

## 'Division 7A' Loan Agreement

Prepared for 03042025J  
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Prepared by Cleardocs kylie  
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### What to do next

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#### You need to arrange for the documents to be signed

How to establish the loan is explained in the *Division 7A Loan Establishment Kit*, prepared by Maddocks. The Kit starts on the next page.

### Questions or further information

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If you have any questions, you can call Cleardocs on 1300 307 343.

**Cleardocs** will answer all your administrative queries. These include, queries about our service, our website, registering as a user, payment or feedback.

**Maddocks** will answer all your questions about the nature, content, use, consequences, drafting and effectiveness of our documents.

All the legal information contained in this document is provided by our lawyers at Maddocks.

## Division 7A Loan Establishment Kit

This Kit has been prepared by Maddocks. All the legal information contained in this Kit is provided by Maddocks.

### Introduction: Understanding the loan's purpose

The Cleardocs division 7A loan agreement (Loan Agreement) is a loan agreement under which a company, or the trustee of a trust associated with the company, can make loans to shareholders or associates of shareholders of the company, without those loans being deemed dividends. This means that the loans do not attract the unfavourable tax consequences of Division 7A of the *Income Tax Assessment Act 1936*.

We encourage all customers to seek independent legal advice as to the timing of anticipated tax outcomes when making trust distributions and entering into a Division 7A loan agreement.

### Process: Establishing the Loan Agreement

To effectively establish the Loan Agreement, you need to arrange for the Loan Agreement to be signed by all parties to the agreement.

The executed Loan Agreement does not need to be lodged with any authority. Nor is stamp duty payable in relation to the Loan Agreement.

### Copies of the Loan Agreement

Each party to the Loan Agreement should keep an original executed version of the agreement.

### Any questions?

If you have any questions, you can call Cleardocs on 1300 307 343.

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**Maddocks** will answer all your questions about the nature, content, use, consequences, drafting and effectiveness of our documents.

# Loan Agreement

between

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**Purple Orange One Thirty Two Com Pty. Ltd.**

**ACN 601 259 689**

5/83 George Street  
Parramatta, NSW, 2150  
(‘the company’)

and

**Parker Sue**

5/83 George Street  
Parramatta, NSW, 2150  
(‘the borrower’)  
(a shareholder, or associate of a shareholder, of the company)

abc  
melbourne  
5653 Bourke Street  
melbourne VIC 3000  
Tel: 5165156165  
Fax: 03 988691230  
jamesparker2781@gmail.com

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## Background

The borrower is a shareholder, or associate of a shareholder, of the company.

The company has made one or more loans to the borrower, and may make one or more loans to the borrower after the date of this agreement.

The parties wish to enter into this agreement to govern the repayment of the loans by the company to the borrower.

## A The facility

### Loan at company's discretion

- 1 The company, Purple Orange One Thirty Two Com Pty. Ltd., ACN 601 259 689, may make one or more loans to the borrower:

Parker Sue of 5/83 George Street

Parramatta, NSW, 2150

This agreement applies to all loans made by the company to the borrower, except loans to which the company and the borrower agree that this agreement is not to apply.

### Interest

- 2 As from 1 July after a loan is made, the borrower must pay interest on the outstanding amount of that loan at the Benchmark Interest Rate as defined in the *Income Tax Assessment Act 1936*.

### Minimum annual repayment

- 3 In relation to each amalgamated loan, the borrower must make annual repayments by 30 June each year that are at least the minimum yearly repayments as defined in section 109E(5) of the *Income Tax Assessment Act 1936*. However, the parties acknowledge that, if:

- the borrower fails to pay a minimum yearly repayment or all of a minimum yearly repayment (shortfall);
- the borrower is experiencing hardship due to COVID-19;
- the borrower makes an application to the regulator in the requisite form for an extension of time to repay the shortfall;
- the regulator makes a decision not to regard the shortfall as a payment of a dividend under section 109RD of the *Income Tax Assessment Act 1936*; and
- the borrower repays the shortfall to company no later than 12 months after the due date,

then the company will accept those arrangements, and that repayment of the shortfall, as complying with the borrower's obligations under this agreement in relation to the relevant minimum yearly repayment.

### **Repayment of loan and interest**

- 4 The borrower must repay each loan to the company, plus all interest that remains unpaid on it, no later than 7 years from the date the loan is made or is deemed by the *Income Tax Assessment Act 1936* to have been made. The borrower may repay any part of a loan, and any interest on a loan, before that date.

### **Capitalising interest**

- 5 The company may capitalise any interest that has become due but remains unpaid. That interest is then to be treated as having been added to the amount of the loan as from the date it became due.

### **Company may require security**

- 6 The company may at any time require the borrower to provide reasonable security for the performance of the borrower's obligations under this agreement.

### **Costs**

- 7 The borrower must pay the company the costs it reasonably incurs in connection with this agreement, and any security the borrower offers or provides under it. This includes stamp duty.

## **B Default**

### **Acceleration of amounts owing under this agreement**

- 8 The company may elect to treat all loans made to the borrower under this agreement, and any interest that has accrued but remains unpaid as payable automatically and immediately if any of the following happens:
- The borrower fails to pay an amount in accordance with this agreement.
  - The borrower assigns any of the borrower's property for the benefit of creditors or any class of them.
  - The borrower's interest in or under this agreement is attached or is taken in execution under any legal process.
  - A mortgagee or person with a similar legal interest in any of the borrower's assets takes possession of them or takes a step in that direction, or exercises a power of sale over them.
  - The borrower ceases to conduct or suspends the conduct of a major part of its business, or threatens to do so, except for the purpose of a solvent reconstruction or amalgamation that has been approved by the company.
  - The borrower disposes of its assets, or threatens to do so, except for the purpose of a solvent reconstruction or amalgamation that has been approved by the company.
  - A security interest becomes enforceable or is enforced against the borrower.
  - A distress, attachment or other form of execution is levied or enforced against the borrower for more than \$1,000.

- The borrower takes any step to obtain protection under legislation against the borrower's creditors, or is granted that protection.
- The borrower commits an act of bankruptcy or becomes insolvent.

## **C General provisions**

### **Method of payment**

- 9 The company may inform the borrower in writing that it requires payment under this agreement to be made in a specified way.

### **Joint and individual liability**

- 10 The obligations imposed on a borrower by this document are imposed on them individually as well as jointly. A breach by any of them is a breach by all of them.

### **Waiver**

- 11 The company only waives the exercise of a right or the performance of a duty under this agreement by specifically waiving it in writing, and then only to the extent it is specifically waived. Nothing else suffices.

### **Variation**

- 12 The parties can only vary this agreement in writing.

### **Counterparts**

- 13 This agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

### **Electronic execution**

- 14 A party may sign this agreement, and any variation to it, by electronic means where permitted by Law. Each other party consents to that party signing by electronic means.
- 15 The parties agree that if any party signs this agreement under clause 14, then:
- 15.1 an electronic form of this agreement with that party's electronic signature(s) appearing will constitute an executed counterpart; and
  - 15.2 a print-out of this agreement with that party's electronic signature(s) appearing will also constitute an executed counterpart.

### **Severability**

- 16 Each provision in this agreement is to be interpreted in a way that makes it enforceable. If anything in this agreement is unenforceable, it is to be disregarded to that extent. All other provisions remain unaffected.

### **Jurisdiction**

- 17 This agreement is governed by the law of New South Wales. Each party submits to the jurisdiction of the courts of that jurisdiction. No party may argue, on the basis of the

doctrine of forum non conveniens or any other basis, that the courts of that jurisdiction should not exercise jurisdiction.

Sample



## Definitions

**Amalgamated loan** means the total of all the loans made pursuant to this agreement that are made in a particular year of income and are not repaid by the end of that year.

**Associate** means what it means in Division 7A of the *Income Tax Assessment Act 1936*.

**Loan** means any of the following:

- an advance of money
- a provision of credit or of some other financial accommodation
- a payment of an amount for or on behalf of or at the request of the borrower where there is an express or implied obligation to repay the amount
- a transaction which in substance effects a loan of money
- a payment that would be deemed to be a dividend under Division 7A of the *Income Tax Assessment Act 1936*, but for which the borrower has taken 'corrective action' within the meaning given to that term in the Australian Taxation Office Practice Statement Law Administration PS LA 2007/20
- it includes any of these that is deemed to have been made under the *Income Tax Assessment Act 1936*.

**Regulator** means the Commissioner of Taxation.

## Execution

Executed as a deed.

Dated: \_\_\_\_\_

EXECUTED as a deed by affixing THE  
COMMON SEAL of Purple Orange One  
Thirty Two Com Pty. Ltd., ACN 601 259 689  
ACN in accordance with Sections 127(2) and  
127(3) of the Corporations Act 2001 in the  
presence of:

\_\_\_\_\_  
Signature of sole director and sole company  
secretary

Parker Peter

\_\_\_\_\_  
Name of sole director and sole company  
secretary

Signed by Parker Sue

\_\_\_\_\_  
5/83 George Street  
Parramatta, NSW, 2150