

- 2021-

**SJS WEALTH SOLUTIONS PTY LTD**  
("The Borrower")

AND

**UNIQUE SMSF PTY LTD**  
("The Lender")

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**LOAN AGREEMENT**

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prepared by:



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THIS LOAN AGREEMENT is made on 8<sup>th</sup> day of July 2020

BETWEEN

**SJS WEALTH SOLUTIONS PTY LTD** [ACN 622 469 845]  
Care of 75 Erceg Road, Yangebup WA 6164 ("the Borrower")

AND

**UNIQUE SMSF PTY LTD A/F UNIQUE SMSF**  
Care of Unit 21278 Beaufort St, Perth WA 6000 ("the Lender")

#### RECITALS

- A. The Borrower wishes to borrow funds from the Lender for the purpose of [assisting in the purchasing of the Property and funding the costs associated with developing the Property].
- B. The Lender has agreed to provide a loan to the Borrower for the purposes stated in Recital A above.
- C. The Borrower and Lender record the terms of their agreement within this Loan Agreement.

#### THE PARTIES AGREE:

##### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this document:

"**Business Day**" means any day not being a Saturday, Sunday or public holiday in Western Australia but, where this expression is used in the context of giving a notice under this Loan Agreement outside Western Australia, means any day not being a Saturday, Sunday or public holiday at the place of receipt of that notice.

"**Controller**" has the meaning given in section 9 of the Corporations Act 2001.

"**Event of Insolvency**" means:

- (a) a receiver, manager, receiver and manager, trustee, administrator, Controller or similar officer is appointed in respect of a Relevant Person or any asset of a Relevant Person;
- (b) a liquidator or provisional liquidator is appointed in respect of any corporate Relevant Person;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraphs (a) or (b);
  - (ii) winding up a corporate Relevant Person; or
  - (iii) proposing or implementing a scheme of arrangement in respect of a Relevant Person;
- (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of a Relevant Person who is an individual or his estate under any Insolvency Provision;
- (e) a moratorium of any debts of a Relevant Person or an official assignment or a composition or an arrangement (formal or informal) with a Relevant Person's creditors or any similar proceeding or arrangement by which the assets of a Relevant Person are subjected conditionally or unconditionally to the control of a Relevant Person's creditors is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;
- (f) a Relevant Person becomes, or admits in writing that it is, or is declared to be, is deemed under any applicable law to be, insolvent or unable to pay its debts;
- (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a Relevant Person;

**"Insolvency Provision"** means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**"Maturity Date"** means that date which is 24 months from the date the Principal Sum was disbursed by the Lender to the Borrower or on completion of the development of the Property, whichever is the later date not exceeding 36 months.

**"Original Securities"** means an Absolute Caveat registered on the Property in favour of the Lender with the consent of the Borrower being provided irrevocably; and

**"Prescribed Rate"** means 17.5% per annum on the Principal Sum calculated annually in arrears.

**"Prescribed Default Rate"** means 17.5% per annum on the Principal Sum calculated monthly in arrears.

**"Principal Sum"** means up to the amount of \$ ..... 100,000 ..... , AUD

**"Property"** means 110 Muriel Court, Cockburn Central, WA 6164.

**"Relevant Person"** means the Borrower jointly or severally.

**"Securities"** means the Original Securities together with any other security held by the Lender at any time for the due performance, observance and fulfilment of the Borrower's obligations hereunder.

**"State"** means the State of Western Australia.

**"Total Owing"** means the Principal Sum, all other money lent by the Lender to the Borrower hereunder and all other money owing or which becomes owing by the Borrower to the Lender hereunder or under any other agreement in writing between, inter alia, the Lender and the Borrower.

## 1.2 Interpretation

In this Loan Agreement:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) the expression "**person**" includes an individual, the estate of an individual, a body politic, a corporation and a statutory or other authority or association (incorporated or unincorporated);
- (c) a reference to any party includes that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
- (d) words denoting the singular number include the plural and vice versa;
- (e) where the day on which or by which any act, matter or thing is to be done under this document is not a business day, that act, matter or thing will be done on the immediately preceding business day; and



- (f) a reference to the Prescribed Rate in the Securities will be deemed to be a reference to the Prescribed Rate as defined in clause 1.1.
- (g) "dollars" or "\$" or "AUD" is a reference to the lawful currency of Australia.

### 1.3 **Joint and several liability**

If there is more than one person identified in this document as the "**Borrower**", that expression will be construed to refer to, and the obligations of the Borrower under this document will bind, each of them severally and every 2 or more of them jointly.

## 2. **THE LOAN**

### 2.1 **Loan**

The Lender agrees to lend and the Borrower agrees to borrow the Principal Sum and all such other amounts as may be agreed from time to time between the Lender and the Borrower ("the Loan") on the terms and conditions contained in this Loan Agreement.

### 2.2 **Currency**

The Lender shall provide the Principal Sum to the Borrower in Australian Dollars and the Borrower must repay the Total Owing to the Lender in Australian Dollars.

### 2.3 **Access to Loan Funds**

- (a) Subject to Clause 2.4 of this Loan Agreement, the Borrower must draw down on the Principal Sum in full or in part (as required and approved by the Lender) within Three Hundred and Sixty Five (365) days of the date of execution of this Loan Agreement.
- (b) The Borrower must give the Lender at least five (5) Business Days written notice of the draw down of all or part of the Principal Sum in accordance with Clause 2.3(a).

### 2.4 **Availability Period**

The Principal Sum is available for draw down by the Borrower for a period of Three Hundred and Sixty Five (365) days following the execution of this Loan Agreement failing which this Loan Agreement is terminated subject to Clause 14 of this Loan Agreement.

### 2.5 **Purpose**

The Borrower will use the Principal Sum solely for the purpose stated in Paragraph A of the Recitals and for no other purpose.

### **3. REPAYMENT**

#### **3.1 Repayment**

The Borrower must repay the Principal Sum to the Lender on the Maturity Date including interest.

#### **3.2 Prepayment**

- (a) The Borrower may prepay the Principal Sum to the Lender prior to the Maturity Date provided that the Borrower gives the Lender at least ten (10) Business Days written notice of such prepayment.
- (b) If the Principal Sum is prepaid prior to the Maturity Date, then the Borrower must pay to the Lender the Prescribed Rate on the Principal Sum computed to its proportionate value for the period less than the twelve (12) months from the date the Principal Sum was disbursed to the Borrower.

### **4. INTEREST**

#### **4.1 Rate**

The Borrower will pay to the Lender interest on the Principal Sum or such amount thereof as shall remain outstanding and on any judgment in which the Principal Sum is merged calculated at the Prescribed Rate on monthly balances from the date the Principal Sum is lent until the Principal Sum is repaid in full.

#### **4.2 Time of payment**

- (a) The Borrower shall pay interest to the Lender monthly in arrears.
- (b) Should any payment of interest not be received by the Lender on the due date, the interest payable will be capitalised and form part of the Principal Sum and will itself be subject to the Prescribed Default Rate.

#### **4.3 Interest on other money**

As to any money forming part of the Total Owing but not forming part of the Principal Sum the Borrower shall pay to the Lender interest thereon at such rate and at such times as may have been agreed in writing between the Borrower and the Lender and, in the absence of such agreement, on demand at the Prescribed Default Rate.

### **5. SECURITIES**

The Borrower agrees to the Original Securities as security for the payment to the Lender of the Total Owing and the due performance of the Borrower's obligations hereunder.

**6. DEFAULT**

**6.1 Events of Default**

At the option of the Lender, the Total Owing shall become immediately due and payable by the Borrower to the Lender notwithstanding any previous delay or waiver by the Lender, if:

- (a) the Borrower does not pay on the due date any money payable under this document or under the Securities;
- (b) the Borrower is in breach of any provision of this document or the Securities;
- (c) the Borrower is unable to pay its debts or certifies that it is unable to pay its debts as and when they fall due;
- (d) a receiver, manager, receiver and manager, trustee, administrator, Controller or similar officer is appointed in respect of the Borrower;
- (e) a liquidator or provisional liquidator is appointed in respect of any corporate Borrower;
- (f) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in clause 6.1(d) or (e);
  - (ii) winding up a corporate Borrower; or
  - (iii) proposing or implementing a scheme of arrangement in respect of a corporate Borrower;
- (g) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of a Borrower who is an individual or their estate under any Insolvency Provision;
- (h) a moratorium of any debts of a Borrower or an official assignment or a composition or an arrangement (formal or informal) with a Borrower's creditors or any similar proceeding or arrangement by which the assets of a Borrower are subjected conditionally or unconditionally to the control of a Borrower's creditors is ordered,

declared or agreed to or is applied for and the application is not withdrawn or dismissed within 7 days;

- (i) a Borrower becomes, or admits in writing that it is, or is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts;
- (j) any distress, execution or sequestration or other process is levied or enforced upon or any order is made against the property and assets of the Borrower and is not paid out, removed or discharged within 7 days;
- (k) the Principal Sum is used for any purpose other than that specified herein; or
- (l) a Borrower creates or purports to assign or create any charge, pledge or lien over the property the subject of the Securities or any part thereof without the prior consent of the Lender;
- (m) an Event of Insolvency occurs.

## **6.2 Remedy default**

The Lender may, if it thinks fit, remedy any default of the Borrower and the Borrower agrees to repay on demand any sum expended or paid to make good such default and such sum shall bear interest at the Prescribed Rate until paid.

## **7. COSTS AND EXPENSES**

### **7.1 Legal costs, disbursements and stamp duty**

The Borrower agrees to pay on demand the entire Lender's reasonable legal fees and costs on a solicitor-client basis, disbursements, stamp duty and registration fees relating to this document and the Securities.

### **7.2 Enforcement expenses**

The Borrower agrees to indemnify the Lender in respect of all legal costs, on solicitor and own client basis, and disbursements incurred by the Lender in enforcing or attempting to enforce this document or the Securities.

## **8. GOVERNING LAW AND JURISDICTION**

- (a) This Loan Agreement is governed by and is to be construed in accordance with the laws in force in Western Australia.



- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Western Australia and any Courts which have jurisdiction to hear appeals from any of those Courts and waives any right to object to any proceeding being brought in those Courts.

9. **MISCELLANEOUS**

9.1 **Assignment**

The Borrower shall not purport to assign its rights or obligations under this document without the prior consent in writing of the Lender.

9.2 **Statements and representations**

The Borrower warrants that all statements made and documents provided in or in connection with the inquiry or application to the Lender for the loan and all representations which he has made or may during the continuance of the loan make to the Lender are true and correct. The Borrower acknowledges that the Lender has relied upon the correctness of those statements, documents and representations in entering into this document and will continue to do so in dealing with the Borrower.

9.3 **Notices**

Any notice or other communication of any nature which must be given, served or made pursuant to this Loan Agreement:

- (a) must be in writing in order to be valid;
- (b) is sufficient if executed by the party giving, serving or making the same or on its behalf by any attorney, director, secretary, other duly authorised officer or solicitor of such party;
- (c) will be deemed to have been duly given, served or made in relation to a person if it is delivered or posted by prepaid post to the address, or sent by facsimile to the number of that person set out herein (or at such other address or number as is notified in writing by that person to the other parties from time to time); and
- (d) will be deemed to be given, served or made:
  - (i) in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;
  - (ii) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the fax number of the recipient;

- (iii) in the case of an email, on production of a delivery confirmation report received by the sender which indicates the time that the email was delivered to the recipient; and
- (iv) in the case of delivery by hand, on delivery.

10. **CONFIDENTIALITY**

The Parties agree to keep confidential this Loan Agreement and its terms except in the case where:-

- (a) such confidential information is used or disclosed with the prior written consent of all the other Parties;
- (b) such confidential information has become public knowledge other than as a result of unauthorised disclosure arising from a breach of this Clause or otherwise; or
- (c) such confidential information is required to be disclosed by law or pursuant to an order of court of competent jurisdiction provided that prior to such disclosure, the party wishing to disclose shall if reasonably practical, seek the prior consent of the other Parties.

11. **NO REPRESENTATION BY OR RELIANCE ON THE LENDER**

The Borrower acknowledges that it has not entered into this document in reliance on or as a result of any representation, promise, statement, conduct or inducement to the Borrower by or on behalf of the Lender otherwise than as embodied herein.

12. **COUNTERPARTS**

This deed may be signed in counterparts with the sum of all executed documents forming the entire agreement.

EXECUTED as a deed.

**Executed by (BORROWER)**  
**SJS WEALTH SOLUTIONS PTY LTD**  
**[ABN 89 622 469 845]**  
in its capacity as trustee for  
**NA**  
in accordance with section 127(1) of  
the *Corporations Act 2001* (Cth) by  
authority of its directors:

Signature of Sole Director & Trustee

**Executed by (LENDER)**

UNIQUE SMSF PTY LTD  
[ACN 642 468 344]  
in accordance with section 127(1) of  
the *Corporations Act 2001* (Cth) by  
authority of its directors:

Signature of Director

