



**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

3.1 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:

- a) 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

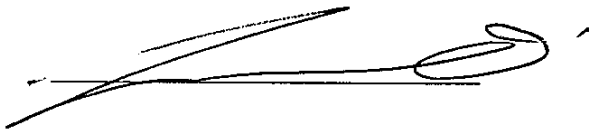
During the period commencing on the date of this Loan Agreement and for the period of the Loan Agreement the Borrower must ensure that, if required:

EXECUTED AS AN AGREEMENT BETWEEN

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

The Lender

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



Venerando Grasso
Partner

Dated: 03 / 10 / 2018

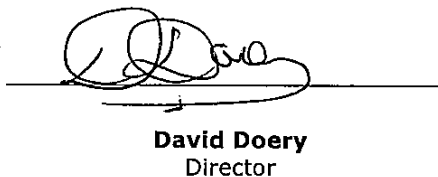
The Borrowers

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:



Venerando Grasso
Director

Dated: 03 / 10 / 2018



David Doery
Director

Dated: 03 / 10 / 2018

- a) the Asset is subject to a Contract of Insurance;
- b) the Borrower does not do anything or take any action to void the Contract of Insurance.

4.2 LENDER MAY REQUEST TO SIGHT CONTRACT FOR INSURANCE

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

CLAUSE 5 - NOTICES

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

- a) may be given by personal service, post, facsimile or email;
- b) must be in writing, legible and in English addressed to the Parties;
- c) in the case of a corporation, must be signed by an officer or under the common seal of the corporation;
- d) is deemed to be given by the sender and received by the addressee:
 - i) if delivered in person, when delivered to the addressee;
 - ii) if posted, 2 Business Days (or 6, if addressed outside Australia) after date of posting to the addressee whether delivered or not;
 - 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
 - iv) if sent by email, on receipt of a reply email from the addressee confirming that the email has been delivered.

CLAUSE 6 -GENERAL

6.1 COSTS

- a) The Lender will pay all the costs, fees and disbursements of the Lender's advisers.
- b) 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.
- c) The cost of preparation of the Loan Agreement will be borne by the Borrower.

6.2 DUTY

Any Duty (including fines, penalties and interest) payable in respect of this Agreement or any document created in connection with it is borne by the Borrower but may be included under this Loan Agreement.

6.3 GOVERNING LAW

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.

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 DEFINITIONS 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) bankruptcy
- ii) winding up
- iii) dissolution
- iv) becoming an insolvent under administration (as defined in section 9 of the Corporations Act).
- v) 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)
- vi) 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.

"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.

"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) Term Deposits;
- ii) Cash at bank;
- iii) Bank Accepted Bills of Exchange;
- iv) Units in Widely Held Unit Trusts and Investment Companies;
- v) Unlisted unit trust and company investments;
- vi) Shares or other securities (including hybrid securities) listed on a public or any other stock exchange in Australia or overseas;
- vii) Direct and indirect property holdings;
- viii) Government bonds;
- ix) Corporate bonds;
- x) Unsecured Notes;
- xi) Debentures; and
- xii) any other Asset as agreed between the Borrower and Lender from time to time.

"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.

"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;
- ii) a document (including this deed) includes any variation or replacement of it;
- iii) 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;
- iv) the singular includes the plural and vice versa;
- v) the word "including" when introducing a list of items does not exclude a reference to other items;
- vi) 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;
- vii) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any Government Agency;
- viii) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- ix) Australian dollars, dollars, \$A or AUD is a reference to the lawful currency of Australia;
- x) An agreement, representation or warranty in favour of two or more persons is for the benefit to them jointly and each of them individually;
- xi) Agreement, representation or warranty by two or more persons is for the benefit of them jointly and each of them individually;
- xii) Headings are inserted for convenience and do not affect the interpretation of this Deed; and
- xiii) Where words are capitalised their meaning is to be found in the Definitions.

SCHEDULE 1.

TERMS OF LOAN AGREEMENT

ASSET:	<i>52 Main Street, Samford, QLD 4520</i>
LOAN AMOUNT:	<i>\$650,119,96</i>
TERM OF LOAN:	<i>15 years</i>
INTEREST RATE:	<i>5.80% Variable Benchmarked to ATO Self-managed super fund limited recourse borrowing arrangements</i>
REPAYMENTS:	<i>Principal and Interest</i>
COMMENCEMENT DATE:	<i>03/10/2018</i>

Lodger Details:

Lodger Code BE2553
 Name PETER CARRIGAN
 Address
 Lodger Box
 Phone 0404 496 425
 Email p.carrigan@gmail.com
 Reference PETER CARRIGAN: GRASSO

**720459560****\$195.00**

11/12/2020 09:48

BE 300**MORTGAGE****Jurisdiction** QUEENSLAND**Privacy Collection Statement**

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or interest being mortgaged

FEE SIMPLE

Land Title Reference	Part Land Affected?	Land Description
13067127		LOT 1 ON RP86874

Mortgagor

Name	SAPOTE MALENY PTY LTD
ACN	135642018
Capacity	AS TRUSTEE FOR SAPOTE MALENY CUSTODIAN TRUST

Mortgagee

Given Name(s)	VENERANDO
Family Name	GRASSO
Tenancy (inc. share)	TENANT IN COMMON 1/2
Given Name(s)	DAVID LLOYD
Family Name	DOERY
Tenancy (inc. share)	TENANT IN COMMON 1/2

The mortgagor mortgages the estate and/or interest in land specified in this mortgage to the mortgagee as security for the debt or liability described in the terms and conditions set out or referred to in this mortgage, and covenants with the mortgagee to comply with those terms and conditions.

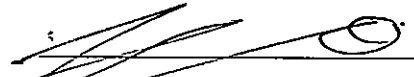
Terms and Conditions of this Mortgage

- (a) Document Reference NIL
- (b) Additional terms and conditions:- **SEE ATTACHED SCHEDULE**

As per loan agreement between mortgagor and VEDORY PTY LTD ACN 627130205 AS TRUSTEE FOR THE VEDORY SUPERANNUATION FUND dated 2 October 2018

Mortgagor Execution

Executed on behalf of SAPOTE MALENY PTY LTD

Signer Name VENERANDO GRASSOSigner Organisation SAPOTE MALENY PTY LTDSigner Role DIRECTORSignature Execution Date 7/12/2020

Executed on behalf of SAPOTE MALENY PTY LTD

Signer Name DAVID LLOYD DOERYSigner Organisation SAPOTE MALENY PTY LTDSigner Role DIRECTORSignature 

Execution Date _____

Mortgagee Execution

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Full Name of Witness PETER ANTHONY CARRIGANWitness Signature Witness Qualifications SOLICITOR

Executed on behalf of VENERANDO GRASSO

Signer Name VENERANDO GRASSOSignature Execution Date 7/12/2020

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Full Name of Witness PETER ANTHONY CARRIGANWitness Signature Witness Qualifications SOLICITOR

Executed on behalf of DAVID LLOYD DOERY

Signer Name DAVID LLOYD DOERYSignature Execution Date 7/12/2020

Title Reference [13067127]

1. UNDERSTANDING THE MORTGAGE

1.1 In the mortgage, unless the context otherwise requires:

- (a) "*business day*" means a day that is not:
 - i. a Saturday or Sunday; or
 - ii. a public holiday or special holiday in the city or town where the office of the *Mortgagee* responsible for the loan is located;
- (b) "*Consumer Credit Code*" means the Consumer Credit Code applying in the Australian State or Territory in which you reside;
- (c) "*deal with*" includes:
 - i. apply to rezone or change any lawful use;
 - ii. transfer or mortgage the right to receive rents and profits;
 - iii. caveat or allow a caveat to be lodged;
 - iv. grant or surrender any estate or interest in land (including, without limitation, any easement);
 - v. change any buildings or improvement on the *Land*;
 - vi. remove any chattels from the *Land*;
 - vii. grant, vary or end any right of use or occupancy;
 - viii. part with possession in whole or part;
 - ix. sell or transfer;
 - x. subdivide or amalgamate;
 - xi. vacate;
- (d) "*environmental laws*" means any law about:
 - i. the use of *Land* for any purpose; or
 - ii. pollution of *Land*; or
 - iii. fixing pollution of *Land*
 - iv. and includes laws about heritage and conservation;
- (e) "*event of default*" means the events set out in Clause 5;
- (f) "*Land*" means the land identified in Item 2 of the attached Mortgage, and includes any additions or alterations to that *Land*;
- (g) "*Loan*" means the transaction or transactions secured by the mortgage. If the mortgage secures a guarantee, it means the transaction that you have guaranteed;
- (h) "*Loan Agreement*" means the Division 7A Loan Agreement between the Mortgagor and the Mortgagee dated the same date as this Mortgage, or other subsequent loan agreement or arrangement between the Mortgagor and Mortgagee;
- (i) "*mortgagee*" means the person or entity listed at Item 4 of the Form 2 - Mortgage;
- (j) "*mortgagor*" means the person or entity listed at Item 3 of the Form 2 - Mortgage;
- (k) "*Property*" means the *Land* and all improvements on the *Land*. It includes all fixtures and fittings. It also includes all licences in connection with the *Land* or improvements;
- (l) "*potential event of default*" means any event which,
 - i. if notice is given; or
 - ii. if time elapses; or
 - iii. if some other event occurswould be an *event of default*;

Title Reference [13067127]

- (m) “*resumed/resumption*” means any way in which land can be compulsorily taken or bought from the owner of that land. It includes notification of an intention to do so;
- (n) “*Secured Monies*” means:
- i. all monies that you owe the *Mortgagee* under the *Loan Agreements* with it; and
 - ii. all monies that the *Loan Agreement* says are *Secured Monies*; and
 - iii. interest on those monies.

To the extent that the mortgage is regulated by the Consumer Credit Code, the *Secured Monies* do not include any amount that exceeds the amount payable under any agreement or guarantee secured by the mortgage plus reasonable expenses of enforcing this security.

Monies are part of the *Secured Monies* whether they are:

- A. provided by the *Mortgagee* alone or with any other person; or
- B. provided to you or any person whose obligations you have guaranteed alone or with any other person; or
- C. provided to you or any person whose obligations you have guaranteed or at your request to any other person; or
- D. owing immediately or at some time in the future; or
- E. actually owing or not required to be paid until something else happens; or
- F. provided before or after the mortgage is signed or at some time in the future.

To avoid any ambiguity, any money provided under the *Loan Agreement* in the future forms part of the *Secured Monies*.

If those agreements or guarantees are regulated by the Consumer Credit Code, before the *Mortgagee* can enforce the mortgage for those obligations the *Mortgagee* will comply with its obligations under the Consumer Credit Code. Once it does, any money owing under those agreements or guarantees forms part of the *Secured Monies*.

- (o) “*security*” means any agreement of any kind given by way of security.
- (p) “*You*” or “*Your*” means the Mortgagor.

1.2 The following rules apply to the interpretation of the mortgage.

- (a) References to:
- i. a person include the person's successors and assigns; and
 - ii. a thing include all or part of that thing; and
 - iii. a document include that document as changed or replaced from time to time; and
 - iv. a statute include that statute as amended, repealed or replaced from time to time; and
 - v. individuals include corporations and the other way around; and
 - vi. a gender includes all other genders; and
 - vii. currencies are to Australian Dollars; and
 - viii. you/your are references to the mortgagor.
- (b) Headings for clauses are included for guidance only and must not be used for interpretation.
- (c) The use of the word “may” about a power means the power may be exercised, or not, at discretion.
- (d) A reference to “includes” is given by way of example and is not intended to limit the term it applies to.
- (e) Words or phrases which are derived from words or phrases which are defined have a similar meaning to the defined term.
- (f) The singular includes the plural and the other way around.
- (g) If you agree not to do something, you will also not attempt to or permit or cause that thing to be done.
- (h) If two or more people are the *Mortgagor*:

Title Reference [13067127]

- i. reference to "you/your" are references to each of them individually and as well refer to any two or more of them together; and
 - ii. their promises in the mortgage bind all of them together and as well bind each of them individually; and
 - iii. the fact that one of them is released from its promises does not mean that any of the others are also released.
- (i) The parties say that it is their intention that, in the interpretation of the mortgage:
- i. if possible, words which have an ordinary meaning are given that meaning; and
 - ii. the mortgage is to be interpreted broadly; and
 - iii. if a general term is used it must be given a broad meaning; and
 - iv. general terms must not be limited because of any legal rule of interpretation.

2. WHAT YOU MUST PAY TO THE MORTGAGEE

- 2.1** You must pay the Mortgagee the *Secured Monies* as necessary in accordance with the terms of the *Loan Agreement*.
- 2.2** You must pay all money under the *Loan Agreement* in full. You must not deduct anything from any payments. This means that you can not deduct anything that you claim the *Mortgagee* owes, or could, in the future, owe you.
- 2.3** You will not be credited for any amount paid until it is actually received by the *Mortgagee*.
- 2.4** If the *Mortgagee* obtains judgment against you, you must pay interest on the amount of the judgment. The rate of interest is the default rate of interest set out in the *Loan Agreement*. If there is no agreement about the rate, then it will be the interest rate charged on the *Secured Monies* when the judgment is obtained. Interest must be paid from the date of the judgment until the *Mortgagee* is paid in full.

3. WHAT YOU MUST DO

- 3.1** You must pay any money payable concerning the *Property* or because you own the *Property when due*, regardless of how it becomes payable or to whom it is payable. For example, you must pay any rates and taxes charged against the *Property*.
- 3.2** You must comply with all lawful requirements in connection with the *Property*.
- 3.3** As soon as you become aware of any matter that may affect the value of the *Property* or otherwise impact upon the Mortgagee's interest in the *Property* you must notify the *Mortgagee*.
- 3.4** You must also give the *Mortgagee* a copy of any documents relating to matters contained in clause 3.3.
- 3.5** In particular, you must comply with any *environmental laws*.
- 3.6** You must:
- (a) keep the *Property* in good and substantial repair to the Mortgagee's satisfaction, and
 - (b) keep the *Property* clean and tidy; and
 - (c) paint, paper and treat the *Property* in a good and workmanlike manner to the *Mortgagee's* satisfaction as required and whenever the *Mortgagee* requests you to; and
 - (d) replace any parts of the *Property* which are lost, broken or worn out, with similar *Property* of at least equal value as required and whenever the *Mortgagee* requests you to; and
 - (e) clear and keep the *Property* clear of noxious weeds, pests and vermin.
- 3.7** You must keep all licences in connection with the *Property* current. You must not transfer, change or remove any licence from the *Property*. You must also not do or fail to do anything which could lead to any licence being cancelled or suspended.
- 3.8** You must not substantially change the use of the *Property* from the use at the date you sign the mortgage without written consent of the *Mortgagee*.
- 3.9** If the *Property* is resumed or you receive notice of intention to resume you must:
- (a) immediately notify the *Mortgagee*; and

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- (b) immediately give the *Mortgagee* copies of all documents that relate to the resumption; and
 - (c) exercise all your rights in relation to the resumption as directed by the *Mortgagee*; and
 - (d) keep the *Mortgagee* informed of your progress in any claim; and
 - (e) direct the resuming authority to pay any compensation directly to the *Mortgagee*; and
 - (f) pay any compensation you receive to the *Mortgagee* and until you pay that compensation to the *Mortgagee* you must hold those monies as trustee for the *Mortgagee*.
- 3.10** You must allow anyone appointed by the *Mortgagee* to enter the *Property* at all reasonable times for any purpose concerning the mortgage or the loan. The *Mortgagee* does not have to give you notice before inspecting the *Property*.
- 3.11** You must not do anything in connection with the *Property* that could materially lower the value of the *Property* or adversely affect the *Mortgagee's* rights as *Mortgagee*. You also must not allow anything to happen that could do so.
- 3.12** You must not deal with the *Property* without the consent of the *Mortgagee*. The *Mortgagee* may put conditions on its consent.
- 3.13** Subject to any law to the contrary, you must not create another security or allow another security to be created over the *Property*. If you do, the *Mortgagee* is not obliged to give you any further advances or financial accommodation.
- 3.14** You must:
- (a) take steps to remove any caveat that is lodged against the *Property*, and
 - (b) deliver to the *Mortgagee* any documents concerning any estate or interest in the *Property* or any right to occupy the *Property* and provide all information requested by the *Mortgagee* about those rights.
- 3.15** You must give the *Mortgagee* at your expense:
- (a) any information that the *Mortgagee* requires about the *Property* or your financial position; and
 - (b) a valuation of the *Property* by a valuer nominated by the *Mortgagee*; and
 - (c) proof that you have complied with your obligations in the mortgage,
- whenever the *Mortgagee* requests you to.
- 3.16** You must sign all documents and do all things necessary to:
- (a) allow the mortgage to be binding and to be stamped and registered; and
 - (b) give the *Mortgagee* any additional or replacement security that is, in the *Mortgagee's* reasonable opinion, needed to ensure that the *Secured Monies* are repaid to the *Mortgagee*; and
 - (c) protect, or remedy any defect in, the *Property*,
- whenever the *Mortgagee* asks you to.
- 3.17** You must:
- (a) contribute Your share of costs of insurance premiums to insure the building required under any agreement with the *Mortgagee*; and
 - (b) together with the *Mortgagee*, ensure building insurance premiums are current for the building and that the building insurance cover is adequate to cover full replacements costs at all times during the term of the mortgage; and
 - (c) not allow any of those insurance policies to be cancelled; and
 - (d) advise the *Mortgagee* and the insurer immediately if a claim or anything which might give rise to a claim occurs; and
 - (e) only pursue, enforce or settle any claim under those insurances according to the *Mortgagee's* directions; and
 - (f) pay any monies received under any claim under those insurances to the *Mortgagee* and hold any monies received by you on trust for the *Mortgagee*; and
 - (g) direct the insurer to pay the proceeds of any claim under those insurances to the *Mortgagee*; and

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- (h) allow the *Mortgagee* to control any insurance claim under those insurances and to settle any claims; and
- (i) not claim against the *Mortgagee* in connection with the insurance of (or failure to insure) the *Property* or in connection with any claim under any insurance policy.

3.18 You agree that:

- (a) the *Mortgagee* is entitled to control and settle any claim under those insurances up to the extent of the balance of the loan outstanding at the time of any claim; and
- (b) any monies up to the limit of the loan balance then outstanding as secured by the Mortgage paid to the *Mortgagee* from any of those insurance policies may be used, at the absolute discretion of the *Mortgagee*, either:
 - i. to rebuild the *Property* on conditions acceptable to the *Mortgagee*; or
 - ii. to reduce the *Secured Monies* and interest (if the *Secured Monies* are then payable).

3.19 You agree that the insurance must be:

- (a) with an insurance company acceptable to the *Mortgagee*; and
- (b) on such conditions as the *Mortgagee* approves from time to time; and
- (c) in the name of the *Mortgagee* and you for your respective insurable interests.

4. YOUR PROMISES TO THE MORTGAGEE

4.1 You state and promise to the *Mortgagee* that:

- (a) you are or are entitled to be the registered owner of the *Property*; and
- (b) the *Property* is not subject to any security that has not been notified to the *Mortgagee* in writing and
- (c) there is no other interest affecting the *Property* that has not been notified in writing to the *Mortgagee*; and
- (d) you have the power to enter into the mortgage; and
- (e) no consents are required to allow you to own or continue to own the *Property*; and
- (f) no consents are required to allow you to enter into the mortgage; and
- (g) all information supplied to the *Mortgagee* in connection with the mortgage is true; and
- (h) that information is not false and misleading; and
- (i) the mortgage is binding on you and enforceable by the *Mortgagee*.

5. WHEN YOU WILL BE IN DEFAULT UNDER THE MORTGAGE

5.1 You will be in default under the Mortgage if:

- (a) you or any person who is obliged, either with you or separately, to pay the *Secured Monies* to the *Mortgagee*:
 - i. do not pay the *Secured Monies* on the day that they are due for payment; or
 - ii. do not perform an obligation under the this mortgage or under the *Loan Agreement*; or
 - iii. do not keep a promise expressed or implied in the mortgage, any security, or in any other agreement with the *Mortgagee*; or
 - iv. do not pay any debts when they fall due for payment; or
 - v. do not fully perform any undertaking given by that person or on its behalf in connection with the mortgage or the *loan*; or
 - vi. are unable to administer your own affairs; or
 - vii. are or become insolvent; or
 - viii. make or attempt to make arrangements with your creditors; or
 - ix. may avoid your obligations under the mortgage or any other security in whole or in part; or
- (b) any debt owing by you or by any person who is obliged, either with you or separately, to pay the *Secured Monies*, becomes payable before it is due to be paid; or

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- (c) the mortgage or any agreement between you and the *Mortgagee* is wholly or partly unenforceable; or
- (d) the mortgage or any agreement between you and the *Mortgagee* that must be registered is not registered within a reasonable time; or
- (e) a receiver is appointed to any of your assets; or
- (f) a judgment obtained against you or any person who is obliged, either with you or separately, to pay the *Secured Monies*, remains unsatisfied for thirty days; or
- (g) enforcement action is taken against any of your assets or the assets of any person who is obliged, with you or separately, to pay the *Secured Monies*; or
- (h) a trustee of the *Property* is appointed or an attempt is made to appoint a trustee; or
- (i) any representation or warranty made to the *Mortgagee* in connection with the loan or the mortgage is untrue or false and misleading; or
- (j) the *Secured Monies* are used for a purpose other than the purpose for which they were made available; or
- (k) an event occurs which, in the reasonable opinion of the *Mortgagee*, adversely affects:
 - i. the value of the *Property*; or
 - ii. the *Mortgagee's* interest under the mortgage; or
 - iii. your ability to perform the terms of any agreement with the *Mortgagee* (including the mortgage); or
 - iv. your ability to pay the *Secured Monies*.

5.2 All of those events are called *events in default*. If there is more than one borrower or mortgagor, an *event of default* occurs if circumstances which create an *event of default* occur in relation to any one of them.

6. WHAT CAN HAPPEN IF YOU DEFAULT

6.1 If an *event of default* occurs:

- (a) if the *Mortgagee* complies with the requirement of any relevant law, the *Mortgagee* may require you to pay the *Secured Monies* to it immediately; and
- (b) the *Mortgagee* may exercise any of the powers given to it under the mortgage or at law, without notice, other than any notice required by law.

7. WHAT POWERS DOES THE MORTGAGEE HAVE IF YOU DEFAULT?

7.1 If an *event of default* occurs and the *Mortgagee* complies with the requirements of any relevant law, in addition to its powers at law, the *Mortgagee* may:

- (a) deal with the *Property* as if it had title equivalent title to the *Property* as the *Mortgagor*. For example, the *Mortgagee* may:
 - i. sell the *Mortgagor's* interest in the *Property* in any manner and on any terms it thinks fit; and
 - ii. grant, vary or end any rights of use or occupancy over the *Property*; and
 - iii. take possession of the *Property* and of the rents and profits of the *Property*; and
 - iv. appoint a receiver of the *Property*; and
 - v. borrow or raise or advance further monies in connection with the *Property*; and
 - vi. make any town planning application it believes appropriate in relation to the *Property*; and
 - vii. make or erect improvements on the *Property* and do any work in connection with the *Property*; and
 - viii. remove any items which are fixed to the *Land* from the *Land* and sell those items separately.
- (b) take possession of and manage the *Property*, but only if the *Mortgagee* has given you any notice of default required by law to be given before it takes possession and you have not remedied the default in the time required by that notice; and

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- (c) make good any default, in which case it can recover from you the reasonable costs of making good the default. If you do not pay that amount, the *Mortgagee* may sue you to recover it.

7.2 The *Mortgagee's* rights to exercise any or all of its powers are not affected:

- (a) by any waiver, delay or any other matter or thing which would, but for this clause, affect the *Mortgagee's* ability to exercise that power; or
- (b) because the *Mortgagee* has tried to exercise its powers before; or
- (c) because the *Mortgagee* did not exercise those powers even though it could have.

8. WHAT WILL HAPPEN TO ANY CHATTELS THAT YOU HAVE ON THE PROPERTY IF YOU DEFAULT?

8.1 This clause deals with chattels which are not mortgaged to the *Mortgagee*. Chattels are items of *Property* which are not attached to land or buildings.

- (a) Some examples of chattels are:
 - i. television sets,
 - ii. washing machines,
 - iii. clothes dryers, and
 - iv. furniture.
- (b) Some examples of things which are not chattels are:
 - i. built in ovens,
 - ii. TV antennas,
 - iii. carpets, and
 - iv. light fittings.

8.2 If an *event of default* occurs, the *Mortgagee* may require you to remove the chattels from the *Property*.

8.3 You must remove the chattels within thirty (30) days after the *Mortgagee* gives you notice. If you do not, then you are deemed to have given up your right to ownership of them.

8.4 If you are deemed to have given up your rights to the chattels, the *Mortgagee* may sell the chattels. The *Mortgagee* may sell the chattels separately or with the *Property*. The *Mortgagee* may pay the costs of storage and sale from the proceeds of sale.

8.5 The *Mortgagee* may sell the chattels by any method it decides is appropriate.

8.6 Any surplus after the storage and sale costs are deducted from the proceeds of sale will be credited to your account. If the proceeds of sale are not enough to pay the storage and sale costs, you must pay the shortfall. If you do not, the *Mortgagee* may sue you to recover it.

8.7 The *Mortgagee* and any person acting for the *Mortgagee* are not liable for any loss on sale or loss or damage to the chattels.

9. YOU APPOINT THE MORTGAGEE TO BE YOUR ATTORNEY

9.1 You appoint the *Mortgagee* to be your attorney.

9.2 Your attorney may, as Your act, do anything which you can lawfully do in connection with the *Property*, the loan, the *Secured Monies* or the mortgage. For example, your attorney may sign documents on your behalf.

9.3 The *Mortgagee* will only use the power of attorney if an *event of default* occurs.

9.4 If the *Mortgagee* is required to by law, it will give you notice before using the power of attorney. Otherwise, it may not.

9.5 This power of attorney is given by way of security. You cannot revoke it.

9.6 Your attorney may authorise someone else to use its powers.

9.7 Your attorney may exercise the power for the sole benefit of the *Mortgagee*.

9.8 You must ratify all actions that the attorney does under the power of attorney.

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9.9 To avoid ambiguity, Your attorney may use the power of attorney to exercise any of its rights under clause 7 of this Mortgage.

10. IF YOU ARE A TRUSTEE

10.1 If you are a trustee, whether or not the *Mortgagee* know that you are a trustee:

- (a) you are liable personally and as trustee for performing all of the mortgagor's obligations under the mortgage even though you are a trustee; and
- (b) the mortgage extends to the full beneficial interest in the *Property*; and
- (c) you promise that you have full rights to claim against the assets of the trust for all liabilities incurred by you under the mortgage and that those rights have not been, and will not be, changed or lost.

10.2 You must not:

- (a) stop being the trustee of the trust;
- (b) allow anyone else to be appointed trustee;
- (c) deal with any *Property* of the trust;
- (d) change the terms of the trust;
- (e) acquire any *Property* for the trust unless it is in your name;
- (f) part with possession, use or enjoyment of the *Property* of the trust;
- (g) do, or fail to do, anything which is a breach of trust or which could lead to you being removed as trustee;
- (h) end the trust or do anything which could lead to the trust being ended earlier than the time stated in the trust deed;
- (i) exercise any of your powers as trustee after an *event of default* or potential *event of default* has occurred without the consent of the *Mortgagee*. The *Mortgagee's* consent may be withheld, granted or granted on conditions in the *Mortgagee's* absolute discretion if the action proposed:
 - i. affects your ability to pay the *Secured Monies*; or
 - ii. affects your ability to perform your obligations or promises under the mortgage or any agreement between you and the *Mortgagee*; or
 - iii. an event of default or potential event of default has occurred.

11. WHAT COSTS AND EXPENSES MUST YOU PAY?

11.1 You must pay these costs and expenses:

- (a) all costs and expenses that you must pay under any agreement between you and the *Mortgagee*; and
- (b) all reasonable costs and expenses which are incurred by the *Mortgagee* in trying to enforce the mortgage.

11.2 The term "costs and expenses" includes taxes (except the *Mortgagee's* income tax) duties, fees, charges and legal fees.

11.3 If you do not pay any monies that you must pay under this clause, the *Mortgagee* may pay them and may sue you to recover them.

12. HOW ARE NOTICES GIVEN UNDER THIS DOCUMENT?

12.1 The *Mortgagee* may give you any notice or other document by:

- (a) delivering it to you personally, or
- (b) leaving it at your home or business address last known to the *Mortgagee*, or
- (c) leaving it at the address you have given the *Mortgagee* to send notices to; or
- (d) sending it by post, telex or facsimile transmission to either of those addresses.

12.2 A notice or other document is taken to be given to you (whether or not you actually receive it):

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- (a) if the notice or other document is given personally, on the date on it or the date you receive it, whichever is the later; or
- (b) if the notice or other demand is sent by post, on the date on it, or the date it would ordinarily have been delivered by post, whichever is the later, or
- (c) if the notice or other document is sent by electronic transmission (including facsimile transmission) on the date on it or the date when the sending machine produces a report indicating that the notice or other document was sent, whichever is the later.

12.3 The *Mortgagee* may also give you a notice or other document in any other way authorised by law.

12.4 A notice or other document may be signed by any person authorised by the *Mortgagee* to sign documents for it. If the notice is given electronically it is properly signed if it appears to have been signed by an authorised officer of the *Mortgagee* or the name of the *Mortgagee* appears at the beginning or end of the transmission.

12.5 You must promptly tell the *Mortgagee* in writing if you change your address.

12.6 You must give the *Mortgagee* notices to residential address.

13. MORE ABOUT THE MORTGAGEE'S RIGHTS

13.1 A certificate signed for the *Mortgagee* is proof of the facts stated in it unless you can show that it is wrong. For example, a certificate may state the amount of money that you must pay under the mortgage.

13.2 The *Mortgagee's* rights under the mortgage are in addition to any other rights it has. Those rights are not affected by:

- (a) any other security held by the *Mortgagee* for payment of the loan; or
- (b) your obligations to the *Mortgagee*.

13.3 The *Mortgagee* may exercise all its rights under the mortgage even if:

- (a) it could have done so before but did not, or delayed in doing so; or
- (b) it has exercised another right under the mortgage or any security held by it for payment of the loan before; or
- (c) it has exercised that right in part before.

13.4 The *Mortgagee* is only bound by a change in the mortgage if it agrees to the change in writing.

13.5 The *Mortgagee's* receipt is a sufficient receipt for anybody dealing with the *Mortgagee*. They do not have to ask whether the *Mortgagee* is acting properly or lawfully.

13.6 Your obligations and rights are governed by this mortgage. You agree that as far as lawfully possible:

- (a) The *Mortgagee's* powers; and
 - (b) your obligations and promises under the mortgage
- are not affected by any law which would otherwise affect them.

13.7 Promises or rights given to *Mortgagees* by any law apply to the mortgage unless it says that they do not.

14. IN SOME CIRCUMSTANCES THE MORTGAGEE IS NOT LIABLE TO YOU

14.1 You agree that as far as lawfully possible the *Mortgagee* and anyone acting for it is not liable to you or anyone else for their actions or those of their employees or agents, even if they are reckless or negligent; and any law that makes them liable is excluded.

15. WHEN THE MORTGAGE CAN BE ASSIGNED

15.1 The *Mortgagee* may assign the loan or the mortgage.

15.2 You can only assign the loan or the mortgage with the *Mortgagee's* consent.

15.3 You can only assign the *Property* with the mortgage with the *Mortgagee's* consent. As a condition of its consent the *Mortgagee* may require that:

- (a) you remedy any breaches of the mortgage or of any agreement that it relates to;
- (b) you and the assignee sign and give to the *Mortgagee* an agreement by the assignee;

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- i. to be personally liable to pay the amounts that are due or that become due under the mortgage; and
- ii. to perform and observe all other requirements and conditions of the mortgage; and
- (c) you and the assignee pay the reasonable costs (if any) incurred by the *Mortgagee* for:
 - i. stamp duty payable on the agreement, or any other document the *Mortgagee* reasonable requires to be signed about the assignment; and
 - ii. legal fees.

The *Mortgagee* can insist on any or all of the above.

- 15.4 Any agreement to assign the mortgage does not change your liability under the mortgage. You are still liable under the mortgage.
- 15.5 The form of the agreement must be acceptable to the *Mortgagee*.

16. WHEN IS THE MORTGAGE RELEASED?

- 16.1 The *Mortgagee* will give you a release of the mortgage when it has been paid all the *Secured Monies*.
- 16.2 The *Mortgagee* does not have to release any security until it is satisfied that it will not, because of any law about insolvency, have to refund any money paid to it.
- 16.3 If, because of any law about insolvency, the *Mortgagee* must refund any money received by it in payment of the *Secured Monies*, then:
- (a) a release of the mortgage given to you by the *Mortgagee* because of that payment no longer applies; and the *Mortgagee* has the same rights that it would have had if the payment had not been made; and
 - (b) if the *Mortgagee* has released the mortgage, then you must do everything necessary to replace it.
- 16.4 The mortgage remains in effect until the *Mortgagee* signs and unconditionally gives you a release of it.
- 16.5 You are not entitled to a release of the mortgage if:
- (a) you have any continuing liability to the *Mortgagee*; or
 - (b) the *Mortgagee* thinks that there is a reasonable prospect that you will, in the future owe, the *Mortgagee* other monies
- under any agreement secured by the mortgage.
- 16.6 You are personally liable for all your obligations and promises in the mortgage until the *Mortgagee* has received all the *Secured Monies* in cash. This is so even if the *Mortgagee* has:
- (a) given you a release; or
 - (b) given you a payout figure; or
 - (c) made a mistake in its calculations.
- 16.7 A release of the mortgage does not release any indemnity given by you in the mortgage unless the release expressly says that it does.
- 16.8 You are not released from your obligations to pay even if the *Mortgagee* has received a payment under an insurance policy that insures your ability to pay the money you owe under this mortgage.

17. OTHER PROVISIONS

- 17.1 You give your consent to the *Mortgagee* lodging a caveat over the title to the *Property*.
- 17.2 You acknowledge that
- (a) the *Secured Monies* are owing to the *Mortgagee*; and
 - (b) the *Secured Monies* are secured by the mortgage.
- 17.3 The provisions of this document form part of any mortgage which refers to the document number of this document if it is registered.
- 17.4 If a Court decides that any clause or part of a clause of the mortgage is illegal or void, then the rest of the mortgage must be interpreted as if that clause or that part of the clause was not part of the mortgage.

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- 17.5** The mortgage is governed by the laws of the state of Queensland.
- 17.6** You submit to the non-exclusive jurisdiction of the Courts of Queensland.
- 17.7** As well as any other method of service, any document in an action may be served on you in the way set out in clause 15.
- 17.8** The *Mortgagee* will act reasonably in giving or refusing any consent that you must obtain from it under the mortgage. It does not have to act reasonably if the mortgage says that it does not. The *Mortgagee* may impose reasonable conditions on any consent.
- 17.9** The *Mortgagee's* consent is not effective unless it is in writing.
- 17.10** The mortgage is not affected by your death. If you die, the mortgage may be enforced against your estate.
- 17.11** You authorise the *Mortgagee* or its solicitors to:
- (a) make any changes to the mortgage necessary to allow it to be stamped or registered and which do not change its meaning; and
 - (b) fill in any blanks in the mortgage; and
 - (c) date the mortgage.