

PERSONAL GUARANTEE AND INDEMNITY

Francesco Milanesi as trustee for The Milanesi Family Trust

Francesco Milanesi

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PERSONAL GUARANTEE AND INDEMNITY

DATE 16/2/16

DETAILS OF PARTIES

Name	Francesco Milanesi as trustee for The Milanesi Family Trust
Label	Lender
Address	20 Hoffman Street McDowall Qld 4053

Name	Francesco Milanesi
Label	Guarantor
Address	20 Hoffman Street McDowall Qld 4053

Name	Vicki Leanne Milanesi
Label	Guarantor
Address	20 Hoffman Street McDowall Qld 4053

BACKGROUND

- A. The Lender has agreed to provide the Guaranteed Money to the Debtor at the Guarantor's request and for valuable consideration.
- B. The Guarantor has agreed to provide this guarantee for the repayment of the Guaranteed Money to the Lender.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this document:

Acquirable asset means the property at 27 Eromba Crescent, Ferny Hills, Queensland more particularly described as Lot 115 on Registered Plan 108613 acquired or to be acquired by the FMVL Super Properties Pty Ltd ACN 603 811 874 as trustee for the FMVL Super Property Trust.

ASIC means the Australian Securities and Investments Commission.

ASIC Act means the *Australian Securities Commission and Investment Act 2001* (Cth).

Associate has the meaning in section 318 of the *Income Tax Assessment Act 1936* (Cth).

Attorney means an attorney appointed under this document or any Collateral Security.

Authorisation includes a consent, authorisation, approval, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption.

Authorised Officer means as it relates to a corporation any director or secretary and any person whose title includes the word 'manager'. The term also includes a party's lawyer.

Bankruptcy Act means the *Bankruptcy Act 1966* (Cth).

Business Day means a day that is not a Saturday, Sunday or public holiday being a day on which banks are open for general banking business in Brisbane.

Collateral Security means any document which at any time is entered into with the Lender to secure all or some of the Guaranteed Money. The term includes any offer letter, heads of agreement, loan agreement or facility agreement.

Controller has the same meaning given to that term by the Corporations Act.

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

Deal With means deal with property in any way including offer for sale, grant an option, create or Dispose of a right, render or permit to be subject to an Encumbrance, convert, deposit, compromise and allow a counterclaim or right of set-off to arise.

Debtor means Francesco Milanesi and Vicki Leanne Milanesi as trustees for the VLFM Superannuation Fund.

Directive includes any present or future directive, regulation, request, requirement, rule or credit restraint programme of any Government Agency or of any self regulating organisation (but, if not having the force of law, only if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is intended to apply).

Dispose Of means sell, transfer, assign, alienate, surrender, dispose of, deposit, Lease, part with possession of and enter into any agreement or arrangement to do or allow any of these things.

Encumbrance means:

- (a) any mortgage, charge, pledge or lien, and any security interest or a preferential or adverse interest of any kind;
- (b) a title retention arrangement (other than a retention of title in the ordinary course of ordinary business);
- (c) a right of any person to purchase, occupy or use assets (including under a hire purchase agreement, option, licence, lease, or agreement to purchase);
- (d) a right to set-off or right to withhold payment of a deposit or other money;
- (e) an easement, restrictive covenant, caveat or similar restriction over property (except, in the case of land, a covenant noted on the certificate of title to the land concerned);
- (f) an agreement to create any of the items referred to in paragraphs (a) to (d) above or to allow any of those items to exist;

- (g) a notice under section 255 *Income Tax Assessment Act* (1936) (Cth), subdivision 260A in schedule 1 *Taxation Administration Act* 1953 (Cth) or any similar legislation; or
- (h) any other right (including without limitation under a trust or agency arrangement) of a creditor to have its claims satisfied prior to other creditors with, or from the proceeds of, or be recourse to any asset and includes any agreement, arrangement or deed conferring such a right.

Financial Accommodation means any financial accommodation or form of financial accommodation including:

- (a) an advance, loan, forbearance, or payment;
- (b) discounting, or drawing, accepting, endorsing, or becoming in any other way liable under, a bill of exchange, cheque, promissory note, warrant or other negotiable instrument at the request of or for the benefit of another party;
- (c) giving or allowing credit;
- (d) giving or paying money under a Guarantee; and
- (e) providing financial accommodation by way of:
 - (i) entering into or performing a Lease;
 - (ii) purchasing, or giving value for a right or asset; or
 - (iii) creating, assuming or undertaking a liability.

Financial Indebtedness means indebtedness, whether present or future, secured or unsecured, or actual or contingent arising under, or as a result of any Financial Accommodation but does not include the deferred purchase price for any goods or services where the goods or services are obtained on normal commercial terms in the ordinary course of ordinary trading and the deferral is for less than 90 days.

Government Agency means:

- (a) a government or government department or other body;
- (b) a government, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST has the meaning given to that term in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act* 1999 (Cth).

Guarantee means a guarantee, indemnity, letter of credit, letter of comfort giving rise to legal liabilities, or any other obligation whatever called and of whatever nature:

- (a) to pay, to purchase, or to provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services, or otherwise) for the payment or discharge of;
- (b) to indemnify against the consequences of default in the payment of; or

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- (c) otherwise to be responsible for,
any obligation or indebtedness of any other person.

Guaranteed Money means all amounts which the Debtor owes to the Lender at any time, including:

- (a) all amounts which at any time the Lender has advanced or paid, or has become liable to advance or pay, for any reason:
- (i) to or on behalf of the Debtor;
 - (ii) at the express or implied request of the Debtor;
 - (iii) because of any act or omission of the Debtor; or
 - (iv) because of any act or omission on the Lender's part made at the express or implied request of the Debtor;
- (b) all amounts for which at that time the Debtor is or may become actually or contingently liable to the Lender for any reason, including all amounts for which the Debtor is or may become liable to the Lender about any orders, drafts, cheques, promissory notes, bills of exchange, letters of credit, Guarantees, bonds and other instruments or engagements (whether negotiable or not) which:
- (i) have been drawn, issued, accepted, endorsed, discounted or paid by the Lender; or
 - (ii) are held by the Lender as a result of any transaction entered into by the Lender for, or on behalf of, or at the express or implied request of the Debtor;
- (c) all amounts which at that time are owing and unpaid, or owing but not presently payable, or owing upon a contingency, by the Debtor to the Lender for any reason;
- (d) all amounts which at that time the Lender is entitled to recover or claim from the Debtor for any reason (including any assignment, transfer or disposition by any person to the Lender of any property);
- (e) all amounts which at that time it is reasonably foreseeable or at some future time falls into any of the descriptions in (a), (b), (c) or (d) above applied as at that future time; and
- (f) all amounts which at that time the Debtor owes or is liable for, to anyone the Lender assigns the Lender's rights and obligations because the assignee performs an agreement or exercises a right the Lender had before the time of the assignment,

and in respect of:

- (g) principal and interest - unlimited; and
- (h) in respect of all other amounts – unlimited.

Insolvency Event means any of the following events:

- (a) if:
 - (i) an application is filed for the winding up of the party (a winding up application) and the winding up application is not dismissed or withdrawn within ten Business Days of that application being filed; or
 - (ii) an order is made for the winding up of the party and the winding up is not stayed indefinitely or terminated within ten Business Days of the winding up order being made;
- (b) if the party's shareholders pass a resolution for its winding up;
- (c) if a receiver, receiver and manager, controller (as defined in section 9 Corporations Act), or similar person is appointed to, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of the party;
- (d) if a provisional liquidator is appointed to the party;
- (e) if:
 - (i) the party is placed into administration (as defined in section 9 Corporations Act) or enters into a deed of company arrangement (as defined in section 9 Corporations Act); or
 - (ii) the party, or any other person takes any step towards placing the party into administration or towards entering into a deed of company arrangement;
- (f) if the party:
 - (i) advises the other party that it is financially unable to proceed with or meet any of its obligations under this document;
 - (ii) without the written consent (not to be unreasonably withheld) of the other party, suspends payment of its debts other than as the result of a failure to pay a debt or claim which is the subject of a genuine dispute;
 - (iii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iv) is or states that it is unable to pay its debts as and when they fall due and payable; or
 - (v) is taken to fail to comply with a statutory demand under section 459F Corporations Act;
- (g) if the party, without the consent of the other party:
 - (i) begins negotiations with one or more of its creditors seeking a general readjustment or rescheduling of its indebtedness to one or more of its creditors;
 - (ii) takes any steps toward entering into, or enters into, any compromise or arrangement with one or more of its creditors under part 5.1 Corporations Act; or

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- (iii) makes any assignment or enters into any arrangement or composition generally for the benefit of one or more of its creditors;
 - (h) if the party:
 - (i) commits an act of bankruptcy under section 40 Bankruptcy Act; or
 - (ii) is made bankrupt;
 - (iii) if the party becomes or takes any step that could result in the party becoming an insolvent under administration (as defined in section 9 Corporations Act); or
 - (i) if the party enters into or takes any step that could result in the party entering into a personal insolvency agreement under part X Bankruptcy Act;
 - (j) if the party enters into or takes any step that could result in the party entering into a debt agreement under part IX Bankruptcy Act;
 - (k) if execution is levied against the party by a creditor;
 - (l) if any matter relating to the party becomes subject to a direction under, or has effect as if it were a direction under, section 14 of the ASIC Act, or to an investigation under, or taken to be under the ASIC Act; or
 - (m) if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition, unless:
 - (i) the event takes place as part of a solvent reconstruction, amalgamation, merger or consolidation on terms approved by the other party before it takes place; and
 - (ii) the implementation of the reconstruction, amalgamation, merger or consolidation complies with the terms of the approval.

Lease means an agreement or arrangement under which property is or may be used, occupied, retained, operated or managed by a Lessee for consideration (of whatever form) payable or provided by the Lessee including a lease, licence, charter, hire purchase or hiring arrangement.

Lessee means a person who uses, occupies, retains, operates or manages property under a Lease.

Loan Agreement means the loan agreement between the Debtor (as borrower) and the Lender (as lender) dated on or about the date of this document.

Material Adverse Effect means as it relates to a person, a material adverse effect:

- (a) on the person's financial condition or business; or
- (b) on the person's ability to perform and comply with its relevant obligations under this document or any Collateral Security.

Payment means all amounts paid in reduction of the Guaranteed Money.

Recipient has the meaning given to that term in the GST Act.

Receiver means any receiver or receiver and manager appointed under this document or any Collateral Security.

Regulatory Change means:

- (a) the introduction of, or a change in, an applicable law or regulatory requirement or in its interpretation or administration by a Government Agency; or
- (b) the introduction of or change in a Government Agency's interpretation or administration of any order, treaty or official policy, ruling, directive, guideline or request including the request of any central bank or other Government Agency, having either force of law or with which responsible banks or financiers in the applicable jurisdiction would comply.

Related Body Corporate has the meaning given to that term by section 9 Corporations Act.

Related Party means an Associate and a Related Body Corporate.

Reorganisation includes:

- (a) a consolidation or sub division of the share capital;
- (b) a return of capital;
- (c) a reduction of capital by a cancellation of capital that is lost or not represented by available assets, where no securities are cancelled;
- (d) a pro rata cancellation of the share capital;
- (e) any issue by capitalisation of profits or reserves; and
- (f) any other re-organisation of the share capital by scheme of arrangement.

Security or Securities means:

- (a) this document; and
- (b) any other Personal Guarantee and Indemnity documents between the Lender (as Lender) and any other guarantor,

and includes any part of the Security or variation to the Security.

Security Interest means an Encumbrance that secures the payment of money or the performance of an obligation, or any other interest or arrangement.

Security Provider means any person other than the Guarantor and the Lender who enters into or gives a Collateral Security. The term includes the Debtor.

Subsidiary has the meaning given to that term by section 9 of the Corporations Act.

Supplier means the entity making the Supply.

Supply has the meaning given to that term in the GST Act.

Tax includes any tax, levy, duty, charge, impost, fee, deduction and withholding however it is described, that is assessed, levied, collected or imposed by law or by a Government

Agency, together with any related interest penalty, fine or other charge, or other amount imposed in respect of any of the above.

Tax Invoice has the meaning given to that term in the GST Act.

Taxable Supply has the meaning given to that term in the GST Act.

Transaction Documents means:

- (a) this document;
- (b) the Loan Agreement;
- (c) the Securities;
- (d) the Collateral Security;
- (e) a financing statement or financing change statement;
- (f) any document relating to the priority of this document or any Security Interest that is a Collateral Security;
- (g) any other document that the parties agree is a Transaction Document;
- (h) any variation of it,

without limiting this definition, includes an agreement or arrangement which is assigned to the Lender and any agreement or arrangement which the Guarantor acknowledges to another person to be a Transaction Document before the agreement or arrangement was assigned to the Lender.

Void Payment means any payment made to the Lender by or on behalf of the Guarantor which is subsequently avoided, conceded or compromised as being void or voidable under any law relating to insolvency or the protection of creditors or to any other matter or event.

1.2 Rules for Interpreting this Document

This clause 1.2 specifies the rules for interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) The contents page, the Background and headings are for convenience only and do not affect the interpretation of this document.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document), or a provision of a document (including a provision of this document), is to that document or provision as amended or replaced;
 - (iii) a party to this document, or a party to any other document or agreement, includes that party's executors, administrators, permitted substitutes and permitted assigns;

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- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) anything (including a right, obligation or concept) includes each part of it;
 - (vi) property includes real, personal and intangible property;
 - (vii) any body or agency, if that body or agency ceases to exist, is renamed, reconstituted, replaced or has its powers or functions removed (**Defunct Body**), means the agency or body which succeeds to the Defunct Body's powers or functions, or performs most closely the functions of the Defunct Body;
 - (viii) AUD\$, A\$, \$A, dollar or \$ is to Australian currency; or
 - (ix) a clause, schedule or annexure is to a clause of, or schedule or annexure to, this document.
- (c) A singular word includes the plural, and vice versa.
 - (d) A word which suggests one gender includes any other genders.
 - (e) If a word is defined, another part of speech or grammatical form of that word has a corresponding meaning.
 - (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (g) An obligation on, warranty by, or right of:
 - (i) two or more persons; or
 - (ii) a party that comprises two or more persons,
 is the obligation, warranty or right (as the case may be) of those persons jointly and severally.
 - (h) Time is reckoned as follows:
 - (i) A reference to the date or time of day, is a reference to that date or that time of day in Queensland, Australia.
 - (ii) If a period expressed in days, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated by:
 - (A) excluding the day, or the day of the act or event; and
 - (B) including the day on which the purpose is to be fulfilled.
 - (iii) If a period expressed in weeks, months or years, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated from:
 - (A) the day, or the day of the act or event; until

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- (B) the corresponding day in the next appropriate week, calendar month or year.
 - (iv) If there is no corresponding day for the purposes of clause 1.2(h)(iii)(B), because of the differing number of days in calendar months, the corresponding day is taken to be the last day of the relevant calendar month.
 - (v) If something is to be done on a particular day, it must be done by 5.00pm on that day.
 - (vi) If something is to be done on a day which is not a Business Day then that thing must be done on the next Business Day.
 - (i) Terms defined in the GST Law have the same meaning in this document unless the context makes it clear that a different meaning is intended.

2. RECEIPT OF VALUE

The Guarantor acknowledges having received valuable consideration from the Lender for the giving of this document.

3. GUARANTEE

3.1 Payment of Guaranteed Money

The Guarantor unconditionally and irrevocably guarantees to the Lender the Debtor's punctual payment to the Lender of the Guaranteed Money.

3.2 Without demand

The Guarantor agrees that if the Debtor does not pay the Guaranteed Money or any part of the Guaranteed Money on or before the time it is due for payment, the Guarantor must immediately pay the Guaranteed Money (or that part of the Guaranteed Money that is due) to the Lender, whether or not the Lender has made demand on the Debtor.

4. INDEMNITY

4.1 Indemnity against loss

The Guarantor unconditionally and irrevocably indemnifies the Lender against all loss the Lender suffers as a result of the Guaranteed Money (or any part of the Guaranteed Money) not being recoverable from or any liability to pay the Guaranteed Money not being enforceable against the Debtor, a Security Provider, the Guarantor, any other Guarantor, or any of them because of:

- (a) any legal limitation, disability or lack of capacity, power or authority affecting any of them personally or in the capacity in which they are purporting to act;
- (b) the doing of any thing by any one of them that has a Material Adverse Effect on the Debtor, the Lender, the Guarantor and any other guarantor and/or their ability to perform any and all of their obligations under any Transaction Documents, whether alone or jointly with any other person;
- (c) any improper exercise of power or authority;
- (d) an Insolvency Event occurring to any of them;

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- (e) any transactions relating to the Guaranteed Money (or any part of the Guaranteed Money) being legally invalid, subsequently invalidated, capable of being invalidated or unenforceable,

or by reason of any other thing and whether or not any of these things were or should be known to the Lender.

4.2 Additional liability

The Guarantor, as a separate and additional liability under this Guarantee as a principal debtor, agrees with the Lender to pay to the Lender on demand an amount equal to the amount of any loss.

5. PRESERVATION OF LENDER'S RIGHTS

5.1 Lender's rights unaffected

The Lender's rights and the Guarantor's obligations and liabilities under this document are not affected by anything which might legally affect them including any of the following:

- (a) the Lender or another person granting time or other indulgence to the Guarantor, any other guarantor, the Debtor or a Security Provider;
- (b) an Insolvency Event occurring to the Debtor, the Guarantor, any other guarantor, or a Security Provider;
- (c) any transaction or arrangement that may take place between the Lender, the Debtor and a Security Provider, the Guarantor, any other guarantor, or any other person;
- (d) any variation of a transaction, arrangement or agreement between the Lender, the Debtor and a Security Provider, the Guarantor, any other guarantor, or any other person;
- (e) the Lender's failure or neglect to recover by the realisation of any Collateral Security or otherwise any of the Guaranteed Money from any person;
- (f) any lack of power on the Guarantor's part to enter into this document either in the Guarantor's own right or in the capacity in which the Guarantor is purporting to act;
- (g) the Lender becoming a party to or being bound by any compromise, assignment of property, scheme of arrangement, composition of debts or scheme of reconstruction by or relating to the Debtor, the Guarantor, any other guarantor, or any Security Provider;
- (h) the release, discharge, abandonment, loss, impairment, transfer of or other dealing with (either in whole or in part and whether with or without consideration) the Lender's rights under this document or under any Collateral Security;
- (i) the death or deregistration of the Guarantor, any other guarantor, the Debtor or other Security Provider;
- (j) the obtaining of a judgement or order against the Debtor, any Guarantor or a Security Provider, or any other person; or

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- (k) the failure by any person intended or contemplated as a party to this document to properly execute this document (either at all or in a manner legally binding upon that person).

5.2 Collateral Securities unaffected

Nothing contained in or implied by this document operates or is interpreted to:

- (a) discharge, release, postpone, merge or otherwise prejudice or affect any Collateral Security or right which the Lender may hold, receive or claim relating to the Guaranteed Money; or
- (b) terminate the Lender's rights under any bill of exchange, promissory note, Guarantee, acknowledgment of debt, agreement for Financial Accommodation or any other contract or negotiable instrument.

5.3 Judgments

Any judgment which the Lender may obtain against the Guarantor relating to the Guaranteed Money may be held as a Collateral Security and no other Collateral Security will merge in that judgment.

5.4 Void Payment

If a Void Payment is made to the Lender:

- (a) the Void Payment will not be considered to have discharged the liability of the Guarantor about which it was made despite any release, settlement or discharge which may have been given on the faith of the Payment;
- (b) the Lender and the Guarantor are placed in or restored to the position they would have been in but for the Void Payment and may exercise the rights and are subject to the liabilities which each would have had or been subject to if the Void Payment and any release, discharge or settlement given on the faith of the Void Payment had not been made or given;
- (c) the Guarantor must take all steps and sign all documents, and must procure that all relevant third parties take all steps and sign all documents that the Lender may require relating to the replacement or reinstatement of this document or any Collateral Security previously held by the Lender;
- (d) the Guarantor must pay all costs, expenses, duties and fees relating to the replacement or re instatement of this document or any Collateral Security; and
- (e) despite anything to the contrary contained in or implied by this document, the Lender may retain this document and any Collateral Security until the Lender is satisfied that no payment made to the Lender must be repaid to the person making the payment or to anyone else.

5.5 Releases, settlements and discharges

Every release, settlement or discharge between or involving the Guarantor and the Lender are subject to this clause.

6. EXTENT OF GUARANTEE

This document is a continuing guarantee and indemnity and will not be considered as wholly or partially discharged by the payment at any time in the future of any of the Guaranteed Money or by any settlement of account or by any other matter or thing whatever and applies to the present and any future balance of the Guaranteed Money.

7. GUARANTOR'S REPRESENTATIONS AND WARRANTIES**7.1 Guarantor not to claim**

Until the Lender has received the whole of the Guaranteed Money the Guarantor must not on any grounds whatever either directly or indirectly:

- (a) claim any right of set off or any other right or relief at law or in equity which would or may have the result of reducing the Guarantor's liability under this document or which would (but for this provision) entitle the Guarantor to deduct from the money payable by the Guarantor under this document any money claimed by the Guarantor to be due from the Lender to on any account whatever;
- (b) bring any proceedings to restrain or prevent the Lender from exercising any of its rights to raise any defence, cross-claim or counterclaim on the basis that any right of set off or any other right or relief referred to in clause 7.1(a) is available to a Guarantor, the Debtor, any Security Provider or any other person against the Lender;
- (c) claim the benefit of any Collateral Security;
- (d) claim or receive the benefit of any distribution, dividend or payment arising out of or relating to any insolvency of the Debtor, any Security Provider or any person liable jointly or severally with the Debtor to the Lender or liable under any Collateral Security; or
- (e) on the occurrence of an Insolvency Event relating to the Debtor or a Security Provider, prove or claim in competition with the Lender so as to diminish any distribution, dividend or payment which, but for such proof, the Lender would be entitled to receive arising out of an Insolvency Event.

7.2 Guarantor's representations and warranties

The Guarantor certifies and confirms to the Lender that:

- (a) the Guarantor has power to enter into this document and do everything contemplated by this document and all necessary action has been taken and Authorisations obtained to make sure this document is legally binding on the Guarantor and to enable the Guarantor to carry out all of obligations imposed on the Guarantor under this document;
- (b) the Guarantor has not breached any laws which may have a Material Adverse Effect on the Guarantor, any other Guarantor or the Debtor;
- (c) an Insolvency Event has not occurred to the Guarantor or any Security Provider;

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- (d) no litigation or other proceeding before any court, judicial or administrative authority, or arbitrator is:
 - (i) taking place or pending; or
 - (ii) is likely to be commenced or threatened to the best of the Guarantor's knowledge,

against the Guarantor or any Security Provider or against the Guarantor's assets or those of any Security Provider which could have a Material Adverse Effect on the Guarantor or any Security Provider;
 - (e) all information given by the Guarantor or any Security Provider to the Lender (including in any financial statements) is accurate and not misleading;
 - (f) the Guarantor and each Security Provider has complied with all Tax laws in all jurisdictions in which they are subject to Tax and have paid all Taxes due and payable by them and no material claims have been made against them relating to Taxes;
 - (g) the Guarantor benefits by executing this document.

7.3 Collateral Security

The representations and warranties in this clause are in addition to any other representations and warranties contained in a Collateral Security.

7.4 Reliance on representations and warranties

The Guarantor acknowledges that:

- (a) the Lender has incurred obligations under this document and any Collateral Security in reliance on the representations and warranties given by the Guarantor and each Security Provider;
- (b) the Guarantor has not entered into this document or any Collateral Security in reliance upon and the Guarantor will not rely on any representation, warranty, promise or statement made by the Lender or any person on the Lender's behalf at any time, unless the representation, warranty, promise or statement is in writing and signed by the Lender's Authorised Officer.

8. GUARANTOR ACTING AS TRUSTEE

- (a) The Guarantor has entered this deed on its own behalf and as trustee of the Trust. The Guarantor and its successors as trustee of the Trust will be liable under this deed as trustee of the Trust to the intent that all the assets both present and future of the Trust will be available to satisfy the Guarantor's liabilities. Nothing releases the Guarantor from any liability in its personal capacity. The Guarantor warrants that at the date of this deed:
 - (i) all the powers and discretions conferred by the deed establishing the Trust are capable of being validly exercised by the Guarantor as trustee and have not been varied or revoked and the Trust is a valid and subsisting trust;
 - (ii) the Guarantor is the sole trustee of the Trust and has full and unfettered power under the terms of the deed establishing the Trust to obtain financial

accommodation on behalf of the Trust and that this deed is being executed and entered into as part of the due and proper administration of the Trust and for the benefit of the beneficiaries of the Trust;

- (iii) no restriction on the Guarantor's right of indemnity out of or lien over the Trust's assets exist or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the Trust's assets.
- (b) The Guarantor must not permit without the Lender's prior written consent:
 - (i) any resettlement, appointment, or distribution of capital of the Trust;
 - (ii) any retirement or replacement of the trustee or any appointment of a new trustee of the Trust;
 - (iii) breach of the provisions of the deed establishing the Trust;
 - (iv) any termination of the Trust or variation of the vesting date;
 - (v) if the Trust is a unit trust, any transfer of, or dealing with the units.
- (c) If any of the above occur, the Guarantor must inform the Lender promptly.

9. LENDER'S POWERS

9.1 No marshalling

Without affecting or discharging the Guarantor's liability under this document, the Lender:

- (a) need not marshal in the Guarantor's favour any security the Lender holds or any of the funds or assets that the Lender may be entitled to receive or claim upon; and
- (b) may at the Lender's absolute discretion vary, exchange, renew, release, refuse to complete or to enforce or to assign any judgment or Collateral Security, whether satisfied by payment or not.

9.2 Variations and further advances

The Lender may from time to time:

- (a) increase or otherwise vary the amount (if any) of advances and accommodation granted or agreed to be granted to the Debtor;
- (b) amend or vary or agree to any amendment or variation of any contracts or other arrangements now or from time to time in the future in force between the Lender and the Debtor;
- (c) transact any business with, for or on account of the Debtor at its absolute discretion; and
- (d) capitalise and add to principal all interest accrued on the Guaranteed Money (or any part of the Guaranteed Money) but not yet paid,

without the Guarantor's consent being necessary and this Guarantee and Indemnity extends to cover the contracts or arrangements from time to time in force between the Lender and the Debtor.

9.3 Demand

The Lender may make demand for the Guaranteed Money (or any part of the Guaranteed Money) or exercise any other power right or remedy under this document without first:

- (a) proceeding against the Debtor or any Security Provider; or
- (b) enforcing any other right, power, remedy or security; or
- (c) claiming payment from the Debtor or any Security Provider,

and waives any right it has of first requiring the Lender to do so.

10. RECEIPT AND APPLICATION OF MONEY**10.1 Receipt of money**

The Lender may credit any money received, recovered or realised or available for receipt by the Lender under this document or any Collateral Security to any suspense account. The Lender may keep the money in that account for as long as the Lender thinks fit, accruing interest at the rate the Lender thinks fit or negotiates, until the Lender, at the time or times the Lender thinks fit, applies the money in reduction or discharge of the Guaranteed Money.

10.2 Contingent amounts

Upon demand by the Lender under this document, the Guarantor must immediately pay to the Lender an amount equal to the aggregate maximum amount contingently payable by the Debtor to the Lender including any liability under any bill of exchange or Guarantee.

10.3 Receipt of Payments

The receipt of any distribution, dividend or other payment which the Lender may receive out of the insolvency of the Debtor or any Security Provider will not prejudice the Lender's right to recover the whole of the Guaranteed Money from the Guarantor.

11. PAYMENTS**11.1 No deductions**

The Guarantor must make all payments relating to the Guaranteed Money:

- (a) to the Lender at the place or into the account from time to time notified by the Lender to the Guarantor;
- (b) free of any set off or counter claim;
- (c) free of and without deduction for or on account of any present or future Taxes; and
- (d) unless otherwise agreed by the Lender, in immediately available funds.

11.2 Costs

The Guarantor indemnifies the Lender against, and must pay to the Lender on demand, all losses, costs, claims and expenses which the Lender may sustain because of any payment of the Guaranteed Money or any part of the Guaranteed Money being made to the Lender on a day other than the day it is due for payment.

11.3 Obligation to top-up

If the Guarantor is required by a judgment or order of any court, statute, law, regulation, treaty, official directive (whether or not having the force of law) or the official interpretation or application of any of the above by any Government Agency charged with its administration to withhold or deduct any Tax or other amount from a payment to the Lender to the effect that the Lender would not (but for this provision) actually receive on the due date the full amount demanded under this document then:

- (a) the amount payable by the Guarantor under this document must be increased so that after making all necessary withholdings and deductions the Lender receives the amount the Lender would have received if no withholdings or deductions had been necessary;
- (b) the Guarantor must pay the full amount deducted to the relevant authority in accordance with the applicable law and (on demand) deliver the original receipts to the Lender.

12. INTEREST ON OVERDUE AMOUNTS**12.1 Payment of interest**

- (a) Subject to clause 12.1(b), the Guarantor must pay interest on any amount due and payable under this deed that remains unpaid, and on any interest payable under this clause 12.
- (b) Clause 12.1(a) does not apply to any amount due where interest continues to be payable by the Debtor on the corresponding part of the Guaranteed Moneys and accordingly forms part of the Guaranteed Moneys.

12.2 Accrual of interest

The interest payable under clause 12.1 is payable at the same rate and in the same manner as interest is payable under the Loan Agreement.

12.3 Rate of interest

The rate of interest payable under this clause 12 is the highest of:

- (a) any rate specified in the Loan Agreement;
- (b) the rate fixed or payable under a judgment, decree or order.

13. LIMITED RECOURSE

Notwithstanding any other provision of this document, the Guarantor acknowledges and agrees that its rights against the Debtor for, in connection with, or as a result of, (whether directly or indirectly) default on:

- (a) the Financial Accommodation; or
- (b) the Guaranteed Money,

are limited to the Acquirable Asset.

14. POWER OF ATTORNEY**14.1 Appointment of attorneys**

The Guarantor irrevocably appoints the Lender as its attorney and agrees to formally approve all action taken by an attorney under this Document.

14.2 Attorneys' powers

Each attorney may:

- (a) do anything which the Guarantor may lawfully do to exercise its right of proof after an event relating to liquidation, administration, bankruptcy, or insolvency occurs in respect of the Debtor or any other guarantor of the Debtor's obligations in connection with a matter not connected with its rights as "Guarantor" under this guarantee and indemnity. These things may be done in the Guarantor's name or the attorney's name and they include signing and delivering documents, taking part in legal proceedings and receiving any dividend arising out of the right of proof; and
- (b) delegate its powers (including this power) and may revoke a delegation; and
- (c) exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so.

15. COSTS

The Guarantor must pay or reimburse the Lender on demand for all costs and expenses it incurs relating to:

- (a) the negotiation, preparation, stamping and registration of this document;
- (b) any variation, amendment, discharge or release of this document;
- (c) any consent or approval of the Lender given under this document;
- (d) any actual or attempted exercise or enforcement of the Lender's powers or rights under this document or at law;
- (e) all taxes, stamp duties, registration fees, fines and penalties which may be paid or payable relating to this document,

including in each case legal costs and expense on a full indemnity basis or solicitor and own client basis whichever is the higher.

16. APPLICATION OF OTHER LAWS

To the extent permissible, no law applies to this document so as to extinguish, delay or otherwise prejudice any of the Lender's rights and powers under this document or otherwise available to the Lender.

17. ASSIGNMENT

Either party may only assign this document or its rights under it with the other party's written consent.

18. GST**18.1 GST exclusive**

Except under this clause, the consideration for a Supply made under or in connection with this document does not include GST.

18.2 Taxable Supply

If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this document for that Supply); and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

19. TIME OF THE ESSENCE

Time is of the essence of the Guarantor's obligations under this document.

20. GENERAL**20.1 Amendments**

This document may only be amended by written agreement between all parties.

20.2 Assignment

The Lender may assign or otherwise Deal With this document and its rights under it including by way of charge, securitisation or transfer. The Lender may disclose information to any person about the transfer, assignment, charge or securitisation. The Guarantor and any other party may only assign this document or its rights under it with the prior written consent of the Lender.

20.3 Counterparts

This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument. A party who has executed a counterpart of this document may exchange it with another party by faxing, or by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document.

20.4 No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

20.5 Entire agreement

- (a) This document together with any offer letter, facility agreement or Collateral Security supersedes all previous agreements about their subject matter and embodies the entire agreement between the parties.

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- (b) Any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to in any negotiation, arrangement, understanding or agreement, has no effect except to the extent expressly set out or incorporated by reference in any of those documents.

20.6 Further assurances

The Guarantor must promptly do all things required by the lender to give effect to this document, any Collateral Security and the transactions contemplated by them.

20.7 No waiver

- (a) The failure of a party to require full or partial performance of any provision of this document does not affect the right of that party to require that performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

20.8 Governing law and jurisdiction

- (a) Queensland law governs this document.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

20.9 Severability

- (a) A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.
- (b) If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

20.10 Non-revocation of power of attorney

Each person who signs this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

21. NOTICES AND DEMANDS

21.1 Service

A notice, demand, consent, approval or communication (**Notice**) given by a party in connection with this document must be:

- (a) in writing, in English and signed by a representative of the party; and

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- (b) hand delivered or sent by prepaid post (or airmail if applicable), email (subject to clause 21.2) or facsimile to the recipient's address for notices specified in the 'Details' section of this document (as varied by any Notice given by the recipient to the party);
 - (c) if the party is a company, the registered address as recorded with ASIC at the time of service; or
 - (d) any other address notified by a party to the other party as its address for service.

21.2 Notice by email

- (a) A Notice by email is taken to be in writing and signed by the named sender.
- (b) A Notice in respect of a party may not be given by email unless a scanned copy of the original Notice is attached to that email.

21.3 Effective on receipt

A notice given in accordance with clause 21.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered – when delivered;
- (b) if sent by prepaid post – on the second business day after the date of posting (or on the seventh business day after the date of posting if posted to, or from, a place outside Australia);
- (c) if sent electronically by email, on the earlier of:
 - (i) receipt by the sender of an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the sender's email system) unless the sender receives an automated message that the email has not been delivered or the recipient is 'out of office'; or;
 - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within eight hours after the transmission (being counted as hours from 9.00am to 5.00pm on a Business Day), the recipient informs the sender that it has not received the entire notice,

but if the delivery, receipt or transmission is not on a business day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

21.4 Ineffective service

A Notice is taken not to be received if:

- (a) in the case of service by post, the Notice is returned to sender because the postal service was unable to deliver it;
- (b) in the case of service by email, the party sending the Notice receives an automated email response specifying that the email containing the Notice was undeliverable;

- (c) in the case of service by fax, the sender's fax system generates a message stating that transmission was unsuccessful, or the Notice is not received in full and legible form.

21.5 Validity

A Notice is validly given by a party even if returned unclaimed or if the recipient has been wound up or is absent from the place the Notice is delivered or sent to.

21.6 Other methods

This clause does not limit any provision for giving Notices in this document or a Transaction Document, or limit any other method for giving Notices or serving demands provided for by law.

Execution

Executed as a deed.

LENDER:

SIGNED SEALED AND DELIVERED by
FRANCESCO MILANESI, in the presence
of:

K Hayes
Signature of witness

KYLIE HAYES
Name of witness (BLOCK LETTERS)

F Milanese
Signature of party

16/2/16
Date signed

GUARANTOR:

SIGNED SEALED AND DELIVERED by
FRANCESCO MILANESI, in the presence
of:

K Hayes
Signature of witness

KYLIE HAYES
Name of witness (BLOCK LETTERS)

F Milanese
Signature of party

16/2/16
Date signed

SIGNED SEALED AND DELIVERED by
VICKI LEANNE MILANESI, in the
presence of:

K Hayes
Signature of witness

Kylie HAYES
Name of witness (BLOCK LETTERS)

V Milanese
Signature of party

16/02/2016
Date signed