

Loan Agreement

Rhidian Mark Howells

Laura Kate Howells

and

R & L Howells SMSF Pty. Ltd. ACN 163587513

and

R & L Howells Custodian Pty. Ltd. ACN 163 587 513

SK Lawyers
Level 6, 87 Wickham Terrace
Tel: (07) 3833 9900
peterk@sklaw.com.au

Table of contents

Background	2
The parties agree	2
A The Advance the Borrower may borrow	2
When must the Lender make the Facility available to the Borrower?	2
What must the Borrower do before drawing down on the Advance?	2
What must the Borrower do at Settlement?	2
What happens to any amount not drawn?	3
What may the Borrower do with the Advance?	3
B Interest the Borrower pays	3
How is interest calculated and paid?	3
What default interest must the Borrower pay on late payments?	3
Does this clause affect the Borrower's obligations to pay?	4
C Borrower's obligations to repay	4
When must the Borrower repay the Loan?	4
What repayments must the Borrower pay?	4
How may the Borrower repay the loan early?	4
How is the Borrower to pay amounts due?	4
D Security the Borrower provides	5
What security must the Borrower provide?	5
Custodian guarantee	5
Limited recourse	5
What requirements apply if the mortgage is over land?	6
When will the Lender release the security?	6
E Borrower's representations and warranties	6
F Borrower's default	6
What may the Lender do if an Event of Default occurs?	6
What are the Events of Default?	7
G Borrower indemnifies the Lender for costs	8
H Compliance with Superannuation Law	8
I Notices to the parties	9
J General and interpretation	9
K Definitions	10
Execution	13
Schedule 1	15
Schedule 2	16

BETWEEN

Rhidian Mark Howells

of 46 Loch Street
East Geelong, VIC, 3219
Australia

Laura Kate Howells

of 46 Loch Street
East Geelong, VIC, 3219
Australia

(together, **Lender**)

AND

R & L Howells SMSF Pty. Ltd. ACN 163587513

in its capacity as trustee for the Fund
of 46 Loch Street
East Geelong, VIC, 3219
Australia

(**Borrower**)

AND

R & L Howells Custodian Pty. Ltd. ACN 163 587 513

of 46 Loch Street
East Geelong, VIC, 3219
Australia

(**Custodian**)

Background

- A The Fund is a Regulated Fund and the Borrower is the trustee for the Fund.
- B The Borrower has asked the Lender to provide the Advance.
- C The Custodian will acquire and hold title to the asset purchased using the Advance, and will:
 - C1 guarantee the Borrower's obligations to the Lender with respect to repayment of the Advance in accordance with this Agreement; and
 - C2 grant a mortgage to the Lender as security for the performance of this guarantee.
- D The Lender has agreed to provide the Advance in accordance with the terms and conditions in this Agreement.

The parties agree

A The Advance the Borrower may borrow

When must the Lender make the Facility available to the Borrower?

- 1 The Lender must make the Advance available to the Borrower from the date of this Agreement until the end of the Term only if:
 - 1.1 the Borrower has complied with clauses 2 and 5
 - 1.2 the Lender is satisfied that clause 5 does not apply; and
 - 1.3 the Lender is satisfied that no Event of Default has occurred and is continuing.

What must the Borrower do before drawing down on the Advance?

- 2 Subject to clause 1, the Borrower may request to draw down on the Advance on any number of occasions.
- 3 Before the Borrower draws down on the Advance for the first time, the Borrower must give the Lender the signed compliance letter set out in Schedule 2, with the attachments listed in that letter.
- 4 At least 2 Business Days before drawing down on the Advance, the Borrower must give the Lender:
 - 4.1 written notice of the amount the Borrower will draw down; and
 - 4.2 the date of the proposed draw down.

What must the Borrower do at Settlement?

- 5 The Lender may refuse a draw down request if:
 - 5.1 the draw down request is in respect of the first draw down and it is made more than 6 months after the date of this Agreement;
 - 5.2 the amount of the draw down exceeds the undrawn balance of the Advance; or

5.3 the draw down would cause the total amount drawn down to exceed the value of the Authorised Investment.

6 At Settlement, the Borrower must provide to the Lender:

6.1 the security and cheques required under clause 19 and 24;

6.2 an executed copy of the Custody Deed; and

6.3 evidence to the Lender's satisfaction that the Custodian has (under the Custody Deed) taken title to the Authorised Investment free from all Encumbrances other than the security.

What happens to any amount not drawn?

7 If 6 months from the first draw down the Borrower has not drawn on the full amount of the Advance, then the amount not drawn is cancelled.

What may the Borrower do with the Advance?

8 The Borrower may use any amount drawn down from the Advance:

8.1 as consideration for the Authorised Investment;

8.2 for expenses incurred in connection with the borrowing or acquisition, or in maintaining or repairing the Authorised Investment including but not limited to: conveyancing fees, taxes such as stamp duty, brokerage or loan establishment costs (but not expenses incurred in improving the Authorised Investment); and

8.3 to refinance a borrowing (including any accrued interest on a borrowing) under an arrangement under section 67A of the SIS Act (or the predecessor of section 67A of the SIS Act).

B Interest the Borrower pays

How is interest calculated and paid?

9 The Loan accrues interest daily at the interest rate set in Schedule 1 (or at another rate agreed between the Lender and Borrower in writing from time to time). The interest is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.

10 The Borrower must pay the interest which accrues under clause 9 to the Lender annually in arrears.

What default interest must the Borrower pay on late payments?

11 If a payment is due and payable and the Borrower does not pay it on time, then the Borrower must pay interest on that amount.

12 The rate of interest is the rate set by the *Penalty Interest Rates Act 1983* (Vic) while the Borrower is in default. The interest is payable for the period beginning on and including the

day on which the amount was due and ending on but excluding the date which is the earlier of:

- 12.1 the date on which all amounts outstanding under this Agreement are repaid after this Agreement ends for any reason; and
- 12.2 the date on which the Borrower pays all unpaid amounts, including any default interest (but not including repayments and interest not yet due).

Does this clause affect the Borrower's obligations to pay?

- 13 The Borrower's obligation to pay each amount which is due and payable under this Agreement on the date on which it falls due remains in place and is unaffected by clauses 9 to 13.

C Borrower's obligations to repay

When must the Borrower repay the Loan?

- 14 The term of the Loan is 10 years starting on the date of the first draw down (**Term**). The Borrower must repay the Loan at the end of the Term which is 19 September 2023.

What repayments must the Borrower pay?

- 15 In addition to the interest payable under clauses 9 to 13, the Borrower must repay the amount of the Loan in equal annual payments over the Term, commencing on the date 5 years after the first draw down. The Borrower must make the final equal payment on the final day of the Term, which is 19 September 2023.

How may the Borrower repay the loan early?

- 16 On any date, the Borrower may prepay all, or some, of the Loan without having to pay any premium or any penalty.
- 17 If the Borrower repays the Loan early, then it must pay all interest owing at the time.

How is the Borrower to pay amounts due?

- 18 The Borrower must pay all amounts owing under this Agreement:
 - 18.1 in the lawful currency of Australia;
 - 18.2 by the payment method set in Schedule 1;
 - 18.3 without any set off or counterclaim whatsoever; and
 - 18.4 free and clear of — and without any deductions or withholdings for or on account of — any Taxes.

D Security the Borrower provides

What security must the Borrower provide?

- 19 As security for the Borrower's performance under this Agreement:
- 19.1 at Settlement, the Borrower must procure that the Lender is provided with:
 - 19.1.1 a first ranking mortgage or charge over the Authorised Investment in a form acceptable to the Lender; and
 - 19.1.2 a personal guarantee from each member of the Fund (in their personal capacity) in a form acceptable to the Lender. (However, if before Settlement the Lender has told the Borrower in writing that a guarantee from any certain Members is not required, then the Borrower does not have to provide that guarantee.); and
 - 19.2 at the request of the Borrower, the Custodian provides the Custodian Guarantee.

Custodian guarantee

- 20 The Custodian guarantees to the Lender the due and punctual payment by the Borrower of all monies due under this Agreement and the performance by the Borrower of all of its obligations under this Agreement.

Limited recourse

- 21 Notwithstanding anything else to the contrary contained in this Agreement (including that any such clause is not expressed to be subject to this clause 21 or clauses 27, 28, 29, and 30) the Lender, the Borrower and the Custodian agree that:
- 21.1 the Lender's rights against the Borrower or the Custodian, including its rights under the Custodian Guarantee, for, in connection with, or as a result of (whether directly or indirectly) either of the following defaults, are limited to rights which the Lender has relating to the Authorised Investment:
 - 21.1.1 default on repayment of the Advance; or
 - 21.1.2 default on the sum of the borrowing and charges related to the Advance; and
 - 21.2 if the Borrower has a right relating to the Authorised Investment (other than a right to acquire legal ownership of the Authorised Investment on repayment of the Loan), then the Lender's rights and the rights of any other person against the Borrower for, in connection with, or as a result of, (whether directly or indirectly) the Borrower's exercise of its right, are limited to rights relating to the Authorised Investment.
- 22 Subject to clause 23, the Lender waives its rights and releases the Custodian from any personal liability whatsoever in respect of any loss or damage which cannot be paid or satisfied out of the realisation of the Authorised Investment.

- 23 The Custodian is personally liable and is not released to the extent that a liability under this Agreement arises out of circumstances which disentitle it to its indemnity under the Custody Deed.

What requirements apply if the mortgage is over land?

- 24 If the Authorised Investment is land, then the mortgage the Borrower provides under clause 19 must be in registrable form. Also the Borrower must arrange for the Lender to be provided with cheques payable:
- 24.1 to the relevant registry to pay any registration fees; and
 - 24.2 to the relevant revenue office to pay any stamp duty.

When will the Lender release the security?

- 25 As soon as practicable after the Borrower repays the Loan in full (including all interest due), the Lender will provide a release of the security the Borrower provided under clause 19.

E Borrower's representations and warranties

- 26 The Borrower represents and warrants to the Lender that:
- 26.1 the Fund is a Regulated Fund;
 - 26.2 the Fund has a written investment strategy which accords in all respects with Superannuation Law;
 - 26.3 the Borrower's investment in the Authorised Investment accords with the Fund's written investment strategy;
 - 26.4 the Authorised Investment is either a collection of assets of which the assets have the same market value as each other and are identical to each other, or it is a single acquirable asset, for the purposes of the SIS Act;
 - 26.5 the Borrower is the sole trustee of the Fund;
 - 26.6 the Borrower has the power and authority to enter into this Agreement;
 - 26.7 the Borrower has the power and authority to purchase the Authorised Investment; and
 - 26.8 this Agreement constitutes the Borrower's legally binding obligations, and is enforceable against the Borrower.

F Borrower's default

What may the Lender do if an Event of Default occurs?

- 27 If an Event of Default occurs, then the Lender may, without notice to the Borrower (unless the Lender is required by statute to give notice), enforce its rights under the security the Borrower provides or procures under clause 19.

- 28 If an Event of Default occurs then the Lender's rights under the security the Borrower provides under clause 19 (but not including pursuant to any personal guarantee) are limited in the manner set out in clause 21.
- 29 If the Lender, having enforced the Lender's rights under the security the Borrower provides under clause 19, does not recover all of the money owing to it under this Agreement, then the Lender may not seek to recover the shortfall by:
- 29.1 bringing proceedings, taking action or exercising rights against the Borrower; or
 - 29.2 applying to have the Borrower wound up or proving in the winding up of the Borrower.
- 30 However, nothing in clauses 21, 27, 28, 29 and 30:
- 30.1 releases the Borrower from its obligations under this Agreement except to the extent that this clause is a limitation on liability to pay money under this Agreement; or
 - 30.2 prevents the Lender from obtaining equitable relief in connection with this Agreement or proceeding against the Borrower to the extent necessary to enforce its rights in respect of the Advance (or other money owing under this Agreement) or against the Borrower or to the extent allowed by this Agreement provided that the Lender may not obtain an order requiring payment of any amount which could not otherwise be recovered from the Borrower under this Agreement.

What are the Events of Default?

- 31 Each of the following is an Event of Default (unless the Lender, in writing, waives its rights):

Fund Ceases as a Regulated Fund

- 31.1 The Fund ceases to be a Regulated Fund;

Non Payment

- 31.2 The Borrower fails to pay on time any amount which is due and payable by it under this Agreement;

Other Obligations

- 31.3 The Borrower does not comply with any provision of this Agreement (other than a failure referred to elsewhere in this clause);

Misrepresentation

- 31.4 Any representation or warranty the Borrower makes in this Agreement is untrue or misleading (whether by omission or otherwise) in any material respect;

Insolvency or Receivership

- 31.5 The Borrower is unable to pay its debts — including its debts relating to the Fund, or

- 31.6 A receiver (or receiver and manager), administrator, provisional liquidator or liquidator is appointed to the Borrower, or in respect of any property of the Borrower (including property of the Fund), or
- 31.7 A resolution is passed or proceedings are commenced to wind up the Borrower or the Fund, or
- 31.8 Any composition or arrangement is made with the creditors of the Borrower or the Fund;

Cross Default

- 31.9 Any other loan or debt of the Borrower, including in respect of the Fund, becomes repayable or payable before its due date other than solely at the option of the Borrower;

Encumbrances

- 31.10 The Borrower creates any Encumbrance, or permits any Encumbrance to exist, or agrees to create or give an Encumbrance over any of its property, including property of the Fund (other than an Encumbrance which the Lender consented to in writing); and

Compulsory Acquisition

- 31.11 Any governmental agency compulsorily acquires any part of the Borrower's property, or
- 31.12 The Borrower (whether or not as trustee of the Fund) sells or divests itself of all of, or a material part of, its property under a binding order from a government agency and the Borrower does not receive compensation for the acquisition, sale or disposal which is acceptable to, and on terms which are acceptable to, the Lender.

G Borrower indemnifies the Lender for costs

- 32 The Borrower indemnifies the Lender against — and must pay the Lender on demand the amount of — all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and Taxes in connection with:
 - 32.1 the negotiation, preparation, execution, stamping and registration of this Agreement;
 - 32.2 the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Agreement; and
 - 32.3 any amendment to, or consent, waiver or release of or under, this Agreement.

H Compliance with Superannuation Law

- 33 The parties agree that all arrangements in respect of the borrowing contained in or referred to in this Agreement must be strictly in accordance with Superannuation Law including, without limitation, for the purpose of ensuring:

33.1 the concessional tax treatment of the Fund and of amounts paid into or out of the Fund; and

33.2 the Fund's status as a Regulated Fund.

34 For this purpose:

34.1 The provisions of this Agreement which (whether expressly or impliedly) confer or impose discretions, powers, rights or obligations on the parties are to be read as:

34.1.1 extending to confer or impose on the parties any discretions, powers, rights or obligations as may be necessary to ensure compliance with Superannuation Law; and

34.1.2 circumscribing any discretions, powers, rights or obligations of the parties to the extent necessary to ensure compliance with Superannuation Law; and

34.2 If a provision of this Agreement (whether express or implied) is inconsistent with this purpose, then that provision must be read down to the extent necessary to ensure compliance with the requirements of this clause 34. If it is not possible to read down a provision of this Agreement in that manner, then that provision is severable without affecting the validity or enforceability of the remaining part of that provision or of other provisions in this Agreement.

I Notices to the parties

35 All notices to be given to or demands to be made under this Agreement must be in writing. They may be delivered in person or sent by mail or facsimile to the party's current business address.

36 All notices are to be treated as having been served:

36.1 if posted, 48 hours after the date of posting;

36.2 if delivered personally, on the actual date of receipt; and

36.3 if sent by facsimile, in the normal course of transmission.

J General and interpretation

37 Time is of the essence of all obligations of the Borrower under this Agreement.

38 This Agreement may only be varied or replaced by a document executed by the parties.

39 Each party must promptly execute and deliver all documents and promptly take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement — including to complete the purchase of Authorised Investment.

40 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties. It survives this Agreement's termination.

41 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

- 42 The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion.
- 43 This Agreement is governed by, and interpreted under, the laws of the jurisdiction set in Schedule 1.
- 44 If a party consists of more than one person, then this Agreement binds them jointly and each of them severally.
- 45 This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.
- 46 If a payment or other act is required to be made or done on a day which is not a Business Day, then the payment or act must be made or done on the next following Business Day.
- 47 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 48 If it is not possible to read down a provision of this Agreement in the manner described in clause 47, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.
- 49 A reference in this Agreement to:
- 49.1 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
 - 49.2 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
 - 49.3 a person includes the legal personal representatives, successors and assigns of that person;
 - 49.4 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the relevant purposes or objects of the first-mentioned body;
 - 49.5 this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
 - 49.6 the singular includes the plural and vice versa; and
 - 49.7 a gender includes the other genders.
- 50 If a party that is a trustee makes a covenant, agreement, undertaking representation or warranty, then the covenant, agreement, undertaking, representation or warranty is to be construed as having been made in the capacity as trustee of the relevant trust.

K Definitions

51 In this agreement, unless expressed or implied to the contrary:

Advance means the principal amount specified in Schedule 1.

Agreement means this loan agreement, including all schedules and appendices.

Authorised Investment means the investments specified in Schedule 1.

Business Day means a day on which banks are open for general banking business in the jurisdiction identified in Schedule 1.

Custodian means the custodian identified in Schedule 1.

Custodian Guarantee means the guarantee under clause 20.

Custody Deed means a Declaration of Custody Trust, in a form agreed by the Lender, between the Custodian and the Borrower.

Encumbrance means an interest or power by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation and whether existing or agreed to be granted or created, and where the interest or power:

- is reserved in or over any asset including without limitation, retention or reservation of title; or
- is created or otherwise arising in or over any asset under a mortgage, security interest, charge, debenture, lien, pledge, trust or power.

Event of Default means any of the events or circumstances described in clauses 27 and 31.

Fund means the Howells Superannuation Fund.

Loan means at any time the principal amount of the Advance outstanding at that time.

Regulated Fund means a 'regulated superannuation fund' within the meaning of section 19 of the SIS Act and a 'complying superannuation fund' within the meaning of Part 5 of SIS Act.

Settlement means settlement of the transaction on the Settlement Date by which:

- the Borrower uses some, or all, of the Advance to purchase the Authorised Investment; and
- the Custodian takes legal title to the Authorised Investment on the terms of the Custody Deed.

Settlement Date means the date and time for Settlement as described in Schedule 1.

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Cth).

Superannuation Law means

- any law of the Commonwealth of Australia which deals with any aspect of the superannuation or taxation in relation to superannuation, including the SIS Act and the *Superannuation Industry (Supervision) Regulations 1994* (Cth) ; or
- any lawful requirement in relation to the Fund or any authority or body that has responsibility in connection with the regulation of superannuation, or taxation in relation to the superannuation.

It includes:

- changes to any such laws or requirements after the date of this Agreement; and
- any proposed law or lawful requirement that the trustee believes may have retrospective effect.

Tax means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any government agency, other than any imposed on overall net income.

Term has the meaning given by clause 14.

Execution

Executed by the parties.

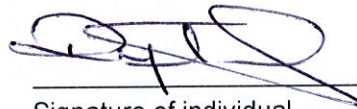
Dated: 2nd August 2013

Signed sealed and delivered

by Rhidian Mark Howells, in the presence of:



Signature of witness



Signature of individual

BRUCE MOSS

Name of witness (please print)

Signed sealed and delivered

by Laura Kate Howells, in the presence of:



Signature of witness



Signature of individual

BRUCE MOSS

Name of witness (please print)

Executed by
R & L Howells SMSF Pty. Ltd. ACN
163587513, in its capacity as trustee for the
Fund, in accordance with section 127(1) of
the *Corporations Act 2001* (Cwth):



Rhidian Mark Howells, director

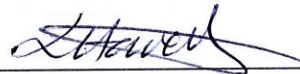


Laura Kate Howells, director

Executed by
R & L Howells Custodian Pty. Ltd. ACN 163
587 513, in accordance with section 127(1) of
the *Corporations Act 2001* (Cwth):



Rhidian Mark Howells, director



Laura Kate Howells, director

Schedule 1

Advance:	\$15,000.00
Interest Rate:	5.29% or such other rate as agreed between the Lender and the Borrower in writing from time to time.
Authorised Investment:	Unit 106, Northlake Views Lot 106 1757 Anzac Avenue Mango Hill, QLD, 4509 Australia County Stanley, Parish Redcliffe
Settlement Date:	14 days from finance approval or notification of registration, whichever is the later, or another date agreed between the Lender and the Borrower.
Custodian:	R & L Howells Custodian Pty. Ltd. ACN 163 587 513 46 Loch Street East Geelong, VIC, 3219 Australia
Payment method:	electronic funds transfer to the Lender's account as advised by the Lender from time to time
Jurisdiction:	Victoria

Schedule 2

Compliance Letter

Attached to this Schedule is an executed copy of the letter dated on or about the Settlement.

Date: 2nd August 2013 from the trustee of the Howells Superannuation Fund to the lender concerning the fund's compliance with superannuation law.