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## Loan Agreement

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This Agreement is between:

P & S Fleming Super Pty Ltd (ACN 161 685 025) as trustee for the P & S Superannuation Fund of 144 Kleidons Road, Bucca, Queensland 4670 Australia

(“**Lender**”)

and

Peter James Fleming as trustee for the JMCE Trust of 144 Kleidons Road, Bucca, Queensland 4670 Australia and Sonia Sharee Fleming as trustee for the JMCE Trust of 144 Kleidons Road, Bucca, Queensland 4670 Australia

(“**Borrower**”)

## **Background**

- A. The Borrower wishes to borrow money from the Lender.
- B. The Lender is prepared to lend the money to the Borrower on these terms.

## **1. DEFINITIONS AND INTERPRETATION**

### **a. Definitions**

These words mean:

“**Agreement**” means this document as varied from time to time.

“**Amount Lent**” means \$35,000.00 plus any amounts previously lent and any further amounts advanced from time to time.

“**Borrower’s Covenants**” means each covenant, agreement or obligation contained or implied in this Agreement or imposed by law to be observed and performed by the Borrower.

“**Business Day**” means any day not being a Saturday, Sunday or public holiday in Queensland.

“**Date of the Loan**” means the date that this Agreement was entered into.

“**Default Charge**” means any additional cost, including enforcement costs and legal costs that the Lender incurs as a result of any late payment.

“**Default Rate**” means a rate being 2% greater than the Interest Rate per annum.

“**Duty Acts**” includes the *Duties Act 1999 (ACT)*, *Duties Act 1997 (NSW)*, *Duties Act 2008 (WA)*, *Duties Act 2001 (Qld)*, *Duties Act 2000 (Vic)*, *Duties Act 2001 (Tas)*, *Stamp Duties Act 1923 (SA)* and the *Stamp Duty Act (NT)*.

“**Event of Default**” means the events specified in clause 5 of this Agreement.

“**Instalment Amount**” means the amount specified in the repayment schedule annexed to

this Agreement and signed by all the Parties.

**“Instalment Dates”** means the dates specified in the repayment schedule annexed to this Agreement and signed by all the Parties.

**“Interest Rate”** means 5.9% per annum.

**“Lender’s Powers”** means all or any of the rights powers and remedies contained or implied in this Agreement exercisable by the Lender against any person.

**“Other Amounts Payable”** means all amounts (other than the Amount Lent) payable by the Borrower under this Agreement, including:

- i. interest;
- ii. costs and expenses set out in clause 4 of this Agreement;
- iii. all other money which the Lender advances to the Borrower;
- iv. all other money which the Lender pays, or becomes actually or contingently liable to pay, to, for or on behalf of, or for the accommodation of, the Borrower, either alone or jointly with any other person, whether or not the payment is made or the liability arises under this Agreement, by way of advances or by reason of the Lender becoming a party to any negotiable instrument or guarantee or indemnity; and
- v. all other money which is or becomes owing to the Lender by the Borrower.

**“Party”** means the parties to this Agreement and **“Parties”** has a corresponding meaning.

**“Term of the Loan”** is 5 years from the Date of the Loan. However, the Borrower is at liberty to repay any part or all of the monies owing under this Agreement at any time before the expiration of the Term of the Loan.

**b. Interpretation**

- i. If the Borrower or Guarantor (if any) comprises two or more persons, the terms on their part bind and are observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them.
- ii. References to clauses are references to clauses of this Agreement unless otherwise stated.
- iii. Headings do not affect this Agreement.
- iv. Words meaning the singular include the plural and vice versa. Any gender includes the other genders. Any reference to a person includes a reference to a corporation, firm, authority, government or governmental agency.
- v. All monies are in Australian currency.
- vi. A reference to a statute, ordinance, code, or other law, includes all regulations and other instruments under it and consolidations, amendments, re-enactments, or

replacements, of any of them.

- vii. A reference to any Party or to any other agreement, deed, licence, document or other instrument required under this Agreement or for the purposes of this Agreement includes that Party's executors, administrators, substitutes, successors and permitted assigns.
- viii. "Including" and similar expressions are not words of limitation.
- ix. When the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next following Business Day.

## 2. AMOUNT LENT AND INTEREST

- i. The Lender will pay the Amount Lent to the Borrower on the Date of the Loan, and the Borrower must pay the Amount Lent and all Other Amounts Payable to the Lender (without deduction or set-off) by instalments of the Instalment Amounts, on the Instalment Dates for the Term of the Loan.
- ii. The Lender will charge the Borrower interest on the Amount Lent. The interest charge is calculated daily on the outstanding balance of the Amount Lent at the Interest Rate until the Amount Lent is fully repaid. Interest charges accrue daily and are payable in accordance with clause 2.i.. Interest charges may also be debited on the day the Borrower repays the balance and all other amounts the Borrower owes under this Agreement (including when the loan is repaid early).
- iii. Notwithstanding any term, whether express or implied, in this Agreement or any rule of law or course of conduct to the contrary, payments made under this Agreement, whatever their nature, must, to the full extent permitted by law, be made by the Borrower without any deduction for, or on account of, any income or other taxes, imposts, deductions or other withholdings of any kind (collectively "**Withholdings**"). If the Borrower is compelled by law to deduct any Withholdings from any payment, the Borrower must ensure that the deduction made does not exceed the minimum legal liability in that regard. The Borrower must also pay to the Lender whatever additional amount is necessary (after allowing, for the avoidance of doubt, for Withholdings from that amount) to ensure the Lender receives the full amount of the payment due under this Agreement as if the Withholdings had not been deducted.
- iv. Unless otherwise directed by the Lender, the Borrower must make all payments under this Agreement by electronic bank transfer to the Lender's bank account as advised by the Lender to the Borrower from time to time.
- v. Where a Lender is lending money to a company and could be adversely affected by the Debt Equity rules contained in Division 974 of the *Income Tax Assessment Act 1997* (Cth) then this Agreement is to be interpreted and read down so that the money so lent to the company is at all times a loan to the company and not an injection of equity into the company. Further, the Agreement is to be interpreted and read down so that the repayment of any monies are not dividends but are repayments of debt and where applicable interest on that debt. Further, in these circumstances where the Term of the Loan is in excess of the requirements of a loan required by Division 974 then the Term of the Loan is accordingly reduced so that there is compliance with Division 974. Further, where the Interest Rate is under the rate required to comply with Division 974 then the rate is increased accordingly to a minimum rate to ensure that the monies lent remain monies lent under Division

974.

### **3. INSTALMENT DELAY**

If the Instalment Amount is unpaid for 7 days after the relevant Instalment Date (whether formally demanded or not) then a higher rate of interest is payable on the Instalment Amount or so much of the Instalment Amount as is owing from time to time. This interest is calculated daily at the Default Rate and is payable on the next Instalment Date and added to the next Instalment Amount. The Lender may also charge the Borrower a Default Charge when an Instalment Amount is paid late.

### **4. OTHER COSTS AND CHARGES**

- i. The Borrower must pay to the Lender all the Lender's costs and expenses arising from:
  - A. the instruction, negotiation, preparation, signing, stamping and registration of this Agreement, including any discharge;
  - B. any exercise or attempted exercise of the Lender's Powers under this Agreement;
  - C. any breach of the Borrower's Covenants under this Agreement;
  - D. obtaining or attempting to obtain payment of the monies due under this Agreement; and
  - E. any action, suit or proceeding arising out of concerned with or incidental to any of the matters referred to in this clause,  
  
if they are of a reasonable amount and have been reasonably incurred and which costs will be presumed to be:
    - F. reasonably incurred if incurred with express or implied approval of the Lender;
    - G. reasonable in amount if the amount is expressly or impliedly approved by the Lender; and
    - H. reasonable in amount if calculated at an agreed hourly rate as stated in or written agreement between the Lender and the Lender's solicitors,

and the Borrower must indemnify the Lender against all liability, loss, costs, charges and expenses arising out of any matter referred to in this clause or in respect of delay or failure to make any payment referred to in this clause.

- ii. The Borrower must pay interest at the Interest Rate to the Lender on all outstanding costs and expenses. The Lender will calculate this from the date of demand for payment.
- iii. The Borrower must pay all duties payable under any Duty Acts and any other taxes, duties, registration, lodgement, discharge and other costs imposed by the State or

Federal Government associated with this Agreement.

- iv. The Borrower must pay any other fees and charges due under this Agreement.

## 5. EVENTS OF DEFAULT

An Event of Default occurs if:

- i. the Borrower, as principal Borrower or otherwise, fails to pay the Amount Lent or Other Amounts Payable on the due date for payment whether under this Agreement or otherwise;
- ii. the Borrower does not observe or perform any of the Borrower's Covenants;
- iii. the holder of a mortgage or charge over any of the property of the Borrower enforces, or attempts to enforce, any right under that mortgage or charge;
- iv. a receiver of any of the property of the Borrower is appointed;
- v. a compromise or arrangement is made between the Borrower and a lender of the Borrower;
- vi. an application is made to a court for an order summoning a meeting of any class of lenders of the Borrower;
- vii. the Borrower is a body corporate, and:
  - A. an application is made, a resolution is passed, or a meeting is convened for the purpose of considering a resolution, for the Borrower to be wound up unless the winding up is for the purpose of reconstruction and the Lender has first approved the scheme of reconstruction;
  - B. a resolution is passed, or a meeting is convened for the purpose of considering a resolution, for the Borrower to be placed under official management;
  - C. a meeting of the Borrower is called to pass a resolution that any share capital not called up is not capable of being called up except in the event of the Borrower being wound up;
  - D. the Borrower is unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth); or
  - E. an application is made or notice given or other procedure commenced for the dissolution or cancellation of the registration of the Borrower or having a similar effect to the dissolution or cancellation of the registration of the Borrower;
- viii. the Borrower becomes insolvent or admits in writing the inability of the Borrower to pay its debts;
- ix. execution is levied on, or other lawful process is issued against, any property of the

Borrower; or

- x. the Borrower is a natural person, and:
  - A. commits an act of bankruptcy as specified in the *Bankruptcy Act 1966* (Cth);
  - B. executes a deed of assignment or a deed of arrangement or enters into a composition under Part X of the *Bankruptcy Act 1966* (Cth); or
  - C. becomes incapable of managing the Borrower's affairs.

## 6. OCCURRENCE OF AN EVENT OF DEFAULT

If an Event of Default occurs as specified in clause 5.i. or 5 .ii., the Lender must give the Borrower written notice specifying the particular default and if the Borrower has not remedied the default to the satisfaction of the Lender within 10 days of receiving the notice of default or in the case of any other Event of Default:

- i. the Lender may demand immediate payment of the Amount Lent and Other Amount Payable;
- ii. the Lender's Powers immediately become exercisable without demand or notice; and
- iii. the Borrower will be deemed to be in default under this Agreement.

## 7. LENDER'S POWERS

- i. Subject to the notice required in clause 6, the Lender may exercise the Lender's Powers:
  - A. without proof of default by the Borrower;
  - B. whether or not that default continues; and
  - C. notwithstanding any laches, neglect, or previous waiver by the Lender, in respect of the Borrower's Covenants or the exercise of the Lender's Powers.
- ii. Other than as specified in clause 6, the Lender need not allow time to lapse before exercising any of the Lender's Powers, unless a lapse of time is required by a law which cannot be excluded. If a lapse of time is required by a law which cannot be excluded, then if a period of lapse of time in relation to the exercise of any of the Lender's Powers is mandatory, the Lender shall allow that time to lapse.
- iii. The Lender may exercise any of the Lender's Powers at their discretion, and separately or concurrently with any other Lender's Power.
- iv. Failure to exercise or delay in exercising any of the Lender's Powers will not operate as a waiver of that Lender's Power.

- v. A single or partial exercise of any of the Lender's Powers will not preclude any other or further exercise of that Lender's Power, or the exercise of any other Lender's Power.
- vi. The Lender is not liable for any loss caused by the exercise, attempted exercise, failure to exercise or delay in exercising any of the Lender's Power, whether by reason of negligence or otherwise.
- vii. Neither the:
  - A. payment by the Lender of money that should have been paid by the Borrower; nor
  - B. observance or performance by the Lender of an obligation, direction or order which may or ought to have been performed or observed by the Borrower,constitutes a waiver of a default or breach by the Borrower and does not prevent the Lender from exercising any of the Lender's Powers whether or not the Lender has previously waived, delayed or neglected to exercise any of the Lender's Powers.
- viii. No demand or notice made or given is waived by subsequent negotiation or payment.

## **8. GUARANTEE AND INDEMNITY**

Not Applicable.

## **9. OTHER TERMS OF AGREEMENT**

### **a. Continuing security**

This Agreement is a continuing security until satisfaction of all terms of the Agreement. This is notwithstanding any settlement of account or intervening payment.

### **b. Statutory powers**

The powers given under any statute (except to the extent inconsistent with the terms in this Agreement) are in addition to the powers given under this Agreement. The Lender may exercise such powers when the Lender becomes entitled to demand payment of any part of the Amount Lent and all Other Amounts Payable.

### **c. Notice demand or consent**

- i. Any communication under this Agreement is to be in writing and signed by the Party giving it. Except as otherwise provided the communication may be delivered or sent by registered post and addressed to the addresses detailed in clauses 9.c.iii. and iv.
- ii. Communications by post are deemed received 48 hours after posting.
- iii. The Lender's postal address is the address of the first named Lender in this Agreement.



- iv. The Borrower's postal address is the address of the first named Borrower in this Agreement.

**d. Power to remedy default**

- i. If the Borrower defaults under this Agreement then the Lender may do such things and pay all such monies as in the absolute opinion of the Lender are desirable to secure the faithful performance of every promise in this Agreement. This is to protect the Lender against the risk of loss or damage of such default by the Borrower.
- ii. All monies and payments made by the Lender under this clause are repayable by the Borrower to the Lender upon demand. Until so repaid the money is deemed part of the Amount Lent and all Other Amounts Payable, and bears interest at the Interest Rate as provided under this Agreement.

**e. Application of Monies**

The Lender may apply all amounts received by it from the Borrower in such manner and against such of the liabilities of the Borrower to the Lender and in such sequence as the Lender may decide.

**f. Liability of Lender**

The Lender is not answerable or accountable for any involuntary losses that may happen in the exercise of any powers given under this Agreement or any applicable statute.

**g. Effect of waiver**

No consent or waiver by the Lender under this Agreement releases the Lender from any part of this Agreement. The Lender accepting any interest payments after the Borrower's default does not prejudice the Lender of any rights under this Agreement.

**h. Certificate by Lender**

A certificate signed by the Lender (or by the Lender's solicitors or attorneys or officers) as to the amount of the Amount Lent and all Other Amounts Payable is, on the face of it, evidence of the facts stated in the certificate.

**i. No merger on judgment**

If a liability of the Borrower under this Agreement becomes merged in a judgment or order, the Borrower must pay interest on the amount owing for the time being under that judgment or order at the Interest Rate and in the manner applicable to that part of the Amount Lent and all Other Amounts Payable to which the judgment or order relates immediately prior to the entry of that judgment or the making of that order.

**j. Proper law**

The laws of Queensland and where applicable the laws of the Commonwealth of Australia govern this Agreement.

**k. Effect of signing**

This Agreement is binding upon each person who has signed it notwithstanding the:

- i. failure of any other person named as a Party to sign it;
- ii. avoidance or unenforceability of any part of this Agreement; or
- iii. avoidance or unenforceability wholly or in part of this Agreement against any person named as a Party to it.

**l. Severability**

If any part of this Agreement becomes void or unenforceable then only that part is severed from this Agreement. All parts that are not void remain in full force and remain unaffected by the severance.

**m. Variations to be in Writing**

This Agreement may only be varied by deed executed by all the Parties.

**n. Entire Understanding**

This Agreement:

- i. is the entire agreement and understanding between the Parties on everything connected with the subject matter of this Agreement; and
- ii. supersedes any prior agreement or understanding on anything connected with that subject matter.

**o. Further Assurances**

Each Party must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purpose of this Agreement.

**p. Time is of the Essence**

Time is of the essence of this Agreement in respect of any obligation of the Borrower to pay money.

**q. Acknowledgment and Advice**

The Borrower warrants and covenants that they have read this Agreement and that before signing this Agreement they received independent legal advice as to, and fully understand, the obligations imposed on the Borrower pursuant to this Agreement.

**10. TRUSTEE PROVISIONS**

If the Borrower is borrowing in its capacity as trustee of any trusts (express, stated or otherwise) then the Borrower warrants that:

- i. it has power as trustee of the trust to unconditionally sign and deliver and perform its obligations under this Agreement;
- ii. in signing this Agreement and performing those obligations the Borrower (officers and agents) has properly performed its obligations to the beneficiaries of the trust;
- iii. all necessary action required by the trust deed to authorise the Borrower's unconditional signing and delivery of and performance of its obligations under this Agreement is met;
- iv. it is the only trustee of the trust;
- v. no action has been taken to remove the Borrower as trustee of the trust or to appoint an additional trustee of the trust;
- vi. the Borrower has a right to be fully indemnified out of all the trust property for the Amount Lent; and
- vii. the Borrower remains also personally liable for the Amount Lent.

**THE REST OF THIS PAGE IS LEFT INTENTIONALLY BLANK.**

Dated this 10 day of MAY 2019.

**Lender:**

Executed by P & S Fleming Super Pty Ltd (ACN 161 685 025) as trustee for the P & S Superannuation Fund in accordance with s127 of the *Corporations Act 2001* (Cth) or in accordance with its constitution by



1<sup>st</sup> Director's signature

<sup>Peter</sup>  
PETER FLEMING

1<sup>st</sup> Director's name  
(please print)



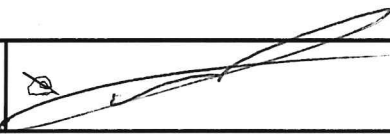
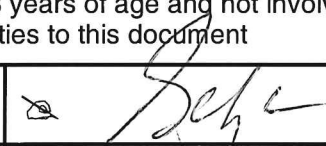
2<sup>nd</sup> Director's / Company Secretary's  
signature  
(if applicable)

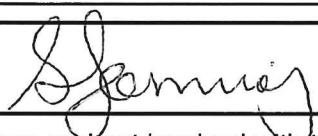
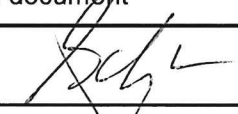
<sup>Sonia</sup>  
SONIA FLEMING

2<sup>nd</sup> Director's / Company Secretary's  
name  
(please print)

and if only one person has signed, that person states that he/she is the sole director and sole secretary of the company.

**Borrower:**

<b>SIGNED</b> by Peter James Fleming as trustee for the JMCE Trust	
in front of the person below being over 18 years of age and not involved with the contents of this document or related to any of the parties to this document	
Witness signature:	
Witness name: (please print)	<u>SCOTT GROGAN</u>
Witness address:	<u>24 BAROLIN ST B'BERS</u>
Witness occupation:	<u>ACCOUNTANT</u>

<b>SIGNED</b> by Sonia Sharee Fleming as trustee for the JMCE Trust	<input checked="" type="checkbox"/> 
in front of the person below being over 18 years of age and not involved with the contents of this document or related to any of the parties to this document	
Witness signature:	<input checked="" type="checkbox"/> 
Witness name: (please print)	<input checked="" type="checkbox"/> SCOTT GROSAN
Witness address:	<input checked="" type="checkbox"/> 24 CAROLIN ST B'BERS
Witness occupation:	<input checked="" type="checkbox"/> ACCOUNTANT