

# Loan Agreement

NATM Pty Ltd (**Lender**)

Maxgrande Pty Ltd (**Borrower**)

Alexander Maxwell Gray (**Guarantor**)

## LOAN AGREEMENT

THIS Agreement is made the 21<sup>st</sup> day of October 2019

### BETWEEN:

NATM SMSF ABN \_\_\_\_\_ of 1 Wandarra CI Karawara WA (Lender)

-AND-

Maxgrande Pty Ltd (ABN 27620079) of 7/95 Hay Street, Subiaco, Western Australia 6008 (Borrower)

-AND-

Alexander Maxwell Gray of 104 Hastings Street, Subiaco, Western Australia 6008 (Guarantor)

The Parties COVENANT and AGREE:

### BACKGROUND

- A. The Lender has agreed, at the request of the Borrower, to provide a loan to the Borrower.
- B. The Borrower is the trustee of the Trust.
- C. The Lender, Borrower and Guarantor have agreed to enter into this loan transaction on the basis of the terms and conditions set out in this Agreement.

### OPERATIVE PROVISIONS

#### 1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

**Act** means the *Corporations Act 2001* (Cth).

**Business Day** means, in respect of each payment, other transaction or calculation which need to be made or done under this Agreement or for the purposes of this Agreement, a day on which business by and between banks may be carried on in Perth, Western Australia.

**Default Interest Rate** means the interest rate specified at Item 5.

**Establishment Fee** means the establishment fee specified at Item 3 and payable by the Borrower to the Lender in consideration of the Lender approving and making provision of the Loan on the terms of this Agreement.

**Event of Default** means any of the events, omissions or occurrences specified in clause 12(b).

**Instalment Dates** means the dates specified at Item 9.

**Interest Rate** means the interest rate specified at Item 4.

**Item** means an item of Schedule 1.

**Lender's Nominated Bank Account** means the account specified at Item 8.

**Loan** means, at any time and from time to time, the principal of the Loan Amount outstanding at that time.

**Loan Amount** means the Loan Amount specified at Item 1.

**Loan Date** means the date of this Agreement.

**Repayment Date** means the date specified at Item 2 or another date as the Lender and the Borrower agree in writing, subject to the provisions of this Agreement (if any) relating to accelerated payment of the Secured Sum.

**Schedule** means the schedule to this Agreement.

**Secured Sum** means the Loan and all money in any currency that the Borrower is or may become liable at any time (presently, prospectively or contingently) to pay to or for the account of the Lender (whether alone or not and in any capacity) including, without limitation, under or in connection with this Agreement, by way of principal, interest, fees, costs, charges, expenses, duties, indemnities, guarantee obligations or damages and money which a person would be liable to pay but for that person being insolvent within the definition of section 9 of the Act.

**Security** means the security (if any) specified at Item 7.

**Security Property** means the security property specified at Item 6.

**Special Conditions** means the special conditions (if any) specified at Item 10.

**Trust** means the GDA Unit Trust established in Western Australia.

## 2. INTERPRETATION

In this Agreement, unless the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa. Any gender includes other genders. Any reference to a person includes a reference to a corporation, firm, authority, government or governmental agency.
- (b) A reference to legislation or a legislative provision includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments, modifications or re-enactments of that legislation or legislative provisions and any legislation or legislative provision

substituted for, and any statutory instrument issued under, that legislation or legislative provision.

- (c) The clause headings in this Agreement are for reference purposes only and do not in any way influence or affect the meaning of this Agreement.
- (d) A reference to any deed, agreement, licence, document or other instrument, including this Agreement, includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time.
- (e) A reference to any party to this Agreement or to any other deed, agreement, 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.
- (f) Where under or pursuant to this Agreement or anything done under this Agreement the day on or by which any act, matter or thing is to be done is not a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (g) References to clauses are references to clauses in this Agreement.
- (h) A reference to winding up or bankruptcy includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in section 9 of the Act) and to the circumstances and events giving rise to or contributing to these matters.
- (i) The covenants and provisions contained in this Agreement exclusively and completely state the rights and obligations of the Lender and the Borrower with respect to the Loan, Secured Sum and all other matters contained within this Agreement. This Agreement supersedes all negotiations and prior agreements, whether written or oral in respect of the Settlement Sum. If there is any conflict or inconsistency between the terms, conditions and provisions of this Agreement and the Security, the terms, conditions and provisions of this Agreement will prevail.
- (j) Where the Borrower and Borrower's successors comprise more than one person, the covenants and agreements on their part contained or implied in this Agreement bind them jointly and each of them severally.

### **3. SPECIAL CONDITIONS**

The Special Conditions are specifically incorporated into and apply to this Agreement. To the extent of any inconsistency between the Special Conditions and any other term of this Agreement, the Special Conditions will prevail.

### **4. PROVISION OF LOAN**

The Lender will, on request by the Borrower, provide the Loan Amount on the Loan Date or other date as agreed between the parties.

### **5. PAYMENT OF INTEREST**

The Loan will accrue interest at the Interest Rate on and from the date being 30 days after the date of this Agreement.

## **6. ESTABLISHMENT FEE**

The Borrower must pay the Establishment Fee to the Lender within 30 days of the date of this Agreement.

## **7. COSTS AND EXPENSES**

The Borrower must, on demand by the Lender, pay to and indemnify the Lender against all reasonable costs, losses, charges, expenses, liabilities, damages, fees and disbursements paid by the Lender, of or incidental to any breach of, or default under, this Agreement or the Security by the Borrower.

## **8. REPAYMENT OF LOAN**

The Borrower must repay and finally discharge the Loan by the Repayment Date. The Borrower must also pay all interest accrued on the Loan and not then paid, and all other Secured Sums payable to the Lender under this Agreement that remain unpaid by the Repayment Date.

## **9. METHOD OF PAYMENT**

- (a) All payments to be made under this Agreement by the Borrower to the Lender must:
  - (i) unless otherwise specified or agreed by the Lender, be made in Australian dollars in immediately available funds not later than 5.00pm (AEST) on the due date for the payment; and
  - (ii) be paid to the Lender by electronic funds transfer to the Lender's Nominated Bank Account or at such other place or to such other account as the Lender may from time to time direct in writing. Any payment made in any other way and any payment sent by mail will be at the Borrower's risk until it is actually received by the Lender.
- (b) Despite any term, whether express or implied, in this Agreement, any rule of law or course of conduct to the contrary, payments under this Agreement must be made by the Borrower without set-off or counterclaim and free and clear of, and without, any deductions.

## **10. NOT USED**

## **11. NOT USED**

## **12. DEFAULT AND TERMINATION**

- (a) If any of the events described in clause 12(b) occurs:
  - (i) the Loan, together with all interest accrued on the Loan and not then paid, and all other Secured Sums payable under this Agreement and unpaid will, at the option of the Lender and despite any delay or previous waiver of the right to

exercise that option, immediately become due and payable by the Borrower;  
and

- (ii) the Lender will be able to enforce the Lender's rights under the Security without the necessity for any demand or notice.
- (b) Each of the following events is an Event of Default:
- (i) if the Borrower fails repay the Loan on or before the Repayment Date or to pay any other Secured Sums payable under this Agreement on the due date for payment of that money and such failure continues for more than thirty (30) Business Days;
  - (ii) if the Borrower fails to perform or observe any of the covenants or provisions of this Agreement on the part of the Borrower to be performed or observed (other than a failure of the type contemplated by clause 12(b)(i) and (if capable of remedy) such default continues for more than thirty (30) Business Days (or such longer period as the Lender in the Lender's absolute discretion permits) after notice from the Lender requiring the Borrower to remedy the default, unless the non- performance or non-observance has been waived or excused by the Lender in writing;
  - (iii) if an application for the winding up or bankruptcy of the Borrower or any guarantor is presented and the Borrower or the guarantor (as the case requires) cannot within five (5) Business Days reasonably satisfy the Lender that the application is frivolous or vexatious, an order is made for the winding up or bankruptcy, or any resolution is passed for the winding up, of the Borrower or any guarantor, except that it will not be an Event of Default where the winding up of the guarantor is for the purpose of reconstruction or amalgamation and has the Lender's prior written consent (which consent will not be unreasonably withheld); or
  - (iv) if a receiver, receiver and manager or provisional liquidator of the assets and undertaking or any part of the assets and undertaking of the Borrower or any guarantor is appointed;
- (c) The Lender may exercise the Lender's rights under clause 12(a):
- (i) despite acceptance of any part of any of the amounts payable under this Agreement after the occurrence of any event of default;
  - (ii) despite the occurrence of any previous or other Event of Default; and
  - (iii) without the necessity for any notice to, or of any consent or concurrence on the part of, the Borrower or any other person.

### **13. APPLICATION OF MONEY**

All money received by the Lender under or by virtue of this Agreement will be applied in the following order and manner:

- (a) first, in payment of all costs, charges and expenses properly incurred in, or incidental to, the exercise or performance, or attempted exercise or performance, of any of the

powers or authorities conferred on the Lender by this Agreement, the Security or otherwise arising in relation to this Agreement or the Security;

- (b) secondly, in or towards payment of such other properly incurred costs, charges and expenses in relation to the enforcement of this Agreement or the Security as the Lender thinks fit to pay;
- (c) thirdly, in or towards payment to the Lender of Interest on the Loan, including Default Interest;
- (d) fourthly, in or toward repayment to the Lender of the Loan; and
- (e) fifthly, in or towards payment to, or at the direction of, the Lender of any other Secured Sums payable by the Borrower under this Agreement or the Security.

The surplus of any monies remaining after the application of money set out in clause 13, if any, will not carry interest and will be paid to the Borrower.

#### **14. NOT USED**

#### **15. NOT USED**

#### **16. ASSIGNMENT**

This Agreement is binding on and operates for the benefit of both the Borrower and the Lender and their respective successors and assigns, except that neither the Borrower nor the Lender may assign the whole or any part of their rights and obligations under this Agreement without the other party's prior written consent, which must not be unreasonably withheld or delayed.

#### **17. GENERAL**

- (a) None of the terms or conditions of this Agreement, nor any act, matter or thing done under or by virtue of, or in connection with, this Agreement will operate as a merger of any of the rights and remedies of the Lender in or under this Agreement or otherwise. All such rights and remedies of the Lender will continue in full force and effect.
- (b) Unless application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Lender under this Agreement.
- (c) To the extent permissible at law, the Borrower must, immediately on demand, pay to the Lender an amount equivalent to any moneys paid by the Lender in respect of any liability imposed on the Borrower under or by virtue of this Agreement, despite any statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, directly or indirectly, imposing liability on the Lender.
- (d) A statement in writing signed by a director, secretary, or officer of the Lender whose title includes the word 'manager' stating the amount due or owing by the Borrower to

the Lender under this Agreement as at any date or dates set out in that statement will be prima facie evidence of the amount due or owing.

- (e) If any provision of this Agreement is, or at any time becomes, prohibited by or unlawful under, any applicable law, regulation or other condition actually applied or otherwise becomes void or unenforceable, it will be severed from this Agreement and rendered ineffective so far as is possible without modifying the remaining provisions of this Agreement. The remaining provisions will, to the extent permitted by the relevant law, regulation or other condition, continue in full force and effect.
- (f) Where, however, the provisions of any such applicable law, regulation or other condition may be waived, they are waived by the Borrower and the Lender to, but not beyond, the full extent permitted by the law, regulation or other condition to enable this Agreement to constitute a valid and binding obligation enforceable in accordance with its terms.
- (g) Any prohibited, unlawful, void or unenforceable provision as envisaged in clause 17(e) will be replaced immediately by an allowable, lawful, effective and enforceable provision which so far as possible achieves the same economic benefit or burden for the Lender and the Borrower as the prohibited, unlawful, void or unenforceable provision was intended to achieve.
- (h) All obligations of the Borrower under this Agreement will survive the expiration or termination of this Agreement to the extent required for their full observance and performance.
- (i) Any amendment to this Agreement must be express and in writing and signed by both parties. This Agreement may not be amended, modified, waived, discharged or terminated verbally nor by implication.
- (j) Time is of the essence of this Agreement. However, no failure or delay by the Lender to exercise any power, right or remedy under this Agreement will operate as a waiver of that power, right or remedy. Nor will any single or partial exercise of any power, right or remedy under this Agreement preclude any other or further exercise of that power, right or remedy.
- (k) The Lender will only be taken to have waived any power, right or remedy under this Agreement, including (without limitation) the Lender's rights in respect of any Event of Default, to the extent that the power, right or remedy has been expressly waived in writing by the Lender, irrespective of any previous waiver of any other breach of the same or any other covenant or provision of this Agreement, the Security or any other agreement.
- (l) The powers, rights and remedies provided under this Agreement to the Lender are not exclusive of any powers, rights and remedies provided at law or in equity.
- (m) If there is any defect in the execution of this Agreement by the Borrower or the Lender, that party may re-execute or ratify its purported execution. That re-execution or ratification will relate back to the original purported execution by that party.
- (n) This Agreement may be executed in any number of counterparts all of which, when taken together, will constitute one and the same instrument.



- (o) If this Agreement is executed on behalf of the Borrower or the Lender by a person authorised to execute it under power of attorney, that person, by his or her execution of this Agreement, states that at the time of execution he or she had no notice of the revocation of that power of attorney.

## 18. NOTICES

- (a) Any notice may be served by delivery in person, by post or by email to the address or email address of the recipient specified in this clause or most recently notified by the recipient to the sender.
- (b) Any notice to or by a party under this document must be in writing and signed by either:
  - (i) the sender or, if a corporate party, an authorised officer of the sender; or
  - (ii) the party's solicitor.
- (c) A notice given to a person in accordance with this clause is treated as having been given and received:
  - (i) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
  - (ii) if sent by pre-paid mail, on the second Business Day after posting;
  - (iii) if sent by email and the sender does not receive a message from its internet service provider or the recipient's mail server indicating that it has not been successfully transmitted, on the day of sending if a Business Day, otherwise on the next Business Day.
- (d) The details for the service of notices of the parties are as follows:
  - (i) Lender:  
  
Post: 1 Wandara Cl Karawara WA  
  
Email: [nhawgood@live.com](mailto:nhawgood@live.com)
  - (ii) Borrower:  
  
Post: 7/95 Hay Street, Subiaco, WA  
  
Email: [accounts@innovationconstruction.com.au](mailto:accounts@innovationconstruction.com.au)

## 19. GOVERNING LAW AND SUBMISSION TO JURISDICTION

This Agreement is governed by the law in force in Western Australia. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement and waives any right it might have to claim that those courts are an inconvenient forum.

## 20. GUARANTEE

(a) In consideration of the Lender entering into this document at the request of the Guarantor (which request is testified by the Guarantor's execution of this document), the Guarantor JOINTLY AND SEVERALLY:

- (i) GUARANTEES payment to the Lender on demand of the Establishment Fee (**Secured Moneys**); AND
- (ii) as an independent liability, INDEMNIFIES AND AGREES TO KEEP INDEMNIFIED the Lender against any loss, damage, action, demand, expense, claim or obligation which the Lender has or may suffer or incur by reason of or in any way consequent on, arising out of or incidental to the non-payment of the Secured Moneys. This indemnity will not be limited or affected in any way whatever by the fact that the Secured Moneys cannot be or could never be recovered from or enforced against the Guarantor for any reason.

(b) This guarantee and indemnity is a continuing security and will not be wholly or partially discharged (even on payment of all of the Secured Moneys that are presently owing) as long as any of the Secured Moneys are owing or payable, are contingently owing or payable.

(c) Neither the Guarantor's liability nor the Lender's rights under this guarantee and indemnity or otherwise will be prejudiced or discharged by any act or omission or the incapacity of any person or any event, circumstance or securities of any description which might otherwise have the effect (whether at law in equity or under statute) of prejudicing, affecting or discharging the liability of the Guarantor under this clause either as a guarantor or principal debtor or as an indemnifier AND without limiting the generality of this, the Guarantor's liability and the Lender's rights will not be prejudiced, affected or discharged in any of the following events or circumstances:

- (i) by the granting of any time, credit or any indulgence or concession to or composition with or release or discharge by novation of the Guarantor or any Guarantor or any other person whatever by the Lender;
- (ii) by any variation whatever of the terms governing the Secured Moneys;
- (iii) by any release, failure or agreement not to sue, variation, exchange, renewal or modification made or any other dealing, act or omission whether constituting a waiver, election, estoppel or otherwise by the Lender with respect to any person or with respect to any judgment, order for payment of moneys, speciality, instrument (negotiable or otherwise) or other security whatever held, recovered or enforceable by the Lender or any obligation or liability whatever in respect of all or any of the Secured Moneys;

AND each of the above circumstances will be construed separately and independently so as not to limit the meaning of any other listed circumstance.

(d) As long as any of the Secured Moneys are owing or payable by the Guarantor to the Lender (whether or not the Guarantor has become liable for those moneys under this guarantee), the Guarantor will not:

- (i) claim any set-off or make any counter-claim against the Guarantor or the Lender;
  - (ii) make any claim or enforce any right against the Guarantor or any other Guarantor or (where the Guarantor or any other Guarantor dies) against their estate;
  - (iii) prove in competition with the Lender if the Guarantor or any Guarantor becomes insolvent, whether in respect of any amount paid by the Guarantor under this guarantee and indemnity, in respect of any other amount (including the proceeds of any security) applied by the Lender in reduction of the Guarantor's liability under this guarantee and indemnity, or otherwise; or
  - (iv) be entitled to the benefit of any security or guarantee or any share therein now or subsequently held by the Lender in respect of the Secured Moneys.
- (e) The Guarantor's liability under this guarantee and indemnity will not be affected by:
- (i) the fact that any other person who is intended to execute this guarantee and indemnity, or otherwise to become a co-surety for payment of the Secured Moneys or any of them, has not done so or has not done so effectively; or
  - (ii) the discharge under statute or any principle of law or equity of any person who is a co-surety or co-indemnifier for payment of the Secured Moneys or any part of it.
- (f) The Guarantor jointly and severally acknowledges that:
- (i) there is no condition affecting the operation of this guarantee and indemnity that is not contained in it;
  - (ii) no person has any authority to vary the terms of this guarantee and indemnity or to waive any of the Lender's rights, except by an instrument in writing executed by the Lender; and
  - (iii) any securities now or subsequently held by the Lender from the Guarantor will extend to secure the Guarantor's liability under this guarantee and indemnity.

## Schedule 1 – Loan details

Item 1	<b>Loan Amount</b> \$185,000.00, comprised of the following advances and details:  (a) \$185, 000 advanced on 21 October 2019 or 22 October 2019 depending on availability of funds to BSB 066125 Acc 1048 8066 (Maxgrande Pty Ltd, Commbank, Hay St Subiaco WA) (Email receipt when transferred).
Item 2	<b>Repayment Date</b>  The date being 5 months days after the Loan Date.
Item 3	<b>Establishment Fee</b>  NA
Item 4	<b>Interest Rate</b>  8.00% per annum
Item 5	<b>Default Interest Rate</b>  Not applicable
Item 6	<b>Security Property</b>  Not applicable
Item 7	<b>Security</b>  Not applicable
Item 8	<b>Lender's Nominated Bank Account</b>  As nominated by the Lender to the Borrower by email.
Item 9	<b>Instalment Dates</b>  Not applicable
Item 10	<b>Special Conditions</b>  NA

**EXECUTION**

EXECUTED by the parties as an Agreement.

EXECUTED by **NATM Pty Ltd (ABN \_\_\_\_\_)** as Lender by )  
authority of its sole director and )  
secretary in accordance with section )  
127 of the Corporations Act 2001 )  
(Cth): )

Signature of director/secretary

Name of director/secretary

EXECUTED by **Maxgrande Pty Ltd (ABN 27620079629)** as Borrower by )  
authority of its sole director and )  
secretary in accordance with section )  
127 of the Corporations Act 2001 )  
(Cth): )

*Alex Gray*

Signature of director/secretary

*Alexander Maxwell Gray*

Name of director/secretary

EXECUTED by the said ) **Alexander Maxwell Gray** ) as Guarantor in the )  
presence of: )

*Alex Gray*  
\_\_\_\_\_  
Alexander Maxwell Gray



Witness signature

KATIE ANNE HOWS

Witness name

9 OAKWOOD AVENUE WOODLANDS 6018

Witness address

ACCOUNTANT

Witness occupation