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## LOAN AGREEMENT

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### PARTICULARS

- Item 1      **Lender**
- Colin Frederick Johnson and Barbara Lynn Johnson**
- Item 2      **Address of Lender**
- 10a Northcote Avenue, Paxton, NSW 2305
- Item 3      **Borrower**
- Steven Martin Johnson**
- Item 4      **Address of Borrower**
- 91 Eton Street, Smithfield, NSW 2164
- Item 5      **Loan**
- One Hundred Thousand Dollars (\$100,000.00)**
- Item 6      **Commencement Date**
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- Item 7      **Expiry Date**
- The fifth (5<sup>th</sup>) anniversary of the Commencement Date
- Item 8      **Interest Payment**
- Eight Hundred and Seventy-eight Dollars (\$878.00) per month
- Item 9      **Rate of Interest**
- 10.54% per annum provided Interest Payments are made within seven (7) days of the due date but if not then 12.54% per annum.
- Item 10     **Collateral Security**
- First (1<sup>st</sup>) registered mortgage over title to the property at 4 Campbell Street, Gin Gin, Queensland and the Lender being noted as an interested party on the Certificate of Currency for the Household Insurance Policy with a reputable insurer for not less than the price paid for that property.

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## IT IS AGREED

### 1. Definitions and Interpretation

#### 1.1 Definitions

Unless the context otherwise requires:

- (1) terms in bold type in the Particulars have the meaning shown underneath them;
- (2) “**Business Day**” means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (3) “**Event of Default**” means any event or occurrence mentioned in clause 9.2;
- (4) “**Exit Fee**” means Eight Hundred and Seventy-Eight Dollars (\$878.00) which is one month’s Interest Payment;
- (5) “**Particulars**” means the particulars set out at the beginning of this agreement; and
- (6) “**Secured Money**” includes the Loan and all other money which the Borrower agrees to pay under any provision of this agreement including interest.

#### 1.2 Interpretation

- (1) Reference to:
  - (a) one gender includes each other gender;
  - (b) the singular includes the plural and the plural includes the singular;
  - (c) a person includes a body corporate;
  - (d) a party includes the party’s executors, administrators, successors and permitted assigns;
  - (e) a statute, regulation or provision of a statute or regulation (“**Statutory Provision**”) includes:
    - (i) that Statutory Provision as amended or re-enacted from time to time; and
    - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision;
  - (f) any document or agreement (including this agreement) includes the document or agreement as amended, novated, supplemented or replaced from time to time; and
  - (g) “month” means a calendar month.

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- (2) All monetary amounts are in Australian dollars, unless otherwise stated.
  - (3) If a party consists of more than one person, this agreement binds them jointly and each of them severally.
  - (4) Headings are for convenience only and do not form part of this agreement or affect its interpretation.
  - (5) A party which is a trustee is bound both personally and in its capacity as a trustee.
  - (6) "Including" and similar expressions are not words of limitation.
  - (7) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
  - (8) If an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day.
  - (9) A "corporation" or a "related body corporate" has the meaning given to it in the *Corporations Law*.
  - (10) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement.

## **2. Provision of the Loan**

### **2.1 Condition Precedent**

The conditions precedent to the making of the Loan are that the Lender has:

- (1) been provided with the Collateral Security (if any) in the form required by the Lender; and
- (2) paid to the Lender the amount of Three Thousand Five Hundred and Twelve Dollars (\$3,512.00) being four (4) Interest Payments in advance.

### **2.2 When Loan to be Provided**

So long as an Event of Default has not occurred, and subject to the provisions of this agreement, the Lender will provide the Loan on the date, on or after the Commencement Date, requested in writing by the Borrower. If the parties agree, the Loan may be provided in 2 or more instalments.

## **3. Interest**

### **3.1 Interest to be Paid Monthly**

The Borrower must pay interest on the Loan at the Rate of Interest on the last Business Day one (1) month after the Loan or the first instalment of the Loan is provided by the Lender, and then on the last Business Day of every following month, except that if the Borrower has made the payment of four (4) Interest Payments under clause 2.1(2) and

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otherwise is not in default, the last Interest Payment will be payable four (4) months before the Expiry Date.

### **3.2 Period for which Interest to be Paid on Loan**

The interest must be paid on the Loan or sums forming part of the Loan from the dates they are provided until the Expiry Date or until earlier repayment under clause 4.2 (but if the Borrower makes default in repaying the Loan on the Expiry Date, then until repayment).

### **3.3 Period for which Interest to be Paid on Balance of Secured Money**

The interest must be paid on sums which are part of the Secured Money but are not part of the Loan from the dates they become payable until they are paid.

### **3.4 Unpaid Interest to Bear Interest**

If any interest is not paid within 7 days after it becomes due for payment, the interest is added to the Secured Money from the date it became due and bears interest from that date, but without prejudice to the Lender's right immediately to sue for that interest, or the other rights of the Lender on default.

### **3.5 Rate of Interest Payable on Judgment**

If the Borrower's liability to pay or repay the Secured Money becomes merged in any judgment, order, deed or other thing, the Borrower must pay interest on the amount owing from time to time under that judgment, order, deed or other thing at the higher of the rates:

- (1) payable under this agreement; or
- (2) fixed by or payable under that judgment, order, deed or other thing.

## **4. Repayment**

### **4.1 Of Loan on Expiry Date**

The Borrower must repay the Loan on the Expiry Date.

### **4.2 Early Repayment of Loan**

The Borrower may, on 1 month's written notice to the Lender, and with the consent of the Lender, repay the Loan in full before the Expiry Date, but the repayment will only be consented to by the Lender if, in consideration for the Lender giving the consent, the Borrower:

- (1) makes the payment on the last Business Day of a month; and
- (2) pays to the Lender at the same time a sum equal to one (1) Interest Payment..

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#### **4.3 Effect on Later Repayment Instalments**

A repayment earlier or larger than provided by this agreement does not affect the obligation of the Borrower to pay subsequent Interest Payment of the amount and at the times provided by this agreement but only accelerates the date by which the full amount of the Loan is repaid.

#### **4.4 Of Other Secured Money**

The Borrower must pay all Secured Money other than the Loan on demand or if demand is not made on the Expiry Date.

### **5. No Deductions**

- 5.1 All money payable by the Borrower must be paid in full without any deduction on account of any income or other taxes or charges present or future. If the Borrower is compelled by law to deduct any taxes or charges the Borrower must pay to the Lender such further sum as will result in the receipt by the Lender of the full amount payable.

### **6. General Covenants by Borrower in Relation to Loan**

#### **6.1 Borrower to Provide Financial Information**

The Borrower must deliver to the Lender all financial and other information which the Lender requires from time to time.

#### **6.2 Borrower to Reimburse the Lender**

The Borrower must pay to the Lender on demand any money which the Lender may see fit to pay to remedy any default of the Borrower.

### **7. Application of Money**

- 7.1 Money received by the Lender from the Borrower may be applied towards interest or other Secured Money at the Lender's discretion.

### **8. Warranties**

- 8.1 The Borrower warrants that:

- (1) it has fully disclosed in writing to the Lender all facts relating to the Borrower, its related bodies corporate, and anything in connection with them that are material to the assessment of the nature and amount of the risk undertaken by the Lender in entering into this agreement;
- (2) no action, proceeding or arbitration is pending or threatened against the Borrower before any Court, administrative tribunal or arbitrator which could or might result in any material adverse change in the business assets or credit of the Borrower; and

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- (3) all financial statements and information furnished by the Borrower to the Lender are complete and correct and there are no other material facts or considerations the omission of which would render any of the information misleading.

## **9. Default**

### **9.1 Lender's Rights on Default**

If an Event of Default occurs or is deemed to have occurred, then at the Lender's option, without any demand or notice:

- (1) all of the Secured Money immediately becomes payable; and
- (2) the Lender may decline to provide any part of the Loan which has not already been provided.

### **9.2 Events of Default**

The following are Events of Default:

- (1) the Borrower fails to request the Lender in writing for the full amount of the Loan, or to provide the Collateral Security, within fourteen (14) days after the Commencement Date;
- (2) the Borrower fails to pay any of the Secured Money when due;
- (3) the Borrower breaches a term of:
  - (a) this agreement;
  - (b) any Collateral Security; or
  - (c) any other agreement, instrument or document between the Borrower and the Lender;
- (4) any warranty or representation made or deemed to have been made under this agreement, any Collateral Security or any other written agreement between the Lender and the Borrower proves to have been untrue or misleading when made or deemed to have been made;
- (5) this agreement becomes wholly or partly void, voidable or unenforceable;
- (6) an order for payment is made or a judgment is entered against the Borrower, any related body corporate of the Borrower or any guarantor of the Secured Money or any part of it and is not satisfied within 7 days;
- (7) any creditor of the Borrower levies, or attempts to levy, any distress or execution against any property of the Borrower;
- (8) the Borrower or any guarantor, being a body corporate, becomes an externally-administered body corporate under the *Corporations Law*;

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- (9) steps are taken by any person towards making the Borrower or any guarantor an externally-administered body corporate;
  - (10) the Borrower is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Law*;
  - (11) a person holding a security interest in assets of the Borrower enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
  - (12) the Borrower dies or becomes lunatic or insane or a protected person within the meaning of any relevant legislation in that behalf.

## **10. Trust Provisions**

- 10.1 Where a Borrower has executed this agreement in its capacity as trustee of a trust ("Trust"), whether or not the fact that the Borrower is a trustee is disclosed to the Lender, the Borrower acknowledges that this agreement is binding on the Borrower personally and in its capacity as trustee of the Trust and that the Lender's right of recourse extends to both the assets of the Borrower personally and the assets of the Trust.

## **11. Consumer Credit Legislation**

Deleted intentionally as National Consumer Credit Protection Act 2009 does not apply.

## **12. Miscellaneous Provisions**

### **12.1 No Obligation to Resort to Collateral Security**

The Lender is not obliged to resort to any Collateral Security for payment of the Secured Money before it resorts to this agreement.

### **12.2 Inconsistencies**

So far as is possible, this agreement must be read together with any Collateral Security and all other agreements or documents entered into in connection with this agreement and, in the event of inconsistency, the provision most favourable to or which confers the greatest benefit on the Lender prevails.

### **12.3 Certificates**

A certificate purporting to be signed by the Lender or an officer of or agent for the Lender stating:

- (1) the amount owing or contingently owing by the Borrower at a certain date under this agreement;
- (2) the rate or rates of interest which are applicable to the Secured Money or any part of it;

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- (3) that a particular Event of Default has occurred; or
  - (4) any other act matter or thing arising under this agreement;

is for all purposes prima facie evidence of the facts stated in the certificate.

#### **12.4 Lender's Power to Assign**

The Lender may assign the benefit of this agreement.

#### **12.5 Time of the Essence**

Time is of the essence of the Borrower's obligations under this agreement unless otherwise agreed in writing by the Lender.

#### **12.6 Further Assurance**

The Borrower must promptly at the Borrower's own cost do all things (including executing all documents) necessary or desirable to give full effect to this agreement.

#### **12.7 Severability**

If anything in this agreement is unenforceable, illegal or void then it is severed and the rest of this agreement remains in force.

#### **12.8 Entire Agreement**

This agreement and the Collateral Securities represent the entire agreement between the parties and all prior or contemporaneous representations, statements and agreements (if any) made by the Lender or the Lender's representatives are merged in this agreement.

#### **12.9 Variation**

An amendment or variation to this agreement is not effective unless it is in writing and signed by the parties.

#### **12.10 Waiver Excluded**

- (1) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (2) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- (3) A waiver is not effective unless it is in writing.
- (4) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

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### 12.11 Costs and Expenses

The Borrower must pay or reimburse the Lender on demand for:

- (1) the costs, charges and expenses of the Lender in connection with the negotiation, preparation, execution, stamping and completion of this agreement and of any forms required by any statute or regulation to be lodged with any registry;
- (2) the costs, charges and expenses of the Lender or any attorney of the Lender in connection with:
  - (a) any consent, exercise or non-exercise of any rights, waiver, variation, release or discharge in connection with or of this agreement; and
  - (b) the contemplated or actual enforcement or preservation of any rights under this agreement including, without limitation, any expenses incurred in retaining any independent consultant or other person to evaluate any matter of concern and in the case of the Lender its administration costs in connection with those events; and
- (3) stamp duty and other taxes payable in connection with this agreement or in connection with any payment, receipt or other transaction contemplated by this agreement;

including, in each case without limitation, legal costs and expenses on a full indemnity basis or on a solicitor and client basis whichever is the greater.

### 12.12 Notices

- (1) A notice or other communication connected with this agreement ("**Notice**") has no legal effect unless it is in writing and:
  - (a) delivered; or
  - (b) sent by post, postage prepaid;to the address of the addressee set out in this agreement or subsequently notified from time to time.
- (2) A Notice is deemed given and received:
  - (a) if delivered, upon delivery; or
  - (b) if mailed, on the expiration of 2 Business Days (at the address to which it is mailed) after mailing.
- (3) A Notice by the Lender may be given by any officer or agent of the Lender.

## 13. Governing Law and Jurisdiction

13.1 This agreement is governed by the laws of Queensland.

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13.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

EXECUTED as an agreement.

DATED 2015

SIGNED by **Colin Frederick Johnson** ]  
in the presence of: ]

Qualified witness  
(eg Justice of the Peace/Commissioner for  
Declarations)

SIGNED by **Barbara Lynn Johnson** ]  
in the presence of: ]

Qualified witness  
(eg Justice of the Peace/Commissioner for  
Declarations)

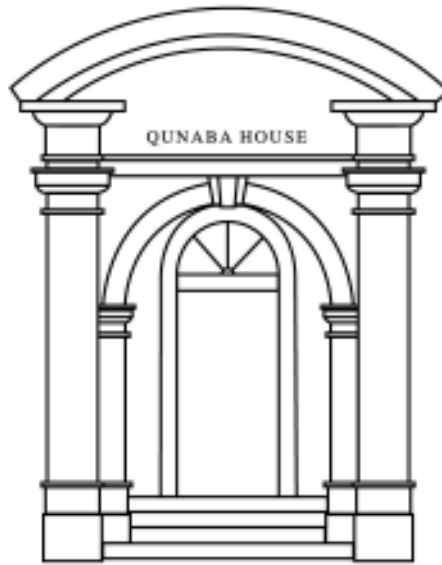
SIGNED by **Steven Martin Johnson** ]  
in the presence of: ]

Qualified witness  
(eg Justice of the Peace/Commissioner for  
Declarations)

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ESTABLISHED 1887

# PAYNE BUTLER LANG

## SOLICITORS

### LOAN AGREEMENT

Between

**COLIN FREDERICK JOHNSON AND BARBARA LYNN JOHNSON**

**("LENDER")**

**AND**

**STEVEN MARTIN JOHNSON**

**("BORROWER")**

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