



LAWYERS + ADVISORS

Loan Agreement

FINHILL PTY LTD ACN 664 492 620
as trustee for the 17MRH UNIT TRUST

FLORENFIN PTY LTD ACN 653 590 464 as
trustee for the FRANKFAB TRUST

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Loan Agreement

Date	
Parties	<p>FINHILL PTY LTD ACN 664 492 620 as trustee for the 17MRH UNIT TRUST of 98 Blackall Range Road Woombye Qld 4559</p> <p style="text-align: right;">(Lender)</p> <p>FLORENFIN PTY LTD ACN 653 590 464 as trustee for the FRANKFAB TRUST C/- GRM LAW, 70 Princess Street, Petrie Terrace Qld 4000</p> <p style="text-align: right;">(Borrower)</p>
Background	<p>A. The Lender has agreed, at the request of the Borrower, to provide a loan facility to the Borrower, the principal amount of which is not to exceed the amount of the Loan.</p> <p>B. The Lender and the Borrower have agreed to enter into this Agreement to set out the terms and conditions of the loan facility.</p> <p>C. The parties formalise their arrangement by executing this Agreement.</p>

Terms and Conditions

1. Definitions and interpretations

1.1 Definitions

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

Advance means the amount provided, or where the context requires to be provided, under this Agreement by the Lender to, or at the direction of, the Borrower on the Drawdown Date.

Agreement means this document and any schedules and Annexures to it.

Approved Purpose means the purpose specified in Item 7 of the Schedule.

Authorised Signatory means:

- (a) where the Borrower is a corporation, each person duly authorised by the Borrower (as the case requires) at any time and from time to time as a person empowered to sign, give or make all instruments, notices, communications and other documents required under this Agreement or the Security (as the case requires) or for the purposes of this Agreement or the Security (as the case requires), a specimen of whose signature has been provided to the Lender; and
- (b) where the Borrower is a natural person, that person.

Business Day means a day which is not a Saturday, Sunday or public or bank holiday in Brisbane.

Commencement Date means the Drawdown Date which is first to occur.

Corporations Act means the *Corporations Act 2001* (Cth) as amended from time to time.

Development Costs means:

- (a) all costs, expenses, fees and Obligations expended or incurred after the date this Agreement takes effect (or, if expended or incurred before the date this Agreement takes effect, such costs, expenses, fees and Obligations which are stated under this Agreement to be recoverable) by or on behalf of the Participants in undertaking the Development Services including:
 - (i) the cost of all works undertaken in respect of the Land or in connection with the Development Services, including the costs of all improvements to or on the Land, and the development of the Land as an approved use;
 - (ii) the costs of complying with conditions imposed as part of approvals granted by Government Authorities obtained as part of the Development Services;
 - (iii) all duties, registration fees, Government Authority fees, building and application fees and development approval fees of any kind associated with the Development Services, including fines or penalties;
 - (iv) all banking and similar expenses;
 - (v) all payments made or payable under any agreement entered into by both of the Participants in connection with the Development Services including all Incentives;
 - (vi) all costs, expenses, fees and Obligations payable to protect and maintain any Project assets;
 - (vii) all insurance premiums for insurances effected by or on behalf of both of the Participants in relation to the Development Services;
 - (viii) any costs, expenses or fees payable to any consultants, managers, advisers and other persons engaged by both of the Participants in relation to the Development Services, including planning, design, engineering, survey, marketing, leasing, legal, accounting, audit and valuation costs, expenses or fees;
 - (ix) all costs, expenses, fees and Obligations expended or incurred in accordance with the Development Management Agreement (if any);
 - (x) all principal repayments, interest, fees, costs, charges, stamp duty, registration and other expenses in relation to Project borrowings;

- (b) the following amounts incurred or arising after the date this Agreement takes effect as a result of the Landowner's ownership of the Land, or as a result of the Landowner's dealings with the Land in accordance with this Agreement:
 - (i) all rates, land tax and other similar land owning charges payable by the Landowner in relation to the Land;
 - (ii) all costs, expenses, fees and Obligations reasonably paid or incurred by the Landowner in relation to the leasing and sale of the Land, including commissions payable to real estate and leasing agents and legal fees incurred in respect of the sale; and
 - (iii) all costs, expenses, fees and Obligations reasonably payable to protect or maintain the Land after the date this Agreement takes effect including insurance premiums;
- (c) all amounts paid by the Participants to or on behalf of the Landowner to enable the Landowner to acquire the Land (including any purchase prices payable by the Landowner for such Land) if the acquisition of the Land is approved by the Participants, including any amounts paid by the Participants; and
- (d) any other costs, expenses, fees and Obligations which are stated to be Development Costs under this Agreement or which the Participants agree between themselves will be Development Costs.

Development Management Agreement means the development management agreement between the Borrower (as Landowner) and Real Property Advice Pty Ltd ACN 619 825 482 with Registered Office located C/- HMW Group Level 5, 10 Eagle Street, Brisbane Qld 4000, dated on or about the date of this Agreement;

Development Proceeds means all amounts received by the Landowner including from the sale of the Land, any rent, licence fees and other amounts received in connection with the Land and the Project less Development Costs and any GST payable by the Landowner.

Development Services means the design, planning, implementation, construction, leasing and marketing for sale by the Landowner of the development of the Land, in stages if considered appropriate by the Landowner, and includes obtaining all approvals, consents, authorisations and permits necessary or reasonably desirable to facilitate such development.

Dispose or **Disposal** means any act or omission, which effects or may, subject to any contingency, further act or event being satisfied or occurring which is within the power or under the control of a person not party to this Agreement, or which is beyond the control of the party purporting to Dispose of its interest, permit or effect:

- (a) a change in the Landowner's (or any of their) entitlement to absolute legal or beneficial ownership of any estate or interest or the possession or control of any relevant estate or interest in the Land; or
- (b) a change in a Participant's entitlement to absolute legal or beneficial ownership of any estate or interest or the possession or control of any relevant estate or interest in a Participant's interest under this Agreement,

(as the case may be) and includes, without limitation, any sale, transfer, or creation of Mortgage, or declaration as trustee, and also includes entering into an agreement to Dispose.

Drawdown Date means the date or dates (if any) specified in Item 5 of the Schedule or such other date or dates that the Lender and Borrower agree in writing.

Encumbrance means any:

- (a) Security Interest;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors;
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

Event of Default means any of the events, omissions or occurrences specified in clause 12.2.

External Lender means a person who provides borrowings other than a Participant.

Government Authority means any local, State or Federal government, a Minister or government department of each of those governments, a corporation or authority constituted for a public purpose, the holder of an office for a public purpose, a local authority and any agent or employee of any of them.

GST has the meaning given in clause 14.5(a).

Land means the land described as such in Item 9 of the Schedule.

Land Cost means the land cost described as such in Item 10 of the Schedule.

Landowner means the Borrower.

Loan means the amount specified in Item 3 of the Schedule, being the total of all Advances provided or, where the context requires, to be provided under this Agreement by the Lender to, or at the direction of, the Borrower and the Deposit (if any).

National Credit Code means the code contained in Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cth).

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

Notice Address means in respect of a party:

- (a) the address or email address specified as such in Schedule 1; or
- (b) where a party gives Notice to all other parties of another address or number, the last address or email address so notified.

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

Participant means the Borrower and the Lender respectively.

Participants' Fee means the Development Proceeds less the Land Cost.

Project means the development described as such in Item 8 of the Schedule;

Related Body Corporate means any body corporate which is related to the Borrower within the meaning given to the term "related" in section 9 of the Corporations Act.

Repayment Date means the date set out as such in the Item 4 of the Schedule;

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

Secured Money means, at any time and from to time, the aggregate principal amount outstanding of all the Advances which have at that time been provided under this Agreement by the Lender to or at the direction of the Borrower, and all other money which the Borrower agrees to pay under any provision of this Agreement, including any interest.

Security means the securities listed in Item 6 of the Schedule, and any mortgage, pledge, lien, encumbrance or charge now or in the future given by the Borrower in favour of the Lender to secure the obligations of the Borrower under this Agreement.

Security Interest means a security interest in any property arising under:

- (a) a mortgage, charge, lien or pledge; or
- (b) a bill of sale or other security agreement,

provided as security for the payment of money or the performance of any other obligation and includes an agreement to grant or create any of them and any notice or arrangement (including retention of title) having a similar effect. For the avoidance of doubt, it includes a security interest within the meaning of section 12(1) of the PPSA and section 12(3) of the PPSA.

Schedule means the details and descriptions specified as such and set out in schedule 1.

1.2 Interpretation

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

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;

- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and
- (m) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

2. Conditions precedent to Lender's Obligation

2.1 Conditions Precedent

The Lender's obligation to provide an Advance to, or at the direction of, the Borrower is subject to and conditional upon:

- (a) **no default:** no Event of Default or potential Event of Default having occurred and continuing to subsist;
- (b) **representations and warranties:** the representations and warranties of the Borrower contained in clause 10.1 being true and correct on the Drawdown Date;
- (c) **change of circumstance:** no change of circumstance as defined in clause 11(c), having occurred;
- (d) **execution of Security:** the Lender having received evidence satisfactory to the Lender that the Borrower has validly entered into and become bound by the Security;
- (e) **development application:** the Lender having received copies of development applications and approvals, including all proposed plans and consultant reports associated with the Land;
- (f) **feasibility:** the Lender having received the feasibility reports for the Land and any associated development;
- (g) **credit checks:** the Lender being satisfied with its credit checks of the Borrower;

- (h) **no tax debt:** the Borrower providing the Lender with confirmation from its accountant that it and its Related Bodies Corporate have no outstanding taxation debt;
- (i) **release of prior encumbrances:** the Borrower procuring the release of all Encumbrances in the Land and the Land is free and clear of all Encumbrances;
- (j) **insurance:** the Lender having received evidence satisfactory to the Lender that the Land is at all material times adequately covered by insurance and such insurance notes the interest of the Lender as an interested party;
- (k) **project supervision:** the Lender having received satisfactory evidence that the Borrower has appointed, and there will at all times be, a Lender approved site superintendent or project manager to oversee the construction of the Project;
- (l) **prior loan statements:** the Lender having received statements of all prior loans which were secured by the Land, evidencing that the Borrower has made payments as required to the satisfaction of the Lender; and
- (m) **satisfaction of conditions:** the Lender being satisfied that any conditions specified by it have been met.

2.2 Non-satisfaction of conditions precedent

- (a) If each of the conditions precedent set out in clause 2.1 has not been fulfilled and fully satisfied or waived by the Drawdown Date, the Lender will not be under any obligation to make the Advance available to the Borrower and interest will nonetheless begin to accrue from the Drawdown Date.
- (b) In this event the Borrower must pay to the Lender all costs, losses, charges, expenses, liabilities, damages, fees and disbursements paid or incurred by the Lender in consequence of the Advance not being provided to the Borrower.

3. Provision of Advance

Subject to clause 2, the Lender agrees to provide Advances to the Borrower by way of advance up to an aggregate amount outstanding at any time not exceeding the Loan, on the Drawdown Date.

4. Security

In consideration of the Lender making the Advances providing the Loan to the Borrower as contemplated by this Agreement, the Borrower agree to provide the Security as security for the Borrower's obligations under this Agreement.

5. Priority for Payments of Proceeds of Sale of Land

The Participants agree and acknowledge that the amounts received upon the sale or Disposal of the Land, will be applied for the purposes of paying or repaying each of the following categories of costs or fees in the following order of priority (with each category of cost or fee to be fully paid or repaid before the next category applies):

- (a) payment of GST on the supply of the Land;
- (b) repayment of amounts required to be paid to an External Lender under the terms of their loan agreements or security documents;
- (c) payment of costs, expenses, fees and Obligations reasonably paid or incurred by the Landowner in relation to the sale of the Land including commissions payable to real estate agents and legal fees incurred in respect of the sale;
- (d) payment of all other Development Costs (and the Participants acknowledge that payment of the Development Costs may be subject to its own set of priorities as specified in the Development Agreement);
- (e) payment of the Land Cost (or that part of it which relates to the Land sold or Disposed) to the Landowner; and
- (f) payment of the balance to the Participants in equal shares as payment or part payment of the Participants' Fee.

6. Payment of Participants' Fee (Interest)

- (a) As consideration for the Lender providing the Advance to assist the Borrower undertaking the Project and the Development Services, the Landowner will pay the Participants the Participants' Fee, with each Participant to receive one half of that fee. The Participants' Fee will be paid by the Landowner as soon as reasonably practicable after any amount which comprises the Participants' Fee is available for payment to the Participants.
- (b) The parties agree that the Participants' Fee can only be finally determined once all of the Land has been sold and all of the relevant amounts referred to in the definition of Participants' Fee have been calculated.
- (c) Despite paragraph (b) above the parties agree that the Participants' Fee will be determined on an interim basis as sale prices are received from time to time by the Landowner from the sale of the Land, based on the sale price(s) received and the costs incurred at that time. When the interim calculation of the Participant's Fee produces a positive sum, amounts will be payable to the Participants in accordance with paragraph (a) above, but subject to the payment of prior interests as referred to in clause 5.
- (d) The parties agree that:
 - (i) a reconciliation of the Participants' Fee will occur at the expiration of each Financial Year;
 - (ii) at the commencement of each Financial Year the amount of the Participants' Fee as reconciled at the expiration of the previous Financial Year will be accepted unless the parties disagree; and
 - (iii) a reconciliation of the Participants' Fee will also occur after all of the Land has been sold, and all of the relevant components which make up the Participants' Fee have been calculated (or after this Agreement has been terminated if that occurs prior to the sale of all of the Land), and appropriate adjustments will be made by the parties after all the Land has been sold.

7. Other Payments

- (a) Whether or not the Borrower satisfies any or all of the conditions precedent set out in clause 2.1, the Borrower must, on demand by the Lender, pay to or as directed by the Lender and indemnify the Lender against all costs, losses, charges, expenses, liabilities, damages, fees, disbursements (including all reasonable legal costs on a solicitor and own client basis) paid or incurred by the Lender of or incidental to:
- (i) the negotiation, preparation, execution and (if applicable), stamping and registration of this Agreement and the Security and of the establishment of this loan facility generally;
 - (ii) any breach of, or default under, this Agreement or the Security by the Borrower (including the fees of all professional consultants properly incurred by the Lender in consequence or in connection with, any such breach or default);
 - (iii) the exercise or attempted exercise of any right, power, privilege, authority or remedy of the Lender under or by virtue of this Agreement or the Security;
 - (iv) all taxes (excluding any income tax payable by the Lender), outgoings, penalties, fines, demands, charges or costs, stamp and other duties and assessments imposed by any court or by any Federal, State, Municipal, statutory or other authority or otherwise (including related bank charges, financial institutions duties and debits tax) directly or indirectly upon this Agreement or the Security or receipt or payment under this Agreement or the Security.
- (b) If the Borrower fails to pay any amount by the due date, or if the Lender pays money or incurs cost or expense in relation to this Agreement or the Security, the Borrower must pay interest to the Lender at the Standard Interest Rate on that amount from the due date for payment or the date the Lender pays the money or incurs the cost or expense (whichever first occurs) until the amounts are paid by the Borrower to the Lender. Interest is calculated on the daily balance of the amount outstanding or owing on the basis of a 365 day year.
- (c) If the Borrower makes fails to make any payment (including an interest payment) under this Agreement on or before its due date for payment or any Event of Default occurs or is deemed to have occurred the Borrower must pay to the Lender the increased cost of administering the Loan, calculated as 2% per annum of the Secured Money outstanding at that date until it is repaid in full and finally discharged. The Borrower acknowledges and accepts that the amount payable pursuant to this clause is reasonable in its extent and reflects a genuine pre-estimate of the additional administration costs which will be incurred should the Borrower fail to comply with their obligations under this Agreement.

8. Repayment

8.1 Repayment on the Repayment Date

On the Repayment Date the Borrower must:

- (a) repay and finally discharge the Secured Money in full; and
- (b) pay to the Lender all other amounts payable under this Agreement and not then paid.

9. Method of Payment

9.1 Time of payment

All payments to be made under this Agreement by the Borrower to, or at the direction of, the Lender must, unless otherwise specified or agreed by the Lender, be made in Australian dollars in immediately available funds not later than 12 noon Brisbane time on the due date.

9.2 Place of payment

All payments to be made under this Agreement by the Borrower to the Lender must be paid to the Lender at such place as the Lender may from time to time direct in writing. Any payment made in any other way and any payment sent by mail will be at the Borrower's risk until it is actually received by the Lender.

9.3 No set-off or counterclaim

Notwithstanding any term, whether express or implied, in this Agreement or any rule of law or course of conduct to the contrary, payments under this Agreement must be made by the Borrower without set-off or counterclaim and, subject to clause 9.4(b), free and clear of, and without, any deductions whatsoever.

9.4 No withholding

- (a) All payments to be made under this Agreement whatever their nature must, to the full extent permitted by law, be made by the Borrower without any deduction for or on account of any income or other taxes, imposts, deductions or other withholdings of any kind.
- (b) If the Borrower is compelled by law to deduct any taxes or charges, the Borrower must pay to the Lender such further sum as will result in the receipt by the Lender of the full amount payable.

10. Representations and Warranties

10.1 Borrower's representation and warranties

The Borrower represents and warrants to the Lender that:

- (a) It has fully disclosed in writing to the Lender all facts relating to the Borrower, its Related Bodies Corporate, and anything in connection with them that are material to the assessment of the nature and amount of the risk undertaken by the Lender in entering into this Agreement;
- (b) no litigation or administrative or other proceedings before, or of, any court or governmental authority or agency or other tribunal have, to the knowledge of the Borrower, been initiated or threatened against the Borrower or any of the

Borrower's assets which would or might have a material adverse effect upon the business, assets or financial condition of the Borrower;

- (c) all financial statements and information furnished by the Borrower to the Lender are complete and correct and there are no other material facts or considerations the omission of which would render any of the information misleading.

10.2 Deemed interpretation

The representations and warranties set out in clause 10.1 will survive the execution of this Agreement and will be deemed to be repeated (updated as appropriate) on each Drawdown Date, on each Interest Payment Date and on the date of payment of other moneys under or pursuant to this Agreement.

11. Borrower's Undertaking

For as long as the Loan remains outstanding under this Agreement to the Lender, the Borrower undertakes with the Lender as follows:

- (a) **purpose of Advance:** to apply the Loan for the Approved Purpose only;
- (b) **further assurances:** to execute and do, or cause to be executed and done by any other person, at the expense of the Borrower, all assurances and other things as are reasonably required or requested at any time and from time to time by the Lender for giving effect to, and the full benefit of, the covenants contained or implied in this Agreement and the Security in favour of the Lender or to protect the Lender's rights, powers and remedies under this Agreement or the Security;
- (c) **change of circumstances:** to immediately notify the Lender of any event or change in the Borrower's circumstances, the effect of which either would or might render any representation or warranty made in this Agreement or the Security untrue or incorrect in any respect; and
- (d) **information:** to immediately deliver all financial and other information which the Lender requires from time to time.

12. Default and Termination

12.1 Consequences of default

If an Event of Default occurs or is deemed to have occurred, then at the Lender's option, without any demand or Notice, and notwithstanding any delay or previous waiver of the right to exercise that option:

- (a) all of the Loan immediately becomes payable; and
- (b) the Lender may decline to provide any part of the Loan which has not already been provided.

12.2 Events of default

Each of the following events is an Event of Default:

- (a) **failure to draw on loan:** the Borrower fails to request the Lender in writing for the full amount of the Loan;
- (b) **payment default:** the Borrower fails to repay any of the Loan when due or fails to pay any other money payable under this Agreement on the due date for payment of that money; or
- (c) **other default:** the Borrower fails to perform or observe any of the covenants or provisions of this Agreement, the Security or any other agreement, instrument or document between the Lender and Borrower;
- (d) **false or misleading statement:** the Lender ascertains that any warranty, statement or representation made by the Borrower under this Agreement or the Security or any related or collateral document or any other written agreement between the Borrower and Lender proves to be untrue or misleading when made or deemed to have been made; or
- (e) **external administration:** the Borrower, being a body corporate, becomes an externally-administered body corporate under the Corporations Act, or steps are taken by any person towards making the Borrower an externally-administered body corporate;
- (f) **execution:** any execution or other process of any court or authority is issued against, or levied upon, part or all of the assets of the Borrower or any Related Body Corporate and it is not satisfied within 5 Business Days; or
- (g) **creditor takes possession:** 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; or
- (h) **insolvency schemes:** without the Lender's prior written consent, the Borrower or any Related Body Corporate enters into any arrangement, reconstruction or composition with its creditors or any of them; or
- (i) **administrator or inspector:** the Borrower, any Related Body Corporate, or any other person appoints an administrator to the Borrower or any Related Body Corporate, or takes steps to do so, or an inspector is appointed to investigate the affairs of the Borrower or any Related Body Corporate; or
- (j) **agreement unenforceable:** this Agreement becomes wholly or partly void, voidable or unenforceable; or
- (k) **loss of capacity:** the authority or power of the Borrower to perform its obligations under this Agreement is revoked or so amended that the Borrower is unable to fully and duly perform and observe those obligations or, if the Borrower is a natural person, the Borrower dies or becomes incapable of managing his or her own affairs; or
- (l) **illegality:** the continued performance of the obligations of the Borrower under this Agreement contravenes, or might in the Lender's opinion contravene, any applicable statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority; or
- (m) **striking off from register:** any action is taken by any competent authority with a view to striking the Borrower's name off any register of companies; or

- (n) **change in ownership:** there is any change in ownership or control of the Borrower or any company of which the Borrower is a subsidiary; or
- (o) **variation of constitution:** the Borrower alters, varies, or modifies its memorandum, articles of association, or constitution without the Lender's prior written consent; or
- (p) **reduction of capital:** the Borrower reduces either its authorised or issued capital or attempts to do so without the Lender's prior written consent; or
- (q) **suspension of listing:** where the Borrower's shares are at any time listed on any stock exchange, the listing is suspended revoked and the suspension or revocation remains in force for a period greater than 14 days; or
- (r) **breach of undertakings:** the Borrower or any person on behalf of the Borrower breaches any undertaking at any time given to the Lender or its solicitors or any condition imposed by the Lender in agreeing to any matter or thing; or
- (s) **commission of an offence:** the Borrower commits an offence under the Corporations Act; or
- (t) **material adverse change:** there is a material adverse change, in the Lender's opinion, in the business or financial condition of the Borrower; or
- (u) **trust events:** if the Borrower is a trust, each of the events specified in clause 16.3.

12.3 Acceptance of money

The Lender may exercise its rights under clause 12.1:

- (a) notwithstanding acceptance of any part of any of the amounts payable under this Agreement after the occurrence of any Event of Default;
- (b) notwithstanding the occurrence of any previous or other Event of Default; and
- (c) without the necessity for any Notice to, or of any consent or concurrence on the part of, the Borrower or any other person.

12.4 Recovery of Costs

The Lender may recover all losses, costs and damages incurred, including the Lender's lawyer's costs on a full indemnity basis, from the Borrower if:

- (a) an Event of Default occurs;
- (b) the Lender is made party to any action;
- (c) the Lender is mentioned in any proposed action or proceedings; or
- (d) the Lender is a party to any dispute whatsoever;

in relation to this Agreement, any amendment or variation of this Agreement, any Security, or any other matter involving the parties to this Agreement.

13. Application of money

All money received by the Lender may be applied towards interest or other Secured Money at the Lender's sole discretion.

14. Protection of Lender

14.1 No requirement for Notice

- (a) It is not incumbent on the Lender to:
 - (i) give any Notice of its rights under this Agreement or the Security to any debtor or member of the Borrower or to any other person; or
 - (ii) enforce the Security or to take any steps or proceedings to enforce the Security, unless the Lender thinks fit.
- (b) The Lender is not liable for any omission to give any Notice.

14.2 Lender not liable for losses

The Lender is not answerable for any involuntary losses or irregularities which may occur in, or by, the exercise or non-exercise of any of the powers, rights or remedies conferred on the Lender by this Agreement or the Security.

14.3 Discretion on consent

In any case where, under or pursuant to this Agreement, the doing or execution of any act, matter or thing by the Borrower is dependent upon the consent or approval of the Lender, such consent or approval may be given conditionally or unconditionally or may be withheld by the Lender in its absolute discretion, unless this Agreement expressly provides otherwise.

14.4 Borrower's risk

Whenever the Borrower is obliged or required under this Agreement to do or effect any act, matter or thing, then the doing of such act, matter or thing will, unless this Agreement expressly provides otherwise, be at the sole risk and expense of the Borrower.

14.5 GST

- (a) **Definitions and interpretation**
 - (i) Capitalised expressions which are not defined in this clause but which have a defined meaning in the GST Law have the same meaning in this Agreement.
 - (ii) In this Agreement:
 - (A) **GST** means the goods and services tax as imposed by the GST Law;

- (B) **GST Amount** means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST (currently 10%);
 - (C) **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*(Cth), or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;
 - (D) **Payment** means any amount payable under or in connection with this Agreement including any amount payable by way of indemnity, reimbursement or otherwise and includes the provision of any non-monetary consideration.
- (b) Without limiting any other provision contained in this Agreement, should any payment to be made to or received by the Lender under this Agreement or the Security be subject to the payment of GST, as a result of the operation of the *A New Tax System (Goods and Services Tax) Act 1999*, the Borrower must:
- (i) pay to the Lender such further sum; and
 - (ii) do all things reasonably necessary,
- (c) as will result in the receipt by the Lender of the full amount (including any applicable GST) to be paid to or received by the Lender as contemplated by this Agreement or the Security.

15. Power of attorney

15.1 Intervening Event

In this clause 15, an Intervening Event means the:

- (a) occurrence of an Event of Default or an event which, with the giving of Notice or the lapse of time or both, would be an Event of Default; or
- (b) Borrower failing to comply with any of the Borrower's obligations under this Agreement or the Security or under any agreement or instrument required under or for the purposes of this Agreement or the Security or under any agreement or instrument collateral to this Agreement or the Security, upon request by the Lender.

15.2 Appointment

The Borrower irrevocably appoints:

- (a) the Lender and its successors and assigns; and
- (b) every director, secretary and officer of the Lender whose title includes the word 'manager',

severally the attorney of the Borrower with power, at the expense of the Borrower, at any time and from time to time after an Intervening Event, to do all acts and things and to execute all documents as may, in the Lender's opinion, be reasonably

necessary or desirable or expedient to give effect to any right or power conferred on the Lender by this Agreement or the Security.

16. Trust Provisions

16.1 Agreement Binding on Trustee as trustee and personally

- (a) Where a Borrower has executed this Agreement in its capacity as trustee of a trust (**Trust**), whether or not the fact that the Borrower is a trustee is disclosed to the Lender, the Borrower acknowledges that this Agreement is binding on the Borrower personally and in its capacity as trustee of the Trust and that the Lender's right of recourse extends to both the assets of the Borrower personally and the assets of the Trust.
- (b) The Borrower and its successors as trustee of the Trust are liable under this Agreement 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 Borrower's liabilities.
- (c) Nothing releases the Borrower from any liability in its personal capacity.

16.2 Warranties of the Trustee

The Borrower warrants that at the date of this Agreement:

- (a) all the powers and discretions conferred by the deed establishing the Trust are capable of being validly exercised by the Borrower as trustee and have not been varied or revoked and the Trust is a valid and subsisting trust;
- (b) the Borrower 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 Agreement 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;
- (c) no restriction on the Borrower's right of indemnity out of or lien over the Trust's assets exist or will be created or permitted to exist and that will have priority over the right of the beneficiaries to the Trust's assets.

16.3 Trust events requiring the Lender's consent

Each of the following events is an Event of Default if the Lender has not provided prior written consent:

- (a) any resettlement, appointment, or distribution of capital of the Trust;
- (b) any retirement or replacement of the trustee or any appointment of a new trustee of the Trust;
- (c) any amendment of the deed establishing the Trust;
- (d) any breach of the provisions of the deed establishing the Trust;
- (e) any termination of the Trust or variation of the vesting date;
- (f) if the Trust is a unit trust, any transfer of, or dealing with the units.

17. General

17.1 Non-merger

None of the terms or conditions of this Agreement, nor any act, matter or thing done under or by virtue of, or in connection with this Agreement will operate as a merger of any of the rights and remedies of the Lender in or under this Agreement or otherwise. All such rights and remedies of the Lender will continue in full force and effect.

17.2 Inconsistencies

So far as is possible, this Agreement must be read together with any Security and all other agreements or documents entered into in connection with this Agreement and, in the event of inconsistency, the provision most favourable to or which confers the greatest benefit on the Lender prevails.

17.3 Statutes not to affect Lender's rights

So far as is lawful, the provisions of all statutes and regulations at any time operating directly or indirectly to:

- (a) lessen, modify, or affect the Borrower's obligations in favour of the Lender; or
- (b) stay, postpone, or otherwise prevent or prejudicially affect the exercise of all or any of the Lender's rights, powers, and remedies conferred by this Agreement,

are negated and excluded from and will not apply to this Agreement. All powers, rights, and remedies conferred on the Lender or any receiver by law, in equity, or by any statute will be in addition to those contained in this Agreement and will not curtail, diminish, or qualify any of them.

17.4 Reimbursement of Lender

To the extent permissible at law, the Borrower must, immediately upon demand, pay to the Lender an amount equivalent to any moneys paid by the Lender in respect of any liability imposed on the Borrower under or by virtue of this Agreement, notwithstanding that any statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, directly or indirectly, imposes such liability upon the Lender.

17.5 Assignments

The Lender may assign the benefit of this Agreement.

17.6 Statement by Lender

A statement in writing signed by a director, secretary, or officer of the Lender whose title includes the word 'manager' stating the amount due or owing by the Borrower to the Lender or any other act, matter or thing arising under this Agreement as at any date or dates set out in that statement will be prima facie evidence of the facts so stated.

17.7 Time of the essence

Time is of the essence of the Borrower's obligations under this Agreement unless otherwise agreed in writing by the Lender.

17.8 Prohibition on oral amendments

Neither this Agreement nor any provision of this Agreement may be amended, modified, waived, discharged or terminated orally.

17.9 Defective execution

If there is any defect in the execution of this Agreement by the Borrower or the Lender, that party may re-execute or ratify its purported execution. That re-execution or ratification will relate back to the original purported execution by that party.

17.10 Execution by attorney

If this Agreement is executed on behalf of the Borrower or the Lender by a person authorised to execute it under power of attorney, that person, by his or her execution of this Agreement, states that at the time of such execution they had no Notice of the revocation of that power of attorney.

17.11 Notices

Any Notice or other communication to a party under this document must be in writing and delivered personally, sent by prepaid mail, or sent by facsimile transmission to the recipient at the Notice Address or the facsimile number appearing in the Schedule or such other address as may have been notified to the sender.

A Notice is deemed to be received:

- (a) if delivered personally, on the date of delivery;
- (b) if sent by prepaid post, 2 Business Days after posting; and
- (c) if sent by email or facsimile transmission, on receipt by the sender of a facsimile transmission report confirming receipt.

17.12 Independent Advice

Each party has been given the opportunity to seek independent legal advice with respect to the content and effect of this Agreement and has sought such advice as it deems necessary.

17.13 No Adverse Construction

No rule of construction applies to the disadvantage of a party on the basis that the party put forward this Agreement or any part of it.

17.14 Counterparts

This document may be executed in any number of counterparts and all counterparts taken together will be deemed to be a single instrument.

17.15 Confidentiality

- (a) The terms and conditions of this document and all negotiations between the parties relating to the subject matter of this document are confidential.
- (b) A party must not make any public disclosure, communication or announcement about this document except with the prior written consent of the other party or to comply with accounting, legal, stock exchange or other regulatory requirements.

17.16 Waiver

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this document, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this document or default under this document as constituting a waiver of that right, power, authority, discretion or remedy.

17.17 Further Assurance

All parties must do all things reasonably necessary to give full effect to this document and the transactions contemplated by this document.

17.18 Severability

If any part of this document is, or becomes, legally invalid or unenforceable, the remainder of this document subsists and remains enforceable.

17.19 Entire Understanding

This document contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this document and relating to any matter dealt with in this document are merged in this document and do not have any effect from the date of this document.

17.20 Governing Law

- (a) This document is governed by the law of Queensland.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and waives any objection to the venue of any legal process on the basis that the process has been brought in any inconvenient forum.

17.21 Multi Capacity

If a party to this Agreement is a party in more than one capacity, it is only necessary for that party to execute this Agreement once and such execution shall bind that party in all capacities.

17.22 Delivery as a deed

Subject to express provisions in this Agreement to the contrary, each party by signing or executing this Agreement is deemed to unconditionally sign, seal and deliver this

Loan Agreement

Agreement as a deed, with the intention of being immediately legally bound by this Agreement.

Schedule 1 Reference Schedule

Item 1	Lender:	FINHILL PTY LTD ACN 664 492 620 as trustee for the 17MRH UNIT TRUST
Item 2	Borrower:	FLORENFIN PTY LTD ACN 653 590 464 as trustee for the FRANKFAB TRUST
Item 3	Loan:	\$
Item 4	Repayment Date:	18 calendar months from the Drawdown Date or as agreed in writing between the parties
Item 5	Drawdown Date:	
Item 6	Security:	Mortgage to be provided by the Borrower over the property located at 17, Middle Road, Hillcrest Qld 4118; and General Security Interest over the assets of the Borrower.
Item 7	Approved purpose:	For use in the Borrower's business only, and specifically not for any of the purposes referred to in section 5(1)(b) of the National Credit Code
Item 8	Project	Light industrial work stores at 17, Middle Road, Hillcrest Qld 4118.
Item 9	Land	17, Middle Road, Hillcrest Qld 4118
Item 10	Land Cost	\$3,500,000 (GST exclusive)

Execution page

This AGREEMENT dated

2022

EXECUTED as an agreement.

**EXECUTED by FINHILL PTY LTD ACN 664 492 620
as trustee for the 17MRH UNIT TRUST** in
accordance with section 127 of the *Corporations
Act 2001* (Cth)

.....
Signature of Witness

.....
Signature of Sole Director / Secretary
(Please delete as applicable)

.....
Name of Witness
(Please print)

.....
SCOTT ANDREW NORTHCOTT
Name of Sole Director / Secretary
(Please print)

**EXECUTED by FLORENFIN PTY LTD ACN 653 590 464
as trustee for the FRANKFAB TRUST** in
accordance with section 127 of the *Corporations
Act 2001* (Cth)

.....
Signature of Witness

.....
Signature of Sole Director / Secretary
(Please delete as applicable)

.....
Name of Witness
(Please print)

.....
SCOTT ANDREW NORTHCOTT
Name of Sole Director / Secretary
(Please print)