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# Equinox

Loan Summary

Loan and Security Agreement

**Macquarie Bank Limited**  
ABN 46 008 583 542

# Macquarie Investment Loan (the “Investment Loan”)

# Macquarie Interest Assistance Loan (the “Interest Assistance Loan”)

## SUMMARY OF THE LOAN FACILITIES

Approved investors may take advantage of an optional Investment Loan to be provided by Macquarie Bank Limited to invest in class C Participating Shares in Macquarie Equinox Limited (ARBN 105 989 231). A choice is offered between paying interest quarterly in arrears, or annually in advance. An Interest Assistance Loan of 75% of the first year's interest amount is also offered to qualifying investors choosing to pay interest annually in advance on a fixed interest rate Investment Loan.

The Shares purchased with the proceeds of the Investment Loan (net of Adviser Referral Fees) will be used to secure your obligations under the Investment Loan and the Interest Assistance Loan. If you choose to dispose of part or all of these Secured Shares prior to 31 December 2011 you will be obliged to repay the same proportion of money outstanding

(including unpaid interest) under the Investment Loan and the Interest Assistance Loan and break costs may be incurred.

The directors of a Corporate Borrower must enter a guarantee for the obligations of the Corporate Borrower under the loan facilities. Depending on the financial position of a Borrower who is an individual, Macquarie may require that individual Borrower's obligations under the loan facilities to be guaranteed. Once it has received an application from an individual Borrower, Macquarie will inform the Borrower if Macquarie requires a guarantee for that Borrower.

Terms not otherwise defined in this document have the meaning given to them in the prospectus issued by Macquarie Equinox Limited dated 18 May 2004.

The following table summarises the main features of the loan facilities on offer.

Investment Loan Facility		
Feature	Details	
<b>Percentage of Application Amount able to be borrowed under the Investment Loan</b>	100%	
<b>Minimum loan application amount</b>	\$40,000, with \$10,000 increments thereafter	
<b>Term</b>	Approximately 7½ years	
<b>Final date for repayment</b>	31 December 2011 or such date thereafter that proceeds become available in respect of a disposal on or before that date of Secured Shares	
<b>Interest Rate</b>	Choice of fixed or floating rate	
<b>Interest Payments</b>	Quarterly in arrears or annually in advance, via direct debit from an investor's bank account. The first payment of interest will include interest for the time between drawdown and 30 June 2004.	
<b>Recourse</b>	<b>During Term</b>	<b>At Maturity</b>
• Loan principal	Full	Full
• Interest payments	Full	Full
• Break costs / gains	Full	N/A

Interest Assistance Loan	
<b>Available to qualifying investors choosing:</b>	Investment Loans where interest is paid annually in advance with a fixed interest rate
<b>Percentage of 30 June 2004 interest payment covered by the Interest Assistance Loan</b>	75%
<b>Term</b>	3 years
<b>Repayment</b>	Three equal payments on 30 June 2005, 2006 and 2007
<b>Interest rate type</b>	Fixed for 3 years
<b>Interest payments</b>	Annually in arrears on 30 June 2005, 2006 and 2007, calculated daily on outstanding principal.

All interest payments are to be made via direct debit from the Borrower's nominated Australian bank account. Please do not send a cheque with your application for your first interest payment, even if you are nominating the “annually in advance” interest payment option with a Fixed Interest Rate, as the interest rates shown in this document are indicative only and may not be the final interest rates. Please ensure you complete the direct debit authority in the Application Form.

Macquarie Equinox Limited (ARBN 105 989 231) is not an authorised deposit taking institution for the purposes of the Banking Act (Cth) and Macquarie Equinox Limited's obligations do not represent deposits of other liabilities of Macquarie Bank Limited (ABN 46 008 583 542). Macquarie Bank does not guarantee or otherwise provide assurance in respect of the obligations of Macquarie Equinox Limited.

## TAX TREATMENT OF INTEREST EXPENSE

### General principles

Investors should seek their own professional taxation advice to determine whether they are able to claim a tax deduction for interest expenses incurred on any loan used to fund the acquisition of Shares or to fund the interest payable on that loan. Such determination will depend on the tax treatment applicable to the investor's particular circumstances.

You should generally be able to claim a tax deduction for any interest expense incurred on any Investment Loan or Interest Assistance Loan provided that you have a reasonable expectation that dividends (or other assessable income other than capital gains) will be derived from the investment in the class C Participating Shares, and will over time exceed your total allowable deductions (including interest) in respect of the investment.

Where interest is deductible under this test, and subject to any application of the thin capitalisation provisions, the interest deductions should be available against all of your assessable income, regardless of its nature.

### Proposed treatment of capital protected products

On 16 April 2003 the Government announced an intention to legislate to deny deductibility of some interest under loans taken out to invest in certain capital protected

products. It is considered that this announcement should not apply to any interest expense incurred on an Investment Loan or Interest Assistance Loan. Rather, it is considered that (under both current and proposed legislation) a full deduction for such interest should be available to Investors provided the above reasonable expectation test is satisfied.

Investors utilising any Investment Loan or Interest Assistance Loan to subscribe for class C Participating Shares should consider the above announcement and consult their own tax adviser where necessary. Please also refer below for comments regarding a product ruling application that has been submitted by Macquarie Bank Limited to the Australian Taxation Office.

### Timing of tax deductions for interest expense

The following comments in relation to timing of tax deductions assume that you will be entitled to deductions for all of your interest payments under any Investment Loan and Interest Assistance Loan.

If you are:

- an individual who does not carry on a business; or
- a Simplified Tax System ("STS") taxpayer<sup>1</sup>,

the timing of your deduction of your interest payments on your Investment Loan and your Interest Assistance Loan should be as shown below.

Amount paid	When deductible
<b>Interest paid quarterly in arrears on an Investment Loan</b>	No later than the time of payment.
<b>Interest paid annually in advance on an Investment Loan</b>	At the time of prepayment provided that either: <ul style="list-style-type: none"><li>• the shares are listed for quotation in the official list of an approved stock exchange<sup>2</sup>; or</li><li>• the tax positive test is passed<sup>3</sup>.</li></ul> Otherwise the deduction will be spread evenly over the period to which the prepayment relates.
<b>Interest paid annually in arrears on an Interest Assistance Loan</b>	No later than the time of payment.

<sup>1</sup> You can choose to be a Simplified Tax System taxpayer only if you are carrying on a business and you meet certain tests, including that:

(a) your average annual turnover is less than \$1,000,000; and

(b) the sum of relevant values of all of your depreciating assets held at the end of a year is less than \$3,000,000.

This is a broad summary of the tests, and some detail has been omitted.

<sup>2</sup> It is anticipated that the class C Participating Shares of Macquarie Equinox Limited will be listed in the Official List of the Irish Stock Exchange by 28 June 2004.

<sup>3</sup> You will pass the tax positive test for a year if your assessable income from class C Participating Shares for that year equals or exceeds your allowable deductions (including the interest on your Investment Loan and on your Interest Assistance Loan, if you have one) for that year in respect of these shares. Obviously, investors will be unable to satisfy this test for the year ended 30 June 2004.

### **Investment by an individual in the course of carrying on a business**

If you make your investment in Macquarie Equinox Limited as an individual in the course of carrying on a business and you are not an STS taxpayer, you will not be able to claim an immediate deduction for any prepayment of interest on any Investment Loan unless the prepayment is less than \$1,000. If the prepayment is \$1,000 or more, the deduction will be spread over the period to which the prepayment relates.

### **Investments by non-individuals**

If you are not an individual and you are not an STS taxpayer, you will not be able to claim an immediate deduction for any prepayment of interest on any Investment Loan unless the prepayment is less than \$1,000. If the prepayment is \$1,000 or more, the deduction will be spread over the period to which the prepayment relates.

### **Product Ruling**

Macquarie Bank Limited has requested the Australian Taxation Office to issue a Product Ruling confirming the deductibility of interest and the timing of deductions for interest prepayments / payments on Investment Loans and Interest Assistance Loans by certain classes of taxpayers. Macquarie Bank Limited cannot guarantee in any way whatsoever that a Product Ruling issued by the Australian Taxation Office will be in accordance with the above comments regarding the deductibility (including timing) of interest payments.

It is anticipated that any Product Ruling which is issued will be based on certain assumptions, including that your dominant purpose for investing in Macquarie Equinox Limited is to derive assessable investment income or both assessable investment income and a capital gain.

The Product Ruling had not yet been issued at the date of this document. It is possible that the Product Ruling will not have been issued by the ATO prior to the time the class C Participating Shares are issued. If this is the case, the investment will continue as detailed in the prospectus issued by Macquarie Equinox Limited.

Although it is not the Company's expectation, it is possible that an unfavourable Product Ruling will be issued prior to the issue of class C Participating Shares under this offer. "Unfavourable" means that more than half of the interest incurred under the Investment Loan on 30 June 2004 is not allowed as a deduction for the year ended 30 June 2004. If this happens, Equinox will either repay investors their subscription monies or issue a supplementary prospectus and:

- give investors one month to withdraw their application and be repaid their application monies in full; or
- issue the class C Participating Shares to applicants and give applicants one month to withdraw their application, in which case the class C Participating Shares will be cancelled and investors will be repaid their application monies in full.

If the Product Ruling is issued by the time the Offer closes, then Macquarie Bank Limited will confirm that fact and include reference details on the Equinox website ([macquarie.com.au/equinox](http://macquarie.com.au/equinox)).

Prospective investors considering utilising the loans should check the Equinox website ([macquarie.com.au/equinox](http://macquarie.com.au/equinox)) to ascertain whether the Product Ruling has been issued and, where it has been issued, to check whether it is in accordance with the comments above regarding deductibility (including timing) of interest payments.

### **Independent Tax Opinion**

**PricewaterhouseCoopers has provided a tax opinion relating to the above tax comments. This opinion appears in Appendix A.**

### **INVESTMENT LOAN INDICATIVE INTEREST RATES**

Investors may choose a fixed interest rate for their Investment Loan or a floating rate, but cannot switch between these rates after the Offer Close Date. Based on market conditions as at 18 May 2004 indicative interest rates on the Investment Loan "Indicative Interest Rates" are:

- Fixed rate: – paid quarterly in arrears: 8.25%  
– paid annually in advance: 7.85%
- Floating rate: – (paid quarterly in arrears) 7.25%

## INTEREST ASSISTANCE LOAN INDICATIVE INTEREST RATE

If an investor chooses the fixed interest rate on the Investment Loan, and the investor also chooses to pay interest annually in advance, the investor may also apply for the Interest Assistance Loan to fund 75% of the 30 June 2004 interest obligation. Based on market conditions as at 18 May 2004 the indicative rate on the Interest Assistance Loan also an ("**Indicative Interest Rate**") is:

- Fixed rate: 7.85%

## FINAL INTEREST RATES

The final interest rates will be advised to investors seven days prior to the Offer Close Date (unless extended, the Offer Close Date is 25 June 2004) via the Equinox website ([macquarie.com.au/equinox](http://macquarie.com.au/equinox)). Investors without internet access can contact the Macquarie Equinox Service Centre on 1800 02 55 13 for those rates.

It is the responsibility of loan applicants to look on the Equinox website or call the Macquarie Equinox Service Centre to ascertain the applicable interest rate for their loan.

Investors will have the opportunity to withdraw their Investment Loan (and Interest Assistance Loan if applicable) application(s) after the interest rates are set if the final interest rates are higher than the Indicative Interest Rates. Macquarie must receive notice of the withdrawal of the application prior to the Offer Close Date. Once the Offer Close Date passes, all Investment Loan and Interest Assistance Loan applications that have not been withdrawn will proceed.

When an applicant's Investment Loan (and Interest Assistance Loan if applicable) is approved, Macquarie Bank will issue a confirmation of the terms of the loan(s) ("**Confirmation**") to your address as nominated in the Application Form. The Confirmation will include the Interest Rate applicable to the loan(s) (or, where the Investment Loan is subject to a Floating Interest Rate, the Interest Rate applicable to the calendar month in which the Investment Loan is drawn).

The fixed rate loans will retain the same interest rate for the life of the loan, while the floating interest rate will be reviewed monthly, with any changes to the floating interest rate being posted on the Equinox website at the commencement of the month.

Where interest is to be paid annually under the Investment Loan, the first interest payment will include interest calculated for that year **plus** interest calculated from the day the loan is drawn down up to but excluding the next occurring 30 June.

## LOAN APPLICATION

To apply for the loan facilities, you will need to complete the attached Application Form and provide any required documentation to Macquarie. You should submit the application for the loan(s) (found at the back of this document) together with your completed Macquarie Equinox Limited application form found in the prospectus dated 18 May 2004.

Before making an investment decision on the basis of this document you should consider whether the Investment Loan and the Interest Assistance Loan are appropriate in the light of your particular investment needs, objectives and financial and taxation circumstances.

This document is a general disclosure document and hence does not take into account your objectives, financial situation or needs. You are advised to read this document in its entirety and seek professional legal, taxation and financial advice to determine whether the Investment Loan and the Interest Assistance Loan are appropriate for you.

# APPENDIX A



The Directors  
Macquarie Bank Limited  
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18 May 2004

Dear Directors

**Taxation Report**  
**Macquarie Equinox Class C Participating Shares – Loan Summary**

We have reviewed the section headed 'Tax treatment of interest expense' in the Equinox - Loan Summary – Loan and Security Agreement to be issued in May 2004 by Macquarie Bank Limited in respect of loans to be provided to invest in class C Participating Shares in Macquarie Equinox Limited. We believe that the section correctly summarises the more important Australian income tax matters for Australian resident borrowers arising in relation to loans borrowed from Macquarie Bank Limited to invest in Macquarie Equinox Limited class C Participating Shares pursuant to the Macquarie Equinox Limited Prospectus to be dated on or around 18 May 2004. The summary is based on the law and practice in force at the date of this letter and on Government announcements made up to the date of this letter. In forming this opinion, we have relied on statements of fact contained in the Equinox - Loan Summary - Loan and Security Agreement, as well as in the Macquarie Equinox Limited Prospectus.

Neither the Loan Summary nor this Taxation Report is, or purports to be, advice to any prospective borrower. Prospective borrowers should seek, and rely only upon, their own professional taxation advice, specific to their own circumstances.

The information contained in this letter does not constitute "financial product advice" within the meaning of the Corporations Act 2001 (Cth) (Corporations Act). The PricewaterhouseCoopers partnership which is providing this letter is not licensed to provide financial product advice under the Corporations Act. To the extent that this letter contains any information about a "financial product" within the meaning of the Corporations Act, taxation is only one of the matters that must be considered when making a decision about the relevant financial product. This letter has been prepared for general circulation and does not take into account the objectives, financial situation or needs of any recipient. Accordingly, any recipient should, before acting on this material, consider taking independent financial advice from a person who is licensed to provide financial product advice under the Corporations Act.

Yours faithfully

A handwritten signature in black ink, appearing to read 'N Healy'.

N Healy  
Partner

# Loan & Security Agreement

**Loan and Security Agreement** between the Borrower, the Guarantor and the Bank, dated as of [the Bank to insert date as appropriate] , 2004

## 1. THE FACILITIES

- 1.1 Subject to this agreement, the Bank agrees to provide the Borrower with:
- an Investment Loan Facility; and
  - subject to clauses 3.2 and 3.3, an Interest Assistance Loan Facility.
- 1.2 The maximum amount of financial accommodation available to the Borrower under this agreement is the Facility Limit.
- 1.3 The Borrower need not use the Facilities. However, if the Borrower wishes to use the Facilities, he or she must do so by a single drawdown for each Facility. The Investment Loan will be drawdown on the Drawdown Date. The Interest Assistance Loan Facility will be drawdown on 30 June 2004.
- 1.4 If the Borrower draws the Investment Loan Facility, the Borrower irrevocably authorises and directs the Bank to apply the proceeds of the drawdown of the Investment Loan Facility (after the deduction of any adviser referral fees) to subscribe for Shares in the Company in the name of the Borrower.
- 1.5 If the Borrower elects to pay interest under the Investment Loan Facility at a Fixed Interest Rate and annually in advance, and the Borrower draws an Interest Assistance Loan Facility under this Agreement, the Borrower irrevocably authorises and directs the Bank to apply the proceeds of the drawdown of that Interest Assistance Loan Facility to pay 75% of the first interest payment due on the Investment Loan Facility.
- 1.6 The Facilities will relate to the Shares acquired with the Investment Loan Facility and will be secured by the Secured Property.

## 2. CONDITIONS PRECEDENT

- 2.1 The Bank shall not be obliged to provide any Facility to the Borrower unless:
- the Bank is satisfied that after providing the accommodation the Facility Limit would not be exceeded;
  - where the Borrower is a trustee, including a corporate trustee of any trust, the Bank has received a solicitor's certificate in a form acceptable to the Bank;
  - where the Borrower is a Corporation, including a corporate trustee, the Bank has received a director's certificate in a form acceptable to the Bank and a guarantee from the directors of the Borrower;
  - where the Borrower is an individual and the Bank has determined that it will require a Guarantor to guarantee the obligations of the Borrower under this agreement, the Bank has received such a guarantee from the Guarantor;
  - the Bank is satisfied that the representations and warranties in clause 8 are correct and not misleading at the date the accommodation is provided;
  - the Bank is satisfied that no Event of Default has occurred and is continuing or would result from the accommodation being provided;
  - the Bank receives an executed copy of the Payment Instructions Deed; and
  - the Bank has received such other documents or information as the Bank may require.
- 2.2 Each condition of drawdown is for the sole benefit of the Bank and may be waived by it.

## 3. INTEREST

- 3.1 The Borrower agrees to pay interest under the Facilities in accordance with this clause or as otherwise specified by the Bank.

### Investment Loan Facility - Interest Rate

- 3.2 The Borrower acknowledges that he or she can elect to have the interest charged under the Investment Loan Facility calculated at either:
- a Fixed Interest Rate; or
  - a Floating Interest Rate,
- and acknowledges that:
- the Interest Assistance Loan Facility is available only where the Borrower elects a Fixed Interest Rate and also elects to pay interest annually in advance under clause 3.3(b) below; and
  - the Borrower's election to pay interest either under clause 3.2(a) or (b) is irrevocable for the term of the Facility.

### Investment Loan Facility - Interest payments and calculations

- 3.3 The Borrower acknowledges that he or she can elect to pay the interest charged under the Investment Loan Facility either:
- in arrears on each Quarterly Interest Payment Date, with interest calculated daily at the prevailing Interest Rate from the Drawdown Date to the first Quarterly Interest Payment Date and thereafter from the day after the Quarterly Interest Payment Date to the next Quarterly Interest Payment Date; or
  - in advance on each Advance Annual Interest Payment Date, with interest calculated daily at the prevailing Interest Rate from the Drawdown Date to the day preceding the first Advance Annual Interest Payment Date and thereafter from the Advance Annual Interest Payment Date to the day preceding the next Advance Annual Interest Payment Date,
- and acknowledges that:
- the Borrower can elect to pay interest annually in advance under clause 3.3(b) only where the Borrower elects a Fixed Interest Rate under clause 3.2(a); and
  - the Interest Assistance Loan Facility is available only where the Borrower elects to pay interest annually in advance under clause 3.3 (b) at a Fixed Interest Rate under clause 3.2 (a) under the Investment Loan Facility.

All interest payments will be made via direct debit from the Borrower's nominated Australian bank account.

### Interest Assistance Loan Facility

- 3.4 The Borrower will pay interest on the Outstanding Monies under the Interest Assistance Loan Facility at the relevant Fixed Interest Rate in arrears on each Arrears Annual Interest Payment Date from the 30 June 2005 until 30 June 2007.

### Interest payments

- 3.5 Where interest is to be paid annually in advance on the Investment Loan Facility under clause 3.3(b), the interest payments made on the first Advance Annual Interest Payment Date will be:
- interest calculated daily at the prevailing Interest Rate in respect of the period from the Drawdown Date to the day preceding the first Advance Annual Interest Payment Date; plus
  - interest in respect of the period from the first Advance Annual Interest Payment Date to the day preceding the next Advance Annual Interest Payment Date calculated in respect of that period.
- 3.6 An Interest Payment Date which would otherwise be after the Repayment Date is on the Repayment Date.

# Loan & Security Agreement (continued)

## 4. REPAYING AND PREPAYING

### Repayments

- 4.1 The Borrower must repay the Outstanding Monies under the Investment Loan Facility on the Investment Loan Repayment Date.
- 4.2 Subject to clause 4.9, the Borrower must repay the Interest Assistance Loan Amount in three equal installments of interest and principal as calculated in the Confirmation. Each installment must be paid on the relevant Arrears Annual Interest Payment Date and the Outstanding Monies under the Interest Assistance Loan Facility paid on 30 June 2007.

### Pre-payments

- 4.3 Subject to clause 4.4, if the Borrower Disposes of a proportion of the Secured Shares before the Capital Protection Date, the Borrower shall repay the same proportion of:

- a) the Outstanding Monies under the Investment Loan Facility; and
- b) the Outstanding Monies under the Interest Assistance Loan Facility,

in one amount on the date of the Disposal (for example, if Shares which represent 20% of the Secured Shares are redeemed, the Borrower must repay 20% of the Outstanding Monies under the Investment Loan Facility and 20% of the Outstanding Monies under the Interest Assistance Loan Facility). That repayment will be applied to reduce the Principal and any accrued but unpaid interest under each Facility in the same proportion.

- 4.4 If the Borrower redeems any of the Secured Shares the Borrower authorises the Bank to apply the proceeds from the redemption as follows:

- a) first, to pay all indemnity obligations under clause 15;
- b) second, to pay all outstanding fees and expenses payable under clause 6;
- c) third, to pay the same proportion of any Outstanding Monies that is repayable pursuant to either clauses 4.1, 4.2 or 4.3

The Bank's application of the proceeds of redemption under paragraph (c) will be made to the Investment Loan Facility and the Interest Assistance Loan Facility in the same proportion.

If the proceeds of the redemption are not sufficient to pay all of the amounts above, the Borrower must pay the Bank the additional amount necessary to pay them.

- 4.5 The Borrower may pre-pay all or any part of the Outstanding Monies under a Facility on the last day of each calendar month (commencing from the Drawdown Date). Prepayment amounts under the Investment Loan Facility must:

- a) be of a minimum of \$5,000, and with \$1,000 increments above that amount; and
- b) must leave no lesser amount of Outstanding Monies than \$40,000,

unless the Bank in its absolute discretion agrees otherwise, and

- c) where an Interest Assistance Loan Facility has been utilised, the Borrower shall repay the same proportion of the Outstanding Monies under each Facility.

- 4.6 Where a Borrower is to pre-pay all or any part of the Outstanding Monies under clause 4.5, then:

- a) the Borrower must notify the proposed payment to the Bank by 11am on the fourth Business Day before the prepayment (once given, a notice of prepayment is irrevocable and the Borrower is obliged to prepay in accordance with the notice);
- b) if a Fixed Interest Rate is applicable to the Drawing, the Borrower may be liable for Break Costs under clause 15.1(c) and is not entitled to any rebate of interest that he or she has prepaid; and
- c) the Bank will notify the Borrower of all amounts, including fees and other expenses then accrued and due under clause 6 and any indemnity obligation under clause 15 (including Break Costs) by the second Business Day before the proposed repayment. These amounts will be payable in addition to the prepayment made under clause 4.5.

- 4.7 Amounts repaid or prepaid may not be reborrowed under this agreement.

- 4.8 The Borrower acknowledges that his or her obligations under the Facility, including his or her obligations to repay the Outstanding Monies and pay costs, fees and charges are not affected by:

- a) the success or failure of the Company;
- b) the level of return from or loss of money invested in the Company; or
- c) any illegality in connection with the Company or the Prospectus.

- 4.9 If any part of the Interest Assistance Loan Amount is prepaid, the prepayment will be applied to reduce future payments under clause 4.2 equally. The Bank will notify the Borrower of any consequent amendments to the calculations of repayments under the Interest Assistance Loan Facility in the Confirmation, and the amount of future repayments.

- 4.10 If any part of the Interest Assistance Loan Amount is prepaid on a date that is not an Arrears Annual Interest Payment Date:

- a) the Borrower is liable to pay to the Bank interest on that amount calculated daily at the relevant Fixed Interest Rate for the period from the last Arrears Annual Interest Payment Date until the date of the prepayment; and
- b) the amount of the prepayment is applied first to pay interest calculated under clause 4.10(a) and secondly to repay Principal under the Interest Assistance Loan Facility; and
- c) the amount by which the Outstanding Monies under the Interest Assistance Loan Facility is reduced will be only the amount applied to payment of Principal under clause 4.10(b); and
- d) the amount payable on each subsequent Arrears Annual Interest Payment Date will be equal.

This clause 4.10 applies in addition to any other charges for which the Borrower may be liable in respect of repayments of the Interest Assistance Loan Facility under this clause 4.

## 5. CHANGE OF LAW OR CIRCUMSTANCES

If there occurs any change in law or an interpretation of law which makes it unlawful for the Bank to give effect to any provision of this agreement, the Bank may notify the Borrower and thereupon the Bank's obligation to make, fund or maintain the Facilities or give effect to the relevant provision shall cease. The Borrower shall immediately repay the Facilities in full and any other monies then accrued due (whether or not yet payable) under this agreement.

## 6. FEES AND EXPENSES

6.1 The Borrower shall forthwith upon demand (and whether or not the Facilities are drawn) pay or reimburse the Bank for all costs, charges and expenses (including stamp duty, any tax on goods and services, value added tax, registration fees and legal fees, if any) incurred or payable by the Bank in connection with or arising out of the entering into this agreement and related documentation, the arrangement and administration of the Facilities, and any action required to be taken by the Bank under this agreement and the contemplated or actual enforcement of, or preservation of rights under, this agreement.

6.2 Where required by the Bank, the Borrower shall pay fees to the Bank for the amount as determined by the Bank from time to time. As at the date of this agreement, these include the following:

- a) a withdrawal fee, payable when funds under the Facilities are drawn by cheque (including bank cheque) (currently \$10 each), telegraphic transfer (currently \$35), direct bank deposit or bank draft;
- b) a fee for extra copies of statements and reports (currently \$10 per page), payable upon request of such copies by the Borrower;
- c) a low value transaction fee (currently \$15), payable on debit transactions of less than \$3,000; and
- d) a retrieval of information fee (currently \$50 plus \$10 per page), payable where the Borrower or its adviser or authorized representative request the Bank to retrieve, collate, sort and/or provide archived or historical information about the Facility.

6.3 The fees set out in Clause 6.2 shall be payable on demand and form part of the Secured Monies. The Bank may at any time and from time to time impose new fees and charges and vary any of these fees or the manner in which they are calculated.

## 7. PAYMENTS

7.1 All monies payable by the Borrower under this agreement shall be paid in full without setoff or counterclaim of any kind and free and clear of, and without any deduction or withholding of any kind.

7.2 If any amount would otherwise be paid or become due for payment on a day which is not a Business Day, that amount shall become due on the next following Business Day or, if that Business Day is in another calendar month, on the immediately preceding Business Day.

7.3 A certificate signed by the Bank stating any amount or rate for the purpose of this agreement shall, prima facie, be binding on the Borrower.

## 8. REPRESENTATIONS AND WARRANTIES

8.1 The Borrower and the Guarantor represent and warrant to the Bank that:

- a) the financial accommodation provided by the Bank under this agreement will be applied wholly or predominantly for business or investment purposes (or for both purposes);
- b) on issue of the Secured Shares to the Borrower, the Borrower will be the beneficial owner of and have good title to the Secured Shares free from any Security Interest other than the Mortgage;
- c) the Secured Shares are not held on trust by the Borrower for any other entity. This does not apply if the Bank has received a solicitor's certificate in a form acceptable to the Bank;
- d) on issue of the Secured Shares to the Borrower, this agreement creates a first ranking fixed mortgage over the Secured Property;
- e) each of the Borrower and the Guarantor obtains various benefits by entering into, exercising his or her rights and performing his or her obligations under this agreement;
- f) each of the Borrower and the Guarantor are able to pay his or her debts as and when they become due and payable;
- g) each of the Borrower's and the Guarantor's obligations under this agreement are valid and binding and are enforceable in accordance with its terms;
- h) no Event of Default continues unremedied;
- i) where the Borrower is a Corporation, the Borrower has been incorporated in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
- j) where the Borrower is a Corporation, the Borrower has power to enter into this agreement and comply with its obligations under them;
- k) where the Borrower is a Corporation, the agreement does not contravene the Borrower's constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;
- l) where the Borrower is a Corporation, the Borrower has in full force and effect the authorisations necessary for it to enter into this agreement, to comply with its obligations and exercise its rights under them and to allow them to be enforced;
- m) where the Borrower is a Corporation, no person has contravened or will contravene section 208 or section 209 of the Corporations Act by entering into this agreement or participating in any transaction in connection with this agreement;
- n) where the Borrower is a Corporation, there is no pending or threatened proceeding affecting the Borrower or any of its Related Bodies Corporate or any of their assets before a court, governmental agency, commission or arbitrator except those in which a decision against the Borrower or the Related Body Corporate (either alone or together with other decisions) would be insignificant;
- o) where the Borrower is a Corporation, neither the Borrower nor any of its Related Bodies Corporate is in breach of a law or obligation affecting any of them or their assets in a way which is likely to be a Material Adverse Change;

# Loan & Security Agreement (continued)

- p) where the Borrower is a Corporation, neither the Borrower nor any of its Related Bodies Corporate has immunity from the jurisdiction of a court or from legal process; and
  - q) where the Borrower is a trustee:
    - i) it is the sole trustee of the trust;
    - ii) it is not in breach of trust;
    - iii) it has the right to be fully indemnified out of the trust assets for obligations incurred under this agreement before the claims of beneficiaries; and
    - iv) this agreement is for the benefit of the trust.
- 8.2 The Borrower and the Guarantor acknowledge that the Bank:
- a) has not authorised or caused the issue of the Prospectus;
  - b) does not make or purport to make any statement in the Prospectus (or any statement on which a statement in the Prospectus is based);
  - c) takes no responsibility for any part of the Prospectus other than the reference to its name and references to the loan facility included in the Prospectus (if any) with its consent; and
  - d) does not endorse or recommend investment under the Prospectus.

## 9. UNDERTAKINGS

- 9.1 The Borrower and the Guarantor shall supply to the Bank when requested to do so:
- a) copies of the financial statements for the Borrower and the Guarantor for each financial year; and
  - b) such additional financial or other information relating to the Borrower and the Guarantor as the Bank may from time to time request.
- 9.2 Unless the Bank otherwise agrees in writing, the Borrower undertakes:
- a) not to create, agree or attempt to create or allow to exist, any Security Interest over or in respect of any Secured Property;
  - b) not to Dispose of, or otherwise deal with, any of the Secured Property or any interest therein;
  - c) to notify the Bank if any representation or warranty made by the Borrower in connection with this agreement is found to have been incorrect or misleading when made;
  - d) to do everything necessary to ensure that no Event of Default occurs; and
  - e) if an Event of Default occurs, to notify the Bank giving full details of the event and any step taken or proposed to remedy it.

## 10. SECURITY

- 10.1 The Borrower as legal and beneficial owner of the Secured Shares mortgages to the Bank all of his or her present and future right, title and interest in the Secured Property by way of a first ranking fixed mortgage as security for the due and punctual payment and satisfaction of the Secured Monies. The Borrower authorises the Bank to notify the Company of the details of the Mortgage.
- 10.2 The Borrower shall authorise the Company, upon issue of the Secured Shares, to deposit with the Bank (or its nominee) all documents of title relating to the Secured Property and any other documents the Bank requests relating to the Secured Property.
- 10.3 Without limiting any rights, powers or remedies conferred upon the Bank by this agreement or by law, at any time, whether before or after the occurrence of an Event of Default, the Borrower irrevocably appoints the Bank as its attorney for any one or more of the following:
- a) to complete and deliver, in accordance with clause 10.4, a Disposal request in respect of the Secured Shares;
  - b) to insert the name of the Bank or its nominee (or, but only after an Event of Default has occurred, the name of any purchaser pursuant to a power of sale conferred by law or the power of sale referred to in clause 12.2) in all or any transfer document ("Transfers") (and other relevant documents, if any) relating to the Secured Property;
  - c) in the name of the Borrower to sign, seal and deliver all or any of those Transfers (and those other relevant documents);
  - d) to cause all or any of those Transfers to be registered; and
  - e) to deliver the certificates (if any) deposited with the Bank (or its nominee) in respect of the Secured Property (and/or any certificate issued consequent upon such registration of the Transfers) to any nominee or purchaser named in such Transfers.
- 10.4 The Bank shall complete and deliver a Disposal request to the Company at least 40 days before the Capital Protection Date for the redemption of all the Secured Shares unless the Borrower advises the Bank at least 45 days before the Capital Protection Date that he or she wishes to redeem only a portion of the Secured Shares or that he or she wishes to retain all of the Secured Shares on the Capital Protection Date, in which event the Bank shall request a partial redemption or refrain from redeeming any of the Secured Shares, as advised.
- 10.5 If all or any part of the Drawing is repaid before the Repayment Date for any reason, then upon payment of such amounts, the Bank must:
- a) release from the Mortgage the same proportion of the Secured Property as the proportion of the Drawing that is repaid; and
  - b) if the Outstanding Monies are fully repaid, fully release the Mortgage.
- 10.6 This agreement is a continuing security and shall remain in full force and effect until the whole of the Secured Monies has been paid or satisfied in full.

## 11. PRIORITY AMOUNT

- 11.1 For the purposes only of fixing priorities in accordance with section 282 of the Corporations Act and without affecting any of the Borrower's obligations to the Bank, the prospective liabilities secured by this agreement include, without limitation, the prospective liabilities of the nature specified in clause 11.2 up to the maximum amount specified in clause 11.3.
- 11.2 The prospective liabilities of the Borrower are the obligation of the Borrower to:
- repay all of the Principal advanced under this agreement;
  - pay interest on the Drawing and other amounts payable under this agreement; and
  - pay or reimburse the Bank for all Costs, increased costs or loss incurred in connection with this agreement.
- 11.3 The maximum amount of the prospective liabilities set out in clause 11.2 is twice the Facility Limit.

## 12. EVENTS OF DEFAULT

- 12.1 Each of the following events shall be an Event of Default:
- the Borrower fails to pay any monies when due in accordance with this agreement;
  - the Borrower or the Guarantor fails duly and punctually to perform or comply with any of his or her obligations under this agreement;
  - any representation or warranty made by the Borrower or the Guarantor in connection with this agreement is found to have been incorrect or misleading when made;
  - the Borrower or the Guarantor dies, becomes insolvent or is subject to any arrangement, assignment or composition or protected from any creditors or otherwise unable to pay his or her debts when due;
  - any government, governmental agency, department, commission, or other instrumentality seizes, confiscates, or compulsorily acquires (whether permanently or temporarily and whether with payment of compensation or not) any of the Secured Property;
  - any litigation, administrative proceedings or other procedure for the resolution of disputes is commenced in which the title of the Borrower to any of the Secured Property will or might be impeached or the Borrower's enjoyment of, or the Bank's rights hereunder to, any of the Secured Property will or might be restrained or otherwise hindered;
  - the Bank receives any notice from a credit reporting agency or any other credit provider to the Borrower or the Guarantor which indicates that the Borrower or the Guarantor is in default under any other financial, payment or performance obligation with any other party or that any of the events specified in the foregoing paragraphs of this clause 12.1 have occurred;
  - there occurs an event which is, or in the Bank's opinion may lead to, a Material Adverse Change;
  - where the Borrower is a Corporation:
    - an application is made for an order, a meeting is convened to consider a resolution, a resolution is passed or an order is made that the Borrower would be wound up or otherwise dissolved and/or that an administrator, a liquidator or provisional liquidator of the Borrower be appointed; or

- a receiver, receiver and manager, administrator, controller, trustee or similar officer is appointed in respect of all or any part of the business, assets or revenues of the Borrower;
- where the Borrower is a trustee:
  - the Borrower ceases to be the trustee of the trust or any step is taken to appoint another trustee of the trust, in either case without the Bank's consent; or
  - an application or order is sought or made in any court for:
    - removal of the Borrower as trustee of the trust; or
    - property of the trust to be brought into court or administered by the court or under its control; or
  - a notice is given or meeting summoned for the removal of that Borrower as trustee of the trust or for the appointment of another person as trustee jointly with the trustee Borrower.

- 12.2 If an Event of Default occurs the Bank may, without being obliged to do so and notwithstanding any waiver of any previous default, and in addition to any other rights or remedies conferred by this agreement or by law:
- declare the Outstanding Monies and all other sums which have accrued due hereunder (whether or not presently payable) to be, whereupon they shall become, immediately due and payable without further demand, notice or other legal formality of any kind; and/ or
  - declare the Facility terminated whereupon the obligations of the Bank hereunder shall immediately cease; and/or
  - do all acts and things and exercise all rights, powers and remedies that the Borrower could do or exercise in relation to the Secured Property including, without limitation, the power to:
    - take possession and assume control of the Secured Property;
    - receive all money or other distributions (whether monetary or otherwise) made or to be made in respect of the Secured Property and give a notice contemplated by the Payment Instructions Deed;
    - sell, dispose of or otherwise deal with the Secured Property or agree to do the same (whether or not the Bank has taken possession) on such terms as the Bank thinks fit in its absolute discretion;
    - employ solicitors, agents, accountants, auctioneers and consultants on such terms as the Bank thinks fit;
    - carry out and enforce, or refrain from carrying out or enforcing, rights and obligations of the Borrower which may arise in connection with the Secured Property or obtained or incurred in the exercise of the rights, powers and remedies of the Bank;
    - institute, conduct, defend, settle, arrange, compromise and submit to arbitration any claims, questions or disputes whatsoever which may arise in connection with the Secured Property or in any way relating to this agreement, and to execute releases or other discharges in relation thereto; and
    - execute documents on behalf of the Borrower under seal or under hand,

and any monies which the Bank pays or becomes liable to pay by reason of doing any of the above shall form part of the Secured Monies.

# Loan & Security Agreement (continued)

## 13. APPOINTMENT OF RECEIVER

- 13.1 Immediately upon or at any time after the occurrence of an Event of Default, the Bank may appoint in writing any person to be a receiver or receiver and manager ("the Receiver") of any Secured Property and:
- the Receiver may be appointed by the Bank on such terms as the Bank thinks fit;
  - the Bank may remove a Receiver and may appoint another in his place;
  - the Bank may from time to time determine the remuneration of the Receiver; and
  - if two or more persons are appointed as Receiver they may be appointed jointly and/or severally and may be appointed in respect of different parts of the Secured Property.
- 13.2 Unless and until the Bank by notice in writing to the Borrower and to the Receiver requires that the Receiver act as agent of the Bank, the Receiver shall be the agent of the Borrower, and the Borrower alone shall be responsible for the acts and defaults of the Receiver, but in exercising any powers of the Bank, the Receiver shall have the authority of both the Borrower and the Bank.
- 13.3 Subject to any specific limitations placed upon him by the terms of his appointment, the Receiver may, in addition to any right, power or remedy conferred upon him by law, do any act, matter or thing and exercise any right, power or remedy that may be done or exercised by the Bank in relation to the Secured Property.

## 14. INTEREST ON OVERDUE AMOUNTS

- 14.1 If the Borrower does not pay any amount under this agreement on the due date for payment, the Borrower agrees to pay interest on that amount at the Default Rate. The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.
- The Borrower agrees to pay interest under this clause on demand from the Bank.
- 14.2 If a liability becomes merged in a judgment, the Borrower agrees to pay interest on the amount of that liability as an independent obligation. This interest:
- accrues daily from (and including) the date the liability becomes due for payment both before and after the judgment up to (but excluding) the date the liability is paid; and
  - is calculated at the judgment rate or the Default Rate (whichever is higher).
- The Borrower agrees to pay interest under this clause on demand from the Bank.

## 15. INDEMNITIES / EARLY UNWIND AND OTHER COSTS

- 15.1 The Borrower indemnifies the Bank from and against all actions, suits, claims, demands, losses, liabilities, damages, costs and expenses which may be made or brought against or suffered or incurred by the Bank arising out of or in connection with:
- any Event of Default;
  - the exercise or nonexercise of any right, power or remedy contained, referred to or implied in this agreement;
  - any prepayment (whether pursuant to clause 4 or otherwise), including, without limitation, any loss or expense incurred in respect of:
    - any costs associated with the Bank obtaining an appropriate form of risk management (or instrument of similar effect) with respect of this agreement, the funding of the Facility; or
    - the exercise, nonexercise or the prevention or inability by the Bank to exercise any rights under any risk management agreement; or
    - the liquidation or redeployment of funds acquired from third parties to make or maintain the Facility; or
    - the termination or reversal of any arrangements (including, without limitation, any fixed rate contracts) entered into in connection with the funding of the Facility; or
    - any loss of profits that the Bank may suffer by reason of the early liquidation or redeployment of such funds or the termination or reversal of such arrangements.
- 15.2 The Borrower agrees to compensate the Bank on demand if the Bank determines that any new or amended law (including without limitation any law which imposes a tax on goods and services), order, official policy, directive or request of any governmental agency, or any change in any interpretation or administration of any law, order, official policy, directive or request of any governmental agency, directly or indirectly:
- increases the cost to the Bank of providing, funding or maintaining the Facility; or
  - reduces any amount received or receivable by the Bank, or its effective return, in connection with the Facility; or
  - reduces the Bank's return on capital allocated to the Facility, or its overall return on capital.
- 15.3 Any amount which the Bank certifies to the Borrower that it has expended, incurred or will incur, or which it will forego pursuant to clauses 15.1 or 15.2 shall, prima facie, be binding for all purposes.
- 15.4 The Bank shall not be responsible for any losses of any kind whatsoever (including, without limitation, the negligence, default or dishonesty of any servant, agent or auctioneer employed by the Bank, any attorney of the Bank or the Receiver) which may occur in or about the exercise, attempted exercise or nonexercise of any of the rights, powers or remedies of the Bank under this agreement.
- 15.5 The Borrower and the Guarantor release the Bank from all actions, suits, claims, demands and losses in connection with the Prospectus.

## 16. SETOFF

- 16.1 The Bank may (in addition to any general or banker's lien, right of setoff, right to combine accounts or any other right to which it may be entitled), without notice to the Borrower or any other person, setoff and apply any credit balance (or any part thereof in such amounts as the Bank may elect) on any account (whether such account is subject to notice or not and whether matured or not) of the Borrower with the Bank and any other monies owing by the Bank to the Borrower, against the Secured Monies.
- 16.2 The Bank may (in addition to any general or banker's lien, right of set-off, right to combine accounts or any other right to which it may be entitled), without notice to the Guarantor or any other person, set-off and apply against any monies owing by the Guarantor to the Bank under this agreement any credit balance (or any part thereof in such amounts as the Bank may elect) on any account (whether such account is subject to a notice or not (whether matured or not)) of the Guarantor with the Bank and any other money owing by the Bank to the Guarantor.

## 17. VOTING RIGHTS

- 17.1 Until an Event of Default occurs or the Secured Shares are registered in the Bank's name, the Borrower may exercise the voting rights attached to the Secured Shares as it sees fit.
- 17.2 If an Event of Default occurs and is subsisting or the Secured Shares are registered in the name of the Bank, then:
- all rights of the Borrower under clause 17.1 immediately cease; and
  - the Bank is entitled to exercise the rights referred to in clause 17.1 although the Bank is not required to exercise such rights.

## 18. TAXATION

If the Borrower is required to deduct any tax from any payment due to the Bank by the Borrower in connection with the Agreement, then:

- it must pay that amount to the appropriate authority and promptly provide the Bank with evidence of payment; and
- the amount payable is increased so that (after deducting that tax and paying any taxes on the increased amount) the Bank receives the same amount it would have received had no deduction been made.

## 19. NOTICES

- 19.1 All notices and other communications required by this agreement to be in writing shall be given by the relevant party and shall be sent to the recipient by hand, prepaid post (airmail if outside Australia) or facsimile.
- 19.2 A notice or other communication shall be deemed to be duly received:
- if sent by hand, when left at the address of the recipient;
  - if sent by prepaid post, 5 days after the date of posting; or
  - if sent by facsimile, upon receipt by the sender of an acknowledgement or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number.
- 19.3 All notices and other communications shall be sent to the addresses of the respective parties as set out in the Application or as a party may notify to the other party in writing.

## 20. ASSIGNMENT

- 20.1 Neither the Guarantor nor the Borrower shall assign or otherwise transfer the benefit of this agreement or any of his or her respective rights, remedies, powers, duties or obligations under this agreement without the prior written consent of the Bank.
- 20.2 The Bank may assign, transfer and otherwise grant participations or subparticipations in all or any part of the benefit of this agreement and any of its rights, remedies, powers, duties and obligations under this agreement without the consent of the Borrower or the Guarantor.
- 20.3 The Bank may disclose to a potential assignee, transferee, participant or subparticipant such information about the Borrower, the Guarantor, and this agreement as the Bank considers appropriate.

## 21. MISCELLANEOUS

- 21.1 The Borrower hereby consents to the Bank disclosing to the Guarantor and to any other guarantor of the obligations of the Borrower the following information:
- a copy or summary of this agreement and related material evidencing the obligations of the Borrower to be guaranteed; and
  - a copy of any formal demand that may be sent from time to time by the Bank to the Borrower.
- 21.2 The Borrower irrevocably appoints the Bank and each executive director, division director and associate director of the Bank for the time being, severally, the attorneys of the Borrower to do (either in the name of the Borrower or the attorney) all acts and things that the Borrower is obliged to do under this agreement or which, in the opinion of the Bank, are necessary or desirable in connection with the Secured Property or the protection or perfection of the Bank's interests or the exercise of the rights, powers and remedies of the Bank.
- 21.3 The failure or delay of the Bank in exercising any right under this agreement will not operate as a waiver of any right and the exercise of a single right or partial exercise of any right by the Bank under this agreement will not prevent the Bank from exercising any other right. The rights of the Bank under this agreement are cumulative and are not exclusive of any other rights provided by law.
- 21.4 A waiver by the Bank shall only be effective if it is in writing signed by at least two officers of the Bank.
- 21.5 Any provision of this agreement which is or becomes prohibited or unenforceable in any jurisdiction shall be severed from this agreement only in respect of that jurisdiction.
- 21.6 The indemnities contained in this agreement are continuing obligations of the Borrower, separate and independent from their other obligations and shall survive the termination of this agreement.
- 21.7 Any consent requested of, or determination by, the Bank may be given or withheld by the Bank in its absolute discretion and conditionally or unconditionally except where this agreement otherwise expressly provides.
- 21.8 If the performance by the Bank of any of its obligations under this agreement or related arrangements is prevented or delayed in whole or in part due to any circumstance which the Bank is unable to control, this agreement will nevertheless continue and remain in full force and effect but the Bank will not be in default under this agreement or otherwise liable for any loss, cost, expense or damage suffered by the Borrower or the Guarantor for that reason only and the Bank will be granted a reasonable extension of time to complete performance of its affected obligations.

# Loan & Security Agreement (continued)

- 21.9 Without limiting the terms of Clause 15 or Clause 21.8, the Bank shall not be responsible for any loss, cost, expense or damage suffered by the Borrower as a result of the Bank acting in accordance with any request or direction from the Borrower (including in relation to any sale of the Secured Property) or of not acting, or of not acting promptly, in accordance with any such request or direction.
- 21.10 This agreement shall be governed by and construed in accordance with the laws of the State. The parties irrevocably and unconditionally submit to the nonexclusive jurisdiction of the courts of the State.
- 21.11 Time shall be of the essence in respect of each and all of the obligations of each of the Borrower and the Guarantor hereunder.
- 21.12 The parties hereby irrevocably authorise the Bank, and each of its officers, agents, employees and solicitors to complete any details and fill in any blanks in this agreement.
- 22. GUARANTEE, INDEMNITY & THIRD PARTY PROVISIONS**
- 22.1 The Guarantor is liable for all the obligations of the Borrower under this agreement both individually and jointly with any one or more other persons named as Guarantor.
- 22.2 The Guarantor acknowledges that it is responsible for making itself aware of the financial position of the Borrower and any other person who guarantees payment of the Secured Money, and seeking appropriate legal advice relating to the Guarantor's obligations under this agreement.
- 22.3 The Guarantor acknowledges incurring obligations and giving rights under this agreement for valuable consideration received from the Bank.
- 22.4 The Guarantor unconditionally and irrevocably guarantees to the Bank, jointly and severally, the due and punctual payment and satisfaction of the Secured Monies by the Borrower. The amount of the Guarantor's liability as guarantor under this clause 22 is limited to the Secured Monies.
- 22.5 The Guarantor unconditionally and irrevocably indemnifies the Bank from all losses and claims arising under this agreement. This indemnity extends to cover all actions, suits, claims, demands, obligations, liabilities, losses, damages, costs and expenses which have been or may be made or brought against or which have been or may be suffered or incurred by the Bank if the whole or any part of the Secured Monies:
- a) are irrecoverable or have never been recoverable by the Bank from the Borrower; or
  - b) cannot be enforced against the Borrower; or
  - c) are not paid to the Bank for any other reason whatsoever including, without limitation, by reason of:
    - i) any legal limitation, disability, incapacity, lack of any power or lack of authority of or affecting any person;
    - ii) any of the transactions relating to the Secured Monies being void, voidable or unenforceable (whether or not the matters or facts relating thereto have been or ought to have been within the knowledge of the Bank); or
    - iii) any other fact, matter or thing whatsoever.
- 22.6 If the Borrower defaults in the due and punctual payment or satisfaction of any of the Secured Monies, the Guarantor shall pay the whole amount of the Secured Monies to the Bank immediately upon demand. The Bank may make such a demand on the Guarantor from time to time and whether or not demand has been made on the Borrower.
- 22.7 The Guarantor shall pay to the Bank immediately upon demand an amount equal to the amount of the claims, demands, obligations, liabilities, losses, damages, costs and expenses referred to in clause 22.5. The Bank may make such a demand from time to time and whether or not demand has been made on the Borrower.
- 22.8 The Guarantor agrees that the liability under clause 22.5 is that of principal debtor.
- 22.9 The Guarantor's obligations under this agreement shall be absolute and unconditional in any and all circumstances and shall not be prejudiced, released or otherwise affected by any one or more of the following (occurring with or without the consent of or notice to any person):
- a) any release, failure or agreement not to sue, discharge, termination, relinquishment, compromise, release, waiver, concession, indulgence, replacement, amendment, variation, increase, decrease or compounding of the obligations of the Borrower or of any other person under this agreement or of any of the Secured Monies;
  - b) any of the obligations of the Borrower or any other person under this agreement being or becoming wholly or partially illegal, void, voidable or unenforceable, whether by reason of any law or for any reason whatsoever;
  - c) any delay, laches, acquiescence, mistake, act, omission or negligence on the part of the Bank or any other person;
  - d) any defences being available to the Borrower under this agreement;
  - e) any part of the monies forming part of the Secured Monies being or becoming irrecoverable or never having been recoverable or any part of the obligations forming part of the Secured Monies being or becoming unenforceable or never having been enforceable;
  - f) any non-compliance by the Bank or any other person with the provisions of any law or with any provision of this agreement;
  - g) any law or judgment staying or suspending all or any of the rights of the Bank against the Borrower, or any other person (by operation of law or otherwise);
  - h) any person becoming or not becoming a guarantor of the Secured Monies or any part thereof or any discharge or release of any such person;
  - i) the insolvency, bankruptcy, winding up, receivership or administration of the Borrower or any other person;
  - j) any setting aside or avoidance of any payment by the Borrower or any other person;
  - k) any failure of the Bank to enforce the Mortgage, or alteration or variation to this agreement;
  - l) the full or partial release of the Mortgage; or
  - m) any other fact, matter, circumstance or thing whatsoever which, but for this provision, could or might operate to prejudice, release, discharge or otherwise affect the Borrower's obligations under this agreement.
- 22.10 The Bank shall not be required to proceed against the Borrower or exhaust any remedies it may have against the Borrower or enforce this agreement, but shall be entitled to demand and receive payment from the Guarantor when any payment is due under this agreement and/ or to proceed directly against the Secured Property.
- 22.11 Unless and until the whole of the Secured Monies have been paid or satisfied in full, the Guarantor shall not make any claim for any sum paid under this agreement or enforce any rights which it may have (whether by way of defence, indemnity, set-off, counterclaim, contribution, subrogation or otherwise) against the Borrower or its property.

## 23. PRIVACY

The Borrower consents to the Bank giving, from time to time, to:

- a) any of the Bank's related entities
- b) the Company;
- c) any Guarantor; or
- d) where the Borrower comprises more than one person, to any Borrower; and
- e) a person authorised by the Borrower and notified to the Bank in writing, as the borrower's representative for the purposes of this Agreement,

any information in the Bank's possession about the Borrower, the Secured Property, the Facility and this Agreement that they may request from time to time. The Bank may also give such information to fund managers, and clearing houses to the extent it deems necessary or desirable for effecting transactions in connection with this Agreement. This information may be given in electronic, paper or spoken form. The Bank is not in any way liable to the Borrower, and the Borrower releases the Bank, its directors and employees from any liability for, the unauthorised accessing or release of any such information (except to the extent, and only to the extent, arising from the Bank's gross negligence or fraud).

## 24. INTERPRETATION

24.1 In this agreement, unless the context otherwise requires:

**"Advance Annual Interest Payment Date"** means 30 June 2004 and each anniversary of that date until the Investment Loan Repayment Date.

**"Arrears Annual Interest Payment Date"** means 30 June 2005, 30 June 2006 and 30 June 2007.

**"Bank"** means Macquarie Bank Limited (ABN 46 008 583 542).

**"Borrower"** means the person identified as the applicant in the Loan Application Form.

**"Break Costs"** means all costs and expenses which may be made or incurred by the Bank arising out of or in connection with any prepayment of the Outstanding Monies (whether pursuant to clause 4 or otherwise), including, without limitation, any loss or expense identified in clause 15.1(c) (i) to (v).

**"Business Day"** means a day on which banks are open for business in the State.

**"Capital Protection Date"** means 31 December 2011.

**"Company"** means the company known as Macquarie Equinox Limited.

**"Confirmation"** means the confirmation to be issued by the Bank to the Borrower.

**"Corporation"** has the meaning given in the Corporation Act.

**"Corporations Act"** means the Corporations Act 2001 (Cth).

**"Costs"** includes costs, charges and expenses, including those incurred in connection with advisers.

**"Default Rate"** means the Fixed Interest Rate then applicable, plus 2% per annum.

**"Dispose"** means transfer or redeem.

**"Disposal"** means a transfer or redemption.

**"Drawdown Date"** means the date the Principal is drawdown, which is the same date as the date when the Shares of the Company are issued, as detailed in the Prospectus.

**"Drawing"** means the outstanding Principal from time to time of the drawdown made under the Facilities.

**"Event of Default"** means any event specified as such in Clause 12.

**"Facility"** or **"Loan Facility"** means:

- a) an Investment Loan Facility; and,
- b) if applicable, an Interest Assistance Loan Facility,

made available under this Agreement and "Facilities" and "Loan Facilities" means both of them.

**"Facility Limit"** means the lesser of:

- a) the amount for the Investment Loan Facility requested by the Borrower in the Loan Application Form; and
- b) the amount for the Investment Loan Facility approved by the Bank and notified to the Borrower in the Confirmation, plus, if requested by the Borrower and approved by the Bank,
- c) the Interest Assistance Loan Amount.

**"Fixed Interest Rate"** means the interest rate charged under the relevant Facility for the term of the Facility as determined by the Bank and set out in the Confirmation.

**"Floating Interest Rate"** means the interest rate charged under the Facility as determined by the Bank and adjusted on the last day of each calendar month (commencing from the Drawdown Date) unless that day is not a Business Day, in which case the reference date will be the previous Business Day, with the initial Floating Interest Rate set out in the Confirmation.

**"Guarantor"** means the person identified as such in the Loan Application Form.

**"Interest Assistance Loan Amount"** means the amount advanced to the Borrower as calculated by the Bank to represent 75% of the interest charged on 30 June 2004 under the Investment Loan Facility.

**"Interest Assistance Loan Facility"** means the loan advanced to the Borrower under the terms of this Agreement for the purposes of funding 75% of the interest payable on 30 June 2004 under the Investment Loan Facility.

**"Interest Payment Date"** means:

- a) if the Borrower elects to pay interest in arrears under clause 3.3(a), each Quarterly Interest Payment Date; or
- b) if the Borrower elects to pay interest in advance under clause 3.3(b), each Advance Annual Interest Payment Date; and
- c) if the Borrower draws an Interest Assistance Loan Facility under clause 1.1(b), each Arrears Annual Interest Payment Date.

**"Interest Rate"** means either the Fixed Interest Rate or the Floating Interest Rate (as nominated by the Borrower in the Loan Application Form).

**"Investment Loan Facility"** means the primary loan advanced to the Borrower under the terms of this Agreement for the purposes of purchasing Shares.

# Loan & Security Agreement (continued)

**“Investment Loan Repayment Date”** means:

- a) if the Borrower redeems all of his or her Secured Shares on the Capital Protection Date, the later of:
  - i) the date on which the proceeds from such redemption become available to the Borrower; and
  - ii) the Capital Protection Date; or
- b) if the Borrower advises the Bank that he or she wishes to retain all of his or her Secured Shares in accordance with clause 10.4, 20 days prior to the Capital Protection Date; or
- c) if the Borrower wishes to redeem a proportion of his or her Secured Shares on the Capital Protection Date and retain the balance of his or her Secured Shares in accordance with clause 10.4, then:
  - i) part (a) of this definition applies to that proportion of the Outstanding Monies that relates to the Secured Shares redeemed on the Capital Protection Date; and
  - ii) part (b) of this definition applies to the balance of the Outstanding Monies.

**“Loan Application Form”** means the application form completed by a proposed Borrower, and lodged with the Bank.

**“Material Adverse Change”** means a change which, in the Bank’s opinion, has a material adverse effect on either the Borrower’s assets, revenue or financial condition, or his or her ability to perform his or her obligations under this agreement;

**“Mortgage”** means the mortgage created under clause 10 of this agreement.

**“Outstanding Monies”** means the Drawing plus any accrued but unpaid interest.

**“Payment Instructions Deed”** means the deed entitled the Payment Instructions Deed dated on or about the date of this agreement between the Bank, the Company and the Borrower, substantially in the form of schedule 1.

**“Principal”** means the amount drawn down under the Facility on the Drawdown Date.

**“Prospectus”** means the prospectus relating to the offer of Shares in the Company dated 18 May 2004.

**“Quarterly Interest Payment Date”** means the following dates in any year:

- a) 30 September;
- b) 31 December;
- c) 31 March; and
- d) 30 June.

**“Related Bodies Corporate”** has the same meaning as in the Corporations Act.

**“Repayment Date”** means:

- a) in relation to the Investment Loan Facility, the Investment Loan Repayment Date; and
- b) in relation to the Interest Assistance Loan Facility (if applicable) 30 June 2007

**“Secured Monies”** means all monies, obligations and liabilities of any nature whatsoever that may now be, or might at any time in the future become or remain, due, owing or payable, whether actually or contingently, by the Borrower to the Bank on any account or for any reason whatsoever under the provisions of this agreement.

**“Secured Property”** means the property used as security under the Mortgage including without limitation all of the Borrower’s present and future right, title and interest in the Secured Shares, including the Borrower’s:

- a) interest in any dividends in respect of the Secured Shares; and
- b) rights consequent upon the redemption including any interest in the proceeds of redemption of those Secured Shares.

**“Secured Shares”** means the shares in the Company issued to the Borrower utilising the proceeds of the Principal provided to the Bank as security under clause 10 of this agreement.

**“Security Interest”** includes any mortgage, bill of sale, pledge, deposit, lien, encumbrance, hypothecation, arrangement for the retention of title and any other right, interest, power or arrangement of any nature whatsoever having the purpose or effect of providing security for, or otherwise protecting against default in respect of, the obligations of any person.

**“Share”** means a class C Participating Share in the Company as described in the Prospectus.

**“State”** means that State or Territory of the Commonwealth of Australia in which the office of the Bank that issues the Confirmation is located.

24.2. In this agreement, unless the context otherwise requires:

- a) words importing the singular include the plural and vice versa;
- b) references to any document (including this agreement) include any variation or replacement to that document; and
- c) references to any party to this agreement include references to its respective successors and permitted assigns.

24.3 In this agreement, if the Borrower comprises two or more persons, a reference to the Borrower is a reference to any two or more of them jointly and to each of them individually.

# Loan & Security Agreement (continued)

EXECUTED as an agreement

**SIGNED** by )  
as attorney for **[THE BORROWER]** )  
under power of attorney dated )

in the presence of (witness) )

Signature of witness )

Name of witness (block letters) )

Address of witness )

Occupation of witness )

By executing this agreement the attorney states that the attorney has received no notice of revocation of the power of attorney

**SIGNED** by )  
as attorney for **MACQUARIE BANK LIMITED** )  
under power of attorney dated )

in the presence of (witness) )

Signature of witness )

Name of witness (block letters) )

Address of witness )

Occupation of witness )

By executing this agreement the attorney states that the attorney has received no notice of revocation of the power of attorney



# Schedule 1: Payment Instructions Deed

This Deed dated <date will be inserted here> is between:

- a) Macquarie Equinox Limited of Washington Mall I, 22 Church Street, Hamilton HM11, Bermuda (“Company”);
- b) <borrower name will be inserted here> of <borrower address will be inserted here> (“Borrower”); and
- c) Macquarie Bank Limited of 1 Martin Place, Sydney NSW 2000, Australia (“Bank”).

## INTRODUCTION

- A) The Borrower has entered into a Loan and Security Agreement with the Bank dated on or around <date will be inserted here> under which the Borrower has mortgaged in favour of the Bank all of its/his or her present and future right, title and interest in the first <number of shares will be inserted here> of Class C Participating Shares in the Company (“Secured Shares”) including the right to receive any dividends in respect of the Secured Shares and the proceeds of redemption of the Secured Shares.
- B) The Borrower wishes, in this Deed, to provide irrevocable payment instructions to the Company for the payment of any dividends and/or the proceeds from the redemption of the Shares payable by the Company to the Borrower.
- C) The Company wishes to acknowledge receipt of the irrevocable payment instructions from the Borrower and to confirm that it will act in accordance with the same for the benefit of the Bank.

## AGREEMENT

1. The Borrower irrevocably instructs the Company to make the following payments:
  - a) to pay any dividends in respect of the Secured Shares to the Borrower unless the Company receives a notice in writing from the Bank requesting that any dividend be paid directly to the Bank, in which case, the Company must pay those dividends directly to the Bank; and
  - b) to pay the proceeds from the redemption of the Secured Shares directly and without any deduction to the Bank.
2. The Company confirms and acknowledges that it will make the payments in accordance with the terms of Clause 1 for the benefit of the Bank.

3. The notice from the Bank in Clause 1(a) shall be sent by facsimile to the Registrar of the Company with a copy by electronic mail to the Registrar.
4. Unless the Bank provides different written instructions to the Company, any payment that the Company is required to make to the Bank under Clause 1 shall be made by wire transfer to:  
<payment details will be inserted here>
5. The Borrower agrees that any payment received by the Bank from the Company of any dividend or redemption proceeds under Clause 1 fully discharges any obligation that the Company has to pay the dividend or the redemption proceeds to the Borrower.
6. This Deed shall be governed and construed in accordance with the laws of the State of New South Wales Australia and the Commonwealth of Australia. The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.

**In Witness** of which the parties have entered into this Deed in Bermuda on the date given above.

<attestation clauses will be inserted here>

# Loan Application Instructions

If you are investing as . . .	. . . your account must be in the name of . . .	For example, like this . . . (the numbers refer to those on the Application Form)	. . . and your account description <sup>1</sup> could be . . .
An individual	The full given name of the individual	1. Yvette Mary Jones	None required
A company	The company	3. Yvette Jones Ltd	None required
A trust	The trustee(s), rather than the name of the trust	1. Yvette Mary Jones and 2. Jack Michael Jones 4. Jones Family Trust	Jones Family Trust
A partnership	The partners (you must supply account instructions which indicate how partners are to sign)	1. Jack Michael Jones 2. James David Smith 4. Jones Smith Partners	Jones Smith Partners

<sup>1</sup>The account description is completed in Section 4 of the Loan Application Form

If you are applying for an Investment Loan:

<b>in individual or joint names:</b>	complete and return Parts A and D
<b>in the name of a company:</b>	complete and return Parts A, B and D
<b>in the name of a trust:</b>	complete and return Parts A, B, C and D
<b>All loan Applicants:</b>	where the loan application is for an amount of \$500,000 or more Part E must also be completed

**Send your completed Investment Loan Application Form together with your Share Application Form to:**

Macquarie Equinox Service Centre  
 GPO Box 3423  
 Sydney NSW 2001  
 Telephone: 1800 025 513  
 or +61 2 8232 1181

# Loan Application Form

## Part A (to be completed by all loan applicants)

Complete this form using BLACK INK and print well within the boxes in CAPITAL LETTERS. Mark answer boxes with a cross (X). Start at the left of each answer space and leave a one box gap between words.



Unless otherwise defined, capitalised terms in this Loan Application Form have the meaning set out in the prospectus for Macquarie Equinox Limited dated 18 May 2004 (the "Prospectus") or the Loan and Security Agreement attached to this Loan Application Form, as the context requires.

### 1 INDIVIDUAL AND JOINT ACCOUNTS

#### Applicant A

Title

Mr  Mrs  Miss  Ms  Other

Given Name(s)

Surname

Occupation

Tax File Number OR Reason for exemption

Home phone number

Mobile phone number

Work phone number

Fax number

E-mail address

Date of Birth

Gender

M  F

### 2 INDIVIDUAL AND JOINT ACCOUNTS

#### Applicant B

Title

Mr  Mrs  Miss  Ms  Other

Given Name(s)

Surname

Occupation

Tax File Number OR Reason for exemption

Home phone number

Mobile phone number

Work phone number

Fax number

E-mail address

Date of Birth

Gender

M  F

### 3 COMPANY, INCORPORATED ASSOCIATION OR BODY

Name of company, incorporated association, or incorporated body

ABN / ACN / ARBN if applicable

Tax File Number OR Reason for exemption

Name of contact person

Phone number

Fax number

### 4 TRUST OR OTHER ENTITY ACCOUNT DESCRIPTION

Name of trust, partnership, deceased estate, unincorporated association or business.

If trust or partnership specify account description. (Refer to page 16 Loan Application Instructions.)

Is this a trust account? Yes  No

TFN / ARBN if applicable



## 9 OPERATING INSTRUCTIONS

**Joint Accounts** – If you do not cross a box we will assume Both to sign together.

Either to sign  Both to sign together

**Company Accounts** – If you intend instructions to be given under company seal, affix the company seal here. If a company seal is affixed here, we will assume that all future written instruments must be executed under seal. If no company seal is affixed here, we will assume that all future written instructions must be executed by two directors of the company or a director and a company secretary (unless the company has only one director), on behalf of the company. We will assume that all signatories to the instruction are authorised to sign.

Common Seal

## 10 LOAN CONSENTS, ACKNOWLEDGEMENTS AND DECLARATIONS

### Loan Approval

Macquarie Bank retains the discretion to decline your application for the Loan Facility/Facilities either in whole or in part. If approval is given for a smaller Investment Loan amount than you request, you will be taken to have applied for a reduced number of Shares corresponding to the Investment Loan amount that is approved.

Investors will have the opportunity to withdraw their application for the Investment Loan (and the Interest Assistance Loan as applicable) after the interest rate is set if the final interest rate(s) applicable to the relevant Facility/Facilities (as set out on the Macquarie Equinox website) are higher than the applicable indicative interest rate set out in the Summary of the Loan Facilities. Macquarie Bank must receive notice of the withdrawal of the application(s) prior to the Offer Close Date. Once the Offer Close Date passes, all Loan Facility applications that have not been withdrawn will proceed.

It is the responsibility of Loan Facility Applicants to look on the Equinox website or contact the Macquarie Equinox Service Centre to ascertain the applicable interest rate for their Loan Facility/Facilities.

If your Loan Facility applications are approved, Macquarie Bank will issue a Confirmation of the terms of the Loan Facility/Facilities to your address as nominated in Part A. This Confirmation will include the Interest Rate(s) applicable to the Loan Facility/Facilities (or, where the Investment Loan is subject to a Floating Interest Rate, the Interest Rate applicable to the calendar month in which the Investment Loan is drawn down).

### Privacy

I/We consent, acknowledge and agree that:

- a) the information in this Loan Application Form and any other information provided in connection with this application ("Information") is provided by me/us to Macquarie Equities (Australia) Limited ("MEAL"), the Company and Macquarie Bank (together the "Entities") to allow my/our application for the Loan Facility/Facilities to be assessed and processed and, if my/our application is successful, to give effect to the issue of Shares to the Borrower and to allow the Loan Facility/Facilities and my/our obligations under them to be administered and enforced. It may also be used and/or disclosed to affiliates and contracted service providers of Macquarie Bank (each also referred to as the "Entities") to offer investment and loan products to me/us;
- b) should I/we fail to provide the Entities with any such information or documentation requested of me/us, my/our application for the Loan Facility/Facilities and the corresponding number of Shares may be refused and the Entities shall not be liable for any loss arising as a result thereof;

- c) the Information may be collected, held, used and disclosed by the Entities in accordance with the Privacy Act 1988 (Cth) and, without limiting the disclosures permitted under that Act, I/we consent to the Entities disclosing my/our Information to a person authorised by me/us and notified to any Entity in writing as my/our representative (including a person authorised to buy and sell investments on my/our behalf); to fund managers and clearing houses; to foreign regulators; and to the Entities' contracted service providers located overseas (for the purpose of registering the Shares or otherwise administering the agreement for the issue of Shares between me/us and MEAL or the Company including, without limitation, Forum Fund Services Ltd in Bermuda);
- d) the Entities will not be in any way liable to me/us, and I/we release the Entities and each of their directors and employees from any liability for the unauthorised accessing or release of any Information (except to the extent, and only to the extent, arising from their gross negligence or fraud); and
- e) I/we may request access to my/our information by contacting the Macquarie Equinox Service Centre using the contact details shown on the Loan Application Instructions.

I/We consent to the Entities (and any other person or company who at any time provides or has any interest in the credit) doing any of the following at any time:

- f) seeking and using commercial credit information about me/us for the purpose of assessing whether to accept me/us as a guarantor/s for credit applied for by, or provided to, the Borrower and assessing my/our creditworthiness;
- g) seeking and using consumer credit information about me/us provided by a credit reporting agency for the purpose of assessing whether to accept me/us as a guarantor/s for credit applied for by, or provided to, the Borrower or commercial credit, to assess my/our creditworthiness, to collect overdue payments from me/us and/or to avoid defaulting on my/our credit obligations;
- h) seeking from and using or giving to another credit provider (including any other credit provider who has lent money on the same security) any information about my/our creditworthiness, credit standing, credit history or credit capacity. In particular, the Entities may provide a reference on me/us;
- i) seeking from and using or giving to any broker, financial consultant, accountant, lawyer or other adviser acting in connection with any financing provided or proposed to be provided to me/us any consumer or commercial credit information;
- j) disclosing any report or personal information about me/us to another person in connection with funding or managing financial accommodation by means of an arrangement involving securitisation;
- k) providing personal information and any of the above to my adviser;
- l) giving a credit reporting agency certain personal and commercial information about me/us, including the following information where applicable:
  - information which is reasonably necessary to identify me/us for example, name, gender, date of birth and current or last known address, current or last known employer, driver's licence number;
  - information about an overdue payment by me/us as the guarantor/s under the guarantee given against default by the Borrower in repaying all or any of the credit obtained by the Borrower from the Macquarie Bank.
  - that a cheque for an amount not less than \$100 that has been drawn by me/us has twice been presented and dishonoured by Macquarie Bank;
  - that in the opinion of Macquarie Bank, I/we have, in specified circumstances, committed a serious credit infringement;
  - that I/we have ceased to be overdue in making payments, or that I/we contend that I am/we are not overdue in making payment;
  - that the credit provided by the Macquarie Bank to the Borrower in respect of which I/we are guarantor/s has been paid or otherwise discharged;
  - that a court judgment has been made against me/us; and
  - that bankruptcy orders have been made against me/us.

**Security**

Subject to approval of your Investment Loan, you will be issued a number of Shares equal to the value of your Investment Loan net of any Adviser Referral Fee. All Shares will be issued to you at \$1.00 per Share. All Shares acquired using the Investment Loan shall be subject to a charge to Macquarie Bank and referred to as your "Secured Shares". Upon issue of your Shares, you authorise the Company to deliver to Macquarie Bank (or a nominee of Macquarie Bank):

- any title documents relating to your Secured Shares; and
- any other documents relating to the Investment Loan.

**Signatures and Business Purpose Declaration**

1. I/We acknowledge and declare that:

- all information provided as part of this application is true and correct;
- I/We have read and understand the Prospectus;
- Macquarie Bank:
  - has not authorised or caused the issue of the Prospectus;
  - takes no responsibility for any part of the Prospectus other than the reference to its name in the Prospectus with its consent; and
  - does not endorse or recommend investment under the Prospectus;
- Macquarie Bank provides Capital Protection to the Company as at the Capital Protection Date on the terms and conditions of the Capital Protection Agreement;
- I/We understand the risks associated with an investment in the Company as they are outlined in the Prospectus. I/we further acknowledge that Shares redeemed prior to the Capital Protection Date will not gain access to the benefits of the Capital Protection provided by Macquarie Bank to the Company and that Shares held beyond the Capital Protection Date will not have the benefits of ongoing protection;
- I/We am/are not aware of any liquidation or bankruptcy proceedings that have been commenced or are intended to be commenced by any person against me/us or which are intended or anticipated by me/us;
- I/We have read and understood the terms and conditions of the Loan and Security Agreement (including the scheduled Payment Instructions Deed) ("Agreement") and agree to be bound by the provisions thereof;
- if my/our Loan Facility application is approved, the Agreement, including the scheduled Payment Instructions Deed, will be signed on my/our behalf pursuant to the Power of Attorney contained in this Loan Application Form;
- all distributions arising from the Company will be applied in accordance with the Agreement;
- I/We acknowledge that my/our obligations under the Agreement including my/our obligations to repay the Loan Facility/Facilities and pay interest costs, fees and charges are not affected by:
  - the success or failure of the Company;
  - the level of return from or loss of money invested in the Company; or
  - any illegality in connection with the Company or the Prospectus; and
- investments in the Company are not deposits with, or other liabilities of, Macquarie Bank or of any entity in the Macquarie Bank Group or of any affiliate of Macquarie Bank, and are subject to investment risk, including possible delays in repayment and loss of income or principal invested. The Entities do not guarantee any particular rate of return or the performance of the Company nor do they guarantee the repayment of capital of the Company.

2. I/We declare that the credit to be provided to me/us by the credit provider, Macquarie Bank, is to be applied wholly or predominantly for business or investment purposes (or for both purposes).

**IMPORTANT NOTE: YOU SHOULD NOT SIGN THIS DECLARATION UNLESS THIS LOAN(S) IS WHOLLY OR PREDOMINANTLY FOR BUSINESS OR INVESTMENT PURPOSES (OR BOTH PURPOSES).**

**Authorisation of Applicant A or Company Officer A**

<b>X</b>	<b>SIGN HERE</b>	<b>DATE</b>
Name		
▶ If a company officer, you <b>must</b> specify your corporate title		
Director	<input type="checkbox"/>	Secretary <input type="checkbox"/>
Other		

**Authorisation of Applicant B or Company Officer B**

<b>X</b>	<b>SIGN HERE</b>	<b>DATE</b>
Name		
▶ If a company officer, you <b>must</b> specify your corporate title		
Director	<input type="checkbox"/>	Secretary <input type="checkbox"/>
Other		

# Loan Application Form

## Part B (to be completed by all guarantors. Note that all company applicants, including corporate trustees, must have directors' guarantees. Macquarie Bank may also require an individual borrower to be guaranteed.)



Complete this form using BLACK INK and print well within the boxes in CAPITAL LETTERS.  
Mark answer boxes with a cross (X). Start at the left of each answer space and leave a one box gap between words.

### Personal Guarantees (to be completed by the Guarantors)

Macquarie Bank may require that the obligations of an individual borrower ("Borrower") be guaranteed. The guarantor(s) must complete this section accordingly. If more than one guarantor is required, please provide details and signatures of all additional guarantors and witnesses on a separate attachment.

### Directors Guarantees (to be completed by all directors')

In the case of a company, including a corporate trustee, the obligations of the borrower ("Borrower") under the Loan Facility/Facilities must be guaranteed by each of the directors' of the company. Each director must complete this section accordingly. If a company has more than three directors' please provide details and signatures of all additional guarantors and witnesses on a separate attachment.

I/we acknowledge and agree that:

#### General

- a) I/we have read and understand the Prospectus;
- b) Investments in the Company are not deposits with or liabilities of Macquarie Bank or any affiliate of Macquarie Bank and are subject to investment risk, including possible delays in repayment and loss of income and/or principal invested;
- c) Neither the Company, MEAL, Macquarie Bank nor any affiliate of Macquarie Bank guarantees any particular rate of return or the performance of the Company nor do they guarantee the repayment of capital of the Company. I/we further acknowledge that Macquarie Bank provides Capital Protection to the Company as at the Capital Protection Date on the terms and conditions of the Capital Protection Agreement;
- d) I/we understand the risks associated with an investment in the Company as they are outlined in the Prospectus. I/we further acknowledge that Shares redeemed prior to the Capital Protection Date will not gain access to the benefits of the Capital Protection provided by Macquarie Bank to the Company on the terms and conditions of the Capital Protection Agreement and that Shares held beyond the Capital Protection Date will not have the benefits of ongoing protection.

#### Privacy

I/we consent, acknowledge and agree that:

- a) the information in this Loan Application Form and any other information provided by me in connection with this application ("Information") is provided by me/us to the Company, MEAL, and Macquarie Bank (together the "Entities") to allow the Borrower's application for the Loan Facility/Facilities to be assessed and processed and, if the Borrower's application is successful, to give effect to the issue of Shares to the Borrower and to allow the Loan Facility/ Facilities and my/our obligations as guarantor under the Loan Facility/ Facilities to be administered and enforced. It may also be used and disclosed to Macquarie Bank's affiliates and/or contracted service providers (each also referred to as the "Entities") to offer investment and loan products to me/us.
- b) should I/we fail to provide the Entities with any such information or documentation requested of me/us, my/our guarantee and the Borrower's application for Shares may be refused and the Entities will not be liable for any loss arising as a result thereof;
- c) the Information may be collected, held, used and disclosed by the Entities in accordance with the Privacy Act 1988 (Cth) and, without limiting the disclosures permitted under that Act, I/we consent to the Entities disclosing my/our Information to a person authorised by me/us and notified to any Entity in writing as my/our representative (including a person authorised to buy and sell investments on my/our behalf); to fund managers and clearing houses; to foreign regulators; and to Entities' contracted service providers located overseas (for the purpose of registering the Shares or otherwise administering the agreement for the issue of Shares between the applicant and MEAL or the Company including, without limitation, Forum Fund Services Ltd in Bermuda);
- d) the Entities will not be in any way liable to me/us, and I/we release the Entities and each of their directors and employees from any liability for the unauthorised accessing or release of any Information (except to the extent, and only to the extent, arising from the Entities' gross negligence or fraud); and
- e) I/We may request access to my/our information by contacting the Macquarie Equinox Service Centre using the contact details shown on the Loan Application Instructions.

I/we consent to the Entities (and any other person or company who at any time provides or has any interest in the credit) doing any of the following at any time:

- f) seeking and using commercial credit information about me/us for the purpose of assessing whether to accept me/us as a guarantor/s for credit applied for by, or provided by the Borrower, and assessing my/our creditworthiness;
- g) seeking and using consumer credit information about me/us provided by a credit reporting agency to assess my/our creditworthiness, to collect overdue payments from me/us and/or to avoid defaulting on my/our obligations;

- h) seeking from and using or giving to another credit provider (including any other credit provider who has lent money on the same security) any information about my/our creditworthiness, credit standing, credit history or credit capacity. In particular, the Entities may provide a reference on me/us;
- i) seeking from and using or giving to any broker, financial consultant, accountant, lawyer or other adviser acting in connection with any financing provided or proposed to be provided to me/us any consumer or commercial credit information;
- j) disclosing any report or personal information about me/us to another person in connection with funding or managing financial accommodation by means of an arrangement involving securitisation;
- k) providing personal information and any of the above to my adviser;
- l) giving a credit reporting agency certain personal and commercial information about me/us, including the following information where applicable:
  - information which is reasonably necessary to identify me/us for example, name, gender, date of birth and current or last known address, current or last known employer, driver's licence number;
  - information about any overdue payment by me/us as the guarantor/s under the guarantee given against default by the Borrower in repaying all or any of the credit obtained by the Borrower from the Macquarie Bank;
  - that a cheque for an amount not less than \$100 that has been drawn by me/us has twice been presented and dishonoured by Macquarie Bank;
  - that in the opinion of Macquarie Bank, I/we have, in specified circumstances, committed a serious credit infringement;
  - that I/we have ceased to be overdue in making payments, or that I/we contend that I am/we are not overdue in making payments;
  - that the credit provided by the Macquarie Bank to the Borrower in respect of which I/we are guarantor/s has been paid or otherwise discharged;
  - that a court judgment has been made against me/us; and
  - that bankruptcy orders have been made against me/us.

### FINANCIAL POSITION AND INCOME DETAILS

In order to assess your ability to guarantee the Loan Facility/Facilities, Macquarie Bank requires the following details as they relate to the guarantor. I/we have:

Net assets\* of at least: \$

**\*NOTE: This amount should be your Total assets LESS your liabilities**

Gross debt: \$

Gross annual income: \$

**LESS:** Annual expected tax payable (after taking into account any potential annual deductions from this transaction):

\$

Annual estimated general living expenses:

\$

Annual mortgage payments (monthly P&I payment x 12):

\$

Annual lease expenses:

\$

Other annual debt payments or expenses:

\$

Annual payments for this transaction (if available):

\$



# Loan Application Form

## Part C (complete only if you are a trustee)

Complete this form using BLACK INK and print well within the boxes in CAPITAL LETTERS. Mark answer boxes with a cross (X). Start at the left of each answer space and leave a one box gap between words.



### Certificate from Trustee's Solicitors

I certify that:

- a) I am a legal practitioner instructed and employed by the trustee applicant(s) independently of Macquarie Bank or any affiliate of Macquarie Bank; and
- b) the trust described in Part A of this Loan Application Form was properly established under its trust deed and is validly subsisting at the date of this Loan Application Form; and
- c) the trustee(s) described in Part A of this Loan Application Form has/have been properly appointed; and
- d) having reviewed the trust documentation, the Prospectus, the Agreement and this Loan Application Form, the trustee(s) has/have the power to borrow the funds, provide the security, perform all of its/their obligations under the Agreement and appoint attorneys; and
- e) the trust receives benefits from the trustee(s) entering into and performing its/their obligations under the Agreement.

### Solicitor Signature

<b>X</b>	<b>SIGN HERE</b>	<b>DATE</b>																		
Solicitor Name																				
Solicitor Firm																				
Address of Firm																				

This page has been left intentionally blank

# Loan Application Form

## Part D (to be completed by all loan applicants)

Complete this form using BLACK INK and print well within the boxes in CAPITAL LETTERS. Mark answer boxes with a cross (X). Start at the left of each answer space and leave a one box gap between words.



### Power of Attorney

**For individual applicants and joint applicants this form must be executed by each applicant. For companies (including corporate trustees) this form must be executed by the company and each of its directors as guarantors.**

I/We hereby irrevocably and by way of security appoint Macquarie Bank Limited ("Macquarie Bank") and/or any entity associated with Macquarie Bank (and each of its officers, employees, agents and solicitors) separately (the "Attorney") as my/our true and lawful agent and attorney in fact (with full power of substitution, delegation and revocation as the Attorney may deem expedient) to sign and deliver on my/our behalf, the following documents:

- the Loan and Security Agreement in substantially the same form as that provided with this Loan Application Form;
- the Payment Instructions Deed, in substantially the same form as that set out in Schedule 1 to the Loan and Security Agreement; and
- any other document, instrument, act or thing which, in the opinion of the Attorney, is necessary or desirable in connection with the Agreement or the protection or perfection of the interests of Macquarie Bank or the exercise of the rights, powers and remedies of Macquarie Bank.

I/We hereby further authorise the Attorney to do the following with respect to any of the relevant documents referred to above:

- complete any blanks;
- make any amendments or additions;
- instruct Macquarie Equinox Limited (the "Company"), Macquarie Equities (Australia) Limited or any broker or other person with respect to any dealings (including without limitation, any lodgements, applications, redemptions, releases and the payment method and destination account of any distribution) with my/our Shares in the Company;
- do, execute and perform any other deed, matter, act or thing which in the opinion of the Attorney ought to be done, executed or performed to perfect the relevant documents and make them effective; and
- attend to the stamping or registration of all related and ancillary documentation.

I/We declare that anything done by the Attorney pursuant to the powers hereby given to the Attorney will be binding on me/us as if those acts had been done by me/us. I/we agree to indemnify the Attorney against any loss or costs it suffers or incurs in exercising the powers specified above. The Attorney may exercise the powers granted above even if it involves a conflict of duty or a conflict of interest. Prospectus means the Prospectus for the Company dated 18 May 2004.

### Signed, sealed and delivered by:

#### Authorisation of Applicant A/Company Officer A/Guarantor A

<b>X</b>	<b>SIGN HERE</b>	<b>/DATE/</b>
Name		
▶ If a company officer, you <b>must</b> specify your corporate title		
Director	<input type="checkbox"/>	Secretary <input type="checkbox"/>
Other		

#### Authorisation of Applicant B/Company Officer B/Guarantor B

<b>X</b>	<b>SIGN HERE</b>	<b>/DATE/</b>
Name		
▶ If a company officer, you <b>must</b> specify your corporate title		
Director	<input type="checkbox"/>	Secretary <input type="checkbox"/>
Other		

#### Authorisation of Applicant C/Company Officer C/Guarantor C

<b>X</b>	<b>SIGN HERE</b>	<b>/DATE/</b>
Name		
▶ If a company officer, you <b>must</b> specify your corporate title		
Director	<input type="checkbox"/>	Secretary <input type="checkbox"/>
Other		

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# Loan Application Form

## Part E (complete only if you are applying for a loan of \$500,000 or more)

Complete this form using BLACK INK and print well within the boxes in CAPITAL LETTERS. Mark answer boxes with a cross (X). Start at the left of each answer space and leave a one box gap between words.



### Accountant's Certificate

TO: Macquarie Bank Limited  
 GPO Box 3423  
 Sydney NSW 2001

I,  of   
 (individual name) (firm name)

certify as follows:

- I am a qualified accountant for the purposes of the Corporations Act, being a member of the Institute of Chartered Accountants in Australia/Australian Society of Certified Practising Accountants/National Institute of Accountants and am subject to, and comply with, that body's continuing education requirements;
- I am giving this certificate at the request of, and with reference to   
 ("Investor")  
 and acknowledge that this certificate will be relied upon to make offers of loans to the Investor;
- I certify that, having reviewed the financial position of the Investor,
  - The Investor has net assets of at least: \$  ,  ,  . **00**
  - The Investor had a gross income for each of the last 2 financial years of at least: \$  ,  ,  . **00**

### Signature

<b>X</b>	SIGN HERE	DATE
Name	<input type="text"/>	<input type="text"/>

### Notes:

This certificate should be:

- provided before any offer of a loan is made, and;
- given no earlier than 6 months before the offer of a loan is made

Group Offices in Hong Kong, London, Sao Paulo and Tokyo

25 June 2004

Dear Loan Applicant

### **Supplementary Letter to Loan Applicants**

Thank you for your Loan Application in relation to the acquisition of class C Participating Shares in Macquarie Equinox Limited (“Equinox”).

As set out in the prospectus issued by Equinox dated 18 May 2004, Macquarie Bank Limited (“Macquarie”) lodged an application for a Product Ruling with the Australian Taxation Office (“ATO”) in an attempt to provide investors who have borrowed funds from Macquarie in order to invest in Equinox, with further assurance regarding the amount and timing of tax deductions for interest paid under that loan.

The purpose of this letter is to inform you of discussions that Macquarie has had with the Australian Taxation Office (ATO) in relation to the application for a Product Ruling.

Subsequent to lodgement of the application for a Product Ruling, Macquarie met with the ATO and had numerous discussions with ATO officers to progress the application. PricewaterhouseCoopers participated in the meeting and in some of those discussions.

The ATO raised concerns about whether it would be appropriate to issue a Product Ruling against the background of proposed legislation on capital protected products. The ATO also raised a number of other matters, including the proper application of the prepayment provisions to an investment which could give rise to attributable income under the Foreign Investment Fund (FIF) provisions.

As disclosed in Section 7 of the Prospectus dated 18 May 2004, certain investors would be required to include attributable amounts in their assessable income under the FIF provisions, in advance of receiving those amounts as dividends. (In that event, subsequent receipts of the dividends would not be assessable, to the extent of the prior attribution). The technical requirements of the prepayment provisions include that, in order to be entitled to a deduction for interest on a prepayment basis, it must be the case that the investor “has not obtained and will not obtain any other kind of assessable income [apart from dividends] from the agreement...”.

The opinion of PricewaterhouseCoopers was, and continues to be, that the prepayment provisions should properly be interpreted and applied such that the inclusion of amounts in an investor's assessable income under the FIF provisions should not preclude that investor from being able to get deductions for prepayments when made.

This matter was discussed a number of times with the ATO. Those discussions related to whether the prepayment provisions should be interpreted and applied as above, or whether they should be interpreted and applied in a manner which would mean that the application of the FIF provisions would preclude an investor from being entitled to deductions on a prepayment basis.

Macquarie understands that the ATO had not reached a concluded view on this issue by the time it decided not to issue any Product Ruling.

PricewaterhouseCoopers has confirmed that its opinion continues to be as set out in Appendix A to the Equinox Loan Summary, Loan and Security Agreement ("the Loan Summary") and that references to the section headed 'Tax treatment of interest expense' in the Loan Summary can be read as references to that section as supplemented by this letter.

Investors should seek independent taxation and financial advice in order to assess the impact of this development on your individual situation.

### **Disclosure Consent**

PricewaterhouseCoopers has consented to being named in this letter and to the inclusion of the statements attributed to it above in the form and context in which they are included.

### **Interest Obligations**

Your obligation to pay interest under the Macquarie Loan facility remains in place as per the terms and conditions of the Loan and Security Agreement even if you apply to the Arranger to withdraw your application for Shares. In such a case, interest will be charged daily from the date the Loan is drawn down until the date that Macquarie receives the redemption proceeds from Equinox.

### **More Information**

If you would like to discuss this matter further please contact your financial adviser or the Equinox Service Centre on 1 800 025 513.

Yours Sincerely



Rowena Harvey-Palmer  
Client Relations Manager  
Macquarie Bank Limited

