

TURTLES SUPER TRUST Loan Agreement

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This Deed is made on the Agreement Date.

BETWEEN: The parties named in Item 2 in the Schedule.

RECITALS:

- A The Borrower has requested the Lender to lend and advance the Principal Sum to the Borrower.
- B The Principal Sum will be applied for the acquisition of the Asset.
- C The legal title to the Asset will be held by the Trustee as trustee for the Borrower.
- D The Lender has agreed to lend and advance the Principal Sum to the Borrower on the terms and conditions contained in this Agreement.

OPERATIVE PART:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context or subject matter require otherwise:

Act means the Superannuation Industry (Supervision) Act 1993;

Act of Insolvency means, in addition to any other analogous act referred to in this Agreement, the Borrower:

- (a) has a liquidator, receiver, manager, administrator (or similar appointment) appointed over the whole or part of its undertaking;
- (b) is unable to pay its debts as and when they fall due;
- (c) fails to discharge any application for winding up, administration or similar matter within twenty-one (21) days of the application being made;
- (d) enters into any arrangement or composition with its creditors; or
- (e) commits any act of insolvency similar to or analogous with the above;

Agreement Date means the date specified in Item 1 in the Schedule or if not specified, the date of execution or signature by the Borrower;

Applicable Law means the law of that place in which the Asset is located;

Asset means the property or assets described in Item 4 in the Schedule and all additions and appurtenances to it and includes any Replacement Asset;

Claim means a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, chose in action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against a person, however arising and whether ascertained or unascertained, or immediate, future or contingent;

Commencement Date means the date of the first drawdown of the Principal Sum by the Borrower;

Event of Default means each of the events described in clause 6;

Final Payment Date means the last day of the Term;

Guarantor includes any person giving a guarantee or other security to any other person to secure the performance of the Borrower's Obligations under this Agreement;

Interest means the interest calculated on the Principal Sum at the Interest Rate in accordance with this Agreement;

Interest Rate means:

- (a) if Division 7A of the *Income Tax Assessment Act 1936* applies to the loan evidenced by this Agreement, the higher of the rate specified in Item 5 in the Schedule and the benchmark interest rate for the purposes of Division 7A of the *Income Tax Assessment Act 1936* expressed as a rate per annum; or
- (b) in all other cases, the rate specified in Item 5 in the Schedule;

Notice means a written notice, consent, approval, direction, order or other communication;

Notice Address means the last address for a person as recorded in the records of the Lender and may include facsimile numbers or electronic mail addresses and at the Agreement Date means the details in relation to the Borrower or the Lender listed in the Schedule;

Obligation includes any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;

Principal Sum means the amount specified in Item 3 in the Schedule;

Replacement Asset has the same meaning as in Section 67B(2) of the Act;

Right includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, entitlement, discretion or cause of action;

Security means the security interest described in Item 4 in the Schedule and/or any security provided to secure the Borrower's Obligations under this Agreement and any other security provided by or on behalf of the Borrower in substitution for or addition to that security at any time;

Term means:

- (a) the period specified in Item 6 in the Schedule; or
- (b) if Division 7A of the *Income Tax Assessment Act 1936* applies to the loan evidenced by this Agreement, the day which is calculated so as to give a maximum term under Section 109N(3) of the *Income Tax Assessment Act 1936* or any regulations made under it in relation to the loan of the Principal Sum,

whichever is the lesser and which period commences on the Commencement Date.

1.2 Interpretation

- (a) Each party to this Agreement will be referred to in this Agreement by the description against their name in Item 2 in the Schedule.
- (b) In the interpretation of this Agreement, unless the context or subject matter require otherwise, references to:
 - (i) **singular** words include the **plural** and vice versa;
 - (ii) any **gender** include every gender;
 - (iii) **persons** include natural persons, firms, companies, corporations, bodies corporate, trustee, trusts, associations, partnerships, government authorities, and other legal entities. It will include references to that person's estate, personal representatives, executors, administrators, substitutes, successors and assigns;
 - (iv) **writing** include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible or electronic form, in English;
 - (v) **signature** and **signing** mean due execution of a document and include signing by an agent or attorney or representative;
 - (vi) **months** mean calendar months;
 - (vii) **statutes** include statutes amending, modifying, rewriting, re-enacting, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, orders in council and ordinances made under those statutes;
 - (viii) **sections** of statutes or terms defined in statutes are to corresponding sections or defined terms in amended, consolidated or replacement statutes;
 - (ix) an **agreement** or **document** (including this Agreement) mean that agreement or document as varied, amended, novated or supplemented and includes all recitals, schedules, appendices and exhibits to it;
 - (x) **clauses** or **schedules** are to the clauses or schedules of this Agreement;
- (c) The following rules apply, unless the context or subject matter requires otherwise:
 - (i) **headings** and the table of contents are used for convenience only and must be disregarded in the interpretation of this Agreement;
 - (ii) if a word or phrase is given a **defined meaning**, another grammatical form of that word or phrase has a corresponding meaning.

1.3 Business days

If the day on or by which a person must do something under this Agreement is not a business day, the person must do it on or by the previous business day.

2. LOAN

2.1 Request

The Borrower has requested the Lender to lend the Principal Sum to the Borrower.

2.2 Loan

The Lender has advanced the Principal Sum to the Borrower or has agreed to lend the Principal Sum to the Borrower on the Commencement Date subject to the terms of this Agreement.

3. LOAN PURPOSE

The Principal Sum must not be used or applied for any purpose other than in the acquisition of the Asset or as otherwise permitted under Section 67A of the Act.

4. PAYMENTS

4.1 Repayment of Loan

- (a) The Borrower must repay the Principal Sum (or the amount then outstanding) and all Interest accrued but unpaid on the Principal Sum to the Lender on or before the Final Payment Date.
- (b) The Borrower may pay the whole or part of the outstanding balance of the Principal Sum and all Interest accrued but unpaid on the Principal Sum at any time prior to the Final Payment Date.

4.2 Interest

- (a) The Borrower must pay Interest on the Principal Sum or on the amount then outstanding and upon any judgment or order in which this or the preceding clause may become merged.
- (b) Interest will be calculated monthly in arrears and paid at the Interest Rate until the Principal Sum is fully paid and satisfied.

4.3 Instalments

- (a) During the Term, the Borrower will repay the Principal Sum and Interest:
 - (i) by monthly payments compounded of principal and interest; or
 - (ii) in such other manner agreed by the Lender and the Borrower.
- (b) If Division 7A of the *Income Tax Assessment Act 1936* applies to the loan evidenced by this Agreement, the Principal Sum may, at the sole discretion of the Borrower, be repaid by the Borrower to the Lender in accordance with the minimum yearly repayment requirements set out in the *Income Tax Assessment Act 1936* so that the loan constituted by the Principal Sum will not be deemed to be a dividend as a consequence of having failed to meet the minimum yearly repayment requirements.

4.4 Late payment

If the Borrower does not pay any amount representing Interest on the due date for payment then the Lender may in its discretion, by notice to the Borrower, require the Borrower to pay Interest on the Principal Sum at the Interest Rate plus 2 percent per annum until the amount which is then in

arrears is paid and satisfied by the Borrower. The Lender may treat the failure to pay any amount as an Event of Default even if it elects to require the payment of the higher rate of interest under this clause.

4.5 No redraw

The Borrower is not entitled to redraw the Principal Sum or any part of it or any other amount which has been paid or repaid to the Lender under this Agreement.

5. NO DEDUCTIONS IN PAYMENTS

All moneys payable by the Borrower under this Agreement must be paid in cleared funds without set-off or counter-claim and free of all deductions as and to any account which the Lender directs and in Australian dollars.

6. EVENTS OF DEFAULT

Each of the following constitutes an Event of Default:

- (a) the Borrower fails to pay any amount due under this Agreement on the due date for payment;
- (b) the Borrower defaults in the performance of any Obligation contained in or implied by this Agreement or any Security;
- (c) the Borrower commits an offence under any statute or law or a person is appointed to investigate all or any part of the affairs of the Borrower;
- (d) if any of the representations and warranties in clause 8 of this Agreement are found to be untrue or materially inaccurate when made or deemed to be made;
- (e) in the opinion of the Lender there is a material adverse change in the financial condition of the Borrower, including without limitation;
 - (i) a receiver, receiver and manager or liquidator or provisional liquidator or trustee, administrator, inspector or official manager or person with similar authority is appointed to the Borrower's undertaking or any part of it;
 - (ii) an application for winding up or bankruptcy as the case may be in respect of the Borrower is presented or an order is made or any effective resolution is passed for the winding up or bankruptcy of the Borrower;
 - (iii) the Borrower enters into an arrangement, assignment or composition with its creditors or proposes to enter into such arrangement, assignment or composition; and/or
 - (iv) the Borrower is unable to pay its debts as and when they fall due;
 - (v) the Borrower commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or enters or proposes to enter into any arrangement or composition with its creditors;
 - (vi) any distress, execution or sequestration or other process is levied or forced upon or any order is made against the property and assets of the Borrower and is not paid out, removed or discharged within fourteen (14) days;

- (f) the Borrower commits an Act of Insolvency.

7. RIGHTS UPON DEFAULT

7.1 Lenders Rights

Subject to clause 13, at any time after an Event of Default has occurred the Lender may do any or all of the following:

- (a) terminate this Agreement;
- (b) demand and require immediate payment of the outstanding balance of the Principal Sum and all other amounts payable by the Borrower under this Agreement and recover the those amounts from the Borrower;
- (c) exercise any Rights under this Agreement and/or any Security; and/or
- (d) perform any one or more of the Borrower's Obligations under this Agreement or any Security,

and any restriction, requirement for notice or effluxion of time stipulated or required by any statute is excluded as far as it is lawful to do so.

7.2 No Obligation

The Rights of the Lender in clause 7.1 may be exercised in the manner and at the times in which the Lender in its absolute discretion deems appropriate but without any Obligation to do so. The Lender will not be liable for any loss or damage arising from the exercise of any Right or any omission, neglect, delay or waiver of the Right.

8. REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties

The Borrower represents and warrants to the Lender that:

- (a) **Power** - it has full legal capacity and power to enter into, exercise its Rights and perform its Obligations under this Agreement;
- (b) **Authorisation** - all conditions and things required by applicable law to be fulfilled or done including obtaining any necessary authorisations in order:
 - (i) to enable it lawfully to enter into, and exercise its Rights and perform its Obligations under this Agreement;
 - (ii) to ensure that its Obligations under this Agreement rank and will continue to rank at all times in accordance with clause 8.1(d); and
 - (iii) to make this Agreement admissible in evidence in any court under the Applicable Law,

have been fulfilled or done;

- (c) **Obligations Binding** - this Agreement constitutes valid and legally binding Obligations, enforceable against it in accordance with their terms except to the extent limited by equitable principles and laws affecting creditors' rights generally;

- (d) **Ranking of Obligations** - its payment obligations under this Agreement rank and will continue to rank at all times at least equally with all its other present and future unsecured payment Obligations (including, without limitation, contingent Obligations), other than those which are mandatorily preferred by law;
- (e) **No Contravention** - its execution of this Agreement and/or its exercise of any Rights and/or performance of its Obligations under this Agreement does not or will not:
 - (i) contravene any applicable law to which it, or any of its property, is subject or any order of any government agency binding on it or any of its property;
 - (ii) contravene any authorisation or require that any authorisation be obtained; or
 - (iii) contravene any undertaking or instrument binding on it or any of its property;
- (f) **No Litigation** - no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of the Borrower, threatened against it or any of its property which could have a material adverse effect on it;
- (g) **No Filings or Taxes** - it is not necessary or desirable to ensure the legality, validity, enforceability or admissibility in evidence of this Agreement that this Agreement, or any other instrument, be filed or registered with any government agency or that any taxes be paid.

8.2 Reliance on Representations and Warranties

The Borrower acknowledges that the Lender will enter into this Agreement and has agreed to lend and advance the Principal Sum in reliance on the representations and warranties in this clause.

9. BORROWER'S UNDERTAKINGS

The Borrower will:

- (a) **Information** - provide the Lender with any information relating to its financial condition, business, assets and affairs as the Lender requests;
- (b) **Records** - keep proper financial records and permit the Lender to examine and take copies of those financial records and all other documents relating to its finances;
- (c) **Comply with Applicable Law** - comply with all applicable laws including, without limitation, by paying all taxes to which it or its assets are assessed or liable when due except to the extent that these are being diligently contested in good faith and by appropriate procedures and adequate reserves for them have been made;
- (d) **Authorisations** - obtain, maintain and comply with any conditions attaching to any authorisations which it requires to carry out the transactions contemplated by this Agreement and to ensure the validity, enforceability and admissibility of it in evidence;
- (e) **Notice of Litigation** - give the Lender prompt notice of any litigation, arbitration or administrative proceedings affecting it or any of its property which could have an adverse effect on it.

10. GUARANTEE AND INDEMNITY

Each Guarantor guarantees to the Lender:

- (a) the repayment by the Borrower of the Principal Sum; and
- (b) the payment of all other amounts payable by the Borrower under this Agreement; and
- (c) the performance of the Borrower's Obligations, under this Agreement,

and fully indemnifies the Lender from and against any Claim arising directly or indirectly from the occurrence of any Event of Default and/or from the performance by the Lender of its Rights and Obligations pursuant to this Agreement. The Lender's Rights may be limited by the provisions of clause 14.

11. CHARGE

- (a) The Borrower charges all of its right, title and interest in the Asset as security for the repayment of the Principal Sum and with the payment of all sums due and owing or payable by the Borrower under this Agreement. The Borrower will at the Lender's request do all things and execute and deliver all documents or instruments required by the Lender (including, where applicable, the Security) to enable the Lender to perfect the security granted by this clause or otherwise to secure the Obligations of the Borrower.
- (b) Where a Guarantor is the legal or registered owner of the Asset, that Guarantor charges the Asset as security for the repayment of the Principal Sum and with the payment of all sums due and owing or payable by the Borrower under this Agreement. The Guarantor will at the Lender's request do all things and execute and deliver all documents or instruments required by the Lender (including, where applicable, the Security) to enable the Lender to perfect the security granted by this clause or otherwise to secure the Obligations of the Borrower.

12. INDEMNITIES

12.1 Indemnity

Subject to clause 13, the Borrower fully indemnifies the Lender from and against any expense, loss, loss of profit, damage or liability which the Lender may incur as a consequence of any Event of Default or otherwise in connection with this Agreement and/or any Security.

12.2 Amount

The certificate of the Lender stating the amount of any amounts owing by the Borrower under clause 12.1 will be conclusive in the absence of manifest error.

13. LIMITED RECOURSE

13.1 Limit Claim

The Lender acknowledges that the Borrower is a regulated superannuation fund under the Act and that, in accordance with section 67A of the Act, and regardless of any other provision in this Agreement or any Security:

- (a) The Rights of the Lender or any other person against the Borrower for, or in connection with, or as a result of (directly or indirectly) a default on the borrowing under this Agreement, or on the sum of the borrowing under this Agreement and charges relating to that borrowing are limited to Rights relating to the Asset;
- (b) As between the Lender and the Borrower, the Lender may only have recourse against the Asset for the payment of:

- (i) any Obligation of or Claim against the Borrower under this Agreement or any Security; or
- (ii) any debt, damage, judgment or decree against the Borrower arising out of this Agreement or any Security, or
- (iii) any money that may otherwise become due or payable by the Borrower to the Lender.

13.2 Other persons

Subject to clause 14, clause 13.1 does not affect any of the Lender's Rights or the amount of any Claim of the Lender:

- (a) against any person other than the Borrower; and/or
- (b) whether those Rights or Claims arise under this Agreement or under any Security or otherwise.

14. PROTECTION OF REGULATED SUPERANNUATION FUND

Regardless of any other provision in this Agreement (particularly clauses 4, 7, 10, 11 and 12):

- (a) no person (including any Guarantor and/or the Lender) has any Rights under this Agreement in relation to or against any of the assets, undertaking or property of the Borrower other than the Borrowers interest (if any) in the Asset;
- (b) where a person becomes liable to the Lender, under any provision of this Agreement or otherwise, for the payment of the Principal Sum or any other sum or for the performance of any other Obligation, the Lender must not make any Claim against that person in respect of any right, title or interest which the person may have or exercise in relation to any of the assets, undertaking or property of the Borrower other than the Asset;
- (c) where the Borrower becomes liable to a Guarantor, (whether under a provision of this Agreement or otherwise) for the payment of the Principal Sum or any other sum or for the performance of any other Obligation, the Guarantor must not make any Claim against the Borrower in respect of any right title or interest which the Borrower may have or exercise in relation to any of the assets, undertaking or property of the Borrower other than the Asset;
- (d) any Right of subrogation of any person (including a Guarantor) and the enforcement of that Right against the Borrower in relation to any part of the Principal Sum or any other Obligation under this Agreement is limited, as against the Borrower, to a Right of subrogation against the Asset.

15. COSTS

The Borrower must pay all costs (including legal costs) expenses and other amounts incurred or paid by the Lender in relation to this Agreement and the Security and (including those arising in consequence of any Event of Default) on demand by the Lender, and any stamp duties and taxes payable in relation to this Agreement or any Security.

16. ASSIGNMENT

16.1 Assignment and consent

No party is entitled to assign its Rights or Obligations under this Agreement or any Security without the prior written consent of the other parties. The consent of any party may be given or withheld, or given on conditions, in the absolute discretion of that party.

16.2 Continuation of liabilities

After an assignment by the Borrower:

- (a) the assignor remains principally liable jointly and severally with the assignee for the performance and observance of all Obligations assigned to the assignee; and
- (b) the assignor will procure the assignee to enter into a deed in which the assignee covenants to be bound by this Agreement, including (without limitation) this clause.

17. NOTICES

17.1 Form of notice

Unless this Agreement provides for a Notice to be given orally, any Notice in connection with this Agreement, must be in writing and signed by the person giving the Notice and be addressed to the Notice Address of the person to whom it is to be given.

17.2 Time of delivery

The Notice will be deemed to be received:

- (a) in the case of a posted letter, on the third day after posting;
- (b) in the case of delivery by generally recognised overnight courier, on the second day after dispatch with that courier;
- (c) in the case of personal delivery, on the date of delivery;
- (d) in the case of facsimile transmission, at the time recorded on the transmission report from the machine from which the facsimile was sent;
- (e) in the case of transmission by electronic mail, on the day of transmission if the electronic medium sending the notice states that the transmission was completed before 5:00pm on a business day, otherwise on the next business day. This method of service is effective only if the medium's report states that it was sent in full and without error and the message is not rejected or undeliverable as evidenced by a message to that effect received by the sender.

18. PROPER LAW, JURISDICTION

18.1 Choice of Law

This Agreement is governed by and construed in accordance with the Act and the Applicable Law.

18.2 Jurisdiction

Actions, suits or proceedings relating in any way to this Agreement or documents or dealings contemplated by it, may be instituted, heard and determined in a court of competent jurisdiction in accordance with the Act and the Applicable Law.

18.3 Submission to jurisdiction

Each party irrevocably submits to the non-exclusive jurisdiction of those courts for the purpose of any such action, suit or proceeding.

18.4 Service of process

A party may by Notice appoint another person at a specified address to receive service of process in connection with proceedings and process served on that person is taken to be served on the party making the appointment.

19. GENERAL PROVISIONS

19.1 Variations

No variation of this Agreement nor consent to a departure by a party from a provision, will be of effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any variation or consent will be effective only to the extent to or for the event for which it may be made or given.

19.2 Waiver

The non-exercise of or delay in exercising a Right of a party does not operate as a waiver of that Right, nor does a single exercise of a Right preclude another exercise of it or the exercise of other Rights. A Right may only be waived by notice, signed by the party (or its authorised representative) to be bound by the waiver.

19.3 Further assurances

Each party to this Agreement must do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it by another party to carry out and give effect to the terms of this Agreement and to perfect, protect and preserve the Rights of the parties to this Agreement.

19.4 Liability of parties

If a party consists of more than one person:

- (a) an Obligation of those parties is a joint Obligation of all of them and a several Obligation of each of them;
- (b) a Right given to those parties is a Right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

19.5 Counterparts

This Agreement may be signed or executed in a number of counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument.

19.6 Warranty of authority

Each person signing this Agreement:

- (a) as attorney, by so doing, warrants to the other parties that, as at the date of signing, the signatory has not received notice or information of the revocation of the power of attorney appointing that person; and
- (b) as an authorised representative, agent or trustee of a party, warrants to the other parties that, as at the date of signing, the signatory has full authority to execute this Agreement on behalf of that party.

19.7 Severability

This Agreement will be interpreted and construed so as not to be invalid, illegal or unenforceable, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision will be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of that provision and this Agreement will not in any way be affected or impaired and will continue regardless of that illegality, invalidity or unenforceability.

19.8 Delivery as a deed

Each party by signing or executing this Agreement is deemed to unconditionally sign, seal and deliver this Agreement as a deed, with the intention of being immediately legally bound by this Agreement.

19.9 Conclusive evidence

The certificate of the Lender as to the amount of the Principal Sum and/or any other amount outstanding and payable by the Borrower to the Lender will be conclusive evidence of the amount due and payable by the Borrower under this Agreement in the absence of any apparent inaccuracy.

20. TIME

Time is of the essence of the Borrower's Obligations.

Schedule

- Item 1: Agreement Date:** / /
- Item 2: Borrower:** TURTLES FUND PTY LTD ACN 654 724 679 As Trustee For TURTLES SUPERANNUATION FUND
- Lender:** BLACKHAUS CONSTRUCTION PTY LTD ACN 619 529 234
- Guarantor:** TURTLES SUPER PROPERTY PTY LTD ACN 654 724 857 in its personal capacity and As Trustee For TURTLES SUPER TRUST
- Trustee:** TURTLES SUPER PROPERTY PTY LTD ACN 654 724 857 As Trustee For TURTLES SUPER TRUST
- Item 3: Principal Sum:** \$373800.00
- Item 4: Asset:** Real Property situated at: LOT 1
2 PAGE STREET
KUNDA PARK QLD 4556
- Security:** Mortgage given by the Trustee in favour of the Lender in respect of the Asset.
- Item 5: Interest Rate:** The Reserve Bank of Australia Indicator Lending Rates for banks providing standard variable housing loans for investors published in May in the financial year immediately prior to the then current financial year.
- Item 6: Term:** 15 year/s

Executed as a Deed

EXECUTED AS A DEED by TURTLES FUND)
PTY LTD ACN 654 724 679 As Trustee For)
TURTLES SUPERANNUATION FUND.)

ANDREW JAMES KERR
Director

STACEY ANN KERR
Director

EXECUTED AS A DEED by BLACKHAUS)
CONSTRUCTION PTY LTD ACN 619 529 234.)

ANDREW JAMES KERR
Sole Director / Sole Secretary

EXECUTED AS A DEED by TURTLES SUPER)
PROPERTY PTY LTD ACN 654 724 857.)

ANDREW JAMES KERR
Director

STACEY ANN KERR
Director