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**LIMITED RECOURSE BORROWING ARRANGEMENT**

**BETWEEN**

**D L DOERY & V GRASSO - ABN 46 146 315 861**

 **(LENDER)**

**AND**

**VEDORY PTY LTD - ACN 627 130 205**

**ATF VEDORY SUPERANNUATION FUND (BORROWER)**

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**SMSF LIMITED RECOURSE LOAN AGREEMENT**

**DATE: 03/10/2018**

**PARTIES:**

1. **THE LENDER**: D L Doery & V Grasso - ABN 46 146 315 861 of

Suite 1, 1000 WATERWORKS RD, THE GAP, QLD 4061 (“**the Lender**”)

2. **THE BORROWER**: Vedory Pty Ltd - ACN 627 130 205 of

Suite 1, 1000 Waterworks Road, THE GAP, QLD 4061 as Trustee of Vedory Superannuation Fund (“**the Borrower**”).

**BACKGROUND:**

A.

The Lender will lend monies to the Borrower for the purpose of acquiring a Single Acquirable Asset including any incidental costs in relation to the acquisition of the Single Acquirable Asset.

B.

The Single Acquirable Asset and any Replacement Asset if allowed under the Superannuation Laws will be held by the Holding Trustee under the terms and conditions of the Holding Trust Deed including that the Borrower has an absolute beneficial entitlement to the Assets notwithstanding the legal title to the Single Acquirable Asset is held by the Holding Trustee.

C.

The loan of monies from the Lender to the Borrower is according to the terms and conditions of the Loan Agreement as set out in **SCHEDULE 1**.

D**.**

The loan is non-recourse with the Lender to have recourse only against the Single Acquirable Asset held in the Holding Trust.

**THE PARTIES AGREE:**

**CLAUSE 1 - LOAN AGREEMENT - Loan of Monies**

At the Commencement Date the Lender will loan Monies to the Borrower under the Loan Agreement to acquire a Single Acquirable Asset. The Loan Amount may be pursuant to a Line of Credit between the Lender and the Borrower. The Loan Amount is to be found in **SCHEDULE 1**.

The loan of Monies will be non-recourse with the Lender having recourse only against the Single Acquirable Asset held in the Holding Trust.

**1.1 TERM OF THE LOAN AGREEMENT**

The term of the Loan Agreement for a Loan Amount is set down in **SCHEDULE 1** and is to be 15 years. The Lender and Borrower may by mutual agreement extend the Loan Agreement for any such period provided the Superannuation Laws allow and any extension does not result in a new loan but a continuation of this Loan Agreement.

**1.2 INTEREST RATE**

The interest rate for the Loan Agreement for the Loan Amount is Fixed Rate and currently set at 5.75% payable in arrears. At any time the Lender with the consent of the Borrower can change

the interest rate. The Loan will be Principal and Interest with the option of the Borrower and with the consent of the Lender may be converted to an Interest Only Loan at any time.

**1.3 CAPITALISATION OF PRINCIPAL AND INTEREST**

Any Principal or Interest repayment may be capitalised at the discretion of the Lender for such period and for such duration as the Lender determines from time to time provided that any such capitalisation of Principal or Interest is in accordance with the Superannuation Laws and does not result in the Fund being treated as a non-complying SMSF.

**1.4 EQUITABLE INTEREST IN HOLDING TRUST ASSET**

The Loan Agreement is not to limit, prevent or deal with the Borrower’s absolute beneficial entitlement to the Holding Trust Asset acquired pursuant to this Loan Agreement.

**1.5 REFINANCE OF THE LOAN AGREEMENT**

The Borrower and Lender may agree, as between them to refinance the Loan Agreement on such terms and conditions that are agreed between the parties.

**CLAUSE 2 - PAYOUT OF LOAN AMOUNTS**

**2.1 PAYOUT OF THE LOAN AMOUNT**

At any time, the Borrower may pay all amounts outstanding under the Loan Agreement. There is no penalty in paying all amounts outstanding under the Loan Agreement earlier than prescribed under the Loan Agreement.

**2.2 TRANSFER OF LEGAL TITLE TO ASSET**

Upon the payment by the Borrower of all amounts outstanding under the Loan Agreement, the Asset Loan is terminated and legal title to the Asset may be transferred from the Trustee of the Holding Trust to the Fund.

**CLAUSE 3 - TERMINATION OF AGREEMENT**

* 1. **TERMINATION OF LOAN AGREEMENT**

The Loan Agreement is to be terminated upon the following events, unless the Lender otherwise waives the right to terminate the Loan Agreement:

* + 1. The Borrower suffering an Insolvency Event;

b) The Borrower breaching any of the terms of the Loan Agreement.

**3.2 LENDER’S RIGHTS ON TERMINATION**

If the Loan Agreement is terminated the Lender has no recourse against the Borrower’s Assets except the Single Acquirable Asset in the Holding Trust. The Lender’s rights of recourse are to seek the transfer of legal and equitable title by the Holding Trustee of the Single Acquirable Asset to the Lender within a reasonable period of time.

**CLAUSE 4 – INSURANCE**

**4.1 BORROWER TO INSURE**

During the period commencing on the date of this Loan Agreement and for the period of the Loan Agreement the Borrower must ensure that, if required:

The Loan Agreement is governed and construed by the laws of the State where the Asset is situated. The parties submit to the non-exclusive jurisdiction of the courts of that place in respect of any dispute arising under the Loan Agreement or its implementation or enforcement.

**GOVERNING LAW**

**6.3**

document created in connection with it is borne by the Borrower but may be included under this Loan Agreement.

Any Duty (including fines, penalties and interest) payable in respect of this Agreement or any

**6.2**

**DUTY**

c)

The cost of preparation of the Loan Agreement will be borne by the Borrower.

**COSTS**

The Lender will pay all the costs, fees and disbursements of the Lender's advisers.

The Borrower will pay all the costs, fees and disbursements of the Borrower's advisers in connection with the Loan Agreement and any transaction contemplated or referred to in the Loan Agreement.

**6.1**

a)

b)

**CLAUSE 6 -GENERAL**

iv)

if sent by email, on receipt of a reply email from the addressee confirming that the email has been delivered.

iii)

if sent by facsimile transmission, on the date shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause; or

ii)

if posted, 2 Business Days (or 6, if addressed outside Australia) after date of posting to the addressee whether delivered or not;

i)

if delivered in person, when delivered to the addressee;

is deemed to be given by the sender and received by the addressee:

d)

c)

in the case of a corporation, must be signed by an officer or under the common seal of the corporation;

must be in writing, legible and in English addressed to the Parties:

b)

a)

may be given by personal service, post, facsimile or email;

**CLAUSE 5 - NOTICES**

**5. 1** Any notice or other communication to or by a party to this Agreement:

Loan Agreement, the Lender may request the Borrower to produce a current certificate for a Contract of Insurance for the Asset. The Borrower must produce this certificate within a reasonable period of time.

During the period commencing on the date of the Loan Agreement and for the period of the

**LENDER MAY REQUEST TO SIGHT CONTRACT FOR INSURANCE**

**4.2**

a)

b)

the Asset is subject to a Contract of Insurance;

the Borrower does not do anything or take any action to void the Contract of Insurance.

**6.4**

**SUCCESSORS AND ASSIGNS**

This Agreement binds and benefits the parties and their respective successors and assigns.

**6.5**

**VARIATION**

This Agreement cannot be amended or varied except in writing signed by the Parties.

**6.6**

**NO WAIVER**

A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement. A waiver of a breach does not operate as a

waiver of any other breach.

**6.7**

**SEVERABILITY**

If any provision of this Agreement offends any law including any Superannuation Laws applicable to it and is as a consequence illegal, invalid or unenforceable then:

a)

where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and

b)

in any other case the offending provision must be severed from this Agreement in which event the remaining provisions of the Agreement operate as if the severed provision had not been included.

**6.8**

**ENTIRE AGREEMENT**

The Loan Agreement, including any Schedules constitutes the entire agreement between the

parties with respect to the subject matter of the Loan Agreement and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties.

**6.9**

**FURTHER ASSURANCES**

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents which are reasonably necessary to give full effect to the Loan Agreement.

**CLAUSE 7 - DEFINITIONS AND INTERPRETATION**

**7.1**

**DEFININITIONS** In this Agreement unless the context otherwise requires:

“**Asset**” includes one or more assets described in Item 1 of SCHEDULE 1 and any Replacement Asset allowed under the Superannuation Laws and held by the Holding Trust under trust for the absolute entitlement of the Borrower.

“**Acquisition Costs**” includes all moneys required by the Trustee to acquire the Asset, to pay any stamp duties payable by it in respect of that acquisition, to pay all costs – including advisory fees and to pay any stamp duty incurred by it to register its legal title to the Asset.

“**Borrower**” is the trustee of the SMSF who is seeking to borrow to acquire an Asset.

“**Commencement Date**” is the date of commencement of this Loan Agreement.

“**Contract of Insurance**” means an insurance contract for the Holding Trust Asset where required by the Borrower, Lender or the Holding Trustee.

“**Fund**” is the SMSF Borrower.

“**Holding Trust Asset**” is the Asset held by the Trustee under the Holding Trust.

“**Holding Trust**” is the bare trust created for the purpose of acquiring the Asset under the Loan Agreement.

“**Holding Trustee**” is the Trustee of the bare trust created for the purpose of acquiring the Asset under the Loan Agreement.

“**Insolvency Event**” includes in relation to a party, a reference to winding up bankruptcy which includes:

i)

ii) iii) iv)

bankruptcy winding up dissolution

becoming an insolvent under administration (as defined in section 9 of the Corporations Act).

being placed under official management, voluntary administration or having a controller or receiver appointed (over the whole or any part of the assets of a party)

and to the circumstances and events giving rise to a contributing to such conditions or matters and where a party is not subject to the laws of Australia, any like event occurring to such party under a comparable or like law of another country.

v)

vi)

“**Lender**” is the person referred in the Loan Agreement as the Lender of Monies to the Fund to acquire an Asset under a bare trust arrangement.

“**Line of Credit**” is the facility for the provision of Loan Monies by the Lender to the borrower to acquire one or more Assets under the Holding Trust.

“**Loan Agreement**” is the agreement registered with the Holding Trust for the loan of Monies or Assets to the Borrower by the Lender by way of a valid lending arrangement that meets the standards of borrowing by the trustee of a superannuation fund under the Superannuation Laws. The term Loan Agreement includes any on-going or replacement loan facility of the original or any replacement loan facility.

“**Loan Amount**” includes Monies advanced by way of a loan to the Borrower or the Holding Trust Trustee acting as agent for the Borrower, to acquire an Asset under a Loan Agreement and may include the Acquisition Price of the Asset together with any Acquisition Costs.

“**Monies**” includes cash, Assets and any other form of property which may be used as a medium of exchange.

“**Manage**” includes if the Asset or a Replacement Asset is real estate the leasing of the real estate, the maintenance of the real estate and the attendance to the payment of all costs associated with the holding and leasing of the real estate.

“**Single Acquirable Asset**” is an Asset or collection of Assets allowed to be acquired under a limited recourse lending arrangement under the Superannuation Laws and is the subject of this Holding Trust.

Term Deposits;

Cash at bank;

Bank Accepted Bills of Exchange;

Units in Widely Held Unit Trusts and Investment Companies; Unlisted unit trust and company investments;

Shares or other securities (including hybrid securities) listed on a public or any other stock exchange in Australia or overseas;

Direct and indirect property holdings; Government bonds;

Corporate bonds;

Unsecured Notes;

Debentures; and

any other Asset as agreed between the Borrower and Lender from time to time.

“**Net Proceeds**” in relation to the disposal of a Holding Trust Assets includes any proceeds the Holding Trustee declares are the Net Proceeds after having received all consideration in respect of the disposal of a Holding Trust Asset and paid out all expenses and taxes in relation to the disposal by the Trustee of a Holding Trust Asset.

“**Replacement Asset**” includes, where the Superannuation Laws allow any Asset that replaces the original Asset acquired by the Trustee of the Holding Trust pursuant to the Loan Agreement as well as any Asset acquired by the Trustee as a result of the disposal of any Asset of the Holding Trust.

“**Securities**” includes the following Assets provided the Superannuation Laws and the Borrower’s trust deed allows:

i)

ii) iii) iv)

v)

vi)

vii) viii) ix)

x)

xi) xii)

“**SMSF**” is a superannuation fund that meets all of the terms and conditions of a Self Managed Superannuation Fund as that term is defined under the Superannuation Laws.

“**Superannuation Laws**” includes the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations (1994), the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Income Tax Regulations, the Corporations Act 2001,the Corporations Regulations, the Social Security Act 1991 (C’th), the Social Security Regulations, the Veterans Entitlement Act 1986 (C’th), the Veterans Entitlement Regulations, the Family Law Act 1975, the Family Law Regulations, the Bankruptcy Act 1966, Superannuation (Departing Australia Superannuation Payments Tax) Act 2006, Superannuation (Excess Concessional Contributions Tax) Act 2006, Superannuation (Excess Non-concessional Contributions Tax) Act 2006, Superannuation (Self Managed Superannuation Funds) Supervisory Levy Amendment Act 2006 and any other law dealing with an Australian Superannuation Fund as amended from time to time.

“**Trustee**” means the trustee of the Holding Trust.

**7.2**

**INTERPRETATIONS**

In this Deed unless the context otherwise requires;

i)

a clause, annexure or schedule is a reference to a clause in or annexure of schedule to this deed;

a document (including this deed) includes any variation or replacement of it;

a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them, except for the purposes of the definition of related body corporate and associate under the Corporations Act, and the definition of Control;

the singular includes the plural and vice versa;

the word “including” when introducing a list of items does not exclude a reference to other items;

the word “includes” when introducing a term or definition does not exclude a reference to the meaning of that term under the common or Superannuation Laws;

the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any Government Agency;

a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

Australian dollars, dollars, $A or AUD is a reference to the lawful currency of Australia;

An agreement, representation or warranty in favour or two or more persons is for the benefit to them jointly and each of them individually;

Agreement, representation or warranty by two or more persons is for the benefit of them jointly and each of them individually;

Headings are inserted for convenience and do not affect the interpretation of this Deed; and

Where words are capitalised their meaning is to be found in the Definitions.

ii)

iii)

iv)

v)

vi)

vii)

viii)

ix)

x)

xi)

xii)

xiii)



 03 / 10 / 2018

 03 / 10 / 2018

 03 / 10 / 2018

**David Doery**

Director

**Venerando Grasso**

Director

**Venerando Grasso**

Partner

**The Lender**

**EXECUTED AS AN AGREEMENT BETWEEN**

This agreement is formally executed by being signed by the persons authorised to sign for:

D L Doery & V Grasso – ABN 46 146 315 861 of Suite 1, 1000 WATERWORKS RD, THE GAP,

QLD 4061 by being signed by the persons authorised to sign on behalf of the partnership

**Dated:**

**The Borrowers**

Vedory Pty Ltd - ACN 627 130 205 of Suite 1, 1000 Waterworks Road, THE GAP, QLD 4061 as trustee for Vedory Superannuation Fund by being signed by the persons authorised to sign on behalf of the company pursuant to section 127 of the Corporations Act 2001:

**Dated:**

**Dated:**

*5.80% Variable Benchmarked to ATO* Self-managed super fund limited recourse borrowing arrangements

**COMMENCEMENT DATE:** 03/10/2018

$*650,119,96*

**SCHEDULE 1.**

**TERMS OF LOAN AGREEMENT**

**ASSET:**

*52 Main Street, Samford, QLD 4520*

**LOAN AMOUNT:**

**TERM OF LOAN:**

*15* years

**INTEREST RATE:**

**REPAYMENTS:**

Principal and Interest