



Loan Agreement

No. 10 Pty Ltd
ACN 620 076 315

Lender

CM (F) Superannuation Pty Ltd as trustee for the CM Superannuation Fund
ACN 166 599 051

Borrower

CM (F) Property Investment Pty Ltd ACN 166 836 746 as trustee for the It Could Mean Divorce LRBA Trust

Purchasing Entity

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Loan Agreement

Parties

No. 10 Pty Ltd ACN 620 076 315

(Lender)

CM (F) Superannuation Pty Ltd ACN 166 599 051 as trustee for the CM Superannuation Fund

(Borrower)

CM (F) Property Investment Pty Ltd ACN 166 836 746 as trustee for the It Could Mean Divorce LRBA Trust.

(Purchasing Entity)

Background

- A. The Borrower has requested that the Lender provide the Borrower with a loan to purchase the Property.
- B. The Lender has agreed to provide the loan to the Borrower in accordance with the terms of this Agreement.
- C. The Borrower is a regulated self-managed superannuation fund and will purchase the Property via the Purchasing Entity.
- D. The Lender will take Security for the loan over the Property.

Operative Provisions

1. Definitions and Interpretations

1.1 Definitions

The following definitions apply in this Agreement unless the context requires otherwise:

- (a) **Accounts** means profit and loss accounts and balance sheets and all statements, reports and notes attached to or intended to be read with any of those profit and loss accounts or balance sheets prepared by a reputable firm of chartered accountants (and which will be audited if the Lender agrees to pay the costs of the audit).
- (b) **Amount** means the sum set out in Item 2 of Schedule 1.
- (c) **Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are generally open for business in Brisbane, Queensland.
- (d) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (e) **Event of Default** means the circumstances described in clause 7.2 of this Agreement.
- (f) **Insolvency Event** means an event that occurs when a party:
 - (i) is in liquidation or provisional liquidation or under administration;

- (ii) has a controller as defined in the Corporations Act, or an analogous person appointed to it or to any of its property;
 - (iii) is taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
 - (iv) is insolvent under the definition provided for that term in section 9 of the Corporations Act;
 - (v) dies, ceases to be of full legal capacity or becomes incapable of managing its own affairs for any reason;
 - (vi) takes a step specifically to enter into administration as defined in section 9 of the Corporations Act;
 - (vii) enters into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
 - (viii) is affected by any analogous event.
- (g) **Interest Payment Date** means the dates described in Item 5 of Schedule 1.
 - (h) **Interest Rate** means the rate in Item 4 of Schedule 1.
 - (i) **Lender Bank Account** means the account, the details of which are set out in Item 8 of Schedule 1.
 - (j) **Loan Date** means the date in Item 1 of Schedule 1.
 - (k) **Mortgage** means the mortgage between the Lender (as mortgagee) No. 10 Pty Ltd ACN 620 076 315 and CM (F) Property Investment Pty Ltd ACN 166 836 746 as trustee for the It Could Mean Divorce LRBA Trust (as mortgagor) for the Property, in the form set out in Schedule 3 to this Agreement.
 - (l) **Outstanding Amount** means the Amount and any other amount owing or payable to the Lender by the Borrower pursuant to this Agreement, including but not limited to the following:
 - (i) any interest payable on the Amount;
 - (ii) all costs and expenses or losses incurred by the Lender for any failure of the Borrower to comply with the terms of this Agreement;
 - (iii) interest on any judgement entered by the Lender against the Borrower in respect of the Amount; and
 - (iv) all costs, charges or expenses incurred by the Lender in enforcing the terms of this Agreement and/or the Security.
 - (m) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
 - (n) **PPSR** means the register established under the PPSA.
 - (o) **Property** means Unit 2, 48 Flinders Parade North Lakes QLD 450, also known as Lot 2 RP299324.
 - (p) **Related Corporation** means a “related body corporate” as defined in the Corporations Act.
 - (q) **Residual Amount** means the amount set out in Item 7 of Schedule 1 plus the Outstanding Amount.
 - (r) **Security** means the security set out in Item 9 of Schedule 1.

- (s) **Tax** means all present and future taxes, levies, deductions, charges, compulsory loans and withholdings, together with any associated interest, penalties and expenses (other than taxes on the net income of the Lender).
- (t) **Termination Date** means the date set out in Item 3 of Schedule 1.
- (u) **Transaction Documents** means:
 - (i) this Agreement; and
 - (ii) the Mortgage of the Property between the Lender and the Purchasing Entity.
- (v) **Trust** means any trust to the extent the Borrower is the Trustee.
- (w) **Trustee** means to the extent that the Borrower acts as trustee of a Trust.
- (x) **Year** means a period of 12 calendar months commencing on January 1 in any year.

1.2 Interpretation

Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural and the opposite also applies;
- (b) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning;
- (c) mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included;
- (d) a reference to a clause refers to clauses in this Agreement;
- (e) a reference to a party, clause, schedule, attachment or annexure is a reference to a party, clause, schedule, attachment or annexure to or of this Agreement and a reference to this Agreement includes all schedules, attachments and annexures to it;
- (f) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (h) a reference to a party to this Agreement or another agreement or document includes that party's successors, administrators and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives or a substituted or an additional trustee);
- (i) if more than one person is identified as a Borrower or Lender, that expression refers to them, and the obligations of the Borrower and the Lender under this Agreement, and binds them, jointly and severally; and an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (j) a reference to a person, individual, the estate of an individual, authority, association, joint venture (whether incorporated or unincorporated), corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (k) a reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets; and
- (l) a reference to dollars or \$ is to an amount in Australian currency.

1.3 Trust

- (a) The Trustee is liable under this Agreement in its personal capacity and in its capacity as trustee of the Trust.
- (b) A reference in this Agreement to any property, asset or thing held by the Trustee will be construed as extending to and, unless the context indicates a contrary intention, binding on, all such property, and every such asset or thing that at any time is held by the Trustee either in its personal capacity or as trustee of the Trust.

2. Loan

2.1 Provision

The Lender agrees to loan the Amount to the Borrower on the Loan Date, subject to the terms of this Agreement.

2.2 Interest Payments and Principal Payments

- (a) On each Interest Payment Date, the Borrower will pay to the Lender the aggregate of:
 - (i) the interest calculated on the Amount at the Interest Rate in accordance with clause 2.3; and
 - (ii) the Repayment Amount set out in Item 6 of Schedule 1.
- (b) The Borrower will pay all moneys to the Lender before 4.00pm on the date due for payment to the Lender Bank Account or in such other manner as the Lender may notify to the Borrower without set-off or counter-claim and free and clear of and without deduction for any Taxes.

2.3 Calculation of Interest

- (a) The term of this Agreement will be divided into interest periods. The first interest period will begin on the Loan Date and expire on the first Interest Payment Date. The second interest period and each subsequent interest period will commence on the day after the expiry of the immediately preceding interest period and expire on the next Interest Payment Date.
- (b) All interest will be calculated on a daily basis assuming a year of 365 days.
- (c) Interest payable for a period will be calculated from the first day of that period to the last day of that period, and for any period less than that period interest will be paid proportionately.

2.4 Final Repayment

On the Termination Date, the Borrower must pay to the Lender:

- (a) the Residual Amount; and
- (b) any other Outstanding Amount.

2.5 Prepayment

The Borrower may prepay the Amount in whole or in part before the Termination Date.

2.6 Interest on Unpaid Amounts

The Borrower will pay to the Lender on written demand, interest on all amounts due and payable under this Agreement and unpaid, from the due date up to and including the date of actual payment, capitalised at the end of each monthly period after the due date for payment.

2.7 Termination

This Agreement terminates on the Termination Date, but the obligation to pay the amounts set out in clause 2.4 will survive the termination.

3. Conditions Precedent

This Agreement is subject to and conditional upon the due execution of the Transaction Documents.

4. Representations and Warranties

The Borrower represents and warrants to the Lender that:

- (a) **(Full Power)** it has full power and authority to execute and perform its obligations under this Agreement and each of the Transaction Documents;
- (b) **(Authorisations Obtained)** it has taken all necessary action and obtained all the necessary resolutions and ratifications to authorise the execution, delivery and performance of this Agreement and each of the Transaction Documents;
- (c) **(Not Unlawful)** the performance of its obligations under this Agreement and any Transaction Document will not be unlawful as a result of:
 - (i) any law, statute, regulation, judgment;
 - (ii) any agreement or arrangement to which the Borrower is a party; or
 - (iii) the corporate constitution of the Borrower, or in the case of the party being a trustee, any provisions of the Trust;
- (d) **(Full Disclosure)** all information that has been disclosed by it to the Lender or its advisers or agents is true, accurate and complete in all respects when disclosed, and not, by omission or otherwise, misleading in any respect;
- (e) **(Litigation)** it is not:
 - (i) involved in any litigation or dispute resolution proceedings; and
 - (ii) none of its officers are aware of any matter or situation that presents a material risk of litigation or dispute resolution proceedings by or against it;
- (f) **(No Event of Default)** no event or circumstance which constitutes or which (with the giving of notice or lapse of time or both) would constitute an Event of Default has occurred as at the date of this Agreement;
- (g) **(Incorporation)** it is a corporation (as defined in the Corporations Act) with limited liability, validly existing under the Corporations Act; or

5. Trust Representations and Warranties

The Borrower (both in its own right and as trustee of the Trust) (**Trustee**) represents and warrants to the Lender that:

- (a) **(Trustee)** it has the power to enter into the Transaction Documents in its capacity as trustee of the Trust;
- (b) **(Validly Created)** the Trust was validly created and exists at the date of this Agreement;
- (c) **(Trustee Validly Appointed)** it was validly appointed as trustee of the Trust and is the sole trustee of the trust;

- (d) **(Vesting Date)** a date has not been declared under the Trust as the date on which the Trust will be vested or come to an end;
- (e) **(Commercial Benefit)** the transaction contemplated by the Transaction Documents is to the commercial benefit of the Trust;
- (f) **(No Acquisition of Trust Assets)** no assets of the Trust have been acquired by any other person, no assets of the Trust are currently registered in the name of any other person, and no person, other than the beneficiaries has acquired any right of any kind whether vested or contingent in any asset of the Trust;
- (g) **(Capacity)** the Trustee enters the Transaction Documents in its capacity as trustee of the Trust, and charges the property of the Trust as provided in the Transaction Documents; and
- (h) **(Rights of Indemnity Against Trust Assets)** the Trustee as trustee of the Trust has valid rights of indemnity and exoneration against the assets of the Trust, which rights are available for satisfaction of all liabilities and other obligations incurred by the Trustee under the Transaction Documents.

6. Undertakings

The Borrower undertakes to the Lender that it will:

- (a) **(Information)** promptly provide to the Lender if requested by the Lender:
 - (i) not later than 120 days after the end of each financial year, copies of its Accounts;
 - (ii) all documents to be delivered to its shareholders as required by law; and
 - (iii) any other information as reasonably requested by the Lender;
- (b) **(Related Corporations Dealings)** obtain the consent of the Lender to:
 - (i) acquire assets;
 - (ii) dispose assets; or
 - (iii) lend money;

if the market value of the transaction is over 20% of the Amount;
- (c) **(Shares)** not, without the prior written consent of the Lender, issue convertible notes, options for shares or new shares in their capital or effect a transfer of its shares;
- (d) **(Deposit Money)** not, without the prior written consent of the Lender:
 - (i) deposit money with a person if the money is not repayable unless the Borrower pays or discharges any other indebtedness or performs or observes another obligation owed to that person or another person; or
 - (ii) permit a set-off or combination of accounts in respect of any right to the payment of money,

if the amount of the money is more than 20% of the Amount;
- (e) **(Dividends)** not, without the prior written consent of the Lender for any financial year, declare any dividend or otherwise pay any amount to any shareholder if it makes an operating loss before tax in that financial year; or
- (f) **(Acquisition of Interest)** not without the prior written consent of the Lender acquire any legal or beneficial interest in any:

- (i) joint venture;
 - (ii) partnership; or
 - (iii) shares, units or securities in the capital of any corporation or trust;
- (g) **(Perfection of Securities)** do all that is necessary, including but not limited to, executing documents or satisfying the requirements of the PPSA, to give effect to any Security in the Transaction Documents;
- (h) **(Insurance)** effect and maintain adequate insurance with a reputable insurer over its assets;
- (i) **(Notice of Default)** promptly give written notice to the Lender if it becomes aware of:
- (i) an Event of Default;
 - (ii) any event or circumstance that presents a material risk of:
 - (A) an Event of Default; or
 - (B) non-compliance with this Agreement;
- (j) **(Notice of Litigation)** promptly give written notice to the Lender if it becomes aware of litigation that affects it, unless the remedy sought in that litigation amounts to less than 20% of the Amount ;
- (k) **(Notice of Adverse Event)** promptly give written notice to the Lender of any matter, which might result or has resulted in a material adverse change to its financial condition or operation or its ability to perform its obligations under this Agreement;
- (l) **(Accounts)** prepare or cause to be prepared Accounts and other financial management statements required by the Lender; and
- (m) **(Corporate Existence)** comply with the law and will do or cause to be done all that is necessary to maintain corporate existence.

7. Default

7.1 Consequences of an Event of Default

If any event or circumstance set out in clauses 7.2(a) to 7.2(g) occurs:

- (a) the Borrower will be in default under this Agreement;
- (b) at the option of the Lender, all the amounts set out in clause 2.4 will be immediately due and recoverable by the Lender, as if the Termination Date had arrived, regardless of the other clauses in this Agreement;
- (c) the consequences of non-payment by the Borrower will be the same as if the Termination Date had arrived, regardless of the other clauses in this Agreement; and
- (d) the Lender can exercise any powers, rights or privileged conferred by law, this Agreement, the Security and/or any other collateral document or securities.

7.2 Events of Default

It is an Event of Default, whether or not the cause is beyond the control of the Borrower, if the Borrower:

- (a) **(Breach of Term of Agreement)** fails to strictly observe and perform all of its obligations and covenants under the Transaction Documents or defaults in respect of any term in this Agreement or any Transaction Document;

- (b) **(Insolvency Event)** is subject to an Insolvency Event;
- (c) **(Control of Property)** owns property that is taken out of its control, or is likely to be taken out of its control in the reasonable opinion of the Lender, by any operation of law whatsoever;
- (d) **(Property Value Diminished)** owns property, personal property or other assets, which:
 - (i) is subject to a Security under this Agreement or any Transaction Document; and
 - (ii) has in the reasonable opinion of the Lender, lost realisable value for any reason whatsoever, if a power of sale were to be exercised in respect of it;
- (e) **(Material Adverse Change)** have, in the reasonable opinion of the Lender, suffered or experienced a materially adverse change in its financial position or the value of the Security taken by the Borrower under the Transaction Documents is materially diminished or is in jeopardy;
- (f) **(Adverse Judgment)** has a judgment signed or entered against it for a sum of more than 20% of the Amount, which remains unsatisfied, or is not appealed against for a period of seven days; and
- (g) **(Representation or Warranty Incorrect)** if any representation or warranty made by the Borrower, or if the answers to the Lender's requisitions, or if any other representation warranty or statement made in writing by the Borrower to the Lender in connection with the loan under this Agreement is incorrect in any material respect when made.

8. Security

8.1 Security

On the Loan Date, the Purchasing Entity must:

- (a) execute the Mortgage;
- (b) maintain the Security for so long as the Outstanding Amount is outstanding.

8.2 Acknowledgement

The Purchasing Entity acknowledges that it charges all of the Property with payment of the Outstanding Amount.

8.3 Mutual Agreement

The Borrower and the Lender may by mutual agreement from time to time vary the Security for this facility by releasing all or any of the Security in whole or in part and the taking of such further Security or the variation of any of the terms and conditions of this deed as may be agreed upon by the parties.

9. Notice, Amendment and Notices

- (a) The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.
- (b) A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless it is required under law to be physically delivered.
- (c) Notices may only be sent to the parties' contact details as specified in Schedule 2.
- (d) A party relying on a notice sent by fax must be able to produce a transmission confirmation report produced by the fax machine from which the fax was sent.

- (e) If a party relies on email to deliver a notice under this Agreement, the email will be taken to be received at 9.00am on the Business Day after the email is sent, unless the party sending the email knows or reasonably ought to suspect that the email was not delivered to the addressee's domain specified in the email address.

10. Assignment

- (a) The Lender may at any time assign or otherwise transfer all or any part of its rights under any Transaction Document, and may disclose to a proposed assignee or transferee any information in the possession of the Lender relating to the Borrower.
- (b) The Borrower cannot assign any of its rights under any Transaction Document without the Lender's prior written consent.
- (c) This Agreement is binding on and endures to the benefit of each party to it and that party's respective successors and permitted assigns.

11. General

11.1 Stamp Duty and Other Costs

The Borrower is liable for:

- (a) stamp duty or any other Tax arising in connection with the transaction contemplated by this Agreement or the Transaction Documents; and
- (b) all legal costs and outlays of the Lender on an indemnity basis in connection with:
 - (i) the preparation, execution, stamping and registration of this Agreement and the Transaction Documents; and
 - (ii) exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under the Transaction Documents, including any expenses incurred in the evaluation of any matter of material concern to the Borrower.

11.2 Continuing Obligation

Each Transaction Document constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing, until a final discharge of it has been given to the Borrower.

11.3 Disclaimer

Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.

11.4 Relationship

The relationship of the parties to this Agreement does not form a joint venture or partnership.

11.5 Waiver

No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.

11.6 Further Assurances

Each party must do anything necessary (including executing agreements and documents) required by the Borrower to give full effect to this Agreement and the Transaction Documents.

11.7 Governing Law

This Agreement is governed by the laws of . Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.

11.8 Inconsistency

If this Agreement is inconsistent with any other document or Agreement between the parties, this Agreement prevails to the extent of the inconsistency.

11.9 Counterparts

This Agreement may be executed in any number of counterparts including where they are exchanged by facsimile or by email containing this Agreement as an unalterable attachment. All counterparts together will be taken to constitute one instrument.

11.10 Time

Time is of the essence in this Agreement.

11.11 Severability

Any clause of this Agreement, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.

11.12 Amendments

This Agreement may only be amended by a deed duly executed by each party.

Schedule 1 Loan Particulars

Item	Particulars
Item 1 Loan Date Clauses 1.1 and 2.1	19 March 2020 or the date on which the Lender advances the Amount, whichever is later.
Item 2 Amount	\$325,000.00
Item 3 Termination Date	15 calendar years after the Loan Date.
Item 4 Interest Rate	5% per annum.
Item 5 Interest Payment Date	Every calendar month following the Loan Date
Item 6 Repayment Amounts	\$1805.55 (plus interest) on each Interest Payment Date
Item 7 Residual Amount	The balance of the Amount unpaid on the Termination Date.
Item 8 Lender Bank Account	Account Name: <i>No 10 Pty Ltd</i> Account Number: BSB: 484 799 Account Number: 45287 5594
Item 9 Security	The Mortgage over the Property

Schedule 2 Notices

Lender

Company Name	No. 10 Pty Ltd ACN 620 076 315
Contact Name	Neil Herron and Glenda Mary Herron
Address	Unit 1/48 Flinders Parade, North Lakes QLD 4509
Email	neilherron@bigpond.com

Borrower

Company Name	CM (F) Superannuation Pty Ltd as trustee for the CM Superannuation Fund ACN 166 599 051
Contact Name	Mark Gavin Wayne Herron & Fiona Louise Herron
Address	Unit 1/48 Flinders Parade North Lakes QLD 4506
Email	mark@herronaccountants.com.au

Purchasing Entity

Company Name	CM (F) Property Investment Pty Ltd ACN 166 836 746 as trustee for the It Could Mean Divorce LRBA Trust
Contact Name	Mark Gavin Wayne Herron & Fiona Louise Herron
Address	Unit 1/48 Flinders Parade North Lakes QLD 4506
Email	mark@herronaccountants.com.au

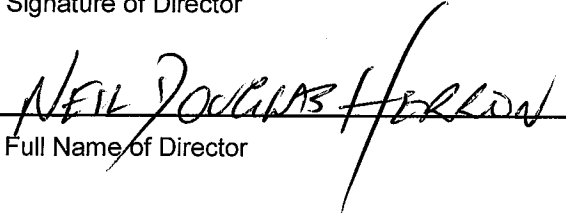
Schedule 3 Mortgage

Executed as a Deed

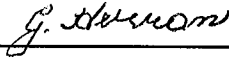
Executed by No 10 Pty Ltd ACN 620 076 315 in accordance with section 127 of the Corporations Act 2001 (Cth) by:



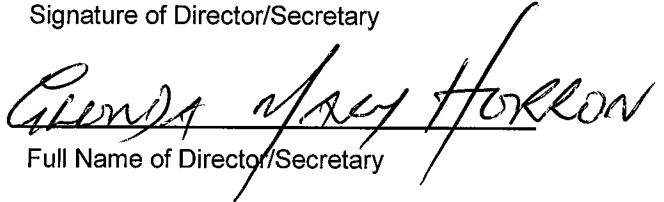
Signature of Director



Full Name of Director

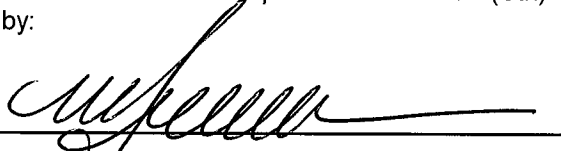


Signature of Director/Secretary

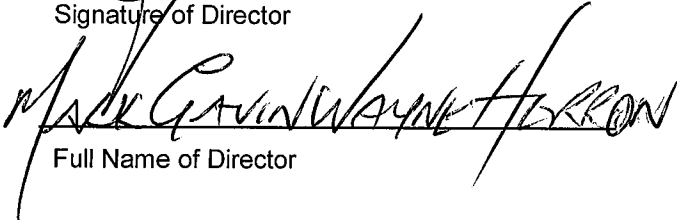


Full Name of Director/Secretary

Executed by CM (F) Superannuation Pty Ltd ACN 166 599 051 as trustee for the CM Superannuation Fund in accordance with section 127 of the Corporations Act 2001 (Cth) by:



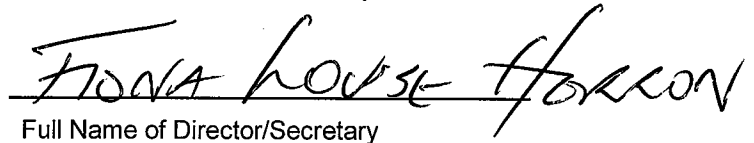
Signature of Director



Full Name of Director

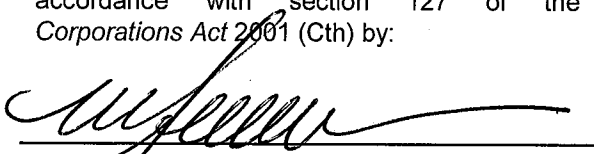


Signature of Director/Secretary

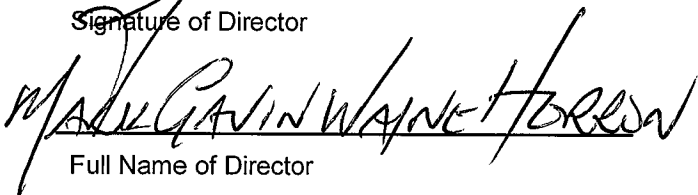


Full Name of Director/Secretary

Executed by CM (F) Property Investment Pty Ltd ACN 166 836 746 as trustee for the It Could Mean Divorce LRBA Trust in accordance with section 127 of the Corporations Act 2001 (Cth) by:



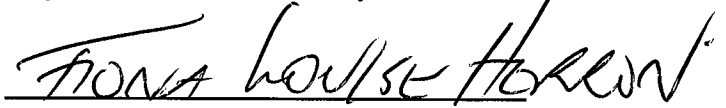
Signature of Director



Full Name of Director



Signature of Director/Secretary



Full Name of Director/Secretary