LEGAL CONSOLIDATED
BARRISTERS & SOLICITORS

National Law Firm

Head Office
18 Stirling Highway
Nedlands WA 6009

T: 1800 141 612

legalconsolidated.com.au

Your Reference: Finch SMSF Loan
Our Reference: 9600111195200
Telephone: 1800 141 612

01 November 20

Prepared with your trustee and loan details.
legalconsolidated.com.au/smsf-lending-money/

Finch Western Pty Ltd ACN 123 456 780
33 Alfred Street
Sydney NSW 2000
Australia
as trustee for the Finch Self Managed Superannuation ABN 38383939876

Loan Agreement

Attached is the Loan Agreement deed. We confirm that we have not provided legal advice nor have we verified the identities of any individuals or entities involved.

Please read the Loan Agreement. After speaking with your accountant, when you have confirmed that the Loan Agreement expresses your wishes and is appropriate and correct for your needs, print out a copy of the agreement for each person and sign the agreement.

We have not given you any legal advice in respect of this document or the transactions to which it relates. We have also not given advice as to whether it is in your best interests, or otherwise, to lend any money or whether you are legally able to do so or not. We have given no advice as to whether this document or transaction is appropriate for you.

How to print your Loan Agreement
When you are satisfied that the Loan Agreement is correct in every way and that the parties and addresses are correct:

1. Download the PDF (Do not print directly from the browser.)
2. Print the PDF Printer settings: A4 paper
   100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).

Steps to sign your Loan Agreement

1. You, as the Lender, hand the unsigned Loan Agreement to the Borrower.
2. The Borrower signs first.
3. If there are Guarantors in the Loan Agreement, then, they sign next.
4. You, as the Lender, are last to sign the Loan Agreement.
5. Each person gets a copy of the fully signed Loan Agreement. (You may wish to email it to all parties, as this is evidence that all parties received a copy.)

Liability limited by a scheme approved under Professional Standards Legislation

6. If you are going to lodge the Loan Agreement as a security (e.g. mortgage, caveat or Personal Property Securities Register) then instruct your conveyancer to do so before you hand over any money.
7. Only transfer the money to the Borrower **after** all parties have signed, and received a copy of the Loan Agreement, and securities and encumbrances are lodged (if any).

What is a Loan Agreement?

A Loan Agreement is an agreement between a Lender (e.g. you) and a Borrower (the person you are lending the money to). The Loan Agreement is a formal way of setting out the terms and conditions of the loan.

The Loan Agreement sets out the rights between the parties. This includes:

1. the amount lent (or to be lent over time) to the Borrower
2. how the amount is repaid by the Borrower to the Lender
3. interest payable by the Borrower (if any)

Lend the money only after all the parties have signed the Loan Agreement?

Do not lend any money until all parties have:

1. signed the Loan Agreement;
2. received a copy of the Loan Agreement; and
3. if you are going to use the Loan Agreement to support a Mortgage, caveat or some other encumbrance, the Loan Agreement is so lodged.

What if I lent the money before the Loan Agreement was signed?

If you hand over the money **before** all the parties sign, then the Loan Agreement may not work. Even if it the Loan Agreement is still valid the Loan Agreement is less enforceable. This is especially the case if the Loan Agreement is used in dealings with such entities as the ATO, Family Court and Bankruptcy Court.

Legal Consolidated does not provide advice on dealing with these entities. You need to speak with your lawyers and your accountant. They also know your individual circumstances. We do not know anything about your circumstances.

Using a Loan Agreement to protect your interests in the Family Court

Legal Consolidated is only providing general advice. Legal Consolidated does not
oses only:

nd his wife. This is without a
e parents do not want the ex-wife

a loan. If that is true, the parents
ex-daughter-in-law may get none
::

into a loan because their

A handshake is hard to audit. Sign before advancing the money. Keep the signed agreement and bank transfer records together so the loan has a clear beginning.

Your agreement records the amount, interest and repayment terms.

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If, the parents had signed the Loan Agreement **before** the money was handed over then the parent's position is stronger.

Similar issues arise in ATO matters, bankruptcy and insolvency.

Get your Loan Agreement signed first, and then hand over the money.

When does the loan start?

We do not put a start date into the Loan Agreement. Instead, you need to keep evidence that the loan was made. If there is a transfer of money via your bank account, then print out the receipt provided by your bank and keep the receipt with the Loan Agreement.

If it is cash, then there should be an exchange of emails or a receipt to say that the Borrower received the cash. If you provided a personal or bank cheque, then keep a copy of the cheque or the bank records with the Loan Agreement.

If you lend more money, then also keep those new records as well.

Time limits for recovering your loan

Time limits for suing to recover a loan depend on the governing law, whether the loan is made by deed or simple contract, and when the right to sue arises. Do not assume that a loan automatically expires after six years.

For example, under the *Limitation Act 1969* (NSW), the usual period is six years for an action founded on a simple contract and twelve years for an action founded on a deed. The starting date depends on the repayment terms and applicable law. Other States and Territories have their own rules.

Obtain advice before the limitation period expires. A part payment or written acknowledgment may affect the period, but paying $1 or signing another copy does not automatically preserve every claim or security.

Professional lenders of money

There are two types of Lenders:

1. **Professional lenders**: banks such the Commonwealth Bank of Australia and ANZ, other lending institutions such as AMP; pawn brokers and shop owners providing laybys.
2. **Non-professional lenders**: other people such as mum and dad lending money to a child; a person lending money to a friend; a person or company lending money not as part of their business or as a one-off transaction.

This Loan Agreement is for **non-professional lenders**. If you are a professional lender, please contact us.

Who gets copies of the Loan Agreement?

Keep a fully signed original of the Loan Agreement for yourself. The Borrower also keeps a copy. Your financial professional should also keep a copy. If you have Guarantors, then each Guarantor must also get a fully signed copy of the Loan Agreement.

Keep records of any repayments with the Loan Agreement. If you lend more money keep evidence of this also with the Loan Agreement.

Keep the receipts and other documents with the Loan Agreement so it is all kept together and up to date.

Who should be my witness?

When humans enter into the Loan Agreement (in contrast to companies) the human's signature must be witnessed. The witness, for a human signing clause, is a person over the age of eighteen and who is of sound mind. They are not involved in the transaction in any way, such as a relative.

The best person to use as a witness is a 'stranger'. Someone like a neighbour, accountant, or financial planner. Your spouse and children should never witness your signature.

Witnessing a Loan Agreement: Key Legal Requirements and Best Practices

When signing a Loan Agreement, following strict guidelines helps ensure the document's validity and protects all parties:

Do Not Use Electronic Signatures

- **Wet signatures are essential.** Avoid signing the Loan Agreement electronically.
- Electronic signatures may be challenged in court and do not provide the same assurance as a physical signature observed by an independent witness.
- Wet signatures reduce the risk of disputes and help ensure that the agreement is enforceable.

Witness Independence

- Witnesses for human signing clauses must be **completely independent**. They:
    - **Cannot be related** to any party in the Loan Agreement.
    - **Cannot have any interest** in the loan or be a party to the agreement.
- Ideal witnesses include neighbours, professional advisors, or other independent individuals.

Sound Mind and Avoiding Pressure

- All parties signing the Loan Agreement, including the lender and borrower, must be of **sound mind**.
- To safeguard against **elder abuse** or **undue pressure**, vulnerable or elderly signers should obtain a **doctor's certificate**.
    - This certificate helps confirm their capacity to understand the agreement and helps protect against future claims of coercion.

Steps for Witnessing a Loan Agreement

1. All parties must sign the Loan Agreement in the **physical presence of their witnesses.**
2. Witnesses must observe the signing in **real-time** and confirm that it is done **freely and willingly**.

What checks should I do on the Borrower – BEFORE I lend any money?

Legal Consolidated is providing no advice as to the identity, ability to repay the loan, legal right to sign a deed, legal right to enter into a Loan Agreement or creditworthiness of the Borrower. The information below is of a general nature only:

- The Lender must seek their own advice and due diligence, legal and otherwise, on the credit worthiness and ability for the Borrower to make repayments and perform its obligations under the Loan Agreement.
- The Lender should seek such advice independently. You should not rely on any person associated or related to the Borrower to give you such advice.
- You need to make sure the person you are lending to is the person they say they gal help.

A signature is not a credit check. Investigate the borrower, its assets and existing debts. For your SMSF, record why this loan is a sensible retirement investment.

Check the borrower before the money leaves the Fund.

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lentity of the person you are
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ommission (ASIC). You should
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an Agreement.

Is this a secured loan?

This Loan Agreement contains security provisions. Signing it does not complete registration or guarantee priority over other creditors. Before advancing money, obtain advice on the security it creates, any further security documents required and the steps to protect that security.

The Borrower promises to sign documents needed to secure the loan. A caveat protects an existing interest in land; it does not create that interest. A mortgage or PPSR registration must meet the applicable legal requirements.

Do I need to secure this loan?

Securing a loan is optional. However, it is beneficial. It increases your chance of getting back your money if the Borrower goes bankrupt.

Therefore, a secured loan protects your interests. If the Borrower is unable to repay the loan, you may get a priority over the unsecured creditors.

How can I secure this loan?

Ask your property or securities lawyer to identify and document the security, check existing interests and arrange the appropriate registrations before you advance money. Land security and personal property security require different steps.

Legal Consolidated does not give advice on securities and their registration.

Personal Property Securities Register (PPSR).

The above deals with real estate. As well as the above if the Borrower has non-land assets, then consider registering a security under the Personal Property Securities Register (**PPSR**).

The PPSR replaces a number of existing registers. These include the old ASIC Register of Charges (for companies) and the Register of Encumbered Vehicles (REVs) (for cars). Registration of certain chattels are streamlined into one national register.

The PPSR applies to tangible (you can touch it) and intangible assets owned by the Borrower. Such chattels include:

- vehicles, boats and aircraft
- crops and livestock
- stocks in trade
- artworks
- equipment
- new or second-hand goods
- patent and copyright
- commercial licenses
- debts and bank accounts
- shares, cash and cheques

The Lender may register a security interest over eligible personal property on the PPSR. Obtain advice on the security agreement, collateral and registration timing before advancing money. Registration alone does not create a security interest.

A security interest may be registered through the PPSR website:
https://www.ppsr.gov.au/registering/you-create-registration

Legal Consolidated provides no advice on securities and their registration. You must seek
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or a company borrows money.

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of assets, but they use different

es (such as a caveat or mortgage)
Territory land titles office.

ster your security interest over the
ehicles, or shares) on the Personal
Property Securities Register (PPSR).

Want stronger security? Consider a mortgage or a registered security interest. Registration is an additional step if you choose that protection; it is not required for every loan. Signing this agreement does not itself register security.

Ask your adviser which security protects your position.

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Is my Loan Agreement still valid even if not registered?

Failure to register security does not, by itself, invalidate the repayment obligations under this Loan Agreement.

However, unregistered or unperfected security may lose priority or become ineffective on insolvency. Registration does not guarantee recovery. Priority and enforcement depend on the security, applicable law and competing interests.

Legal Consolidated does not register securities, caveats, or PPSR interests for you. Speak to your accountant, conveyancer, or a specialist PPSR lawyer. If you are registering securities, do so before you hand over the money.

What happens if the Lender dies?

You are owed money. You now die. Your rights under the Loan Agreement now go to your beneficiaries named in your Will. The debt is still owing. The person now owes the money to your Estate. The executors collect the debt just as you would have collected the debt.

For example, a Loan Agreement may be from a dad (Lender) to a child (Borrower). Let us say your son owes the debt to you and your son is one of the beneficiaries. In your Will you leave everything to your three children. You now die. Your son's entitlement under the Will may be reduced to get rid of the debt.

What happens if the Borrower dies?

The Borrower owes you money under the Loan Agreement. The Borrower dies. The debt does not usually die with the Borrower. The debt normally survives death. The executor of the Borrower's Will is obliged to pay the debt. Instead of enforcing the Loan Agreement against the Borrower you now seek to enforce the loan against the dead Borrower's estate.

Can I set up the Loan so that when the Lender dies the loan is automatically forgiven?

You do not do this in the Loan Agreement. If you wish to forgive a debt at the Lender's death, then put that as a specific gift in your Will. But speak with your Estate Planning lawyer first.

However, why would you want to forgive the debt at death? Let us say you have three children. You lend them each $100,000 via three separate Legal Consolidated Loan Agreements. You and your spouse die, and you leave everything to the children equally. Well, the children just collapse the debt themselves. All is fair and equal.

But what if:

1. you lent a further $250,000 to only one child. Then at death, you would expect that the child pays back the $250,000 to make the gifting to all three children the same.
2. or instead, what if one of the children does the right thing and pays back the $100,000. If you forgave all debts, then the child would have received less than your other two children. It would be unfair.

Think long and hard about whether you want to forgive the debt at death. But if you do, then do it in your Will.

Legal Consolidated does not give advice on this. We also do not know your individual circumstances. Speak with your accountant, lawyer and financial planner before you sign the Loan Agreement or lend the money.

Can the Lender borrow money and then on-lend it to the Borrower? And claim a tax deduction?

Legal Consolidated is giving no advice on the taxation implications of the Loan Agreement and any other related matters such as deductions for tax purposes. You should approach your accountant on such matters.

Are the Lender and Borrower allowed to enter into this loan?

Your SMSF is not the family overdraft. It must not lend to a member or a member's relative. The 5% in-house asset limit does not override that prohibition.

Superannuation Industry (Supervision) Act 1993 (Cth) s 65; ATO, SMSFR 2008/1.

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e speak to your accountant,
n may forbid you entering into
easons we provide some

e financial assistance to a
e asset limit does not override
ust may be permitted, but the in-
/. Before advancing money,
ment strategy, sole purpose test
ial interest, repayment and
tically compliant. These
requirements include sections 62, 65 and 109 and Part 8 of the *Superannuation Industry (Supervision) Act 1993* (Cth).

- **Minors**: Individuals under the age of 18 generally lack the legal capacity to enter into binding contracts, including loan agreements.
- **Mental Incapacity**: People who are legally declared as mentally incapacitated due to illness, disability, or cognitive impairment are unable to sign a contract because they cannot understand the implications of the agreement.
- **Undischarged Bankrupts**: In many jurisdictions, individuals who are undischarged bankrupts are restricted from incurring certain types of debts or loans without the permission of the bankruptcy trustee.
- **Company Directors with Specific Restrictions**: Directors of companies, particularly in insolvency situations or those under specific statutory or regulatory restrictions, may be prohibited from entering into loan agreements on behalf of the company.
- **Power of Attorney abuse**: A person holding power of attorney for another cannot use this power to benefit themselves at the expense of the principal, such as signing a loan agreement where the terms are unfavourable to the principal but beneficial to the holder.
- **Public Officials**: Certain public officials are prohibited from engaging in transactions, including loans, where there is a potential or actual conflict of interest.

We stress again we are not giving you advice or any legal advice on such matters. The Loan Agreement comes with no legal advice. The examples above only cover a small number of reasons why a person cannot enter into a loan or sign a Loan Agreement.

Do the Lenders and Borrowers have the mental capacity to sign a Loan Agreement?

The Loan Agreement can be attacked. This is by arguing that some or all the parties that signed the Loan Agreement lacked mental capacity.

To sign a Deed, or enter into any legal agreement, you need to be of sound mind.

To reduce the chance of someone arguing that you lacked mental capacity get a doctor's note. This is to say you are of sound mind. And keep all such doctor notes with the Loan Agreement.

Where the Lender or Borrower is a company, then the director(s) needs to get a doctor's certificate. This is to confirm that the director is of sound mind.

To put the matter beyond doubt every human that signs the Loan Agreement needs to have a doctor's certificate to say they are of sound mind.

The doctor's note should be obtained on or around the date that the Loan Agreement is signed.

Are the Lenders of Borrowers tricked or coerced into signing the Loan Agreement?

Another way to render the Loan Agreement of no effect is to argue that one of the parties did not sign the Deed freely. There was no free will.

The person making the attack argues duress, undue influence or elder abuse. Duress is when you are forced to do something against your own will.

The signing of a Loan Agreement should be treated to the same high standard that is given to the signing of a Will. For example, the people potentially benefiting should not be anywhere near the other parties when they sign the Loan Agreement.

The witnesses should be people of substance and independent. They must never be family members or related to people involved in the loan.

Non-Cash Payments (e.g., Dividends)

This Loan Agreement allows for non-cash payments, such as dividends, to be applied to the loan balance, subject to written agreement between the parties and compliance with all applicable laws, including the *Corporations Act 2001* (Cth) and taxation laws.

Consult your accountant and tax practitioner to ensure that any such arrangements meet legal and tax requirements and are appropriate for your circumstances. Legal Consolidated Barristers & Solicitors provides no legal, tax, or other advice regarding the suitability, compliance, or consequences of applying non-cash payments to the loan, and you must rely on your own independent professional advice.

Related party 'at call' loans provided to your company Debt/Equity Rules

Your accountant should check the tax treatment of money lent to a company before you advance it. A written Loan Agreement records the parties' obligations; it does not determine the tax classification by itself.

> Money provided to a company may be debt or equity for tax purposes. The terms of the arrangement and the statutory tests determine its treatment.

Background

Division 974 of the *Income Tax Assessment Act 1997* (Cth) contains the debt and equity tests. The name given to an arrangement does not decide its classification.

Ask your accountant to check the consequences of the classification. Depending on the arrangement:

1. returns on an equity interest are generally not deductible as interest and may be frankable;
2. payments may have dividend or capital consequences rather than ordinary loan repayment treatment; and

Your money. Clear repayment terms. Agree whether repayment falls due on demand or on set dates. Keep any demand and repayment records with the agreement so there is no guessing about what is owed.

For an SMSF loan, record the commercial reasons for the terms.

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allow debt deductions may also
n of 'at call' loans.

able law. Neither this Loan
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nent. This is between a
ur company. For example, the
der or a Family Trust. 'At call'
/ at any time. (In contrast a
loan may be for a fixed period. E.g. you will pay me back the money in 5 years' time.)

Keep the signed Loan Agreement, records of advances and repayments, and any agreed changes. An unwritten arrangement is harder to prove, but the absence of a written agreement does not automatically make it equity.

Debt / Equity rules for 'at-call' loans

Consider this 'at call' loan:

Keith owns shares in his company and lends it $100,000. His accountant must examine the actual arrangement, including whether:

1. there is a written loan agreement;
2. the records establish an enforceable obligation to repay; and
3. repayment is due on demand or on a fixed date.

The arrangement between Keith and his company is that the loan is repaid when Keith demands repayment – 'at call'.

Keith's accountant applies the debt and equity tests to those terms and checks whether the related-party at-call loan exception applies. An at-call loan is not automatically equity merely because it is unwritten.

If the arrangement is an equity interest, Keith's accountant should check:

1. whether returns are non-deductible equity distributions; and
2. whether a payment is a return of capital or a distribution, and its tax consequences for Keith and the company.

$20 million turnover exception (*de minimis* exception)

Section 974-75(6) of the *Income Tax Assessment Act 1997* (Cth) provides an exception for qualifying related-party at-call loans where the company's GST turnover is less than $20 million. It does not exempt every arrangement from the debt and equity rules. Your accountant should confirm that the conditions are met.

If the company no longer qualifies for the exception, the statutory tests and any applicable transitional rules determine the treatment of the arrangement. Reaching $20 million turnover does not automatically turn every loan into equity.

Again, the above information is of a general nature. Legal Consolidated does not know your individual circumstances or what you are using this Loan Agreement for. Your accountant knows your individual circumstances. Speak to your accountant before you sign the Loan Agreement.

This now concludes the matter. Thank you for your instructions.

Yours sincerely,

Legal Consolidated

LEGAL CONSOLIDATED BARRISTERS & SOLICITORS

Loan Agreement

Finch Western Pty Ltd ACN 123 456 780
(Lender)

Wattle Grove Holdings Pty Ltd ACN 234 567 897
(Borrower)

Loan Agreement

This Loan Agreement is between:

Finch Western Pty Ltd ACN 123 456 780
33 Alfred Street, Sydney NSW 2000, Australia
as trustee for the Finch Self Managed Superannuation ABN 38383939876

(**Lender**)

and

Wattle Grove Holdings Pty Ltd ACN 234 567 897
120 Collins Street, Melbourne VIC 3000, Australia
as trustee for the Wattle Grove Family Trust

(**Borrower**)

David James Lawson
39 James Street, Fortitude Valley QLD 4006, Australia
Sarah Anne Lawson
185 King William Road, Hyde Park SA 5061, Australia

(**Guarantor**)

The parties agree as follows:

Background

a) The Borrower wishes to borrow money from the Lender.

b) The Lender is prepared to lend the money to the Borrower on these terms.

c) The Borrower allows encumbrances, mortgages and caveats over any of the Borrower's assets and real estate, at any time.

1 Dictionary

These words mean:

1.1 **Amount Lent** $150,000 plus any further amounts advanced from time to time

personal representatives,

Lent and the Borrower paying

was advanced on or the date

earlier or as agreed by an

r the Term of the Loan or

of the Loan or otherwise agreed in writing by the parties. The Lender may notify the Borrower of those dates but cannot unilaterally change agreed repayment dates

1.7 **Interest** or **Interest Rate** 8% per annum, calculated daily on the outstanding principal on a 365-day basis, payable monthly in arrears.

Who is actually lending? The SMSF acts through its trustee. This sample names the company and its SMSF capacity. The borrower's company and Family Trust are separately identified.

Check both trustee names and capacities against the trust records.

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1.8 **Lender** includes executors, administrators, personal representatives, successors and assignees of the Lender

1.9 **Loan Agreement** this loan agreement

1.10 **Mortgage** includes any security documents including a mortgage that makes reference to this Loan Agreement

1.11 **Repayment Amount** includes:

1.11.1 Amount Lent

1.11.2 Interest

1.11.3 all other moneys, costs, charges, damages and expenses owing to the Lender under this Loan Agreement and includes:

(a) all sums advanced by the Lender to protect any property
e or attempt to cure the
Borrower's obligations and

damages and expenses as owing
Loan Agreement
tion
on is increased so that it includes
ge

an Agreement
ble 36 months after the date of
n the last day of each calendar
e parties. The repayment amounts, frequency and due dates stated here prevail over any inconsistent general repayment provision. Where repayment is expressly on demand, the Lender may demand payment in accordance with those terms

A friendly borrower still needs commercial terms. Keep evidence supporting the interest rate, repayment period and security. The sample rate is an example, not a recommended SMSF rate.

Superannuation Industry (Supervision) Act 1993 (Cth) s 109; ATO, SMSFR 2008/1.

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Interpretation

1.14 If the Borrower comprises two or more persons, the terms on their part bind and are observed and performed by them jointly and each of them severally, and may be enforced against any one or any two or more of them. Each of them is liable for 100% of the Repayment Amount. To put the matter beyond doubt they are jointly and severally liable.

1.15 Headings are for convenience only and do not affect interpretation.

1.16 A reference to a 'person' includes a reference to: an individual; body corporate (wherever incorporated); body politic; association of persons (whether incorporated or unincorporated) partnership; trust; person in the capacity as a trustee; person in the capacity as the personal representative of a deceased estate and superannuation fund.

1.17 The plural includes the singular and vice versa and a reference to any gender includes every other gender.

1.18 A reference to this Loan Agreement includes a reference to any amendment, novation, variation, supplemental deed or replacement from time to time.

1.19 A reference to any party to this Loan Agreement includes successors or permitted assignees.

1.20 A reference to laws in this Loan Agreement refers to those laws as amended or replaced as consistent with the overall purpose of this Loan Agreement and does not lead to an anomaly.

1.21 A reference to any statute, subordinate legislation or instrument includes all statutes, subordinate legislation or instruments amending, modifying, consolidating, re-writing, re-enacting or replacing them and a reference to a statute includes all subordinate legislation and instruments made under that statute.

2 Due diligence by the Lender before the money is lent

2.1 The Lender lends the Amount Lent to the Borrower.

2.2 The Borrower pays the Repayment Amount to the Lender pursuant to the terms of this Loan Agreement.

2.3 The parties acknowledge that the law firm that prepared this Loan Agreement only acts for the Lender in their personal capacity. And where there is more than one Lender then the law firm only acts for the first Lender as appearing in this Loan Agreement. And the law firm only acts for that Lender in their personal capacity. And in no other capacity such as a trustee. As set out in the cover letter to the Lender that accompanied this Loan Agreement, the Lender must seek their own advice and due diligence, legal, tax and otherwise, and also on the credit worthiness and ability for the Borrower to make repayments and perform its ntity checks of the Borrower should moneys are lent to the Borrower. rm such due diligence from ver. t has provided no taxation, advice e nature or benefit of the lending of heir accountant and financial

enquired as to whether any party or borrow the money. her the Loan Agreement is fit for purpose or appropriate for the Lender or any other persons.

Interest on paper is not cash in the bank. Diary repayments, reconcile receipts and act on arrears. Your auditor needs records of what happened, as well as what was agreed.

Keep the loan ledger with your SMSF investment records.

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3 What Happens if an Instalment Amount is delayed?

Irrespective of anything in this Loan Agreement, if the Instalment Amount is unpaid for 7 days after the relevant Instalment Date (whether formally demanded or not) then the Borrower is in default of the Loan Agreement.

4 Is there Security?

4.1 For the Consideration, the Lender is authorised to direct the Borrower, unconditionally and unequivocally, to sign all documents required to register all forms of security and other interests in and over the Borrower's assets and rights, of any description. The Borrower, unconditionally and unequivocally, consents that

such encumbrances can be exercised and carried out by the Lender at any time and from time to time, including:

4.1.1 land, real estate and other interests in property the Borrower owns or controls from time to time (this includes the right to lodge equitable mortgages, mortgages, caveats and other encumbrances of any nature whatsoever); and

4.1.2 other assets, fixtures, choses in action and chattels owned or controlled by the Borrower, including by way of a general security interest over all present and after-acquired property (AllPAAP), debentures, fixed and floating charges, mortgages, equitable mortgages, caveat, Personal Property Securities Register and share capital securities and mortgages.

(collectively **Security**)

This Security is also for the repayment of the Repayment Amount and all interest rred by the Lender because of romises under this Loan ents of the law and is read *nuation Industry (Supervision)*

nforcement of any Security are greement gives the Security

e Security and the value or ration thereto. The lawyer that prepared the Loan Agreement has given no advice, support or other information in respect to any aspects of the Security, lodgement or protection of the Loan Agreement.

First in the queue? Do not assume so. If you choose registered security, check earlier interests and the priority rules. Registration may strengthen your position when the borrower runs short.

Registration is an optional step to strengthen security.

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Irrevocable Power of Attorney

4.4 For the Consideration, the Borrower provides an irrevocable power of attorney to sign all documents expedient or necessary to deal with and otherwise register any Security or security document or documents.

4.5 For the Consideration, the Borrower (and where more than one jointly and severally), irrevocably appoints the Lender (and where more than one jointly and severally) as the Borrower's true and lawful attorney to:

4.5.1 complete any blanks left in the Loan Agreement;

4.5.2 do, execute and perform any other deed, agreement, matter, act or thing which, in the Lender's opinion, ought to be done, executed or performed to perfect or to perform the transactions and any Security contemplated by the Loan Agreement; and

4.5.3 sign all documents expedient or necessary to deal with and otherwise register any Security or security document or documents

4.6 The Borrower declares that:

4.6.1 this irrevocable power of attorney is given for valuable consideration and is irrevocable without the Lender's prior written consent

4.6.2 the powers and authorities given under this irrevocable power of attorney remain in full force and effect until their revocation by written notice to the Borrower, given with the Lender's prior written consent

4.6.3 the Borrower ratifies and confirms whatever the Lender lawfully does, or causes to be done, under this irrevocable power of attorney

4.6.4 the Borrower indemnifies and keeps the Lender indemnified against all claims, demands, costs, damages, losses and expenses, howsoever arising, consequent upon the exercise of all or any of the powers and authorities contained in this irrevocable power of attorney

5 What other Costs and Charges Does the Borrower Pay?

5.1 The Borrower pays to the Lender all the Lender's costs and expenses relating to:

5.1.1 the instructions for, and the preparing, executing, transfer duty, stamping nt and any discharge;
Lender's powers; and
der this Loan Agreement.

er on all outstanding costs and te of demand for payment.
ation fee, due diligence fees, ation fees payable for any fees regarding this Loan to the recovery of all or any part

A power of attorney is not a magic wand. Read its scope and use it only as authorised. If you want additional security, ask your adviser about the documents and registration needed for that protection.

This clause supports action; it does not guarantee recovery.

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6 Where the Borrower is acting as a Trustee

6.1 When the Borrower is acting in the capacity of trustee, then the Borrower has the power in the capacity as trustee to:

6.1.1 borrow and raise money from any person, on a full or non-recourse basis, with or without security, mortgage or charge, including via an overdraft

6.1.2 provide any guarantee or indemnity for payment of money or for the performance of any person's contractual obligations

6.1.3 mortgage, lien, pledge, charge, guarantee or otherwise provide the trust asset for security for any borrowing, raising, facility, guarantee, indemnity, lease or other contractual obligation, whether such contractual obligations relate to the trust or not

6.1.4 provide the Security

6.1.5 give and execute any mortgage, charge or other security over all or any part or parts of the assets of the trust fund as the Lender wishes, to secure the payment or the performance of any contract obligation under or in connection with any transaction including this Loan Agreement

6.2 The Borrower further warrants that:

6.2.1 the terms of the trust do not restrict the right of a Lender to have recourse to the assets of the trust to satisfy any liability to the Lender incurred by the Borrower as trustee.

6.2.2 any trust document authorises the Borrower (and while a company, its directors) to enter into transactions despite any conflict of interest and duty that may arise on the part of the Borrower as trustee.

6.2.3 notwithstanding anything to the contrary, the Borrower may enter into any relationship (legal or otherwise) irrespective of whether there is a direct or personal interest, with any person, including related parties (even if the Borrower is a sole trustee) to do all things in such manner, on any terms (favourable, unfavourable or otherwise), whether there is a conflict or not, as the Borrower thinks fit.

6.2.4 the terms of the Loan Agreement do not restrict the right of the Borrower to be fully indemnified out of the assets of the trust to satisfy any liabilities incurred by the Borrower arising out of any transactions including this Loan Agreement.

6.3 The Borrower:

Lending to a Family Trust? Identify its trustee and check its borrowing power and right of indemnity. If it is related to your SMSF, also check the in-house asset rules and any indirect financial assistance.

Superannuation Industry (Supervision) Act 1993 (Cth) s 65 and pt 8; ATO, SMSFR 2008/1.

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k accounts
rsonally with the trust
whether acting as trustee or not, is
debts and the Amount Lent under

is void?

any transaction affecting in any
ormance of the Borrower's
entitled against all the parties to all
the other Borrower's promises as
if that transaction had not taken place.

8 What are the other Terms of the Loan Agreement?

8.1 **Continuing Security**

This Loan Agreement is a continuing security until satisfaction of all terms of the Loan Agreement. This is notwithstanding any settlement of account or intervening payment.

8.2 **Statutory Powers**

The powers given under any statute (except to the extent inconsistent with the terms in this Loan Agreement) are in addition to the powers given under this Loan Agreement. The Lender may exercise such powers when the Lender becomes entitled to demand payment of any part of the Repayment Amount.

8.3 **Not to Prejudice Other Securities**

This Loan Agreement does not extinguish, merge, prejudice or affect any other security that the Lender may at any time hold for the Repayment Amount.

8.4 **Where the Borrower is a Company**

Where the Borrower is a company all current and future directors agree to be bound by this Loan Agreement jointly and severally as though they were the Borrower.

8.5 Notice Demand or Consent

8.5.1 any communication under this Loan Agreement is in writing and signed by the party giving it or via email. Except as otherwise provided the communication may be delivered or sent by registered post or via email.

8.5.2 communications by post are deemed received 48 hours after posting and immediately if sent by email.

8.6 **Power to Remedy Default**

he Lender may do such things
Lender are desirable to secure
eement. This is to protect the
y the Borrower. All moneys
epayable by the Borrower to
emed part of the Repayment
reement.

Keep the paper trail when payments stop. Record the missed instalment, notices and response. A related borrower still needs commercial treatment; friendship is not a repayment plan.

Follow the default and notice provisions before taking action.

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untary losses that may happen
ment or any statute or law.

8.8 **Third Parties**

Where the Lender (or attorney) exercises any of the powers, given under this Loan Agreement or by statute, no purchaser or other person dealing with the Lender is concerned to inquire whether the Lender has authority or correctly exercised the powers. Such exercise of the power is unimpeachable.

8.9 **Effect of Waiver**

No consent or waiver by the Lender under this Agreement releases the Borrower from any part of this Loan Agreement. The Lender accepting any interest payments after the Borrower's default does not prejudice the Lender of any rights under this Loan Agreement.

8.10 **Certificate by Lender States How Much is Owing**

A certificate signed by the Lender (or by the Lender's solicitors, attorneys or officers) as to the amount of the Repayment Amount and Interest and any other act is prima facie evidence of the facts.

8.11 **No Merger**

Notwithstanding any judgment that the Lender may recover against the Borrower, the Lender holds such judgment collaterally with this Loan Agreement for the due payment of the Repayment Amount with interest and this Loan Agreement does not merge in such judgment.

8.12 Proper Law

This agreement is governed and construed according to the laws of the State or Territory in which the Lender resides in, as evidenced by the Lender's address in the Loan Agreement. Each party irrevocably submits unconditionally to that jurisdiction and of all courts competent to hear appeals for any legal action, suit or proceeding arising from the Loan Agreement.

8.13 Effect of Signing

This Loan Agreement is binding upon each person who has signed it notwithstanding that:

8.13.1 another party has failed to sign it;
8.13.2 part of the Loan Agreement is avoidable or unenforceable; or
8.13.3 the whole or part of the Loan Agreement is avoidable or unenforceable against another party.

8.14 Severability

If any part of this Loan Agreement becomes void or unenforceable then only that part is severed from this Loan Agreement. All parts that are not void remain in full force and remain unaffected by the severance.

8.15 Changing the Instalment Amount

The Instalment Amount may be varied from time to time by agreements between the parties evidenced by an exchange of emails or letters.

8.16 Changing the Instalment Dates

The Instalment Dates may be varied from time to time by agreements between the parties evidenced by an exchange of emails or letters.

8.17 Changing the Interest Rate

Unless stated otherwise, the Interest payable and Interest Rate may be varied from time to time by agreement between the parties evidenced by an exchange of emails or letters.

8.18 Allocating the Repayment Amount

The monies provided by the Borrower for the Repayment Amount are allocated as the Lender sees fit from time to time to either the repayment of capital, Interest or other

Put the new deal in writing. If repayment dates or other terms change, keep the signed variation and reasons. For an SMSF, reassess the commercial terms and investment consequences.

Keep variations with the original loan and repayment records.

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e contrary, the Amount Lent is

g., Dividends)

agreement of the Borrower
resolution), accept non-cash
l by the Borrower, as part of the
pplied to reduce the Amount
greement, as determined by the

Lender in accordance with the payment allocation provisions of this Loan Agreement. The parties must establish the Lender's entitlement to receive the dividend or other property and lawfully apply it to the debt. Its application does not determine the loan's tax classification or remove any tax consequences of the payment.

8.21 Record-Keeping for Non-Cash Payments

Where the Lender accepts a non-cash payment, including a dividend, as part of the Repayment Amount pursuant to the above clause, the Borrower must provide, and the Lender must retain, written documentation evidencing the transaction. Such documentation shall include:

8.21.1 a board resolution or other formal record of the Borrower declaring the dividend or authorising the non-cash payment;

8.21.2 a written agreement between the Lender and the Borrower (evidenced by an exchange of emails, letters, or other correspondence) specifying the amount, nature, and date of the non-cash payment and its application to the Repayment Amount; and

8.21.3 an updated statement of the loan account reflecting the reduction in the Amount Lent, Interest, or other amounts owing.

The Borrower warrants that all such non-cash payments comply with the *Corporations Act 2001* (Cth) and other applicable laws. Both parties shall retain these records with the Loan Agreement for the duration of the loan and for a period of at least seven years thereafter, or as required by law.

8.22 Compliance with Dividend Payment Requirements

Where a dividend is applied as a non-cash payment to the Repayment Amount under the non-cash payment provisions of this Loan Agreement, the Borrower warrants that:

8.22.1 the dividend is authorised under the Borrower's constitution and applicable law, including section 254T of the *Corporations Act 2001* (Cth) and section 254U where applicable. Immediately before declaration, the Borrower's assets must exceed its liabilities by enough to pay the dividend; the payment must be fair and reasonable to shareholders as a whole and must ability to pay creditors;
taxation laws, including the
, where relevant, is accompanied
anking credits as required; and
payment Amount does not
rements, including the Debt/Equity
Tax Assessment Act 1997.

, liability, or expense (including
n any breach of these warranties or
ity challenging the validity or tax
yment Amount. The Lender is not
responsible for verifying the Borrower's compliance with these requirements and relies on the Borrower's warranties.

No cash changed hands? Keep the evidence. A journal entry alone does not explain a repayment by set-off or dividend. Record the legal entitlement, approvals, amount and date.

Your accountant needs the transaction records, not just the balance.

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9 Guarantee

In consideration of and to induce the Lender to enter into the Loan Agreement, the Guarantor provides this guarantee (**Guarantee**):

9.1 unconditionally and absolutely guarantees to the Lender, the full and prompt payment and performance by the Borrower of all the Borrower's obligations under and pursuant to the Loan Agreement. This includes paying the Repayment Amount. It further includes the full and prompt payment of any and all costs and expenses of and incidental to the enforcement of this Guarantee, including, without limitation, reasonable lawyer and accounting fees.

9.2 agrees that the Lender may from time to time, without notice to the Guarantor, which notice is waived by the Guarantor, extend, waive, renew or compromise the Repayment Amount, in whole or in part. This is without releasing, extinguishing or affecting in any manner whatsoever the liability of the Guarantor. The Guarantor consents to the above acts.

9.3 agrees that the Guarantee remains in full force and effect and is binding upon the Guarantor until the terms of the Loan Agreement are performed in full plus the Repayment Amount is paid in full.

nt Amount is due and owing or
ender, the Guarantor must not
lect or seek to collect from the
vise, acquired by the Guarantor
int.
ny monies from the Borrower
d in full plus the Repayment
their written prior permission).
Lender is conclusive evidence

In the case of Garcia, the High Court set aside a wife's guarantee of her husband's business debts. A signature alone did not settle the matter. Each guarantor must seek their own independent legal advice.

We do not act for the guarantors. *Garcia v National Australia Bank Ltd* (1998) 194 CLR 395.

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l representatives, successors
efit of the Lender and their successors, assigns and legal representatives.

9.8 agrees that the Guarantor may be joined in any action or proceeding against the Borrower under this Loan Agreement. Further, recovery may be had against the Guarantor in any such action or proceeding or in any independent action or proceeding against the Guarantor. This is if the Borrower fails to duly and punctually pay and perform any of the obligations under the Loan Agreement. This is without any requirement that the Lender first assert, prosecute or exhaust any remedy or claim against the Borrower.

9.9 agrees that the Lender may start an action or proceeding against the Guarantor without requiring or joining the Borrower to such an action.

9.10 agrees that this Guarantee is deemed a contract made under and pursuant to the laws in the State in which the Lender is situated, as evidenced by the Lender's address in the Loan Agreement. Where more than one Lender, then the first Lender's address and is governed by and construed under the laws of such State. Further, wherever possible, each provision of this Guarantee is interpreted in such manner as to be effective and valid under applicable law. But if any

provision of this Guarantee is prohibited by or invalid under the applicable law, such provision is ineffective only to the extent of such prohibition or invalidity without invalidating the remainder o the Guarantee.

9.11 agrees that no failure on the exercising, any right or remedy ope single or partial exercise of any righ exercise or the exercise of any othe document or by law.

9.12 agrees that where there is r jointly and severally. Each Guarant

Two guarantors does not mean half the debt each. This guarantee provides for joint and several liability. Each guarantor must seek advice from their own independent lawyer before signing.

We do not act for the guarantors.

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The Guarantor agrees that:

9.13 the Guarantor is not presently insolvent or bankrupt and will not be rendered insolvent or bankrupt by virtue of the execution and delivery of this Guarantee;

9.14 the Guarantor has not executed or delivered this Guarantee with actual intent to hinder, delay or defraud the Guarantor's or Lender's creditors; and

9.15 that the Lender has entered into the Loan Agreement in reliance upon this Guarantee.

SIGNED as a Deed on the ..... day of ..... 20 .....

SIGNED SEALED DELIVERED AND EXECUTED by
Finch Western Pty Ltd ACN 123 456 780

in accordance with section 127 of the
Corporations Act 2001 (Cth) by:

_____	_____
Signature of Director	Signature of Director/Secretary (leave blank if none)

[ ] Sole Director and Sole Secretary
(Tick the box if the sole Director is also the sole Secretary.)

SIGNED SEALED DELIVERED AND EXECUTED by
Wattle Grove Holdings Pty Ltd ACN 234 567 897

in accordance with section 127 of the
Corporations Act 2001 (Cth) by:

_____	_____
Signature of Director	Signature of Director/Secretary (leave blank if none)

[ ] Sole Director and Sole Secretary
(Tick the box if the sole Director is also the sole Secretary.)

SIGNED, SEALED AND DELIVERED by

David James Lawson

The Guarantor acknowledges the warning to have this Loan Agreement explained by an independent lawyer. The Guarantor by signing below declares and warrants to the Lender an understanding of the nature of this Loan Agreement and the financial nature of the loan.

Guarantor:

_____

David James Lawson

_____

(Signature of witness)

_____

(Name of witness)

SIGNED, SEALED AND DELIVERED by

Sarah Anne Lawson

The Guarantor acknowledges the warning to have this Loan Agreement explained by an independent lawyer. The Guarantor by signing below declares and warrants to the Lender an understanding of the nature of this Loan Agreement and the financial nature of the loan.

Guarantor:

_____

Sarah Anne Lawson

_____

(Signature of witness)

_____

(Name of witness)