**Questions on the mortgage**

1. National Credit Code. Why does the Code apply?

The National Credit Code (“Credit Code”') governs consumer lending in Australia.

Commencing on 1 July 2010, it replaced the state based Uniform Consumer Credit

Code. Designed to protect consumers, the Credit Code applies only to credit provided

wholly or predominantly for personal, domestic or household purposes where the

consumer is an individual or a strata corporation. It applies to credit for residential

investment properties but does not apply to credit for business purposes.

The Credit Code is based on the principles of truth in lending which allows

borrowers to make informed choices when purchasing credit. It also sets out rules

by which credit providers must abide throughout the life of a loan.

1. Does the mortgage require the property to be insured? If so, can the Churchills choose the relevant insurer and policy?

Yes. Clause 8 Security – listing the warranty / guarantee to have minimum property insurance of $1,5m.

Clause 7 – Insurances and 7.1 Mortgagor to insure.

Property, public risk, business interruption and other general insurance reasonably required by the Mortgagee.

Yes. They can choose their insurer / policy as long as they are satisfactory to the Mortgagee. They will also need to provide evidence of currency of the insurances whenever they are required by the Mortgagee.

1. If funds are required from a different financier for the renovations, can the Churchills provide an additional mortgage over the property as security for the loan?

Yes. Clause 19 Prior or subsequent mortgages is the appropriate section that caters for the Churchills to provide the property as additional security for the loan for the renovations provided they receive in writing the consent of the Mortgagee. As well as clause 24.2 that the mortgage will be on the same terms as this current Mortgage.

1. When must each repayment be made? If the Churchills fail to make a repayment, what are the consequences?

There are 180 monthly repayments of $10,723.24 during the term of 15 years. The first repayment is due on the day that is one month after your settlement date for the purchase of the property. There is an arrears fee of $55 if a repayment is not made within 7 days of it being due and on the 8th day after each subsequent date on which a Repayment is due whilst that amount remains unpaid. This fee is payable as part of the Balance.

In addition clause 22 – General outlines what you could do if you cannot make a repayment, such as getting in touch with the credit provider immediately to see if you can negotiate to lengthen the term or reduce the amount until circumstances become more favourable.

In addition, clause 31 – Event of default may occur when there is a failure to pay.

1. Can the Churchills repay the loan early?

Yes. cl4 of the Information Sheet grants that you can pay out the amount required / credit contract on the day you wish to end the contract.

1. With respect to the ground level of the property being converted to consulting rooms and then being leased to Churchill Services No 3 Pty Ltd, is the mortgagee’s consent required?

Yes. cl9 Will not sell lease covers the Mortgaged Premises requiring the consent of the Mortgagee for the assignment of possession via a lease to Churchill Services No 3. Pty Ltd.

**Questions on the lease**

1. What is the remaining term of the lease between Churchill Services No 3 Pty Ltd and Mr and Mrs Demetrios including any options to renew?

1 year and 9 months. Ending 31 Dec 2023.

This is an option to renew for 1 x 3 year period at the end of this term.

1. The Churchills are committed to moving the consulting rooms to the Hawthorne property. What are their options with respect to the current lease?

As per cl 13 of the Lease they could assign their lease to someone else that satisfies the Landlord that the new tenant is respectable and financially sound (as well as another Medical Practice). Otherwise, there is no clause / section that covers the right of early termination. They will be liable to pay rent until the end of the lease.

Clause 13.2 sets out all the conditions that need to be met by the Churchills if they wanted to re-assign the lease, but this isn’t necessarily guaranteed as the consent for the Landlord also have conditions.

Abandoning the premises is also not an option which is covered by clause 16.5.

1. Mrs Churchill is involved in a yoga studio. Could Mrs Churchill move the yoga studio into the Tarragindi property?

No. Permitted use is “medical surgery” as categorised in Item 5. S6 – Use strictly governs that the tenant (in this case a yoga studio) will not use the premises for any other purpose than medical surgery. Even if they were to try and assign a new lease, the Landlord has the right under cl 13.3(c) to withhold this consent.

1. When Churchill Services No 3 Pty Ltd vacates the Tarragindi property, what must be done (if anything) to the property?

They must remove all signs and advertising (cl 7.1(d))

There is also an obligation clause for end of term: clause 11.

In essence, it is the same for all commercial leases and that is to return the premises in the same condition they were at the commencement date. Which would include removing internal walls, fresh paint and carpets. Converting everything back to its original condition as well as make good any damage caused to the Premises.

1. The signing of the lease by Churchill Services No 3 Pty Ltd was not witnessed. Is the lease valid?

Execution by a corporation is not required to be witnessed. Churchill Services No 3 Pty Ltd was signed by the two directors.

1. With respect to the lease to Churchill Services No 3 Pty Ltd of the ground level of the Hawthorne property, will there be any need to enter a written lease? If a written lease is required, should the lease be registered?

With respects to a written lease for the ground level of the Hawthorne property, absolutely, yes. Despite them being owners of the property and then leasing it back to their corporation. Other than tax implications, there are formal requirements with respects to the protection of guarantors, where the guarantor would have no protection in case of a lease default.

If the term of a lease is three years or less and the option period envisaged by the lease would extend the term beyond 3 years, then yes, the lease should be registered. Given our facts, it seems as though this would be the case of the Churchills.

This will give them (if registered) the lessee to have the benefit of indefeasibility of title against a registered proprietor. (ss 182, 184 of the *Land Title Act 1994* (Qld)).