

## Deed of Loan

Prepared by:

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# Deed of Loan

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**Date of this Deed:** 20 / 03 / 2014

**Parties**

**Between:** WESTPAC  
Please print name of Lender

of .....  
Please print address of Lender  
(‘the Lender’)

and SM Boyle Super Pty Ltd ACN 168 620 326  
(‘the Borrower’)

and SM Boyle Investments Pty Ltd ACN 168 620 291  
(‘the Bare Trustee’)

**Whereas:**

- A.** The Borrower is the trustee of the superannuation fund, described in section 1 of the Schedule (‘the Fund’) and enters into this deed only in its capacity as trustee of the Fund (‘the Fund Trustee’);
- B.** The Fund Trustee wishes to acquire the beneficial interest in the asset, described in section 2 of the Schedule (‘the Investment’);
- C.** The Investment will be acquired on trust for the Fund Trustee by the Bare Trustee, pursuant to the Bare Trust Deed attached to this deed (‘the Bare Trust Deed’) under a limited recourse borrowing arrangement;
- D.** The Lender has agreed to lend the amount specified in section 3 of the Schedule (‘Principal Sum’) to the Borrower to allow the Fund Trustee to acquire the beneficial interest in the Investment; and
- E.** The Lender has agreed that the rights of the Lender in the event of default on the borrowing by the Borrower are non-recourse in that they are limited to rights relating to the Investment or a replacement to the Investment.

Agreed terms as follows:

## **1. Loan**

- 1.1. The Lender shall lend the Principal Sum to the Borrower, subject to the terms of this deed.
- 1.2. The Lender agrees that the Borrower shall pay the Principal Sum to the Bare Trustee to be applied in the acquisition of the Investment under the terms of the Bare Trust Deed.
- 1.3. The Borrower agrees to repay the Principal Sum and interest on it at the rates set out in section 4 of the Schedule ('Interest').

## **2. Repayment**

- 2.1. The Borrower agrees to pay to the Lender Interest calculated daily on the Principal Sum by the instalments set out in section 5 of the Schedule ('Instalments') which must be paid on each payment date as set out in section 6 of the Schedule ('Payment Date') until the Maturity Date.
- 2.2. The Principal Sum or so much of it as then remains outstanding must be repaid by the Borrower to the Lender on the date referred to in section 7 of the Schedule ('Maturity Date').

## **3. Default**

- 3.1. In the event that the Borrower fails to make a payment as required by this deed or the Borrower breaches any of its obligations under this deed, the whole of the balance of Principal Sum and Interest payable by the Borrower to the Lender and any other monies payable by the Borrower under the terms of this deed shall then become due and payable to the Lender and the Borrower will pay Interest on the amount outstanding until repayment in full.
- 3.2. If the Borrower does not forthwith pay the amount outstanding due to the Lender, as provided for by clause 3.1 above, the Lender may seize and sell the Investment or any property acquired by the Lender as a replacement to the Investment. The Lender may deduct from the amount realised by the Lender from that sale of the Investment or its replacement the amount of that Principal Sum and Interest due together with the costs including legal costs of enforcement and any other monies due by the Borrower under this deed to the Lender and shall pay the balance to the Borrower. The Lender shall have no additional rights against the Borrower to require the Borrower to pay more to the Lender than the amount so realised on sale of the Investment or its replacement.

## **4. Other charges**

- 4.1. The Borrower shall pay to the Lender such other amounts as may have been incurred by the Lender in:
  - (a) borrowing any amount to on-lend to the Borrower;
  - (b) any fees which might be payable by the Lender for early repayment of any amount it borrowed to on-lend to the Borrower;
  - (c) any fee incurred by the Lender in repaying any amount it had borrowed to on-lend to the Borrower.

## **5. Security**

The Borrower and the Bare Trustee charge their right title and interest in the Investment or its replacement with the Borrower's obligations under this deed. The Bare Trustee will grant a mortgage over the Investment or its replacement, in favour of the Lender in such form as required by the Lender, to secure the Borrower's and Bare Trustee's obligations under this deed. The Borrower and Bare Trustee jointly and severally irrevocably appoint the Lender to be the true and lawful Attorney of the Bare Trustee and the Borrower to ensure all documents required to be executed and all things required by the Bare Trustee under this clause 5 are done.

# Schedule

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**1. Fund** SM Boyle Retirement Fund

**2. Investment:**

.....  
Please print description of investment

**3. Principal Sum:**

\$ .....

Please print amount lent

**4 .Interest:**

.....% p.a. (per cent per annum)  
Please print interest rate applicable if the Borrower were to be in default

reduced to .....% p.a. (per cent per annum)  
Please print interest rate applicable if the Borrower paid all amounts due

when any amount due under the terms of this Deed is received by the Lender paid within three (3) days of the due date for such payment.

NOTE: It is important that the rates are commercial lending rates and that financial advice is obtained on the appropriate rates to apply to this loan taking into account that it is a non recourse secured loan. The calculation of the rate needs to be based on reasonably objective and supportable data such as the rates charged by financial institutions for similar borrowings.

Monies lent by a member or related party to the Fund at less than commercial rates may be characterised as a contribution to the Fund.

Monies lent by a member or related party at greater than commercial rates may result in a breach of the sole purpose test and/or breach of the Fund prohibition to the giving of financial assistance to members or related parties using the Fund's resources.

For Real Property – The Lender should hold the certificate of title. To further protect their interest, the Lender should obtain a mortgage signed by the Bare Trustee which may be registered on title or protected by the lodgement of a caveat on title. If assistance is required, please contact Hunt & Hunt Lawyers for details of hourly rates and fee estimates for this process.

**5. Instalments:**

\$ .....

Please print the monthly instalments based on the default rate

Reducing to \$ .....

Please print the monthly instalments based on the second rate above

if paid within three (3) days of the Payment Date on which the instalment is due.

NOTE: Financial advice should be sought to assist in the calculation of these amounts.

**6. Payment Date:**

On the first (1st) day of each month following the date of this Deed.

**7. Maturity Date:**

.....  
Please print the date on which full repayment of the Principal Sum is required

# Execution

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Executed as a Deed

SIGNED, SEALED and DELIVERED by  
the Lender

.....  
Please print name of Lender

.....  
Signature

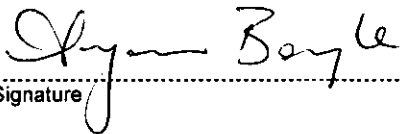
In the presence of:

.....  
Please print name of Witness

.....  
Signature of Witness

EXECUTED by  
**SM Boyle Super Pty Ltd ACN 168 620 326**  
in accordance with section 127 of the  
*Corporations Act 2001* by its Directors or  
Director and/ or Secretary:

.....  
SUZANNE BOYLE  
Please print name of Director/ Sole Director\*

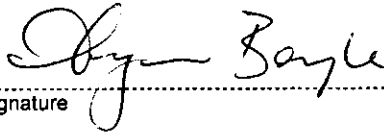
.....  
  
Signature

.....  
Please print name of Director/ Secretary\*  
\* Delete as appropriate

.....  
Signature

EXECUTED by  
**SM Boyle Investments Pty Ltd ACN 168 620 291**  
in accordance with section 127 of the  
*Corporations Act 2001* by its Directors or  
Director and/ or Secretary:

.....  
Suzanne Boyle  
Please print name of Director/ Sole Director\*

.....  
  
Signature

.....  
Please print name of Director/ Secretary\*  
\* Delete as appropriate

.....  
Signature