



THE PROTECTOR

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Accountant's Statement of Financial Solvency

I, David Sidhu of IPS Super, 5 Smith Street , Gold Coast Queensland 4215 state that, having reviewed and considered the financial position of John Smith and Sally Smith immediately before making the gift recorded by the Deed of Gift executed between the Giftees and the Gifter (attached), I have reasonable grounds to believe that John Smith and Sally Smith are able to pay their debts as and when they fall due.

In making this decision I have discussed the financial position with the Giftees and also have prepared and reviewed their financial statements and tax returns and for any entities that they have an interest in.

Dated:

Signature of David Sidhu



DEED OF GIFT

BETWEEN

JOHN SMITH AND SALLY SMITH

(THE GIFTER)

AND

SMITH NOMINEES PTY LTD ACN: 123 223

423 ATF THE SMITH LEADING MEMBER

TRUST

(THE GIFTEE)

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DEED OF GIFT

THIS DEED IS DATED: 24 March 2020

PARTIES:

1. JOHN SMITH OF 5 SMITH STREET, SYDNEY NEW SOUTH WALES 2000 AND SALLY SMITH OF 5 SMITH STREET, SYDNEY NEW SOUTH WALES 2000 (the Gifter)
2. SMITH NOMINEES PTY LTD ACN: 123 223 423 OF 5 SMITH STREET, SYDNEY NEW SOUTH WALES 2000 ATF THE SMITH LEADING MEMBER TRUST (the Giftee)

RECITALS:

- A. The Gifter wishes to gift to the Giftee cash and/or Property as shown on the attached schedule (**'gift'**).
- B. The Giftee agrees to accept the gift upon the terms and conditions contained in this Deed.

OPERATIVE PROVISIONS:

DEFINITIONS

- 1.1 In this Deed, unless the context or subject matter otherwise requires:

'Deed' means this document including schedules and annexures, to which the agreement to the terms and conditions is expressed by the signatories representing all Parties.

'Party' means a party to this Deed and its successors and permitted assigns, and

'Parties' means all of them.

'Property' means any property, both corporeal or incorporeal that is the subject of this Deed of Gift passing the ownership of the Property from the Gifter to the Giftee absolutely including cash and any debt arising in any manner whatsoever including any unpaid present entitlement or benefit owing from a trust or superannuation fund.

OWNERSHIP

- 2.1 The Gifter represents and covenants to the Giftee that:
- (a) they have absolute ownership and title to the gift including any cash or amount owing to the Gifter;
 - (b) they do not require the consent or approval of any other person (including but not limited to immediate family, friends, partners, trustees or business associates) to make this gift; and

- (c) they have not transferred, assigned or bequeathed any rights in respect of the ownership to the gift to any other person (including but not limited to immediate family, friends, partners or business associates).

TRANSFER OF THE GIFT

- 3.1 The Gifter assigns absolutely and transfers all interest in and title to the gift of Property to the Giftee at the date of signing of this Deed.
- 3.2 The Gifter will do all things reasonable and necessary to transfer and grant the gift to Giftee including executing this Deed and all other necessary papers and forms.
- 3.3 On receipt of the gift the Giftee may use the gift as it sees fit without further consultation with the Gifter.
- 3.4 The Giftee may loan or apply the gift to any person or arrangement it sees fit.

ACKNOWLEDGEMENT

- 4.1 The Giftee may acknowledge the gift to it by the Gifter through acknowledgements, both verbally and in writing, when and where it is appropriate and reasonable to do so.

GENERAL

- 5.1 This Deed will be governed by and construed in accordance with the laws of the QLD and the Parties agree to submit to the jurisdiction of the courts in QLD.
- 5.2 If any provision of this Deed is held to be invalid or unenforceable for any reason, it will be severable and will not affect the remaining provisions of this Deed especially title to the gift by Giftee.
- 5.3 This Deed contains the entire agreement and understanding between the Parties in relation to the matter the subject of this Deed. This Deed supersedes any prior agreements, understandings and negotiations between the Parties in relation to those matters.
- 5.4 This Deed may not be modified, amended, added to or otherwise varied except by a document in writing signed by each of the Parties.
- 5.5 No failure on the part of the Giftee to exercise, and no delay in exercising, any right under this Deed will operate as a waiver thereof.

EXECUTED AS A DEED BY THE PARTIES

1: THE GIFTER

JOHN SMITH OF 5 SMITH STREET, SYDNEY NEW SOUTH WALES 2000 AND SALLY SMITH OF 5 SMITH STREET, SYDNEY NEW SOUTH WALES 2000

i. Signed by:

.....
John Smith
Gifter

.....
Date

Witnessed by:

.....
Witness Signature

.....
Date

.....
Witness Name

ii. Signed by:

.....
Sally Smith
Gifter

.....
Date

Witnessed by:

.....
Witness Signature

.....
Date

.....
Witness Name

2: THE GIFTEE

SMITH NOMINEES PTY LTD ACN: 123 223 423 OF 5 SMITH STREET, SYDNEY NEW SOUTH WALES 2000 ATF THE SMITH LEADING MEMBER TRUST

.....
John Smith
Director

.....
Date

SCHEDULE 1: GIFTED PROPERTY

The Gifter hereby gifts, subject to this Deed the following Property:

Cash: \$1,100.00



DEED OF PROMISSORY NOTE

BETWEEN

JOHN SMITH
("THE PROMISOR")

AND

SMITH NOMINEES PTY LTD - ACN: 123 223
423 ATF THE SMITH LEADING MEMBER TRUST
("THE PROMISEE")

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DEED OF PROMISSORY NOTE

THIS DEED IS DATED: 24 March 2020

PARTIES:

1. PROMISOR:

JOHN SMITH of 5 SMITH STREET, SYDNEY, NSW 2000 ("The Promisor")

2. PROMISEE:

SMITH NOMINEES PTY LTD - ACN: 123 223 423 of 5 Smith Street, Sydney, NSW 2000
ATF THE SMITH LEADING MEMBER TRUST ("The Promisee")

WHEREAS

(a) The Promisor will repay the Promisee the said monies with an additional compensation payment for use of the monies for the term of the agreement. Any failure to pay the original monies and compensation amount may result in a penalty payment if determined under this Deed.

(b) The terms upon which the Promissory Note is established are set out in this Deed.

THIS DEED WITNESSES:

1. Definitions and Interpretation

In this deed the terms and words hereunder shall have the following meanings unless otherwise indicated by the context:

'Financial Year' means the period from the date of this deed to midnight 30 June next, and thereafter each period of 12 months ending at midnight on 30 June, and if the termination date is not 30 June in any year, the last financial year shall be the period commencing on 1 July prior to the termination date and ending on the termination date.

'Compensation Payment' is the amount to be paid by the Promisor for the use of the monies under this Promissory Note for the period of the note.

'Promisor' means that person or entity who agrees to the terms of this Deed for the consideration of monies received from the Promisee.

'Promisee' means that person or entity who agrees to the terms of this Deed for the consideration of monies paid to the Promisor.

'Termination date' means 23 March 2030

'Promissory Note' means:

- the money paid by the Promisee to the Promisor under this Promissory Note; and
- all other money and property which becomes subject to the rights and obligations of this Deed.

Words importing any one gender shall be deemed and taken to include all genders and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided.

Headings shall not be taken into account in the construction of this Deed.

2. Promise to Pay and Compensation

2.1 For value received, the Promisor hereby promises to pay the Promisee the total sum of \$1,150,000 together with a compensation payment of \$50,000 payable on the Termination Date being 23 March 2030.

3. Repayment

3.1 The entire outstanding amount shall become immediately payable upon demand by the holder of this Note, but demand shall not be made before the Termination Date.

3.2 The Promisor may prepay this Note in full or in part at any time without premium or penalty. All prepayments shall first be applied to the accrued compensation payment and thereafter to the promised amount.

4. Late Payment Charges

4.1 No late payment charges will apply.

5. Amendment; Modification; Waiver

This Promissory Note can be altered or modified, or any provision waived, only through a written instrument expressly referring to this Promissory Note and to such provision that is altered, modified or waived. Such instrument shall be executed by both parties.

6. Breach of Promissory Notes

If there is breach of any of the provisions of this Promissory Note, such provision shall not be deemed waived unless it is waived in writing. In the event of default, any litigation with respect to any matter connected with this Promissory Note, the prevailing party shall be entitled to reasonable costs and attorneys' fees.

7. Transfer

This Note is transferrable by Promisee. The Promisor waives any notice of transfer and agrees to be bound by the Terms of this Note. Any subsequent holder of this Note will have the same rights as the Lender.

8. Successors

The provisions of this Note shall be binding upon and shall benefit the successors, assignees, legal heirs, survivors and personal representatives of the Promisor and the Promisee.

9. Severability

If any provision of this Note remains unenforceable, all the other provisions will remain in effect.

10. Governing Law

This Promissory Note shall be enforced according to the laws of Queensland.

EXECUTED AS A DEED BY THE PARTIES:

1. PROMISOR

i. Signed by: John Smith

.....
John Smith
Promisor

.....
Date

Witnessed by:

.....
Witness Signature

.....
Date

.....
Witness Name

2. PROMISEE

SMITH NOMINEES PTY LTD - ACN: 123 223 423 ATF THE SMITH LEADING MEMBER TRUST
by being signed by the persons authorised to sign for the company pursuant to section 127
of the Corporations Act 2001:

.....
John Smith
Director

.....
Date



LOAN AGREEMENT

BETWEEN

SMITH NOMINEES PTY LTD. - ACN 123 223 423 ATF THE
SMITH LEADING MEMBER TRUST
(THE“LENDER”)

AND

JOHN SMITH AND SALLY SMITH
(THE“BORROWER”)

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LOAN AGREEMENT

DATE: 24 March 2020

PARTIES:

1. THE LENDER: SMITH NOMINEES PTY LTD. - ACN 123 223 423 OF 5 SMITH STREET SYDNEY NSW 2000 ATF THE SMITH LEADING MEMBER TRUST (“the Lender”).
2. THE BORROWER: JOHN SMITH OF 5 SMITH STREET SYDNEY NSW 2000 AND SALLY SMITH OF 5 SMITH STREET SYDNEY NSW 2000 (“the Borrower”).

BACKGROUND:

- A. The Lender will lend monies to the Borrower subject to the terms and conditions of the Loan are to be found in this Loan Agreement and specifically in Schedule 1.

THE PARTIES AGREE:

1. LOAN AGREEMENT

1.1 LOAN OF MONIES

At the Commencement Date the Lender will loan Monies to the Borrower under the Loan Agreement. The Loan Amount may be pursuant to a Line of Credit between the Lender and the Borrower. The Loan Amount is to be found in SCHEDULE 1.

1.2 TERM OF THE LOAN AGREEMENT

The term of the Loan Agreement for a is set down in SCHEDULE 1 and is to be 10 years. The Lender and Borrower may by mutual agreement extend the Loan Agreement for any such period and any extension does not result in a new loan but a continuation of this Loan Agreement.

1.3 INTEREST RATE

The interest rate for the Loan Agreement is Variable to increase or decrease in line with the Reserve Bank variable interest rate. The Lender and Borrower may review the interest rate at any time and no later than the anniversary of the loan agreement each year.

1.4 REPAYMENT OF LOAN MONIES

The Lender and the Borrower have agreed to make repayments of interest only and the relevant repayment amounts can be found in Schedule One.

1.5 CAPITALISATION OF PRINCIPAL AND INTEREST

Any Principal or Interest repayment may be capitalised at the discretion of the Lender for such period and for such duration as the Lender determines from time to time.

1.6 LENDER MAY TAKE CHARGE OVER BORROWER'S PROPERTY

The Parties may execute a separate Personal Guarantee Document and/or Mortgage Agreement as between the Borrower and the Lender whereby the Borrower may give a personal guarantee or may provide a charge, mortgage, lien or such other encumbrance over Property listed in Schedule 1 and no terms or conditions of this Loan Agreement are to prevent the Lender exercising their rights and entitlements under the Mortgage Document.

1.7 REFINANCE OF THE LOAN AGREEMENT

The Borrower and Lender may agree, as between them to refinance the Loan Agreement on such terms and conditions that are agreed between the parties.

1.8 REGISTRATION OF THE LOAN AGREEMENT

The Lender may register the Loan, any charge or guarantee in the Personal Property Securities Register and check any and all other loans or securities registered on behalf of the Borrower or any related party of the Borrower.

2. PAYOUT OF LOAN AMOUNTS

2.1 PAYOUT OF LOAN AMOUNT

At any time the Borrower may pay all amounts outstanding under the Loan Agreement. There is no penalty in paying all amounts outstanding under the Loan Agreement earlier than prescribed under the Loan Agreement.

3. TERMINATION OF AGREEMENT

3.1 TERMINATION OF LOAN AGREEMENT

The Loan Agreement is to be terminated upon the following events, unless the Lender otherwise waives the right to terminate the Loan Agreement:

- a. The Borrower suffering an Insolvency Event;
- b. The Borrower breaching any of the terms of the Loan Agreement.

3.2 LENDER'S RIGHTS ON TERMINATION

If the Loan Agreement is terminated the Lender has full recourse against the Borrower's Property noted in the Mortgage Document.

4. NOTICES

Any notice or other communication to or by a party to this Agreement:

- a. may be given by personal service, post, facsimile or email;
- b. must be in writing, legible and in English addressed to the Parties:
- c. in the case of a corporation, must be signed by an officer or under the common seal of the corporation;
- d. is deemed to be given by the sender and received by the addressee:
 - if delivered in person, when delivered to the addressee;
 - if posted, 2 Business Days (or 6, if addressed outside Australia) after date of posting to the addressee whether delivered or not;
 - if sent by facsimile transmission, on the date shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause; or
 - if sent by email, on receipt of a reply email from the addressee confirming that the email has been delivered.

5. GENERAL

5.1 COSTS

- a. The Lender will pay all the costs, fees and disbursements of the Lender's advisers.
- b. The Borrower will pay all the costs, fees and disbursements of the Borrower's advisers in connection with the Loan Agreement and any transaction contemplated or referred to in the Loan Agreement.
- c. The cost of preparation of the Loan Agreement will be borne by the Borrower.

5.2 DUTY

Any Duty (including fines, penalties and interest) payable in respect of this Agreement or any document created in connection with it is borne by the Borrower but may be included under this Loan Agreement.

5.3 GOVERNING LAW

The Loan Agreement is governed and construed by the laws of QLD. The parties submit to the non-exclusive jurisdiction of the courts of that place in respect of any dispute arising under the Loan Agreement or its implementation or enforcement.

5.4 SUCCESSORS AND ASSIGNS

This Agreement binds and benefits the parties and their respective successors and assigns.

5.5 VARIATION

This Agreement cannot be amended or varied except in writing signed by the Parties.

5.6 NO WAIVER

A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement. A waiver of a breach does not operate as a waiver of any other breach.

5.7 SEVERABILITY

If any provision of this Agreement offends any law including any Superannuation Laws applicable to it and is as a consequence illegal, invalid or unenforceable then:

- a. where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
- b. in any other case the offending provision must be severed from this Agreement in which event the remaining provisions of the Agreement operate as if the severed provision had not been included.

5.8 ENTIRE AGREEMENT

The Loan Agreement, including any Schedules constitutes the entire agreement between the parties with respect to the subject matter of the Loan Agreement and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties.

5.9 FURTHER ASSURANCES

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents which are reasonably necessary to give full effect to the Loan Agreement.

6. DEFINITIONS AND INTERPRETATION

6.1 DEFINITIONS

In this Agreement unless the context otherwise requires:

“Acquisition Costs” includes all moneys required by the Trustee to acquire the Asset, to pay any stamp duties payable by it in respect of that acquisition, to pay all costs – including advisory fees and to pay any stamp duty incurred by it to register its legal title to the Asset.

“Borrower” is that person or entity noted in this Loan Agreement as such.

“Commencement Date” is the date of commencement of this Loan Agreement.

“Insolvency Event” includes in relation to a party, a reference to winding up bankruptcy which includes:

- i) bankruptcy
- ii) winding up
- iii) dissolution
- iv) becoming an insolvent under administration (as defined in section 9 of the Corporations Act).
- v) being placed under official management, voluntary administration or having a controller or receiver appointed (over the whole or any part of the assets of a party)
- vi) and to the circumstances and events giving rise to a contributing to such conditions or matters and where a party is not subject to the laws of Australia, any like event occurring to such party under a comparable or like law of another country.

“Lender” is the person referred in the Loan Agreement as the Lender of Monies to the Borrower.

“Line of Credit” is the facility for the provision of Loan Monies by the Lender to the Borrower.

“Loan Agreement” is the agreement for the loan of Monies or Assets to the Borrower by the Lender by way of a valid lending arrangement. The term Loan Agreement includes any on-going or replacement loan facility of the original or any replacement loan facility.

“Loan Amount” includes Monies advanced by way of a loan to the Borrower or the Holding Trust Trustee acting as agent for the Borrower, to acquire an Asset under a Loan Agreement and may include the Acquisition Price of the Asset together with any Acquisition Costs.

“Monies” includes cash, Assets and any other form of property which may be used as a medium of exchange.

“Mortgage Document” is the agreement executed between the Lender and the Borrower to secure the repayment of any borrowings under this Loan Agreement and may include a lien, charge or mortgage and relate to Property as described in SCHEDULE 1.

“Property” includes one or more assets described in Item 1 of SCHEDULE 1 and any other asset subject to a charge, mortgage or lien under the Mortgage Document.

“Securities” includes the following Assets provided the Superannuation Laws and the Borrower’s trust deed allows:

- i) Term Deposits;
- ii) Cash at bank;
- iii) Bank Accepted Bills of Exchange;
- iv) Units in Widely Held Unit Trusts and Investment Companies;
- v) Unlisted unit trust and company investments;
- vi) Shares or other securities (including hybrid securities) listed on a public or any other stock exchange in Australia or overseas;
- vii) Direct and indirect property holdings;
- viii) Government bonds;
- ix) Corporate bonds;
- x) Unsecured Notes;
- xi) Debentures; and

- xii) any other Asset as agreed between the Borrower and Lender from time to time.

6.2 INTERPRETATIONS

In this Deed unless the context otherwise requires;

- i) a clause, annexure or schedule is a reference to a clause in or annexure of schedule to this deed;
- ii) a document (including this deed) includes any variation or replacement of it;
- iii) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them, except for the purposes of the definition of related body corporate and associate under the Corporations Act, and the definition of Control;
- iv) the singular includes the plural and vice versa;
- v) the word “including” when introducing a list of items does not exclude a reference to other items;
- vi) the word “includes” when introducing a term or definition does not exclude a reference to the meaning of that term under the common or Superannuation Laws;
- vii) the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any Government Agency;
- viii) a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- ix) Australian dollars, dollars, \$A or AUD is a reference to the lawful currency of Australia;
- x) An agreement, representation or warranty in favour of two or more persons is for the benefit to them jointly and each of them individually;
- xi) Agreement, representation or warranty by two or more persons is for the benefit of them jointly and each of them individually;
- xii) Headings are inserted for convenience and do not affect the interpretation of this Deed; and

xiii) Where words are capitalised their meaning is to be found in the Definitions.

7. EXECUTED AS AN AGREEMENT BETWEEN

This agreement is formally executed by being signed by the persons authorised to sign for:

1. The Borrower

John Smith of 5 Smith Street Sydney NSW 2000 and Sally Smith of 5 Smith Street Sydney NSW 2000, in the presence of:

.....
John Smith
Borrower

.....
Date

Witnessed by:

.....
Witness Signature

.....
Date

.....
Witness Name

.....
Sally Smith
Borrower

.....
Date

Witnessed by:

.....
Witness Signature

.....
Date

.....
Witness Name

2. The Lender

SMITH NOMINEES Pty Ltd. - ACN 123 223 423 of 5 SMITH STREET SYDNEY NSW 2000
ATF The Smith Leading Member Trust signed by the persons authorised to sign for and
on behalf of the company pursuant to section 127 of the Corporations Act 2001:

.....
John Smith
Director

.....
Date

SCHEDULE 1 – TERMS OF LOAN AGREEMENT

LOAN AMOUNT:	\$1,100,000
TERM OF LOAN:	10 years however repayable early with no penalty
INTEREST RATE:	Interest Variable at 2.00% per annum with a review each 30 June and then as agreed between the parties
REPAYMENTS:	Interest payable at the end of the loan term
COMMENCEMENT DATE:	24 March 2020
CHARGED PROPERTY:	5 Smith Street, Sydney NSW 2000, Folio No L140 540



DEED OF PERSONAL GUARANTEE BETWEEN

JOHN SMITH AND SALLY
SMITH("GUARANTOR")

AND

SMITH NOMINEES PTY LTD. - ACN 123 223
423 ATF THE SMITH LEADING MEMBER TRUST
("LENDER")

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DEED OF PERSONAL GUARANTEE

THIS DEED IS DATED 24 March 2020

PARTIES:

1. THE LENDER: SMITH NOMINEES PTY LTD. - ACN 123 223 423 OF 5 SMITH STREET SYDNEY NSW 2000 ATF THE SMITH LEADING MEMBER TRUST (“the Lender”).
2. THE GUARANTOR AND BORROWER: JOHN SMITH OF 5 SMITH STREET SYDNEY NSW 2000 AND SALLY SMITH OF 5 SMITH STREET SYDNEY NSW 2000 (“the Guarantor” and “the Borrower”).

RECITALS:

- a. The Borrower has entered into a Loan Agreement with the Lender.
- b. The Lender requires John Smith and Sally Smith to enter into personal guarantee to make good any failure by the Borrower to meet its commitments pursuant to the Loan Agreement. This does not include any of their personal Superannuation Interests which are protected under this Agreement.
- c. The Lender and the Guarantor hereby enter into a Deed of Personal Guarantee (“the Guarantee Agreement”) according to the following terms and conditions:

TERMS OF THE GUARANTEE AGREEMENT

Where words are capitalised their meaning is to be found in the Definitions in Section 8.

1. THE GUARANTEE

- a. The Guarantor hereby guarantees to the Lender and its successors and assigns, full, complete and due performance by the Borrower of all the provisions, conditions, warranties, covenants and agreements contained within the Loan Agreement, a copy of which the Guarantor has read and understood the contents therein.
- b. This Guarantee shall extend to any obligations of the Borrower under any amendment, present or future, to this Agreement or the Loan Agreement, including, without limiting the generality of the foregoing, any amendment which has the effect of extending the Agreement where time is of essence.
- c. If the Borrower fails to perform any of its obligations under the Loan Agreement, or breaches any provision thereof then the Guarantor undertakes and guarantees to perform the current and on-going obligations of the Borrower under the Loan Agreement and will indemnify the Lender in full for all losses, damages, costs and

expenses which may incurred and suffered by the Lender including all charges, legal fees or disbursements incurred by the Lender or the Borrower by reason of any default on the part of the Borrower in performing or observing the agreements and provision on its part contained in this Agreement.

- d. This Guarantee shall be in addition to and not in substitution for any other guarantees which the Lender may now or hereafter hold in respect of the obligations of the Borrower pursuant to the Loan Agreement. The Lender shall be under no obligation to grant in favour of the Guarantor any other guarantees or other securities or any monies or the assets which the Lender may be entitled to receive or may have claim upon.
- e. The obligations under this Agreement are not effected or impacted by any other guarantee obligations that the Lender has secured with any other party including another guarantor.
- f. This Guarantee shall be absolute and non-conditional and shall be effective from the date hereof.

2. ENFORCING THE GUARANTEE

- a. The Lender shall be at liberty to proceed against the Guarantor under this guarantee as though they are the Borrower under the Loan Agreement. The Guarantor commits to meeting its obligations under this Agreement using Guarantor Property and income of the Guarantor but excluding any Superannuation Interest the Guarantor has in a complying superannuation fund.
- b. The Lender in enforcing this guarantee and undertaking is at liberty to initiate and take action or proceedings or otherwise against the Guarantor and the Guarantor's Property in any Court, arbitration, tribunal or other process or means of enforcing this Agreement. The Guarantor hereby agrees that where any actions or proceedings are initiated and taken by the Lender, the Guarantor shall submit to the jurisdiction of the enforcement process pursued by the Lender in all matters connected with the Guarantor's obligations and liabilities under or arising out of this guarantee and undertaking. Any writ, judgment or other notice of legal process shall be sufficiently served on the Guarantor if delivered to or sent by ordinary or registered post to the address stated in this Agreement and will also include the Guarantor's business or main email address.
- c. The Lender shall not be bound to exhaust its recourse against the Borrower or any other parties or Guarantors, nor realize any security granted to the Lender by the Borrower or any party, nor value any such security nor notify me, the Guarantor of any act of default on the part of Borrower, before enforcing the provisions of this Guarantee.
- d. The Guarantor shall unless otherwise instructed by the Lender in writing including email, pay to the Lender all monies and satisfy all liabilities hereunder in Australian

Dollars, inclusive of any judgment or order made or registered against the Guarantor. For the purpose of this clause, the rate of exchange means the rate at which the Lender is able on or about the date of such payment to purchase, in accordance with normal practice, the contractual currency with the payment currency and shall take into account (and the Guarantor shall be liable for) any premium and other costs of exchange including any taxes or duties incurred by reason of any such exchange.

- e. The Guarantor shall not be required to inquire into the powers of the Lender or any agents acting or purporting to act on the Lender's behalf, and any obligations to the Lender incurred in the professed exercise of the rights and positions of the Lender under the Loan Agreement shall be deemed to be part of these hereto guaranteed obligations, even though the actions in so doing may be in excess of the powers of the Lender or of its professed agent or may be in any way irregular, defective or informal.

3. TERM OF THE AGREEMENT

- a. The Guarantee Agreement shall be of a continuing nature and shall secure the guaranteed obligations that may be due from time to time and at any time from the Lender to the Borrower notwithstanding that the guaranteed obligations may change from time to time or may at any time be amended or deleted.
- b. The obligations of the Guarantor cease when the full obligations, rights and performance of the Borrower under the Loan Agreement and the Guarantor under this Guarantee Agreement have been met.
- c. The liability under this Guarantee and Undertaking shall continue despite the insolvency or winding-up of the Borrower and until such time as the Borrower, the Guarantor or any other party including another Guarantor has fully performed all the provisions, conditions, warranties, covenants and agreements contained under the Agreement.
- d. This Guarantee shall not be discharged nor otherwise affected by the death of the Guarantor and shall continue to the benefit of the Borrower, its successors and assigns, and shall be binding upon the Guarantor and their estate, executors, administrators, successors or assigns.

4. WARRANTIES AND WAIVERS

- a. The Guarantor hereby acknowledges and warrants that they have read and understood the contents of this Guarantee and undertaking and further warrant that they have sought independent legal advice in relation to this Guarantee or warrant that they have waived this right.
- b. The Guarantor hereby waives all and any of their rights as surety which may at any time be inconsistent with any of the provisions of this guarantee.

- c. None of the Parties shall be bound by any representation or promise made by any person in relation to the Loan Agreement or this Agreement which is not covered herein, and it is specifically agreed that you, the Lender shall not be bound by any representations or promises made by the Borrower to the Guarantor.

5. AMENDMENT OF THE AGREEMENT

- a. Subject to reasonableness the Lender may at any time amend any or all clauses under this Agreement Deed.
- b. The Guarantor acknowledges that the Agreement may be amended from time to time by the Lender without the prior consent of the Guarantor, and it is hereby agreed that no such amendment shall release the Guarantor from their liability under this Guarantee either in whole or in part.

6. NOTICES

All notices relating to this Agreement and the Guarantor may be sent by registered or certified mail or by prepaid courier, addressed to the address stated in this Agreement or by delivering it by hand to the Guarantor or their agent to the address stated in this Agreement and any notice sent by mail or by courier shall be deemed to be served on me on the third business day following the mailing thereof. Where allowed under the Law any notice may be sent to the Guarantors business or main email address and shall be deemed to be served on the Guarantor at the time of opening of the email by the Guarantor or its agent.

7. OTHER TERMS AND CONDITIONS

- a. The liabilities herein by the Guarantor shall be irrevocable.
- b. This Guarantee and Undertaking shall be governed by and construed in all respects in accordance with the laws of the State, Territory or Country where the asset subject to the Loan Agreement primarily resides or at the discretion of the Lender in the State, Territory or Country where the Loan Agreement is enforceable.
- c. If any of the provisions of this Guarantee and Undertaking becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions of this Guarantee and undertaking shall not in any way be affected or impaired.

8. DEFINITIONS AND INTERPRETATION

- a. **DEFINITIONS: THESE MEANINGS APPLY UNLESS THE CONTRARY INTENTION APPEARS;**

Guarantor's Property includes all property – real, tangible, intangible and otherwise situate both within and outside Australia and owned directly or indirectly by the Guarantor or in partnership or by way of a partial interest. However, unless the Superannuation Laws allow it is not to include any interest in a complying superannuation fund.

Loan Agreement is the SMITH NOMINEES Pty Ltd. - ACN 123 223 423 ATF The Smith Leading Member Trust to John Smith and Sally Smith Loan Agreement.

Superannuation Interest means a beneficial interest in a superannuation fund under the Superannuation Laws.

Superannuation Laws mean the Commonwealth of Australia Constitution Act 1900, Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations (1994), the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Income Tax Regulations, the Corporations Act 2001, the Corporations Regulations, the Social Security Act 1991 (C'th), the Social Security Regulations, the Veterans Entitlement Act 1986 (C'th), the Veterans Entitlement Regulations, the Family Law Act 1975, the Family Law Regulations, the Bankruptcy Act 1966, Superannuation (Departing Australia Superannuation Payments Tax) Act 2006, Superannuation (Excess Concessional Contributions Tax) Act 2006, Superannuation (Excess Non-concessional Contributions Tax) Act 2006, Superannuation (Self Managed Superannuation Funds) Supervisory Levy Amendment Act 2006 and any other law dealing with an Australian Superannuation Fund as amended from time to time.

- b. INTERPRETATIONS: In reading, understanding or construing this Deed of Guarantee the following interpretations may be relied upon unless the context otherwise requires:
- a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed;
 - a document (including this deed) includes any variation or replacement of it;
 - a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them, except for the purposes of the definition of related body corporate and associate under the Corporations Act, and the definition of Control;
 - the singular includes the plural and vice versa;
 - the word "including" when introducing a list of items does not exclude a reference to other items;

- the word “includes” when introducing a term or definition does not exclude a reference to the meaning of that term under the common or Superannuation Laws;
- the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any Government Agency;
- a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- Australian dollars, dollars, \$A or AUD is a reference to the lawful currency of Australia
- an agreement, representation or warranty in favour of two or more persons is for the benefit to them jointly and each of them individually;
- agreement, representation or warranty by two or more persons is for the benefit of them jointly and each of them individually;
- headings are inserted for convenience and do not affect the interpretation of this Deed; and
- where words are capitalised their meaning is to be found in the Definitions.

9. DEED EXECUTION

Executed on the: 24 March 2020

This Deed of Personal Guarantee is formally executed by being signed by the persons authorised to sign for:

1. The Guarantor

John Smith of 5 Smith Street Sydney NSW 2000 and Sally Smith of 5 Smith Street Sydney NSW 2000, in the presence of:

.....
John Smith
 Guarantor

.....
Date

Witnessed by:

.....
Witness Signature

.....
Date

.....
Witness Name

.....
Sally Smith
Guarantor

.....
Date

Witnessed by:

.....
Witness Signature

.....
Date

.....
Witness Name

2. The Lender

SMITH NOMINEES Pty Ltd. - ACN 123 223 423 of 5 SMITH STREET SYDNEY NSW 2000
ATF The Smith Leading Member Trust signed by the persons authorised to sign for and
on behalf of the company pursuant to section 127 of the Corporations Act 2001:

.....
John Smith
Director

.....
Date



MORTGAGE DEED

BETWEEN

JOHN SMITH AND SALLY SMITH
(THE "MORTGAGOR")

AND

SMITH NOMINEES PTY LTD. - ACN 123 223
423 ATF THE SMITH LEADING MEMBER TRUST
(THE "MORTGAGEE")

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LAST UPDATED 1 MARCH 2020

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MORTGAGE DEED

DATE: 24 March 2020

PARTIES:

1. THE MORTGAGEE: SMITH NOMINEES PTY LTD. - ACN 123 223 423 OF 5 SMITH STREET SYDNEY NSW 2000 ATF THE SMITH LEADING MEMBER TRUST (“the Mortgagee”).
2. THE MORTGAGOR: JOHN SMITH OF 5 SMITH STREET SYDNEY NSW 2000 AND SALLY SMITH OF 5 SMITH STREET SYDNEY NSW 2000 (“the Mortgagor”).

BACKGROUND:

- A. The Mortgagee will lend monies to the Mortgagor subject to the terms and conditions of the Loan are to be found in the Loan Agreement.
- B. The Mortgagee will have recourse to the Property under this agreement and any other property may be subject to recourse under a guarantee.
- C. This Deed of Mortgage is to secure the Mortgagee’s rights and recourse to the Property.

THE PARTIES AGREE:

1. The Mortgagor holds an absolute beneficial entitlement to the Property at 5 Smith Street, Sydney New South Wales 2000 Folio No L140 540;
2. The Mortgagor has requested the Mortgagee to lend \$1,100,000 which the Mortgagee has agreed on mortgaging the Property.
3. THIS DEED WITNESSETH THAT in pursuance to the said agreement and in consideration of the sum of \$1,100,000 paid by the Mortgagee to the Mortgagor, the mortgagor hereby covenants to repay the sum borrowed to the Mortgagee with interest of 2.00% Variable per annum as between the Mortgagor and the Mortgagee as an interest only repayment over a 10 years period.
4. THIS DEED FURTHER WITNESSETH THAT in consideration aforesaid, the Mortgagor hereby transfers by way of mortgage its interest in the Property at 5 Smith Street, Sydney New South Wales 2000 Folio No L140 540 and more particularly described in the Schedule hereunder written as a security for repayment of the said sum with interest of 2.00% Variable per annum.

5. IT IS HEREBY AGREED AND DECLARED that if the Mortgagor does not pay the said mortgage amount with interest when it shall become due and payable, the Mortgagee shall be entitled, subject to any interest of a first mortgagee, be paid the mortgage amount out of the sale proceeds of the Property.
6. IT IS FURTHER AGREED AND DECLARED by the Mortgagor that during the period, the mortgage amount is not paid and the said Property remains as a security for the mortgage amount, the Mortgagor shall insure the Property.
7. IT IS AGREED that the governing law of this Mortgage Deed is the location of the Property unless the Mortgagee and the Mortgagor agree on another jurisdiction.

This agreement is formally executed by being signed by the persons authorised to sign for:

1. THE MORTGAGEE

SMITH NOMINEES Pty Ltd. - ACN 123 223 423 of 5 SMITH STREET SYDNEY NSW 2000
 ATF The Smith Leading Member Trust signed by the persons authorised to sign for and
 on behalf of the company pursuant to section 127 of the Corporations Act 2001:

.....
John Smith
 Director

.....
Date

2. THE MORTGAGOR

John Smith of 5 Smith Street Sydney NSW 2000 and Sally Smith of 5 Smith Street
 Sydney NSW 2000, in the presence of:

.....
John Smith
 Mortgagor

.....
Date

Witnessed by:

.....
Witness Signature

.....
Date

.....
Witness Name

.....
Sally Smith
Mortgagor

.....
Date

Witnessed by:

.....
Witness Signature

.....
Date

.....
Witness Name