in the Land as an asset of the Fund;
 - (ii) borrow under this Agreement;
 - (iii) allow the legal interest in the Land to be held in the name of the Bare Trustee; and
 - (iv) contract in the form of this Agreement and also the Bare Trust Deed;
- (f) writing from the directors of the Borrower to the effect that acquisition of the Land would not contravene the "in-house asset" rules applicable to the Fund under the SIS Act, nor contravene the investment strategy the SIS Act requires of the Fund, nor contravene the SIS Act.

Event of Default includes:

- (a) without the Lender's prior written consent, the terms and conditions of the Lease are modified or waived as to be in the Lender's opinion materially adverse to the Borrower;
- (b) without the Lender's prior written consent and outside a range recommended by a recent independent valuer's report, the Borrower agrees a market rent under the Lease;
- (c) without the Lender's prior written consent, the Lease is surrendered or terminated;
- (d) a notice of default under the Purchase Contract issues against the Borrower;
- (e) the Borrower ceases to be the sole trustee of the Fund;
- (f) the Borrower ceases to have a full and unrestricted right of indemnity against the assets of the Fund;
- (g) except with the Lender's prior written consent or to the extent required to comply with the SIS Act, the governing rules of the Fund are varied;
- (h) except with the Lender's prior written consent, the Bare Trust Deed is terminated or varied;
- (i) the Bare Trustee ceases to be party to the Bare Trust Deed;
- (j) in respect of any year of income, the Fund is not a self managed superannuation fund, and / or not a complying superannuation fund (all within the meaning of the SIS Act);
- (k) the Fund becomes technically insolvent (within the meaning of Division 9.6 of the *Superannuation Industry (Supervision) Regulations 1994*);

- (l) a mortgage, charge or lien over the Land in favour of a third party becomes enforceable; or
- (m) distress, execution or other legal process is levied against the Land.

Fund means B & A Williamson Super Fund.

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

Lease means an agreement to lease (or lease) between the Borrower (as landlord) and the Tenant (as tenant) as regards the Land.

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 to 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* as read with the *Superannuation Industry (Supervision) Regulations 1994*.

Tenant means PF Financial Advisers Pty Ltd ACN 617 303 885 and includes any successor to the estate and interest of that person under the Lease.

Insurance of the Land

- (a) The Borrower must insure the Land:
 - (i) in the joint names of the Borrower and the Lender for their respective interests, or in the Borrower's name with the Lender's interest as loss payee endorsed on the policy;
 - (ii) for the amounts, the risks and on the terms that the Lender requires or, if the Lender does not give notice of its requirements, that a normally prudent owner of the Land would consider appropriate.
- (b) If at any time the Lender requires, within 5 Business Days the Borrower must deliver up to the Lender the insurance policy and receipts for premiums.
- (c) The Borrower must not allow anything that might render the insurance void, voidable or unenforceable, or which might prejudice a claim under the insurance or prevent the Lender recovering money under the insurance.

General positive obligations

- (a) Upon reasonable notice, the Borrower must allow the Lender or agent to enter upon and inspect the Land.
- (b) Within 2 Business Days the Borrower must notify the Lender and thereafter within 2 Business Days of request give the Lender any further information the Lender requires if:
 - (i) the Borrower or the Bare Trustee receives a notice from government evidencing an intention to:
 - (A) change a use to which the Land may be put under planning law;
 - (B) open or close a public road at a boundary of the Land;
 - (C) compulsorily acquire any of the Land;
 - (D) require an improvement upon the Land to be demolished;

- (E) sell the Land in enforcement of a statutory charge or lien; or
- (F) register or note a statutory easement on the certificate of title of the Land;
- (ii) the Borrower of the Bare Trustee has or might have a claim under insurance; or
- (iii) an Event of Default occurs.
- (c) If the Borrower or the Bare Trustee becomes entitled to any money as a result of insurance or the compulsory acquisition by government of the Land:
 - (i) the Borrower must allow (and cause the Bare Trustee to allow) the Lender to assume sole management of the claim to that money to the exclusion of the Borrower and the Bare Trustee;
 - (ii) that money must be paid to the Lender, and if in the first instance paid to the Borrower or the Bare Trustee, is held on trust for the Lender;
 - (iii) that money must be applied only to such uses (such as towards reducing the Outstanding Liability) as the Lender may allow.

General negative covenants

- (a) The Borrower must not:
 - (i) allow to be contravened any law in respect of the ownership, use or occupation of the Land;
 - (ii) breach a contract with a third party in respect of the Land.
- (b) Except with the Lender's prior written consent, the Borrower (or as applicable the Bare Trustee) must not:
 - (i) allow a use to which the Land may be put (within the meaning of planning laws) to be varied or discontinued;
 - (ii) allow any improvements upon the Land to be in worse condition and state of repair than as at the date of this Agreement;
 - (iii) allow any improvements (includes fixtures) upon the Land to be removed or demolished unless promptly replaced with assets of at least equal value and utility;
 - (iv) dedicate the Land for a public purpose;
 - (v) partition, sub-divide or consolidate the Land;
 - (vi) grant any easement of which the Land is the servient tenement;
 - (vii) grant any restrictive covenant as regards the Land;
 - (viii) create or allow any lease, tenancy or licence to occupy the Land;
 - (ix) modify or waive a right or remedy under any lease or licence to occupy the Land;
 - (x) allow the surrender of any lease or licence to occupy the Land;
 - (xi) without prejudice to anything mentioned in an above provision, declare a trust over, sell, gift, exchange, transfer, surrender, or part with or share possession of the Land.

Limitation of liability

Despite any other provision of this Agreement, the rights of the Lender against the Borrower for, or in connection with, or as a result of, (whether directly or indirectly):

- (a) default on the borrowing; or**
- (b) the sum of the borrowing and charges related to the borrowing,**

are limited to rights relating to the Land within the meaning of section 67A of the SIS Act.

The above does not however, limit the Bank from exercising its rights or remedies under any other Transaction Document, nor from obtaining an injunction or other order from a court of competent jurisdiction to restrain any breach of any Transaction Document.

Statements of Account

The Lender will issue statements of account for the Facility at least every 3 months.

Events of Review

If at any time:

- (a) a Surety is company and after the date of this Agreement and without the Lender's prior written consent, there is a change of control of that company (where **control** has its meaning in section 50AA of the *Corporations Act 2001*);**
- (b) a Surety is an individual who dies or becomes legally incapable of managing his or her own affairs; or**
- (c) in the Lender's opinion there has been a material, adverse, non-temporary change in the respective assets, liabilities (whether actual or contingent) or financial conditions of the Transaction Parties (taken as a whole),**

then the Lender may give to the Borrower a notice referring to this provision and that operates clause 9 of the Agreement as if the date of such notice was a Review Date.

BETWEEN:

Regional Australia Bank Ltd ABN 21 087 650 360 of Technology Park, Madgwick Drive, Armidale NSW 2350, Ph: (02) 6776 6822, (**Lender**)

AND:

The person/s named in **Item 1 (Borrower)**

INTRODUCTION

- A. The Borrower requests the Lender make available the Facility to the Borrower.
- B. This Agreement provides for the Lender to make available the Facility to the Borrower.

TERMS

PART 1 – PRELIMINARY

1. DICTIONARY

In this Agreement:

Business Day means a day other than:

- (a) a Saturday, Sunday;
- (b) a day which is a public holiday or bank holiday in New South Wales; or
- (c) a day that falls between Christmas and the following New Year's Day.

Break Cost Fee is the fee payable by the Borrower if the whole of the Outstanding Balance is paid or additional repayments made during any period when the Lower Rate is fixed, the fee being the cost to the Lender where the annual rate of interest (reinvestment rate) the Lender can earn on reinvesting the repayment is less than the Lower Rate and calculated as follows:

Step 1 - The proportion of the Outstanding Balance that is being repaid:
 $\text{repayment} / \text{Outstanding Balance}$

Step 2 - The interest that would be lost to the Lender if the Borrower fully repaid the Outstanding Balance:

$\text{Outstanding Balance} \times (\text{Lower Rate} - \text{reinvestment rate})$

Step 3 - An interest offset based on the Borrower's expected future instalments:

$\text{instalment} \times N \times (\text{Lower Rate} - \text{reinvestment rate}) \times \text{years} / 2$

The fee is calculated as: $\text{Proportion (Step 1)} \times [\text{Amount (Step 2)} - \text{Amount (Step 3)}]$.

The Break Cost Fee cannot be less than zero.

Where:

instalment is the amount payable at each Principal Repayment Date;

N is the number of whole instalment periods remaining in the fixed interest rate period at the date of repayment;

reinvestment rate is the Lender's fixed interest rate (% per annum) at the date of repayment;

repayment is the amount of the additional payment made; and

years is the number of years remaining in the fixed rate period at the date of repayment calculated as $N / 12$.

Conditions Precedent mean:

- (a) conditions stated in **Item 14**; and

- (b) anything stated in another Item to be a Condition Precedent.

Draw Down Request means a signed and dated written request for an advance under the Facility (signed by or for the Borrower) (includes by email) that:

- (a) states the amount of that advance;
- (b) states the date the advance is to be advanced (being a Business Day at least 2 Business Days after the request is given);
- (c) identifies a bank account or payee to which the advance is to be paid; and
- (d) certifies there is no unremedied or unwaived breach by a Transaction Party of any Transaction Document.

Event of Default means any of the following events or circumstances:

- (a) a Transaction Party commits a breach of a Transaction Document to which party in the Lender's reasonable opinion incapable of prompt remedy;
- (b) a Transaction Party commits a breach of a Transaction Document to which party in the Lender's reasonable opinion capable of prompt remedy that is not remedied within 10 Business Days after written notice from the Lender to the Borrower specifying the breach and requiring its remedy;
- (c) if a Transaction Party is a company, after the date of this Agreement and without the Lender's prior written consent, there is a change of control of that company (where **control** has its meaning in section 50AA of the *Corporations Act 2001*);
- (d) if a Transaction Party enters into a Transaction Document as trustee, after the date of this Agreement and without the Lender's prior written consent, that Transaction Party ceases to be a trustee of the same trust;
- (e) if a Transaction Party is a company, it is deregistered, suffers the appointment of a provisional liquidator, suffers the appointment of a controller over any of its assets, becomes a Chapter 5 body corporate, or is the subject of a statutory demand not withdrawn or stayed within 10 Business Days (all within the meaning of the *Corporations Act 2001*);
- (f) if a Transaction Party is an individual, he or she becomes an insolvent under administration within the meaning of the *Corporations Act 2001*;
- (g) a Security becomes enforceable according to its terms; or
- (h) anything stated in the Facility Schedule to be an Event of Default.

Facility means a facility of the kind stated in **Item 3** to be made available by the Lender to the Borrower under this Agreement with these following features:

- (a) not available pending satisfaction or the Lender's waiver in writing of the Conditions Precedent;
- (b) a facility limit of the Facility Limit;
- (c) bearing interest at the Interest Rate, with interest payable by the Borrower to the Lender in the amounts and at the times stated in the Facility Schedule or elsewhere in this Agreement;
- (d) the repayment of which, with interest and costs, is secured to the Lender by the Security;
- (e) under which the Lender is not obliged to advance any moneys to the Borrower:
 - (i) unless the Borrower has given a Draw Down Request for that advance to the Lender;

- (ii) unless the Security is in good standing and (if registrable) registered with the priority the Security is intended to have;
 - (iii) unless the Lender has received such other things as it may reasonably require;
 - (iv) if and to the extent such advance would exceed the Facility Limit;
 - (v) if an Event of Default exists; or
 - (vi) if the Facility is then repayable;
- (f) the proceeds of which are only to be used by the Borrower for the Permitted Use;
 - (g) under which the Borrower must provide the Reports;
 - (h) under which the Borrower must pay the Initial Costs to the Lender, and may become liable to pay additional fees and costs;
 - (i) under which the Borrower must pay the Transaction Fees to the Lender on demand as and when incurred, and any such amount not paid when due adds to the Outstanding Liability and bears interest;
 - (j) at any time, without notice or penalty, the Borrower may repay any principal outstanding, provided that such repayment may not be re-drawn;
 - (k) repayable as to the whole of the Outstanding Liability on the earliest of:
 - (i) the date the Borrower is deregistered, suffers the appointment of a provisional liquidator, suffers the appointment of a controller over any of its assets, becomes a Chapter 5 body corporate, or is the subject of a statutory demand not withdrawn or stayed within 10 Business Days (all within the meaning of the *Corporations Act 2001*); or
 - (ii) written demand made by the Lender if an Event of Default exists; or
 - (iii) the Maturity Date.

Facility Limit means the amount stated in **Item 4** or such other amount as the Lender and Borrower may agree in writing.

Facility Schedule means a schedule appended to, and forming part of, this Agreement.

GST, taxable supply and **tax invoice** have their meaning in *A New Tax System (Goods and Services Tax) Act 1999*.

Higher Rate means that rate stated in **Item 6**.

Initial Costs mean those amounts (before GST) stated in **Item 11**. Other costs and fees may be payable by the Borrower as provided for in the Transaction Documents. An above cost or fee not paid when due adds to the Outstanding Liability and bears interest.

Interest Payment Dates mean those dates or times stated in **Item 9**.

Interest Rate means the Higher Rate, provided that the Lender must accept interest at the Lower Rate in lieu of the Higher Rate for any period in respect of which all of the following are satisfied:

- (a) the Transaction Parties have fully observed and performed their respective obligations under the Transaction Documents (other than those relating to the payment of interest to the Lender);

- (b) the Borrower pays interest to the Lender at the Lower Rate not later than 3 Business Days after the day on which interest ought to have been paid (as to which time is of the essence); and
- (c) the Facility has not become repayable.

Item means an item of the Facility Schedule.

Lower Rate means that rate stated in **Item 5**.

Maturity Date means the date stated in **Item 8**.

Month means:

- (a) a calendar month; or
- (b) if calculating a month from a certain date, includes the period from such date to the same date in the next month but if the next month does not contain the same date, then the last day of the next month.

Outstanding Balance means the Outstanding Liability excluding any moneys contingently owing.

Outstanding Liability means at any time the whole or any moneys owing (including contingently owing) by the Borrower to the Lender in connection with any Transaction Document including, without limitation:

- (a) moneys advanced under the Facility not repaid;
- (b) any interest accrued under a Transaction Document unpaid;
- (c) any fees, costs or expenses due to the Lender under any Transaction Documents unpaid;
- (d) any reasonable costs or expenses reasonably incurred by the Lender in the recovery, or attempted recovery, of any other of the Outstanding Liability;
- (e) any reasonable fees, costs or expenses incurred by the Lender or by an attorney, receiver, or receiver and manager appointed by the Lender under a Transaction Document, in the exercise or attempted exercise of any right or remedy conferred by a Transaction Document or by legislation.

Permitted Use means a use of proceeds of the Facility stated in **Item 2**.

Principal Repayment Dates mean those dates or times stated in **Item 10**.

Reports mean reports by the Borrower of the kind and with the frequency stated in **Item 16**.

Review Date means a date stated in **Item 7**.

Security means, at any time, individually and collectively, those security interests, guarantees, indemnities and / or documents stated in **Item 13**.

Surety means at any time a person except the Borrower who must or may be obliged to pay any of the Outstanding Liability to the Lender.

Transaction Documents mean individually and collectively:

- (a) this Agreement;
- (b) each Security;
- (c) any contract relating to the priority of any Security;

- (d) any present or future written agreement between the Lender and a Transaction Party relating to the repayment of any of the Outstanding Liability;
- (e) any instrument agreed by the Lender and a Transaction Party to be a Transaction Document;
- (f) any instrument contemplated by, varying, granted or delivered pursuant to, anything mentioned in any above paragraph,

as such may at any time be modified, extended, renewed or substituted.

If at any time another contract (whether or not titled as a facility agreement or loan agreement) provides for the Lender to provide financial accommodation other than the Facility to the Borrower (alone or with others), that other contract is included as a Transaction Document.

Transaction Fees mean those amounts stated in **Item 12**.

Transaction Party means a party to a Transaction Document other than the Lender and, without limitation, includes any Surety.

Expressions defined in the Facility Schedule or elsewhere in this Agreement have those meanings.

2. INTERPRETATION

In this Agreement: singular includes plural and *vice versa*; reference to a person includes a body politic or corporate and an individual and a partnership and *vice versa*; headings do not affect construction; no rule of construction applies to the disadvantage of a party because that party put forward this Agreement or any portion of it; another grammatical form of a defined word has a corresponding meaning; reference to legislation includes: (i) the legislation as amended; (ii) any substituted legislation; (iii) any subordinate legislation under that legislation; and (iv) any orders or codes of practice under that legislation.

PART 2 – FACILITY

3. FACILITY

Subject to clause 4, the parties agree for the Lender to make available the Facility to the Borrower on and subject to the terms in this Agreement.

4. CONDITIONS PRECEDENT

The Facility is not available unless and until all Conditions Precedent are satisfied or in writing waived by the Lender, and in relation to which:

- 4.1 if the Lender so requires, a copy of a document referred to in a Condition Precedent must be certified as being true, complete and current by a director or secretary of Borrower;
- 4.2 each is solely for the Lender's benefit, who may at any time by notice in writing to the Borrower waive or extend the time for satisfaction of any of them;
- 4.3 if any of them is not satisfied or waived within the period set out, either party may terminate this Agreement by notice in writing to the other. In that case, except that the Borrower remains liable to pay the Initial Costs unpaid, neither party has further rights against the other party under this Agreement.

If however, the Lender makes any advance under the Facility before the satisfaction or waiver of any Condition Precedent, then that advance is on the basis that any outstanding Condition Precedent must be satisfied within 5 Business Days (or such longer period specified by the Lender) after the date of that advance, or the Borrower must then repay the advance and interest thereon.

5. PROCEEDS

- 5.1 The Borrower must use proceeds of the Facility solely for the Permitted Use.

- 5.2 Any proceeds of the Facility not promptly used for the Permitted Use must be repaid promptly.
- 5.3 The Lender is not responsible to see to the use the Borrower makes of any proceeds of the Facility.

6. INTEREST

- 6.1 On each Interest Payment Date, the Borrower must pay interest to the Lender on the Outstanding Balance.
- 6.2 Interest accrues daily and is calculated by multiplying the Outstanding Balance at the end of each day by the daily interest rate. The daily interest rate is the Interest Rate divided by 365.
- 6.3 Interest so calculated is payable as provided for in the Facility Schedule.
- 6.4 Interest remains payable despite that all or any of Outstanding Liability may be merged in a judgment or order of a Court, and in which case the Borrower must then pay interest to the Lender on the amount owing from time to time under that judgment or order at the highest of the rates payable under this Agreement or fixed under that judgment or order.

7. FACILITY LIMIT

- 7.1 The Borrower must ensure that at all times the Outstanding Balance does not exceed the Facility Limit.
- 7.2 If at any time the Outstanding Balance exceeds the Facility Limit, within 2 Business Days the Borrower must pay the excess to the Lender.

8. REPAYMENT OF PRINCIPAL

On each Principal Repayment Date (or as this Agreement otherwise requires or permits), the Borrower must repay to the Lender principal advanced under the Facility.

9. ANNUAL REVIEW

- 9.1 The parties intend in or about each Review Date to review the Facility generally having regard to the needs and financial position of the Borrower.
- 9.2 In addition to any other obligations of the Borrower under the other Transaction Documents, the Borrower must cause to be provided to the Lender on a timely basis such information as the Lender reasonably requests to enable the Lender to conduct each review, including without limitation, if and to the extent requested:
 - 9.2.1 copy of the income tax return of each Transaction Party respectively for the immediately preceding tax year;
 - 9.2.2 updated statement of position of each Transaction Party who is an individual (in form provided by the Lender).
- 9.3 If the Borrower fails to supply information under clause 9.2, the Lender may make such assumptions of fact, opinion or law as the Lender thinks appropriate, including assumptions adverse to the Borrower or any Surety.
- 9.4 Upon completion of a review, the Lender may choose to give written notice to the Borrower to:
 - 9.4.1 make no changes to the Facility; or
 - 9.4.2 offer to vary the terms of the Facility as to:

- (a) reduce the Facility Limit (and so require payment to the Lender of any Outstanding Liability exceeding the new Facility Limit);
- (b) require additional Security;
- (c) alter the Lower Rate (by increasing its face value, and / or changing the Lender's reference rate used for that purpose, and / or margin);
- (d) impose, increase and / or accelerate instalments of principal to be repaid to the Lender;
- (e) bring forward the Maturity Date; or
- (f) any combination of anything mentioned in any above paragraph.

9.5 If the Lender gives a notice under clause 9.4.2 and the Borrower accepts Lender's offer by the date set out in that notice, the Lender must prepare and forward to the Borrower the documentation that is, in the Lender's opinion, necessary to give effect to the terms of the offer and the Borrower must execute and return that documentation within 20 Business Days after receipt.

9.6 If the Borrower will not agree to any changes requested by the Lender under clause 9.4.2 as set out in the notice provided by the Lender to the Borrower under clause 9.5, the Lender may terminate this Facility on 20 days' notice and all Outstanding Liability must be repaid on the expiry of that period.

9.7 The Lender's rights under this clause 9 are without prejudice to any other right of the Lender under the Transaction Documents, and are not prejudiced by any delay in conducting or any failure to undertake any review.

10. TERMINATION

10.1 The Facility terminates as this Agreement requires or permits (as to which time is of the essence).

10.2 On termination of the Facility, the Borrower must pay the whole of the Outstanding Liability to the Lender.

PART 3 – WARRANTIES

11. GENERAL WARRANTIES

The Borrower warrants and represents to the Lender:

11.1 each Transaction Party has power to enter into and observe and perform its obligations under the Transaction Documents, and to carry out the transactions contemplated by any such Transaction Document;

11.2 all information provided to the Lender by or on behalf of a Transaction Party in investigations or negotiations leading to this Agreement was when given and is now true in all material respects and is not misleading or deceptive;

11.3 the Transaction Parties fully disclosed to the Lender in writing, all information relating to the Transaction Parties relevant to the assessment of the nature and amount of risk assumed by the Lender in respect of this Agreement.

Each above warranty endures for the benefit of the Lender after the execution and performance of the Transaction Documents.

PART 4 – OTHER

12. INFORMATION

If at any time the Lender reasonably requires, within 10 Business Days the Borrower must give to the Lender complete and accurate information about:

- 12.1 any matter concerning the financial or commercial position of a Transaction Party;
- 12.2 the past or future performance by the Borrower of this Agreement.

13. ENQUIRES

The Borrower irrevocably authorises and directs a Relevant Person to at any time disclose and discuss with the Lender any affairs of the Borrower, or the observance or performance by the Borrower of a Transaction Document.

For this purpose, a **Relevant Person** means any present or future:

- 13.1 director or secretary of the Borrower;
- 13.2 valuer, actuary, or SMSF auditor, selling agent, lawyer or conveyancer engaged by the Borrower.

14. ACKNOWLEDGMENT OF DEBT

If at any time the Lender so requires, within 5 Business Days the Borrower must give to the Lender such written acknowledgment of the Outstanding Liability as the Lender may reasonably require.

15. CERTIFICATE BY THE LENDER

A certificate signed by a then officer of the Lender as to:

- 15.1 the total and / or composition of the Outstanding Liability on a certain date; and / or
- 15.2 any other matter in respect of a Transaction Document,

is sufficient evidence of the matter unless proved incorrect.

16. ABOUT PAYMENTS

Payments by the Borrower to the Lender under the Transaction Documents are payable without need for demand, by 11.00 am (Sydney time) and in immediately available funds without set-off (in common law or equity), counterclaims, conditions or, except as required by law, deduction or withholding.

17. APPROPRIATION OF PAYMENTS

The Lender may apply money received from the Borrower in connection with the Transaction Documents in any priority and against any of the Outstanding Liability then due as the Lender decides, despite any purported appropriation by the Borrower.

18. GST

If a party (**Provider**) is liable to pay GST in respect of a taxable supply it makes to the other party (**Recipient**) under a Transaction Document then (unless the Transaction Document expressly states that the consideration includes GST), the consideration payable by the Recipient to the Provider for that taxable supply must be increased by an amount equal to the amount of the GST imposed or to be imposed in respect of that taxable supply and be paid at the same time as when the consideration for the relevant taxable supply is required to be paid by the Recipient, conditional upon the Provider first issuing a tax invoice for the taxable supply to the Recipient.

19. ASSIGNMENT BY THE BORROWER

Except with the Lender's prior written consent, the Borrower may not assign or declare a trust over any of its benefits or obligations under any Transaction Document.

20. DISPUTE RESOLUTION

- 20.1 Subject to this clause, any dispute in connection with a Transaction Document must not be the subject of litigation pending the party raising the dispute (**Party 1**):
- 20.1.1 notifying the other party (**Party 2**) as to the nature of the dispute (with reasonable details), and what action Party 1 thinks will resolve the dispute;
 - 20.1.2 by the same or other notice, inviting Party 2 to a meeting of the parties' respective agents at some convenient location with a view to resolving the dispute.
- 20.2 If Party 1 gives notice of a meeting as above, each party must send to the meeting an agent with authority to resolve the dispute, and at the meeting make a good faith attempt to resolve the dispute.
- 20.3 This clause does not prejudice the right of a party to seek injunctive relief to prevent immediate and irreparable harm, or to terminate the Facility or enforce a Security where the basis for doing so is not in dispute.

21. ABOUT THIS AGREEMENT

This Agreement:

- 21.1 (excepting other Transaction Documents) is the whole contract between the parties about its subject and supersedes any prior contract or obligation between the parties about its subject;
- 21.2 may be modified only by written agreement of the parties;
- 21.3 is governed by the laws in New South Wales;
- 21.4 may be executed in counterparts, but if executed in counterparts, is not effective until each party has executed at least one counterpart and the Lender holds all those counterparts - an executed counterpart may be delivered by any means this Agreement allows for the giving of notices. Each counterpart constitutes an original of this Agreement, but the counterparts together constitute one and the same contract.

The Borrower acknowledges that before commitment to this Agreement (and any other Transaction Document executed by the Borrower at the same time) the Borrower had fair opportunity to read, understand, take independent advice on, and to negotiate with the Lender on the terms and conditions of this Agreement and those other Transaction Documents respectively.

22. NO WAIVER

A party waives a right under this Agreement only by written notice that it waives that right.

23. NOTICES

To be effective, a notice under this Agreement must be in writing and given to a party either:

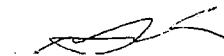
- 23.1 by registered post to the recipient's address now stated or as last notified – notice by registered post is given 3 days after it is posted or (if earlier) at the time at which the letter would be delivered in the ordinary course of post; or
- 23.2 by a means allowed by the *Electronic Transactions Act 2000* (NSW) (includes by email to the recipient's email address now stated or as last notified), and is given when that Act specifies; or
- 23.3 as permitted by legislation applicable to the recipient.

Despite the above, a notice in writing delivered personally to a party's administrator appointed under this Agreement is notice to that party.

24. SPECIAL CONDITIONS

Any special conditions stated in **Item 17** form part of this Agreement, and prevail over other terms of this Agreement to the extent of any necessary inconsistency.

EXECUTED on behalf of **REGIONAL AUSTRALIA BANK LTD ABN 21 087 650 360** by its authorised officer:)
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Bank Officer Name: Neil Buxton
Bank Officer Title: Lending Manager
Date: 15 November 2021

EXECUTED by **TOMBAL PTY LTD ACN 640 503 582 AS TRUSTEE FOR B & A WILLIAMSON SUPER FUND** in accordance with s.127 of the Corporations Act 2001:)
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Alison Sarah Williamson
Director / Secretary



.....
William John Williamson
Director