



IMPORTANT NOTE FOR RELATED PARTY (NON-BANK) LOANS FOR LIMITED RECOURSE BORROWING ARRANGEMENTS

The ATO Commissioner issued Practical Compliance Guideline, PCG 2016/5 that deals specifically with the income tax issues of ensuring that limited recourse borrowing arrangement (LRBA) that has been entered into with a related party lender complies with an arm's length dealing. Failure to do so can result in both the ordinary and statutory income of the fund being treated as non-arm's length income (NALI) and taxed at the highest marginal tax rate.

To assist Trustee(s) to comply with what the ATO see as an arm's length arrangement, the Guideline sets out 'Safe Harbour' terms on which a trustee may structure their LRBA to evidence it is consistent with an arm's length dealing. The Safe Harbour applies to real property, listed shares and listed units.

If the Trustee(s) do not meet the Safe Harbour terms, you must be able to otherwise demonstrate that the arrangement was entered into and maintained on terms consistent with an arm's length dealing. One example of how this could be demonstrated is by providing evidence of a loan offer to the SMSF in relation to the particular asset from a financial institution.

It is the responsibility of the related party lender and Trustee(s) to ensure that they continue to comply each year with the terms of this Loan Facility Agreement and the Safe Harbour provisions each year, which is likely to incorporate changes to interest rates, along with fixed or variable loan terms which will both impact on the repayment terms of the loan. Failure to continue to comply with these requirements may result in the NALI provisions applying.

References:

PCG 2016/5:

<https://www.ato.gov.au/law/view.htm?DocID=COG/PCG20165/NAT/ATO/00001>

PCG 2016/5 FAQs

<https://www.ato.gov.au/Super/Self-managed-super-funds/In-detail/SMSF-resources/SMSF-technical/PCG-2016/5-frequently-asked-questions/>

**LIMITED RECOURSE BORROWING
LOAN FACILITY AGREEMENT**

For

BYRNES STREET SUPERANNUATION FUND

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Document Version:

LRBA_LFA-2021-08

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This **AGREEMENT** is made on the

day of

20

BETWEEN: the Borrower and Lender named in the Schedule

BACKGROUND:

- A. The Borrower is the trustee of the Superannuation Fund referred to in the Schedule.
- B. The Borrower has requested the Lender to provide a loan facility to the Borrower for the purpose of acquiring an interest in the Property on an instalment basis and in such manner as to comply with sections 67 and 67A of the SIS Act and the SIS Act generally.
- C. The Lender is willing to provide a loan facility to the Borrower upon the terms of this Agreement and in compliance with the provisions of sections 67 and 67A of the SIS Act and the SIS Act generally.

OPERATIVE PART:

1. THE FACILITY

1.1 Commitment

The Lender agrees to make available to the Borrower the Facility up to an aggregate principal amount equal to the Facility Limit on the terms set out below.

1.2 Purpose

The Borrower will apply all Advances made under the Facility for the purpose of:

- a) acquiring an interest in the Property referred to in the Schedule or any Replacement Property in accordance with The LRB Trust Agreement;
- b) funding expenses incurred in connection with the acquisition of, or the maintenance and repair of the Property;
- c) the maintenance of the Borrower's obligations under this Agreement and The LRB Trust Agreement; or
- d) to refinance a borrowing in relation to the Property as contemplated by section 67A of the SIS Act.

1.3 Termination

The Facility will terminate on the Termination Date.

2. DRAWDOWN

2.1 Drawdown: The Lender will make Advances to the Borrower as required and directed by the Borrower.

2.2 Advances: The Borrower may draw one or more Advances under this Facility

3. CONDITIONS PRECEDENT

3.1 Conditions Precedent to the first Advance

The Lender will make the first Advance provided that has received all of the following documents in form and substance acceptable to it:

- a) a copy of a resolution of the directors of each corporate Relevant Person who is a party to a Transaction Document approving and authorizing the execution of the Transaction Documents to which it is a party and acknowledging that each such Transaction Document will benefit it;
- b) the consent of each member of the Superannuation Fund to the Facility;
- c) each Transaction Document signed by or on behalf of all parties other than the Lender;
- d) evidence that all necessary filings and registrations have been completed and all fees and any Taxes have been paid to ensure that the Transaction Documents are valid, binding and enforceable.

3.2 Conditions Precedent to all Advances

The obligation of the Lender to make and continue all Advances is subject to the further conditions precedent that:

- a) it receives a Drawdown Notice in relation to any Advance requested;
- b) any Advance requested is for a proper purpose and complies with clause 1.2 and all other provisions of this Agreement;
- c) the representations and warranties set out in clause 9.1 are true and correct as of the date of the relevant Drawdown Date as though made on those dates; and
- d) no Event of Default or Potential Default is subsisting at the date of relevant Drawdown Date or will result from the provision or continuation of the Advance.

4. REPAYMENT AND PREPAYMENTS

4.1 Repayment

The Borrower must repay to the Lender on the Termination Date or as otherwise agreed in writing all Advances that remain outstanding together with all other money the payment or repayment of which forms part of the Obligations.

4.2 Prepayment

- a) The Borrower may prepay an Advance in whole or in part at any time together with any interest accrued on that amount prepaid.
- b) Amounts prepaid may not be re-borrowed under this Agreement.

5. INTEREST

5.1 Calculation of Interest

Interest on each Advance will accrue from day to day and be calculated on the basis of the actual number of days elapsed (including the first day but excluding the last) and a year of 365 days. The rate of interest for each Advance will be the Higher Rate. However, if interest is paid when due and there is no Event of Default or Potential Default subsisting or which would result there from, the Lender will accept interest calculated at the Lower Rate.

5.2 Payment of Interest

The Borrower must pay to the Lender's account the accrued interest in relation to each Advance for the period from and including the Drawdown Date to but excluding the Termination Date and each payment will be made monthly in arrears on the first day of each calendar month and on the Termination Date calculated up to that day. The Lender may make such adjustments in the calculation of interest as the Lender in its absolute discretion determines to be appropriate to take into account the drawing of an Advance on a day which is not the first day of a month.

6. DEFAULT INTEREST

6.1 Payment of Interest

Where the Borrower fails to pay amounts due and payable under or in respect of this Agreement or the other Transaction Documents the Borrower will on demand by the Lender pay interest on all such amounts at the rate specified below, including any further interest payable under this clause.

6.2 Accrual of Interest

Such interest will accrue on such amounts from day to day from and including the due date to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the rate that is the higher of the rate payable under the judgment and the Higher Rate.

6.3 Compounding Interest

Interest on the Advance which is not paid on the due date for payment under clause 5.2 will be compounded monthly by adding it to the amount of the Advance and will be treated as part of that Advance for the purposes of future interest calculations.

7. PAYMENTS

7.1 Time and Place

Unless this Agreement expressly provides otherwise, all payments to be made by the Borrower must be made to the Lender in immediately available funds not later than 11.00 a.m. on the due date to the account specified by the Lender in writing.

7.2 Banking Days

If any payment to be made or act, matter or thing which is to be done under this Agreement, would otherwise fall due or be done on a day which is not a Banking Day, then the due date for payment or the day such act, matter or thing is to be done will be extended to the next succeeding Banking Day or if that Banking Day is in another calendar month on the preceding Banking Day.

7.3 No Deduction

Unless this Agreement expressly provides otherwise, all payments made by the Borrower under this Agreement whether of principal, interest or other amounts due under this Agreement will be made in full without any set-off or counter claim or

deduction for or on account of any present or future Taxes, withholdings, deductions or charges of whatsoever nature.

7.4 Appropriation of Payments

All payments made by the Borrower under this Agreement or the Securities, whether or not made after the occurrence of an Event of Default, may be appropriated as between principal, interest and other amounts as the Lender in its absolute discretion determines or, failing any determination, in the following order:

- a) first, towards reimbursement of all fees, costs, expenses, charges, damages and indemnity payments incurred or due and owing by the Borrower under this Agreement or the Securities;
- b) second, towards payment of interest due and payable under this Agreement or the Securities; and
- c) third, towards repayment of the outstanding principal.

8. ILLEGALITY

If it becomes unlawful for the Lender to maintain or give effect to its obligations under this Agreement or any other Transaction Document the Lender must notify the Borrower and appoint a date as the Termination Date.

9. REPRESENTATIONS AND WARRANTIES

9.1 Representation and Warranties

The Borrower represents and warrants to the Lender in respect of itself and each other Relevant Person:

- a) **status:** each Relevant Person that is a body corporate is properly incorporated, registered and validly existing under the *Corporations Act 2001* (Cth);
- b) **capacity and power:** each Relevant Person that is a body corporate has full legal capacity and power to own its own assets and to carry on its business as it is presently being conducted and to enter into and perform each Transaction Document to which it is a party and the transactions contemplated by such Transaction Documents.
- c) **authority:** each Relevant Person has taken all corporate and other action necessary to authorize the execution and performance of each Transaction Document to which it is a party.
- d) **documents binding:** each Transaction Document constitutes a legally binding obligation of each Relevant Person that is a party to the Transaction Document in accordance with its terms.
- e) **transactions permitted:** the execution, delivery and performance of each Transaction Document does not contravene and has not contravened any provision of any existing law, or of any regulation, or of any document or

agreement to which a Relevant Person is a party or which is binding upon it or any of its assets.

- f) **authorisations:** all consents, licences, approvals or authorisations (if any) of any Government Body, required to be obtained by a Relevant Person in connection with the execution, delivery and performance of each Transaction Document have been obtained and are valid and are in full force and effect.
- g) **other default:** no Relevant Person is in default under any law or agreement or obligation binding upon it or its assets, or in the payment of any material sum or in the performance or observance of any material obligation in respect of any money borrowed or raised (including rentals under leases) and related interest, and no event has occurred in which with the giving of notice, lapse of time or other conditions would constitute such a default in respect of such borrowed money.
- h) **accounts:** each Relevant Person's most recent financial statements (in the case of a corporation) or asset and liability statement (in the case of an individual) delivered to the Lender have been prepared in accordance with accounting principles and practices generally accepted in Australia and give a true and fair view of the financial condition of the Relevant Person as at the date to which they relate and the results of the Relevant Person's operations for the accounting period ending on that date and since that date there has been no material adverse change in the financial condition of the Relevant Person from that shown in such financial statements or asset and liability statement.
- i) **no litigation:** no litigation, arbitration, administrative proceedings or other procedure for the resolution of disputes is current or pending or, to the knowledge of the Borrower, threatened, which if adversely determined would have a material adverse effect on the business, assets or financial condition of a Relevant Person.
- j) **no trustee:** no Relevant Person is the trustee of any trust or the holder of property on trust except for the Custodial Trustee and the Borrower.
- k) **no Encumbrance:** each Relevant Person has not granted any Encumbrance over any of its assets except a Security arising under a Transaction Document or created in favour of the Lender or where the written consent of the Lender has been obtained.
- l) **accuracy of information:** all information relating to a Relevant Person provided to the Lender in connection with the Transaction Documents is true in all material respects as at the date of this Agreement, or if given after the date of this Agreement, as at the date it was given and is not, by the omission of information or otherwise, misleading in any material respect.
- m) **Borrower as trustee:** as at the date of this Agreement:

- i) all the powers and discretions conferred by the Trust Deed are capable of being validly exercised by the Borrower as a trustee and have not been amended or revoked;
- ii) the Superannuation Fund is a valid superannuation fund with full force and effect;
- iii) the Borrower has the consent of the Superannuation Fund to enter into this Agreement and any of the Transaction Documents and the Borrower is not aware of any facts or circumstances under which such consent would be withdrawn;
- iv) the Borrower as the trustee of the Superannuation Fund and has the power to acquire the Property and to enter into this Agreement;
- v) this Agreement is entered into by the Borrower as part of the due and proper administration of the Superannuation Fund and at the direction of and for the benefit of the members of the Superannuation Fund;
- vi) no action has been taken to remove the Borrower as trustee of the Superannuation Fund or to appoint an additional trustee of the Superannuation Fund;
- vii) the Borrower has not defaulted in the performance of its obligations as trustee of the Superannuation Fund;
- viii) the investment in the Property by the Superannuation Fund is consistent with the documented investment strategy of the Superannuation Fund and the SIS Act;
- ix) no circumstances currently exist which are likely in the next 12 months to result in a call upon the liquidity of the Superannuation Fund that may impact upon the ability of the Superannuation Fund to perform its obligations under this Agreement or any Transaction Document;
- x) the method of acquisition of the Property is consistent with the SIS Act;
- xi) no action has been taken to terminate the Superannuation Fund;
- xii) the Superannuation Fund accounts and taxation returns are current and up to date;
- xiii) the Superannuation Fund has been registered and is compliant with the GST laws;
- xiv) the members of the Superannuation Fund are referred to in the Schedule and there are no other members who have a present interest; and
- xv) the Borrower will keep all interest in the Property separate from any other activity that it may engage in.

9.2 Representations and Warranties Repeated

The representations and warranties contained in clause 9.1 survive the execution of each Transaction Document and are repeated on the date of each Drawdown Notice and each Drawdown Date with reference to the facts and circumstances then subsisting, as if made on each such day.

9.3 Reliance by the Lender

The Borrower acknowledges that the Lender has entered into this Agreement and any applicable Transaction Document in reliance on the representations and warranties in clause 9.1.

9.4 No Representation by the Lender

The Borrower acknowledges that it has not entered into the Transaction Documents to which it is a party or any other agreement, instrument or transaction which either is or is expressed to be collateral or supplemental to the Transaction Documents to which it is a party as a result of any representation, promise, statement or inducement to it by or on behalf of the Lender.

10. UNDERTAKINGS

10.1 Undertakings

So long as any amount is outstanding under the Facility the Borrower undertakes to the Lender that:

- a) it will perform, fulfil and observe the Obligations;
- b) it will ensure that all consents, licences, approvals or authorisations (if any) of any Government Body required for the validity and enforceability of the Transaction Documents and the performance of its obligations and the obligations of each other Relevant Person under this Agreement and any Transaction Document are obtained and promptly renewed and maintained in full force and effect and it will provide promptly copies to the Lender when they are obtained or renewed.
- c) it will and it will ensure that each other Relevant Person will duly and punctually comply with all laws binding upon it or the Relevant Person the subject of a Security or any other property occupied, used or developed by it or the Relevant Person in which it or the Relevant Person has an interest and will as soon as reasonably practicable following receipt, provide a copy to the Lender of any notice, demand, claim, order or other communication received by it or the Relevant Person..
- d) within 60 days of request it will deliver and will ensure that each other Relevant Person delivers to the Lender:
 - i) a copy of the Relevant Person's audited financial statements of that financial year (in the case of a corporation) or a statement of the Relevant Person's assets and liabilities as at the end of that financial year (in the case of an individual);
 - ii) a copy of the Relevant Person's financial statements for that half year (in the case of a corporation) or a statement of the Relevant

- Person's assets and liabilities as at the end of that first half year (in the case of an individual); and
- iii) such further information regarding any Relevant Person's financial condition business operations as the Lender may from time to time request.
- e) it will ensure that all financial statements delivered to the Lender are prepared in accordance with all applicable statutes and accounting principles and practices generally accepted in Australia consistently applied (or if not consistently applied, accompanied by details of the inconsistencies), and will give a true and fair view of its financial condition and the results of its operations, as at the date, and for the period ending on the date, to which such financial statements are prepared.
 - f) it will give notice to the Lender as soon as it becomes aware of the occurrence of:
 - i) any Event of Default or Potential Default;
 - ii) all litigation, arbitration or similar proceedings relating to a Relevant Person or any Relevant Person's property, assets or revenues that involves a claim against the Relevant Person in excess of \$50,000 or that, if decided adversely to the Relevant Person could have a material adverse effect on the ability of any Relevant Person to perform the Obligations;
 - iii) (except as disclosed to the Lender prior to this Agreement) the appointment of a Relevant Person as trustee of any trust or if a Relevant Person comes to hold any property subject to or impressed by a trust.
 - g) except as otherwise provided in any Transaction Document, it will not and will ensure that each other Relevant Person will not sell or otherwise dispose of or create any interest in the property the subject of a Security without the prior written consent of the Lender and will and will ensure that each other Relevant Person will not sell or otherwise dispose of or create any interest in all or a substantial part of its other assets unless for full value on an arm's length basis or in the ordinary course of day to day trading.
 - h) it will not, and will ensure that each other Relevant Person will not, create or allow to exist any Encumbrance over the Property except for the Securities.

11. EVENTS OF DEFAULT

11.1 Events of Default

It is an Event of Default if:

- a) non-payment of principal: The Borrower fails to repay any Advance in accordance with this Agreement;

- b) non-payment of other money: A Relevant Person fails to pay when due any amount payable by it under this Agreement or any other Transaction Document.
- c) other default: a Relevant Person defaults in fully performing, observing and fulfilling any other provision under any Transaction Document other than a provision requiring the payment of money as contemplated by clause 11.1 a) and where, in the opinion of the Lender such default is capable of remedy, the default is not remedied within 30 days of the occurrence of such default.
- d) Insolvency Event: An Insolvency Event occurs in respect of a Relevant Person.
- e) execution: any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued involving any sum in excess of \$50,000 against or in relation to any asset of a Relevant Person.
- f) representations: any representation, warranty or statement made or repeated or deemed to be made or repeated in any Transaction Document or in connection with the Facility is untrue or misleading in any material respect when made or repeated.
- g) undertakings: any Relevant Person breaches any undertaking given to the Lender or fails to comply with any condition imposed by the Lender in agreeing to any matter (including any waiver) and fails to rectify the breach or non-compliance within 30 days of the occurrence of the breach or non-compliance.
- h) cross default: any Encumbrance:
 - i) which is a floating security over any asset of any Relevant Person crystallizes into, or otherwise becomes, a fixed or specific security; or
 - ii) relating to any property subject to a Security is varied without the prior written consent of the Lender or comes to secure an aggregate debt or liability (present or future, actual, contingent or prospective and on any account whatsoever) that exceeds the amount previously agreed to be the Lender in writing.
- i) vitiation of documents: at any time:
 - i) it is unlawful for the Relevant Person to perform any of its obligations under any Transaction Document to which it is a party; or
 - ii) any Transaction Document is, becomes or is claimed by any Relevant Person to be, void, voidable or unenforceable in whole or in part.
- j) failure to comply: any Relevant Person fails to duly and punctually comply with all statutes and other laws binding on it which could have a material adverse effect on the ability of the Relevant Person to perform any of its obligations under any Transaction Document to which it is a party.

- k) Environments Law: any Government Body takes any action, or there is any claim or requirement of substantial expenditure or alteration of activity under any Environments Law which may have a material adverse effect on the financial condition of any Relevant Person , or the value of any Security or any circumstances arise which in the reasonable opinion of the Lender may give rise to such action, claim, requirement or breach.
- l) disposals: any Relevant Person substantially changes the scope of its business or disposes of all or a substantial part of its business or assets or proposes to do so without the written consent of the Lender;
- m) change in control: in the opinion of the Lender there occurs a material change in the control of any Relevant Person;
- n) other event of default: any event of default occurs under any Transaction Document.

11.2 Consequences of Default

Where an Event of Default occurs, the Lender may by written notice to the Borrower:

- a) declare that this Agreement and its obligations under this Agreement are terminated; and/or
 - b) declare all outstanding Advances and interest and all other money the payment of which forms part of the Obligations to be immediately due and payable without further notice or demand,
- and any such notice will be effective upon receipt.

12. INDEMNITY

12.1 Indemnity

Subject to the provisions of clause 18.1, the Borrower will on demand indemnify the Lender against any loss, cost or expenses which the Lender may sustain or incur as a consequence of:

- a) any sum payable by the Borrower under this Agreement not being paid when due;
- b) the occurrence of any Event of Default or Potential Default; or
- c) an Advance requested in a Drawdown Notice not being provided for any reason (including a failure to fulfil any condition precedent but excluding any default by the Lender).

13. EXPENSES AND STAMP DUTIES

13.1 Expenses

The Borrower must on demand, pay to or reimburse the Lender for its expenses (including legal costs and disbursements on a full indemnity basis assessed without the necessity of Taxation) in connection with:

- a) the preparation, execution and completion of the Transaction Documents and any subsequent consent, agreement, approval, waiver, amendment or discharge; and
 - b) the enforcement or attempted enforcement of, or the preservation of any rights under the Transaction Documents including without limitation, any expenses incurred in the evaluation of matters of material concern to the Lender,
- and indemnifies the Lender in respect of such expenses.

13.2 Stamp Duties

- a) The Borrower must pay to or reimburse the Lender or pay the appropriate authority on demand all stamp duties, transaction, registration and similar Taxes (including fines and penalties) which may be payable or determined to be payable in any jurisdiction in connection with the execution, delivery, performance or enforcement of the Transaction Documents or any payment or receipt or any other transaction contemplated by them.
- b) The Borrower must indemnify the Lender against any loss or liability incurred or suffered by it as a result of the delay or failure by the Borrower to pay such Taxes.

14. ASSIGNMENTS

14.1 Assignments by the Lender

The Lender may at any time assign or otherwise transfer all or any part of its rights and obligations under any Transaction Document to another person. The Lender may disclose to a proposed assignee or transferee information in the possession of the Lender relating to the Borrower and any Relevant Person and provided in connection with the Facility.

14.2 Assignments by the Borrower

The Borrower cannot assign all or any of its rights under any Transaction Document without the prior written consent of the Lender.

14.3 Successors and Assigns

This Agreement is binding on and has effect for the benefit of the parties and their respective successors and permitted assigns.

15. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of the State in which the property is acquired ("the said State") and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the said State.

16. NOTICES

16.1 Form of Notice

All notices and other communications by or to the parties to this Agreement must be in writing and signed by the party or the solicitor of the party or where the sender is a corporation by a director, secretary or other duly authorized officer or the solicitor of the party.

16.2 A notice or other communication required or permitted to be given by a party to another must be:

- a) delivered by hand;
- b) sent by post, postage prepaid;
- c) sent by email; or
- d) sent by facsimile transmission

to that party's address or email address or facsimile number for service or any other address, email address or facsimile number that a party may notify to the other.

16.3 A notice or other communication will be taken, for the purposes of this Agreement, to have been given:

- a) if delivered by hand, upon delivery at the address of the recipient;
- b) if mailed, on the expiration of 3 Business Days after the day of posting; or
- c) if sent by email, on the receipt by the sender of an acknowledgement of the email generated by the sender's "read receipt" indicating the email was sent to the recipient's email address.
- d) if sent by facsimile transmission, on the receipt by the sender of an acknowledgement of transmission report generated by the sender's facsimile machine indicating the facsimile was sent to the recipient's number.

17. GENERAL

17.1 Partial Discharge

Despite any payout figure quoted or other form of account stated by the Lender or any rule of law or equity to the contrary, no grant of full or partial discharge of the Securities or any of them will release the Borrower from personal liability under this Agreement or under the Securities until all money the payment of which forms part of the Obligations have in fact been received by the Lender.

17.2 Continuing Security

Subject to the provisions of clause 18.1, each Transaction Document constitutes a continuing security despite any settlement of account, intervening payment or any other matter until the Lender has given a final discharge of the Transaction Document to the Borrower.

17.3 Certificate of Lender

A certificate in writing signed by an officer of the Lender certifying the amount payable by the Borrower under this Agreement or stating any other act, matter or thing relating to any Transaction Document is conclusive and binding on the Borrower and any Relevant Person in the absence of manifest error on the face of the certificate.

17.4 Further Assurance

The Borrower must immediately on demand by the Lender and at the entire cost and expense of the borrower do all things as the Lender may reasonably require in relation to the rights and powers afforded or created by any Transaction Document.

17.5 Invalid Provisions

Any provision in any Transaction Document which is invalid or unenforceable in a jurisdiction will be ineffective in that jurisdiction to the extent of the invalidity or unenforceability without invalidating the remaining provisions of the Transaction Document or the validity of the provision in another jurisdiction.

17.6 Collateral Securities

The Borrower acknowledges that each of the Securities secures to the Lender the due performance and fulfilment of the Obligations and is collateral to each other of them and that upon the happening of any Event of Default the Lender will be entitled to exercise the powers arising from each and every one of them without the necessity of giving notice to any party to them or any other person or body corporate.

17.7 Remedies Cumulative

The rights and remedies conferred by this Agreement upon the Lender will not be deemed exclusive but will be cumulative and in addition to all other rights and remedies available to the Lender by law, by virtue of any Transaction Document or any guarantees or any other documents, agreements or obligations entered into previously or at any future time by any Relevant Person or any other person in respect of the Obligations.

17.8 Waivers

Time is of the essence of this Agreement but a failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, remedy, power or privilege under this Agreement by the Lender will not in any way preclude or operate as a waiver of any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy, power or privilege or provided by law.

17.9 Professional Fees

Where any determination is to be made by it (whether in respect of a drawdown or otherwise), the Lender may employ such surveyors, architects, engineers, valuers, consultants or persons as it, in its absolute discretion, sees fit to assist it in making such determination. The Borrower will reimburse the Lender for any fees paid by the Lender to any such persons immediately upon receipt of a written demand for the same and will pay any fees due directly to any such persons immediately upon request for such payment by the Lender.

17.10 Set-Off

The Borrower authorises the Lender to apply without prior notice any credit balance (whether or not then due) to which the Borrower is at any time entitled on any account with the Lender in or towards satisfaction of any sum then due and unpaid from the Borrower to the Lender. The Lender will not be obliged to exercise any such rights which will be without prejudice and in addition to any right of set-off, combination of

accounts, lien or other right to which it is at any time otherwise entitled (whether by operation of law, contract or otherwise).

17.11 Moratorium Legislation

To the full extent permitted by law the provisions of all legislation whether existing now or in the future operating directly or indirectly:

- a) to lessen or otherwise to vary or affect in favour of the Borrower any obligation under any Transaction Document; or
- b) to delay or otherwise to prevent or prejudicially affect the exercise of rights or remedies conferred on the Lender by any Transaction Document,

are negated and excluded from each Transaction Document. This clause shall not apply to the provisions of the SIS Act.

17.12 Counterparts

This Agreement may be executed in counterparts and all counterparts taken together constitute one document.

17.13 Entire Agreement

This Agreement contains the entire understanding between the parties in relation to its subject matter. There are no express or implied conditions, warranties, promises, representations or obligations, written or oral, in relation to this Agreement other than those expressly stated in it or necessarily implied by law.

17.14 No Variation

This Agreement may not be varied except by a document executed by all parties.

18. LIMITATION ON RECOURSE OF LENDER

18.1 Despite any other provision of this Agreement, the rights of the Lender or any other person against the Borrower for default under this Agreement or any Transaction Document is limited to the rights relating to the Property.

18.2 The Borrower charges in favour of the Lender all its right title and interest in the Property and its rights under The LRB Trust Agreement.

19. DEFINITIONS AND INTERPRETATION

19.1 Definitions

In this Agreement unless the context requires another meaning:

“Advance” means the principal amount advanced or to be advanced by the Lender to the Borrower or the amount of the Advance which remains outstanding.

“Associate” has the same meaning given by Section 318 of the *Income Tax Assessment Act 1936* (Cth) or any section amending or replacing such provision

“Banking Day” means a day on which banks are open for business in the said State.

“Business Day” means a day other than a Saturday, Sunday or public holiday in the said State;

“Corporations Act” means the *Corporations Act 2001* (Cth).

"Custodial Trust Deed" means the deed dated on or about the date of this Agreement between the Borrower as Beneficiary and the Custodial Trustee.

"Custodial Trustee" means the party described as such in the LRB Trust Agreement.

"Drawdown Date" means a Banking Day on which an Advance is made, or, where the context requires, is proposed to be made.

"Encumbrance" means any mortgage, pledge, lien, charge, assignment, hypothecation, title retention, trust arrangement, set-off or any security or preferential interest or arrangement of any kind, or any other right of or arrangement with any creditor to have its claims satisfied prior to other creditors with, or from the proceeds of, any asset including, but without limitation, any deposit of money by way of security.

"Event of Default" means any of the events set out or referred to in this Agreement as an Event of Default.

"Facility" means the loan facility made available to the Borrower by the Lender by and under the terms of this Agreement as specified in the Schedule.

"Facility Limit" means the amount referred to as such in the Schedule (or such other amount as may be agreed between the Lender and the Borrower) and to the extent not cancelled or permanently reduced under this Agreement.

"Government Body" means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, including (without limitation) any local or municipal council.

"Higher Rate" means the amount specified in the Schedule.

"LRB Trust Agreement" means the Limited Recourse Borrowing Trust Agreement between the Custodial Trustee and the Borrower as Fund Trustee dated on or about the date of this Agreement in relation to the acquisition of the Property by the Custodial Trustee.

"Insolvency Event" means for any Relevant Person that is a body corporate, the happening of one or more of the following:

- a) a receiver, manager, receiver and manager, trustee, administrator or similar officer is appointed in respect of that Relevant Person or any of its assets;
- b) a liquidator or provisional liquidator is appointed in respect of that Relevant Person or any of its assets;
- c) a Relevant Person becomes, or admits in writing that it is, or is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts.
- d) an application (not being an application withdrawn or dismissed within 14 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - i) appointing a person referred to in clause a) or b) above;
 - ii) winding up a corporate Relevant Person;

- iii) implementing a scheme of arrangement in respect of a Relevant Person (other than for the purpose of a reconstruction which the Lender has given its prior written approval);
 - iv) placing a corporate Relevant Person under administration; or
 - v) the Superannuation Fund being declared a non-complying fund; and
- in the case of a Relevant Person who is an individual where a court grants a petition, or an order is made, for the bankruptcy of that Relevant Person or his estate under any law relating to insolvency.

“Lower Rate” means the rate as specified in the Schedule.

“Obligations” means all the obligations and liabilities of any Relevant Person to the Lender under any Transaction Document and includes any such obligations and liabilities which:

- a) are present or future;
- b) are actual, prospective, contingent or otherwise;
- c) are at any time ascertained or unascertained;
- d) are already in existence prior to or come into existence after the date of this Agreement;
- e) relate to the payment of money or the performance or omission of any act;
- f) are owed or incurred by or on account of any Relevant Person alone, or severally or jointly with any other person;
- g) are owed to or incurred for the account of the Lender alone, or severally or jointly with any other person;
- h) are owed to any other person as agent (whether disclosed or not) for or on behalf of the Lender;
- i) are owed or incurred as principal, interest, fees, charges, Taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;
- j) are owed to or incurred for the account of the Lender directly or as a result of:
 - i) the assignment to the Lender of any obligation or liability of any Relevant Person; or
 - ii) any other dealing with any such obligation or liability;
- k) accrue as a result of any Event of Default; or
- l) comprise any combination of any of the above.

“Potential Default” means any event which, with the giving of notice, lapse of time or any determination might constitute an Event of Default.

“Property” has the same meaning as in The LRB Trust Agreement and that property referred to in the Schedule.

“Relevant Person” means a reference to the Borrower, Security Provider, Custodial Trustee and any other person who is a party to any Transaction Document, either separately, together or in any combination unless otherwise stated.

“Replacement Property” has the same meaning as in the The LRB Trust Agreement.

“Security” means any security provided by the Borrower or a Security Provider to the Lender to secure the obligations of the Borrower under this Facility where the Lender’s or any other person’s rights are limited to rights relating to the Property.

“Security Provider” means a person who grants a Security other than the Borrower.

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

“Superannuation Fund” means the Superannuation Fund referred to in the Schedule.

“Tax” and **“Taxes”** mean all income tax, stamp duty and other taxes, levies, imposts, deductions, charges and withholdings whatsoever together with interest thereon and penalties with respect thereto, if any, and charges, fees or other amounts made on or in respect thereof.

“Termination Date” means the date as specified in the Schedule.

“Transaction Documents” means:

- a) this Agreement;
- b) the LRB Trust Agreement;
- c) each Security;
- d) the Bare Trust Deed; and
- e) any document which the Lender and any Relevant Person agree in writing is a Transaction Document for the purposes of this Agreement; and
- f) each document entered into or provided under any of the documents described in paragraphs a), b), c), d) or e) or for the purpose of amending or novating any of those documents,

and **“Transaction Document”** means any of them.

19.2 **“Trust Deed”** means the deed establishing The Superannuation Fund.

19.3 References to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this Agreement.

19.4 Headings in this Agreement are for convenience only and do not affect its interpretation or construction.

19.5 In this Agreement unless the context requires another meaning, a reference-

- a) to the singular includes the plural and vice versa;
- b) a gender includes all genders;
- c) to a party means a party to this agreement including their successors, executors, administrators and permitted assigns;
- d) to a person means a natural person and any association, body or entity whether incorporated or not;
- e) to “month” means calendar month and the word “year” means 12 calendar months;
- f) to writing includes any communication sent by post or facsimile transmission;

- g) to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- h) to all monetary amounts is taken to be in Australian currency;
- i) to a time refers to time in the said State;
- j) to anything mentioned after the words “include”, “includes” or “including” does not limit what else might be included;
- k) to any thing is a reference to the whole and each part of it;
- l) to a group of persons is a reference to all of them collectively and to each of them individually;
- m) to “corporation” and “body corporate” has the meanings respectively provided by Chapter 1 of the Corporations Act 2001 (Cth);
- n) to a document includes all amendments or supplements to, or replacements or novations of, that document; and

19.6 Liability and Obligations of the Borrower

- a) The Borrower enters into this Agreement and will be liable under this Agreement in its capacity as trustee of The Superannuation Fund;
- b) The definition of “Obligations” contained in this Agreement will be construed as if every reference to the Borrower is a reference to the Borrower in its capacity as trustee of The Superannuation Fund.
- c) Every reference in this Agreement to any property, assets, undertaking, matter or thing held by or relating in any way to the Borrower will be construed as being limited to and only extending to and, binding on the Property.

SCHEDULE

Borrower:	Paul John Anstee and Rodney Michael Smith As Trustees of BYRNES STREET SUPERANNUATION FUND Unit 1601 3 Kings Cross Rd Darlinghurst NSW 2010
Lender:	Paul John Anstee
Lender Address:	Altair, Unit 1601 3 Kings Cross Rd, Darlinghurst NSW 2010
Description of Asset:	14,000 Common Shares in Home Town Ticketing, Inc.
Loan complies for Safe Harbour terms in PCG 2016/5?	Yes
Facility Limit	\$160728.16
Lower Rate	7.47.35%
Higher Rate:	Lower Rate plus 2 per centum (2%) per annum
Term of Loan	a) the date which is 7 years from the date of this Agreement (or such other date as is agreed in writing between the Lender and the Borrower); and b) such earlier date on which the Facility is terminated or cancelled by the Lender in accordance with this Agreement.
Superannuation Fund:	BYRNES STREET SUPERANNUATION FUND Unit 1601 3 Kings Cross Rd Darlinghurst NSW 2010

EXECUTED as an Agreement by the parties on the date specified herein.

SIGNED SEALED AND DELIVERED by)

Paul John Anstee in their capacity as Lender)

in the presence of:)

.....

Witness

.....

Witness Full Name

EXECUTED AS A DEED BY:

SIGNED SEALED AND DELIVERED by)

Paul John Anstee in their capacity as Trustee)

in the presence of: _____)

.....

Witness

Witness Full Name

SIGNED SEALED AND DELIVERED by)

Rodney Michael Smith in their capacity as)

Trustee in the presence of: _____)

.....

.....

Witness

Witness Full Name

**Loan Facility Agreement
Notice to vary Interest Rate**

To: The Trustee(s)

_____ (insert Fund Name)

_____ (insert Fund Address)

("Borrower")

From:

("Lender")

In accordance with Clause _____ of the Loan Facility Agreement made on _____ (insert date) the Lender is required to notify you in writing of a change or variation of the interest rate to the Loan Facility Agreement.

As Lender, we hereby notify you of the interest rate change to _____% (insert rate) with effect from _____ (insert date).

This interest rate will apply for repayment on the outstanding loan Amount until a further notice for vary the interest rate is provided in writing by us.

Signed:

.....

Signature of Lender

Lender Name: _____

Date: ____/____/____