

# LOAN AGREEMENT

## TABLE OF CONTENTS

Clause	Page
<b>1 INTERPRETATION</b> .....	<b>1</b>
1.1 Definitions .....	1
1.2 Construction .....	3
<b>2 LOAN</b> .....	<b>4</b>
2.1 Advance.....	4
2.2 Repayment.....	4
2.3 Early repayment .....	4
<b>3 INTEREST</b> .....	<b>5</b>
3.1 Interest.....	5
3.2 Payment of interest.....	5
<b>4 BORROWER'S COVENANTS</b> .....	<b>5</b>
<b>5 DEFAULT</b> .....	<b>6</b>
5.1 Remedy by lender.....	6
5.2 Termination on default .....	6
5.3 Default events.....	6
<b>6 METHOD OF PAYMENT</b> .....	<b>7</b>
6.1 Time of payment.....	7
6.2 Place of payment.....	7
6.3 No set off or counterclaim .....	8
<b>7 MISCELLANEOUS</b> .....	<b>8</b>
7.1 Non-merger .....	8
7.2 Application of statutes .....	8
7.3 Assigns .....	8
7.4 Certificate of amounts owing.....	9
7.5 Powers of attorney.....	9
7.6 Notice .....	9
7.7 Provisions severable .....	9
7.8 Governing law .....	9
7.9 Counterparts .....	9
7.10 Variation.....	10
<b>SIGNATURES</b> .....	<b>11</b>
<b>SCHEDULE</b> .....	<b>12</b>

## **LOAN AGREEMENT**

### **DATE**

**THIS AGREEMENT** is made on the date set out in item 1 of the schedule.

### **PARTIES**

**BETWEEN** the parties described in item 2 of the schedule.

### **AGREEMENT**

**NOW IT IS AGREED** as follows:

## **1 INTERPRETATION**

### **1.1 Definitions**

In this agreement, unless the subject or the context otherwise requires:

- (a) “BUSINESS DAY” means a day on which banks are open for general banking business in the State specified in item 3 of the schedule other than a Saturday or Sunday;
- (b) “BASE INTEREST RATE” means the interest rate calculated as a percentage per annum published from time to time by the Lender’s bankers as its overdraft rate for overdrafts of \$100,000. Should there cease to be a published rate, then that rate which the bankers designate as being the appropriate equivalent rate and a certificate from the bankers stating the rate in question at a particular date is conclusive evidence of the rate at that particular date;
- (c) “CONTROL” in relation to a corporation means:
  - (i) the ability to control or influence the composition of the corporation’s board or the conduct of its affairs; or
  - (ii) the ability to control the casting of more than half of the maximum number of votes that might be cast at a general meeting of members of the corporation; or
  - (iii) where the corporation is acting as a trustee, the ability to remove it as trustee;

whether directly or indirectly and whether by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interests in the shares or stock of that corporation or otherwise;

- (d) “COLLATERAL SECURITY” means a debenture charge over the assets of the Borrower entered into between the Borrower and the Lender on or about the date of this agreement;
- (e) “DEFAULT EVENT” means any of the events, omissions or occurrences specified in Clause 5.3;
- (f) “DRAWDOWN DATE” means the date specified in item 4 of the schedule or such other date agreed in writing between the Lender and the Borrower;
- (g) “HIGHER RATE” means the aggregate of the Base Interest Rate plus the amount in the percentage specified in item 5 of the schedule;
- (h) “INSOLVENCY EVENT” in respect of a corporation means any of the following:
  - (i) an application being made to a court for an order that the corporation be wound up;
  - (ii) an order being made that the corporation be wound up;
  - (iii) an application being made to a court for an order appointing a liquidator or provisional liquidator to the corporation;
  - (iv) the appointment of a liquidator or provisional liquidator to the corporation;
  - (v) the corporation entering into or resolving or proposing to enter into a scheme of arrangement, deed of company arrangement, composition, reorganisation, moratorium or other administration with, or assignment for the benefit of, all or any of its creditors;
  - (vi) a resolution being passed to wind up the corporation or notice of intention to do so being given;
  - (vii) the corporation stating that it is unable to pay its debts as and when they fall due;
  - (viii) the corporation failing to comply with a statutory demand made pursuant to section 459E of the *Corporations Law* which remains in effect;
  - (ix) any of the events referred to in section 459C(2)(b) or section 585 of the *Corporations Law* occurring in relation to the corporation;
  - (x) the corporation taking any step to obtain protection or being granted protection from its creditors under any applicable legislation;
  - (xi) an administrator or controller being appointed to the corporation or to its property or any part thereof; or
  - (xii) anything having a substantially similar effect to any of the events specified above happening under any law of any applicable jurisdiction;

- (i) “INSOLVENCY EVENT” in respect of a natural person means the person becoming insolvent under administration as defined in section 9 of the *Corporations Law* or action being taken which could result in that occurring or anything having a substantially similar effect to any of the events specified above happening under any law of any applicable jurisdiction;
- (j) “LEGAL AND OTHER EXPENSES” includes all costs, charges and expenses and payments legal or otherwise (including stamp duty) which the Lender may incur, sustain, make, be put to, pay or be liable to pay in connection with:
  - (i) this agreement including its preparation, completion and enforcement;
  - (ii) the exercise or attempted exercise of any right, power, authority or remedy conferred on the Lender under or by virtue of this agreement or by statute; or
  - (iii) the assisting or defending the title of the Lender in relation to this agreement;
- (k) and any other moneys paid or payable by the Lender under or by virtue of this agreement or of any statute in relation to any actions or proceedings arising out of or concerned with any of the above matters and all legal costs will be calculated on a solicitor and own client basis;
- (l) “PRINCIPAL SUM” means the sum specified in item 6 of the schedule advanced by the Lender to the Borrower or so much of that sum which is from time to time outstanding;
- (m) “RELATED CORPORATION” means a related body corporate as defined in section 9 of the *Corporations Law*; and
- (n) “REPAYMENT DATE” means the date specified in item 7 of the schedule.

## 1.2 Construction

In this agreement, unless the subject or the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing one gender include the other genders;
- (c) a reference to any party or other person includes that person’s successors and permitted assigns;
- (d) a reference to a statute, ordinance or other legislation includes any amendment, replacement or re-enactment thereof for the time being in force and includes all regulations, by-laws and statutory instruments made thereunder;

- (e) a reference to this or any other document includes a reference to that document as amended, supplemented, novated or replaced from time to time;
- (f) a reference to a recital, clause or schedule is a reference to a recital, clause or schedule of this agreement;
- (g) a reference to writing includes all means of reproducing words in a tangible and permanently visible form;
- (h) a reference to a person includes a natural person, corporation, partnership, trust, estate, joint venture, sole proprietorship, government or governmental subdivision or agency, association, cooperative and any other legal or commercial entity or undertaking;
- (i) a reference to time is a reference to time in the State specified in item 8 of the schedule;
- (j) where a party comprises two or more persons any agreement or obligation to be performed or observed by that party binds those persons jointly and each of them severally, and a reference to that party is deemed to include a reference to any one or more of those persons;
- (k) the headings in this agreement are not to affect its interpretation;
- (l) the recitals and schedules form part of this agreement.

## **2 LOAN**

### **2.1 Advance**

The Lender will provide, and the Borrower will accept, the Principal Sum by way of cash advance on the Drawdown Date on the terms and conditions set out in this agreement. The advance will be provided to the Borrower by way of cheque drawn by the Lender payable to the Borrower or as the Borrower directs in writing.

### **2.2 Repayment**

Subject to Clause 5.2, the Borrower must repay the Principal Sum and all other moneys then outstanding under this agreement on the Repayment Date. All moneys paid under this agreement will be applied first in payment of interest, secondly in payment of other moneys owing under this agreement and thirdly in repayment of the Principal Sum.

### **2.3 Early repayment**

The Borrower may repay to the Lender on any date for payment of interest the whole or any part of the Principal Sum in the amount specified in item 9 of the schedule or in such multiples as are specified in item 10 of the schedule and interest will abate accordingly on such amount repaid from the date of such repayment.

### **3 INTEREST**

#### **3.1 Interest**

Interest is payable by the Borrower to the Lender on the Principal Sum at the Higher Rate computed from the date of advance of the Principal Sum on the daily balance on the basis of a 365 day year. If the Borrower pays interest to the Lender at a rate equal to the Base Interest Rate and the Borrower is not otherwise in default under this agreement or the Collateral Security the Lender will accept interest paid at the Base Interest Rate in lieu of the Higher Rate.

#### **3.2 Payment of interest**

Interest will be paid on the last day of each month during the term of this agreement and on the Repayment Date.

### **4 BORROWER'S COVENANTS**

#### **4.1 The Borrower covenants to:**

- (a) carry on and conduct its business in a proper and efficient manner at all times during the continuance of this agreement;
- (b) keep proper books of account and make true and correct entries of all transactions in such books of account and keep the books of account and all other documents relating to affairs of the Borrower at its address shown in this agreement;
- (c) pay the legal and other expenses of the Lender forthwith upon request;
- (d) provide to the Lender copies of the audited annual accounts and copies of half yearly financial statements of the Borrower not later than three months after the end of the period to which they respectively relate;
- (e) not without the Lender's prior written consent create or allow to exist any encumbrances over the Borrower's assets (other than the Collateral Security) whether ranking ahead, equally with, or after the Collateral Security;
- (f) execute and do, or cause to be executed and done, at the expense of the Borrower all assurances and other things as are reasonably required or requested at any time and from time to time by the Lender for the giving effect to, and the full benefit of, the covenants and agreements contained or implied in this agreement and the Collateral Security in favour of the Lender or to protect the Lender's rights, powers and remedies under this agreement or the Collateral Security;
- (g) notify the Lender forthwith of any litigation or administrative or other proceedings initiated or threatened against the Borrower or the Borrower's assets where the amount involved is, or could reasonably

be expected to be, in excess of the amount specified in item 11 of the schedule;

- (h) keep its assets and undertaking insured, and to ensure that any major asset leased by it is insured, against such risks and in such amounts as would prudently be insured against by a person carrying on business similar to that of the Borrower and to deliver to the Lender upon request by the Lender written details of such insurances and appropriate evidence that all such insurances are in full force and effect and that all relevant premiums have been paid.

## **5 DEFAULT**

### **5.1 Remedy by lender**

If the Borrower makes default in duly observing any covenant or agreement on the part of the Borrower contained in this agreement, it is lawful, but not obligatory for the Lender, and without prejudice to any other right or remedy of the Lender, to do all things and pay all moneys necessary to make good such default to the satisfaction of the Lender. All moneys so expended by the Lender for any such purpose including legal and other expenses will be added to the Principal Sum and bear interest at the Higher Rate.

### **5.2 Termination on default**

If any of the events described in Clause 5.3 occurs, the Principal Sum and all other moneys advanced pursuant to this agreement and then outstanding, together with all interest accrued and not then paid and all other amounts payable under this agreement and unpaid will, at the option of the Lender and notwithstanding any delay or previous waiver of the right to exercise that option, immediately become due and payable without the necessity for any demand or notice to the Borrower. In addition, if the Lender exercises that option, the Collateral Security will become immediately enforceable.

### **5.3 Default events**

Each of the following events is a Default Event:

- (a) if the Borrower fails to pay or repay any moneys owing to the Lender under this agreement on the due date for payment;
- (b) if the Borrower fails to perform or observe any of the covenants or provisions of this agreement or of the Collateral Security on the part of the Borrower to be performed or observed (other than a failure of the type contemplated by Clause 5.3(a)) and (if capable of remedy) such default continues for more than 5 Business Days (or such longer period as the Lender in its absolute discretion permits) after notice from the Lender requiring the Borrower to remedy the default, unless the non-performance or non-observance has been waived or excused by the Lender in writing;

- (c) if an Insolvency Event occurs in relation to the Borrower;
- (d) if there occurs, in the Lender's opinion, a material failure by the Borrower or any Related Corporation of the Borrower to implement and to continue to apply commercially sound business practices with respect to the property, operation and management of its respective activities;
- (e) if any action is initiated by any competent authority with a view to striking the name of the Borrower off the register of companies;
- (f) if, without the Lender's consent, the Borrower reduces its share capital or buys back its shares or attempts to do so;
- (g) if the Borrower or any Related Corporation of the Borrower is in default under any other arrangement for the provision of financial accommodation and such default has continued unremedied for 5 Business Days, whether or not the default has been waived, except to the extent in any instance that the existence or enforceability of the relevant arrangement is, to the satisfaction of the Lender, being disputed in good faith by the Borrower or the Related Corporation (as the case requires) by appropriate and current proceedings;
- (h) if, without the Lender's prior written consent, there is a change in Control of the Borrower;
- (i) if the continued performance of the obligations of the Borrower under this agreement or of the Borrower under the Collateral Security contravenes or might, in the Lender's opinion, contravene any applicable statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority;
- (j) if the Collateral Security becomes unenforceable or ceases to be fully binding for any reason other than discharge or release in accordance with its terms;
- (k) if there is a material adverse change, in the Lender's opinion, in the business or financial condition of the Borrower.

## **6 METHOD OF PAYMENT**

### **6.1 Time of payment**

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

### **6.2 Place of payment**

All payments to be made under this agreement by the Borrower to the Lender must be paid to the Lender at its address set out in this agreement or at such other place as the Lender may from time to time direct in writing.



Any payment made in any other way and any payment sent by mail will be at the Borrower's risk until it is actually received by the Lender.

### **6.3 No set off or counterclaim**

Notwithstanding any term, whether express or implied, in this agreement or any Collateral Security or any rule of law or course of conduct to the contrary, payments under this agreement must be made by the Borrower without set off or counterclaim and without any deductions whatsoever.

## **7 MISCELLANEOUS**

### **7.1 Non-merger**

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

### **7.2 Application of statutes**

Unless application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Lender under this agreement.

### **7.3 Assigns**

This agreement is binding on, and operates for the benefit of, both the Lender and the Borrower and their respective successors and assigns, except that the Borrower may not assign this agreement or any of its obligations under this agreement without the Lender's prior written consent. The Lender may at any time assign, charge or otherwise deal with its rights under this agreement. Without limiting the generality of this clause, the Lender may also participate its rights under the whole or any part of this agreement. The Lender may transfer the whole or any part of its obligations similarly. The Lender may for the purposes of any participation or assignment disclose to a potential participant or assignee all information in its possession about the Borrower. Where the Lender assigns or participates its rights or its obligations or both as contemplated by this clause, the Borrower must do all acts and things and execute all documents as may, in the Lender's opinion, be reasonably necessary or desirable or expedient to effect the assignment or participation. The benefit of all provisions of this agreement will enure in the same way for the benefit of the assignee or participant.

#### **7.4 Certificate of amounts owing**

A statement in writing signed by an authorised officer of the Lender stating the amount due or owing by the Borrower to the Lender or any other act, matter or thing arising under this agreement as at any date or dates set out in that statement will be prima facie evidence of the facts so stated.

#### **7.5 Powers of attorney**

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

#### **7.6 Notice**

Any notice, demand or other communication (“Notice”) to be given or required to be made pursuant to this agreement is to be in writing and is to be given by post, facsimile or hand to a party at the party’s addresses specified in item 2 of the schedule or at such other address or facsimile number as is notified in writing by one party to the other party.

A Notice is deemed to be given or served:

- (a) where sent by prepaid post on the second Business Day following the day on which it was posted;
- (b) where transmitted by facsimile during normal business hours on a Business Day on that day, or in any other case of transmission by facsimile on the Business Day following the day of transmission;
- (c) where delivered by hand during normal business hours on a Business Day on that day, or in any other case of hand delivery on the Business Day following the day of delivery.

#### **7.7 Provisions severable**

If any provision of this agreement is invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions will not be affected and such invalid, illegal or unenforceable provision is to be severed from this agreement.

#### **7.8 Governing law**

This agreement is governed by and construed in accordance with the laws of the State specified in item 8 of the schedule, and the parties irrevocably submit to the jurisdiction of the courts of that State.

#### **7.9 Counterparts**

This agreement may be executed in more than one counterpart, each of which when executed by all the parties and delivered is deemed to be an original.

#### **7.10 Variation**

No part of this agreement may be amended or modified unless reduced to writing making specific reference to this agreement and signed by the parties hereto or their authorised representatives.

**SIGNATURES**

**SIGNED** by the parties.

RSDic  
Signature of Borrower

Catherine D  
Signature of Borrower

Director  
Office held

Director  
Office held

RODNEY SCOTT DIX  
Name (in block letters)

CATHERINE JANE DIX  
Name (in block letters)

RSDic  
Signature of Lender

Catherine D  
Signature of Lender

Director  
Office held

Director  
Office held

RODNEY SCOTT DIX  
Name (in block letters)

CATHERINE JANE DIX  
Name (in block letters)

## SCHEDULE

### ITEM 1

Date of agreement: 29/6/20

### ITEM 2

**Parties to the agreement** (Heading and Clause 7.6):

**Borrower:** R & C Dix of 6 Davis Avenue, Keith

(the "Borrower")

**Lender:** RS & CJ Dix Super Fund

of 6 Davis Street, Keith

(the "Lender")

### ITEM 3

**State** (Clause 1.1(a)): South Australia

### ITEM 4

**Drawdown Date** (Clause 1.1(f)): 29/6/20

### ITEM 5

**Higher Rate** (Clause 1.1(g)): 2.5%

### ITEM 6

**Principle Sum** (Clause 1.1(k)): \$30,000

### ITEM 7

**Repayment Date** (Clause 1.1(m)): 30/6/21

### ITEM 8

**Time and Governing law**

(Clauses 1.2(i) and 7.8): South Australia

### ITEM 9

**Early repayment — Amount**

(Clause 2.3): \$30,000

### ITEM 10

**Early repayment — Multiples**

(Clause 2.3): \$10,000

### ITEM 11

**Value of proceedings against**

**Borrower** (Clause 4.1(g)): \$250,000