

Loan agreement

Mark Thomas Walmsley and Jack Walmsley as
trustees for Chook Super Fund

Montrose Pro Pty Ltd ACN 650 809 840 as
trustee for Montrose Pro Trust

Troy Anthony Hanifin and Denae Louise Hanifin

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Details

This loan agreement is dated: 26TH JANUARY 2022

Parties

Legal name **MARK THOMAS WALMSLEY AND JACK WALMSLEY AS TRUSTEES FOR THE CHOOK SUPER FUND**

Short name **Chook Super**

Address for service 68 Cartwright Street, Windsor, Queensland

Legal name **MONTROSE PRO PTY LTD ACN 650 809 840 AS TRUSTEE FOR MONTROSE PRO TRUST**

Short name **Borrower**

Address for service 9 Flemington Street, Hendra, Queensland

Legal name **TROY ANTHONY HANIFIN AND DENAE LOUISE HANIFIN**

Short name **Guarantors**

Address for service 9 Flemington Street, Hendra, Queensland

Background

- A The Borrower has requested the Lender to advance and provide certain funds and financial accommodation to the Borrower which the Lender has agreed to do upon the terms and conditions set out in this Agreement.
- B The Guarantors have agreed to guarantee the obligations of the Borrower in favour of the Lender under this Agreement.

Operative part

1 Definitions

- 1.1 In this Agreement the following terms have the following meanings unless the context otherwise requires:
- (a) **Advance:** the advance of \$250,000 made by the Lender to the Borrower. Any reference to "advances" has a similar meaning.
 - (b) **Advance Date:** 26 January 2022; or
 - (c) **Bank:** an authorised deposit-taking institution within the meaning of the *Banking Act 1959 (Cth)*.
 - (d) **Business Day:** a day other than a Saturday, Sunday, public holiday or bank holiday in Brisbane.
 - (e) **Event of Default:** each of the events in clause 8.
 - (f) **First Mortgagee:** Sullivans International Pty Ltd ACN 093 486 938.
 - (g) **Further Advance:** any further advances or loans made by the Lender to the Borrower.
 - (h) **Immediately Accessible Funds:** cash, bank cheques drawn on a Bank or telegraphic transfers of cleared funds.
 - (i) **Insolvency Event:** any of the following events:
 - (i) becoming insolvent;
 - (ii) committing an act of bankruptcy;
 - (iii) making an assignment for the benefit of or any composition with any of its creditors;

- (iv) having a receiver or trustee of the whole or any part of its property appointed.
- (j) **Interest Amount:** \$250,000
- (k) **Loan:** the aggregate amount of all moneys owing to the Lender by the Borrower and all actual and contingent liabilities of the Borrower to the Lender including the Advance and any Further Advance, all interest and all other sums payable to the Lender by the Borrower under or pursuant to this Agreement.
- (l) **Property:** the property known as 18 Montrose Street, Taringa, Queensland more particularly described as lots 1-5 (inclusive) on GTP 1545.
- (m) **Term:** 15 months from the Advance Date.

2 Interpretation

In the interpretation of this Agreement unless the context otherwise requires:

- (a) words denoting any gender include all other genders;
- (b) words denoting persons include all bodies, associations, trusts, partnerships, instrumentalities and entities corporate or unincorporate, and vice versa;
- (c) references to any of the parties include in the case of a person, their personal representatives and permitted assigns, and in other cases their successors and permitted assigns;
- (d) any obligation on the part of two or more persons is deemed to bind or benefit as the case may be, any two or more of them jointly and each of them severally;
- (e) words expressing the singular include the plural and vice versa;
- (f) headings are included for convenience only and do not affect the interpretation of this Agreement;
- (g) references to sections, clauses, Recitals, Schedules and Annexures are to sections and clauses of and Recitals, Schedules and Annexures to this Agreement;
- (h) references to this Agreement are to this Agreement as amended supplemented or varied from time to time;
- (i) references to any document or agreement includes all references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (j) expressions cognate with expressions defined in clause 1 are to be construed accordingly;
- (k) references to dates and times are to Brisbane time;

- (l) references to "\$" and "dollars" are to Australian dollars;
- (m) recitals to this Agreement are to be read as and form part of this Agreement;
- (n) references to writing include typing, facsimile and all other means of reproducing words in a permanent and visible form;
- (o) references to any legislation includes any legislative provision which amends, extends, consolidates or replaces it and any orders, regulations, instruments, proclamations or other subordinate legislation made under it;
- (p) references to institutes, associations, bodies and authorities whether statutory or otherwise will, if it ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred to refer to the institute, association, body or authority established or constituted in its place or which substantially succeeds to its powers or functions;
- (q) no rule of construction will apply to the disadvantage of a party because that party was responsible for the drafting of this Agreement or any part of it; and
- (r) unless application is mandatory by law, any legislation present or future will not apply to this Agreement so as to abrogate, extinguish, impair, delay or otherwise prejudicially affect the exercise or enjoyment of any rights given or accruing to any party.

3 Advance

- 3.1 It is agreed that that the Lender will provide the Advance to the Borrower on the Advance Date by way of a payment by Immediately Accessible Funds to bank account of the Borrower.

4 Interest Amount

- 4.1 The parties agree that interest does not accrue on the Loan (on a daily rate or otherwise) from the Advance Date.
- 4.2 The Borrower agrees to pay to the Lender the Interest Amount at the expiration of the Term.

5 Repayment and charging of Property

- 5.1 The Borrower must repay the Loan and the Interest Amount to the Lender at the address of the Lender specified in this Agreement or at such other place as may be notified by the Lender to the Borrower in Immediately Accessible Funds on or before the last day of the Term.
- 5.2 The Borrower may repay the Loan and the Interest Amount in full at any time prior to the last day of the Term but must first give the Lender at least 7 days written notice.

5.3 The Borrower charges the Property to the Lender (as an unregistered interest) as security for the Loan.

6 Mortgage

6.1 The Borrower will execute a mortgage over the Property containing the Titles Office standard terms dealing no. 703149459 to secure the Loan (**Mortgage**).

6.2 The Borrower must cause the Mortgage to be prepared, signed by the Mortgagor and given to the Lender when this Agreement is executed.

6.3 The Lender acknowledges and agrees not to lodge the Mortgage in the Titles Office for registration unless the Borrower is in default under this Agreement and has not remedied that default within 14 days of the Lender giving written notice to the Borrower of that default and requiring the default to be remedied.

6.4 The Lender acknowledges and agrees that:

- (a) the Borrower is borrowing funds from the First Mortgagee to be used as part of the purchase price for the Property and its development;
- (b) the Borrower will be granting a first registered mortgage over the Property to the First Mortgagee;
- (c) the registration of the Mortgage may cause the Borrower to breach the terms of its loan arrangements with the First Mortgagee and would be detrimental to the Borrower;
- (d) the Lender will not lodge the Mortgage in the Titles Office for registration unless the Borrower is in default under this Agreement and has not remedied that default within 14 days of the Lender giving written notice to the Borrower of that default and requiring the default to be remedied

6.5 Nothing in this Agreement prevents the Lender from lodging a priority notice in respect of the Property at any time.

7 Termination

7.1 This Agreement will terminate on the earlier of the following:

- (a) the last day of the Term; or
- (b) when the Loan has been repaid in full by the Borrower to the Lender in accordance with the provisions of this Agreement.

8 Events of default

8.1 If:

- (a) the Borrower fails to make any payment due pursuant to this Agreement within 7 days from the due date for payment;
- (b) this Agreement becomes wholly or partly void, voidable or unenforceable;
- (c) the Borrower suffers an Insolvency Event;
- (d) an order for payment is made or a judgement is entered against the Borrower and is not satisfied within 7 days;
- (e) any creditor of the Borrower levies, or attempts to levy, any distress or execution against any property of the Borrower; or
- (f) 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;

then the Lender may declare the Loan and the Interest Amount immediately due and payable on written notice to the Borrower.

9 Guarantee

9.1 In consideration of the Lender agreeing, at the request of the Guarantor, to enter into this Agreement with the Borrower, the Guarantor hereby agrees with the Lender as follows.

9.2 The Guarantor guarantees:

- (a) the due and punctual performance and observance of all of the Borrower's obligations, agreements, stipulations and covenants under the Agreement;
- (b) the payment of all moneys payable under or pursuant to the Agreement; and
- (c) the payment of all loss and damages (including legal costs calculated on a solicitor and own client basis) arising in any way out of any breach (actual, anticipatory or otherwise) or default in performance by the Borrower of any term or condition of the Agreement.

9.3 This Guarantee is a continuing guarantee and is not affected or avoided in any way, and nor are any of the Lender's rights, remedies or recourse against the Guarantor stayed, suspended, released or discharged by:

- (a) any agreement or arrangement made between the Lender and the Borrower whether with or without the consent of the Guarantor;
- (b) any alterations or variations of the rights and obligations of either the Lender and the Borrower;
- (c) the granting of any time or other indulgence or forbearance by the Lender to the Borrower or the Guarantor;

- (d) the making of any composition with or waiver of any breach or default by the Borrower;
- (e) the neglect or forbearance of the Lender to enforce the covenants and provisions of this Agreement or those of this Guarantee and Indemnity;
- (f) the avoidance for any reason whatsoever by statute or otherwise of any payment by or on behalf of the Borrower or any Guarantor to the Lender;
- (g) any moratorium or other period staying or suspending by statute; or
- (h) the order of any authority,
- (i) it being the intention that this Guarantee is unconditional and absolute in any and all circumstances.

9.4 The Lender is at liberty to regard the Guarantor in all respects as a principal debtor and is not obliged to take action first against the Borrower.

9.5 The obligations of the Guarantor will not merge or be deemed to have merged in any judgement obtained by the Lender against the Borrower and the Guarantor will remain liable to the Lender in terms of this Guarantee and Indemnity notwithstanding that the Lender may in the meantime obtain judgement against the Borrower.

9.6 In the event of any term of the Agreement not being enforceable against the Borrower as principal whether by reason of any legal limitation, disability or incapacity or by reason of any liquidator of the Borrower disclaiming the Agreement, the Guarantor will be responsible under this Guarantee as though the Guarantor was solely or principally liable as Borrower under the Agreement.

9.7 The Guarantor hereby waives in favour of the Lender, the Borrower and any other person any estate or assets so far as necessary to give effect to anything contained in this Guarantee.

9.8 Where more than one person is Guarantor, the Guarantor agrees that the obligations contained in this Guarantee will bind each of them jointly and severally.

9.9 As a separate and independent obligation and for the consideration referred to, the Guarantor hereby agrees to indemnify and hold harmless the Lender from and against all claims suffered or incurred by the Lender by reason of the Borrower's breach of or default in observing or performing the terms, covenants and conditions on the Borrower's part to be observed and performed under this Contract and the preceding provisions of this Guarantee apply mutatis mutandis to this indemnity.

10 Notices

10.1 All notices and other communications between the parties may be sent by prepaid express or registered post, by hand delivery or by facsimile or email transmission to the addressees contained in this Agreement or to such other address or person as a party may specify by notice in writing to the other. All notices will be treated as being delivered immediately if

personally delivered, left at the address contained in this Agreement or sent by facsimile or email transmission, provided the sender's transmission record indicates that the same was received without error in the event it is sent by facsimile or email.

11 Costs, duty, etc.

- 11.1 Each party will pay their own costs, charges and expenses of and relating to this Agreement including legal costs.
- 11.2 The Borrower must pay to the Lender on demand all moneys which the Lender pays or becomes liable to pay in exercising any of its rights or remedies under this Agreement contained or implied or on account or arising out of any default by the Borrower in duly performing or observing any of the covenants or agreements on the part of the Borrower in this Agreement contained or implied, which will be added to and form part of the Loan.
- 11.3 Such moneys will be paid by the Borrower on demand.

12 Further assurances

- 12.1 The parties agree and agree to procure every other person as required to sign all documents and otherwise do all such acts, matters and things as may be necessary or desirable to give full force and effect to this Agreement.

13 General

13.1 Entire Agreement

This Agreement constitutes the full and complete understanding between the parties with respect to the subject matter of this Agreement. There is no other oral understanding, agreement, warranty or representation whether express, implied or collateral in any way extending, defining or otherwise relating to its provisions or binding on the parties. The parties acknowledge that they have not been induced to enter this Agreement based on any representation other than as expressly recorded in this Agreement.

13.2 Amendments

No modification to this Agreement will be binding on any party unless made in writing properly and duly executed by that party.

13.3 GST

Where goods and services tax (or any similar tax GST) is applicable to any supply under or in connection with this Agreement (including any supply as defined by GST legislation) and a party is required to make payment for that supply to another party, then the party required to make the payment will pay the applicable GST in addition to the base amount payable.

13.4 Waiver

The failure of either party to exercise any right arising as a result of a breach by the other will not waive that right, nor will any practice developed between the parties waive or lessen their rights under this Agreement.

13.5 Counterparts

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, and all of which together will constitute the Agreement.

13.6 Non Business Days

If any day appointed or specified by this Agreement for the payment of any money or the doing of any act, matter or thing, falls on a non Business Day in Brisbane the day so appointed or specified will be deemed to be the next Business Day.

13.7 Time of the essence

In every respect, time will be of the essence of this Agreement.

13.8 Governing Law

This Agreement will be construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the Queensland courts notwithstanding the domicile or residence of any party or the occurrence of any act, matter or thing outside of Queensland.

13.9 Severance

If any provision of this Agreement is, for any reason, considered or found by a court of competent jurisdiction or any competent government authority to be invalid, illegal or unenforceable, that provision is to be severed from the remainder of the provisions of this Agreement and will be deemed never to have been part of this Agreement. The remainder of the provisions of this Agreement will remain in full force and effect unless the basic purposes of this Agreement are defeated.

13.10 Assignment

No party will assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other parties except in accordance with the provisions of this Agreement.

Execution page

Executed as an agreement:

SIGNED SEALED AND DELIVERED by)
MARK THOMAS WALMSLEY AND JACK)
WALMSLEY AS TRUSTEES FOR THE CHOOK)
SUPER FUND in the presence of)

J.T.A.
.....

witness

JEREMY TROST
.....

Print Full Name

[Handwritten Signature]
.....

[Handwritten Signature]
.....

EXECUTED BY MONTROSE PRO PTY LTD ACN 650)
809 840 AS TRUSTEE FOR MONTROSE PRO)
TRUST in accordance with the Corporations Act by)
authority of its director(s))

[Handwritten Signature]
.....

Signature of Director

[Handwritten Signature]
.....

Signature of ~~Director/Secretary/Sole~~
Director & Secretary*

*delete whichever is not applicable