**SMSF Financing Agreement**

|  |  |
| --- | --- |
| **Lender:** | **BC Invest Loans Pty Ltd**  **ACN 646 785 211** |
| **Borrower:** | **<<Bordetallnames>> ACN <<BORDET1ACN>> as trustee for <<BORDET1TRUSTNAME>>** |
| **SMSF Member(s):** |  |
|  | **<<rr\_directors>>** |
|  | **<<GUARANTORNAME >>** |
|  | **<<er\_directors>>** |
| **Bare trustee:** | **<<GUARANTOR1FULLNAME>> ACN <<GUARANTOR1ACN>>** |
| **Application Number:** | **<<ApplicationNumber>>** |
| **Loan Number:** | **<<LOANNUMBER>>** |

**SCHEDULE**

|  |  |  |
| --- | --- | --- |
| **Lender** | Name: | BC Invest Loans Pty Ltd |
| **(*we*, *us* or *our*)** | ACN: | 646 785 211 |
|  | Address: | Level 1, 274 Coventry Street, South Melbourne VIC 3205 |
|  |  |  |
| **SMSF Trustee** | Name: | <<BORDET1FULLNAME>> as trustee for <<BORDET1TRUSTNAME>> |
|  | ACN: | <<BORDET1ACN>> |
|  | Address: | <<BORDET1ADDRESSLINE1>>, <<BORDET1SUBURB>> <<BORDET1STATE>> <<BORDET1POSTCODE>> |
|  | Email: | <<BORDET1EMAILADDRESS>> |
|  |  |  |
| **SMSF Fund** | Trust name | <<BORDET1TRUSTNAME>> (***the SMSF Fund***) |
|  | Trust deed: | A deed dated <<bordet1trustdate>> establishing the SMSF Fund (***SMSF Fund Trust Deed***) |
|  |  |  |
| **SMSF Trustee Documents** | Loan Agreement and SMSF Financing Agreement and any other document signed or to be signed by the SMSF Trustee arising from or in connection with any of those documents | |
|  |  |  |
| **SMSF Member(s)** |  |  |
|  | <<rr\_directors>> |  |
|  | Name: | <<GUARANTORNAME>> |
|  | <<er\_directors>> |  |
| **Bare Trustee** | Name: | <<GUARANTOR1FULLNAME>> |
|  | ACN: | <<GUARANTOR1ACN>> |
|  | Address: | <<GUARANTOR1ADDRESSLINE1>>, <<GUARANTOR1SUBURB>> <<GUARANTOR1STATE>> <<GUARANTOR1POSTCODE>> |
|  |  |  |
| **Bare Trust** | Trust name | <<GUARANTOR1TRUSTNAME>> |
|  | Trust deed: | A deed dated <<GUARANTOR1TRUSTDATE>> between the SMSF Trustee and the Bare Trustee establishing the Bare Trust (***Bare Trust Deed*)** |
|  |  |  |
| **Bare Trustee Documents** | Guarantee and Indemnity, Mortgage of Land (including the Mortgage Common Provisions) and SMSF Financing Agreement and any other document signed or to be signed by the Bare Trustee arising from or in connection with any of those documents. | |
|  |  |  |
| **Jurisdiction** | <<cs\_{property\_state = ACT}>>  Australian Capital Territory  <<es\_>>  <<cs\_{property\_state = NSW}>>  New South Wales  <<es\_>>  <<cs\_{property\_state = NT}>>  Northern Territory  <<es\_>>  <<cs\_{property\_state = QLD}>>  Queensland  <<es\_>>  <<cs\_{property\_state = SA}>>  South Australia  <<es\_>>  <<cs\_{property\_state = VIC}>>  Victoria  <<es\_>>  <<cs\_{property\_state = TAS}>>  Tasmania  <<es\_>>  <<cs\_{property\_state = WA}>>  Western Australia  <<es\_>> | |
|  |  |  |

**Executed as an agreement on \s**

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **EXECUTED** by **<<BORDET1FULLNAME>> ACN <<BORDET1ACN>>** in accordance with s. 127 of the Corporations Act 2001 (Cth):-   |  | | --- | | Signature of director | | **<<guarantor\_2\_name>>** | | Name of director | | <<Guarantor2Addressline1>>, <<Guarantor2Suburb>> <<Guarantor2State>> <<Guarantor2Postcode>> | | Address of director (please print) | | )))) | |  | | --- | | <<cr\_{guarantor\_3\_name != null}>> | | Signature of director | | **<<guarantor\_3\_name>>** | | Name of director / company secretary | | <<Guarantor3Addressline1>>, <<Guarantor3Suburb>> <<Guarantor3State>> <<Guarantor3Postcode>> | | Address of director (please print) | | <<er\_>> | |

**ig2d**

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **EXECUTED** by **<<PROPDET1MORTGAGORS>> ACN <<GUARANTOR1ACN>>** in accordance with s. 127 of the Corporations Act 2001 (Cth):-   |  | | --- | | Signature of director | | **<<guarantor\_2\_name>>** | | Name of director | | <<Guarantor2Addressline1>>, <<Guarantor2Suburb>> <<Guarantor2State>> <<Guarantor2Postcode>> | | Address of director (please print) | | )))) | |  | | --- | | <<cr\_{guarantor\_3\_name != null}>> | | Signature of director | | **<<guarantor\_3\_name>>** | | Name of director / company secretary | | <<Guarantor3Addressline1>>, <<Guarantor3Suburb>> <<Guarantor3State>> <<Guarantor3Postcode>> | | Address of director (please print) | | <<er\_>> | |

**ate\**

**<<rs\_directors>>**

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by <<GUARANTORNAME>> | )  ) | \signature1\ |
|  |  | <<GUARANTORNAME>> |

<<es\_>>

|  |  |  |
| --- | --- | --- |
| **EXECUTED** on behalf of **BC INVEST LOANS PTY LTD**: | )  ) |  |
|  |  | David Hinde – Director |

# DEFINITIONS & INTERPRETATION

## Words with special meanings

In this Agreement, the following expressions have the following meanings (unless the context indicates otherwise):

### **Agreement** means this SMSF Financing Agreement including the Schedule.

### **Bare Trust** means bare trust specified in the Schedule as “Bare Trust” of which the Bare Trustee is the trustee, and **Bare Trust Deed** means the deed of trust or settlement constituting the Bare Trust.

### **Bare Trustee** means the person or persons specified in the Schedule as “Bare Trustee”.

**Bare Trustee Documents** means the documents specified in the Schedule as “Bare Trustee Documents”.

**Credit Legislation** means:

### the *National Consumer Credit Protection Act* 2009 (Cth), as amended from time to time;

### the *National Consumer Credit Protection Regulations* 2010 (Cth), as amended from time to time; and

### the National Credit Code, contained in Schedule 1 of the National Consumer Credit Protection Act 2009 (Cth), as amended from time to time.

**Jurisdiction** means the jurisdiction specified in the Schedule.

**Loan Agreement** means the loan agreement entered into between the SMSF Trustee (therein “the Borrower”) and us.

**Mortgaged Property** means the property mortgaged to us by the Bare Trustee.

**Schedule** means the schedule that is attached to and forms part of this SMSF Financing Agreement.

**SMSF Fund** means the self-managed superannuation fund specified in the Schedule as “SMSF Fund” of which the SMSF Trustee is the trustee, and **SMSF Fund Trust Deed** means the deed of trust or settlement constituting the SMSF Fund.

**SMSF Member** means the person or persons specified in the Schedule as “SMSF Member(s)”.

**SMSF Trustee** means the person or persons specified in the Schedule as “SMSF Trustee”.

**SMSF Trustee Documents** means the documents specified in the Schedule as “SMSF Trustee Documents”.

**we** means the person specified in the Schedule as “Lender” and **us** and **our** have corresponding meanings.

**you** means each of:

### the SMSF Trustee;

### each director of the SMSF Trustee (if it is a corporation);

### the Bare Trustee;

### each director of the Bare Trustee (if it is a corporation); and

### each SMSF Member,

### and **your** has a corresponding meaning. If there is more than one of you, you means each of you separately and every two or more of you jointly.

## Interpretation

In this Agreement, unless the context indicates otherwise:

### a word or expression indicating the singular includes the plural, and vice versa;

### a word or expression indicating one gender includes all genders;

### examples are descriptive only and are not exhaustive;

### reference to any thing includes a part of the thing;

### reference to a party includes the party’s personal representatives, successors, transferees and permitted assigns;

### a rule of construction does not disadvantage a party just because that party prepared the agreement;

### reference to an agreement, document or instrument includes any legally enforceable arrangement or understanding (whether or not in writing). It also includes all amendments, supplements to, replacements of, or novations of them;

### reference to a “liability” or “obligation” includes a present, future, actual, prospective or contingent liability or obligation. It may be incurred alone or with any other person. The amount may or may not be able to be determined;

### reference to a person includes a body corporate, partnership and unincorporated joint venture;

### a reference to law includes a reference to common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re­ enactments or replacements of any of them);

### words defined in the Credit Legislation have the same meaning when used in this Agreement; and

### where any word or expression has a special meaning, any other part of speech or other grammatical form of that word or expression has a corresponding meaning.

# Declarations

## SMSF Fund

You declare that:

### the SMSF Trustee is the only trustee of the SMSF Fund; and

### no action has been taken or proposed to remove the SMSF Trustee as trustee of the SMSF Fund; and

### no action has been taken or proposed to appoint an additional or alternate trustee of the SMSF Fund; and

### the SMSF Trustee has the power to sign and perform the SMSF Trustee Documents; and

### the SMSF Trustee signs the SMSF Trustee Documents in its capacity as trustee of the SMSF Fund; and

### the SMSF Members sign this Agreement for the benefit of all beneficiaries of the SMSF Fund; and

### the SMSF Members consent to the SMSF Trustee signing the SMSF Trustee Documents; and

### the SMSF Trustee has the right to be indemnified out of the assets of the SMSF Fund for all obligations it incurs in relation to the SMSF Trustee Documents; and

### the assets of the SMSF Fund are sufficient to satisfy the SMSF Trustee’s right of indemnity referred to in clause 2.1(h) above; and

### the SMSF Fund has the power to acquire real estate, borrow money, charge assets of the fund to secure repayment of that money, open and operate bank accounts in its name and provide indemnities; and

### the SMSF Fund Trust Deed and other documents relating to the SMSF Fund which you have provided to us are you have given us are true, complete and up to date copies, and contain all the terms of the SMSF Fund; and

### the SMSF Fund has been properly constituted and the SMSF Fund Trust Deed is valid and enforceable; and

### the SMSF Trustee has complied with the SMSF Fund Trust Deed and its obligations as SMSF Trustee; and

### no action has been taken or proposed to terminate the SMSF Fund and (to your knowledge) no-one intends to take any such action; and

### no action has been taken or proposed to revoke a power of the SMSF Trustee and (to your knowledge) no-one intends to take any such action; and

### unless you tell us otherwise in writing, the SMSF Members who sign this Agreement are the only beneficiaries of the SMSF Fund; and

### our rights under the SMSF Trustee Documents have priority over the interests of the beneficiaries (including the SMSF Members) of the SMSF Fund.

## Bare Trust

You declare that:

### the Bare Trustee is the only trustee of the Bare Trust; and

### no action has been taken or proposed to remove the Bare Trustee as trustee of the Bare Trust; and

### no action has been taken or proposed to appoint an additional or alternate trustee of the Bare Trust; and

### the SMSF Trustee is the only beneficiary of the Bare Trust; and

### the Bare Trustee has the power to sign and perform the Bare Trustee Documents; and

### the Bare Trustee signs the Bare Trustee Documents in its capacity as trustee of the Bare Trust; and

### the SMSF Members who sign this Agreement consent to the Bare Trustee signing the Bare Trustee Documents; and

### the Bare Trustee has the right to be indemnified out of the assets of the Bare Trust for all obligations it incurs in relation to the Bare Trustee Documents; and

### the assets of the Bare Trust are sufficient to satisfy the Bare Trustee’s right of indemnity referred to in clause 2.2(h) above; and

### the Bare Trust Deed and other documents relating to the Bare Trust which you have provided to us are true, complete and up to date copies, and contain all the terms of the Bare Trust; and

### the Bare Trust has been properly constituted and the Bare Trust Deed is valid and enforceable; and

### the Bare Trustee has complied with the Bare Trust Deed and its obligations as Bare Trustee; and

### no action has been taken or proposed to terminate the Bare Trust and (to your knowledge) no-one intends to take any such action; and

### no action has been taken or proposed to revoke a power of the Bare Trustee and (to your knowledge) no-one intends to take any such action; and

### our rights under the Bare Trustee Documents have priority over the interests of the beneficiaries (including the SMSF Members) of the SMSF Trust.

## General

### You declare that the SMSF Trust was constituted and has been and will be conducted and administered in accordance with, and the entering into of the SMSF trustee's documents will comply with, all applicable laws, including the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

### The acquisition of the Mortgaged Property is not a prohibited "related party transaction" within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cth).

### You must tell us whenever anything happens preventing you from repeating any of the declarations in clause 2.1 or clause 2.2.

# WAIVER AND consent

## SMSF Trustee consent

You (other than the SMSF Trustee) consent to the SMSF Trustee:

### signing the SMSF Trustee Documents; and

### exercising rights and performing obligations in relation to the SMSF Trustee Documents,

and you expressly waive any right you have to claim the SMSF Trustee breaches its obligations under the SMSF Fund Trust Deed or otherwise in relation to the SMSF Fund by doing so.

## Bare Trustee consent

You (other than the Bare Trustee) consent to the Bare Trustee:

### signing the Bare Trustee Documents; and

### exercising rights and performing obligations in relation to the Bare Trustee Documents,

and you expressly waive any right you have to claim the Bare Trustee breaches its obligations under the Bare Trust Deed or otherwise in relation to the Bare Trust by doing so.

# Indemnity

You indemnify us against and you must therefore pay us for:

### any loss we suffer in connection with you not observing any of your obligations or agreements under this Agreement or in connection with any declaration in this Agreement being inaccurate; and

### the reasonable expenses we reasonably incur in enforcing this Agreement.

# Limited recourse

## Limited recourse

### Other than pursuant to any guarantee and indemnity given by the SMSF Members and/or the Bare Trustee to us, and despite any other provision of this Agreement:

### we may not have recourse to you or your assets and we may only have recourse to the Mortgaged Property and its proceeds to be available to us as a result of realisation of the Mortgaged Property (after payment of all reasonable enforcement expenses);

### our rights against the SMSF Fund on default are limited to recourse against the Mortgaged Property, and in the absence of fraud or misrepresentation by you, neither us nor any guarantor have any recourse whatsoever against you or the SMSF Fund for payment of any money owing other than recourse against the Mortgaged Property;

### subject to clause 5.1(d), we must not take any steps to:

### (i) make any claim or institute any proceedings of any kind as against any of your property or assets, other than the Mortgaged Property

### (ii) have an administrator appointed to you;

### (ii) have a receiver, receiver and manager, trustee, other controller (as defined in the *Corporations Act* 2001 (Cth)), liquidator, provisional liquidator or similar official appointed to you, other than a receiver of all or part of the Mortgaged Property only;

### (iii) apply for the winding up or bankruptcy of you;

### (iv) carry out any distress or execution on any property of the SMSF Fund other than the Mortgaged Property; or

### (v) exercise any right of set-off or counter-claim against you, other than in respect of the Mortgaged Property.

### the other provisions of this clause 5.1 do not:

### (i) prohibit or restrict us from obtaining, or undertaking proceedings to obtain, an injunction or other court order to restrain any breach of your Loan Agreement by you;

### (ii) prohibit or restrict us from obtaining, or undertaking proceedings to obtain, declaratory relief; or

### (iii) affect our rights to:

### (A) enforce the Loan Agreement over the Mortgaged Property in accordance with the terms of the Loan Agreement and the registered mortgage over the Mortgaged Property;

### (B) for the sole purpose of enforcing our rights against the Mortgaged Property, proceed against you to the extent necessary to enforce our rights against the Mortgaged Property or to obtain the benefit of the recourse to you allowed by this clause 5.1;

### (C) enforce any rights we may have under any other document; or

### (D) enforce any rights we may have against you for fraud or misrepresentation.

## Applicable law

### If at any time we determine that any introduction or variation of any law makes the loan to the SMSF Trustee prohibited, illegal or otherwise, in our reasonable opinion, has a material adverse effect, we may terminate the Loan Agreement by written notice to you and require repayment of the Total Amount Owing within 60 days of the date of the notice.

### The expression Total Amount Owing used in clause 5.2(a) above has the same meaning as in the Loan Agreement.

# ACKNOWLEDGMENTS AND Undertakings

## Acknowledgements

You acknowledge and accept that:

### you incur obligations, and give us rights, under this Agreement for valuable consideration from us;

### despite our review of the SMSF Fund Trust Deed and the Bare Trust Deed we make no representation that the SMSF Fund Trust Deed or the SMSF Fund complies with the *Superannuation Industry (Supervision) Act 1993* (Cth) and have no responsibility for any such non-compliance;

### we make no representation in relation to the structure under which the Bare Trustee and the SMSF Fund have acquired the Mortgaged Property;

### you have sourced the Mortgaged Property of your own volition and acknowledges that we accept no responsibility for the selection of the Mortgaged Property or its appropriateness within the strategy of the SMSF Fund. If the Mortgaged Property has been referred through an adviser to the SMSF Fund, you confirm that the SMSF Trustee has undertaken appropriate due diligence of the Mortgaged Property;

### we have not given any advice or made any representations and we have no responsibility in respect of the suitability or appropriateness of the Mortgaged Property as an investment for the SMSF Fund; and

### you have made and relied on your own enquiries and satisfied yourself in relation to the structure and tax implications relating to the acquisition of the Mortgaged Property;

### you have conducted your own inquiries and are satisfied that there are no issues of conflict arising between your advisers (financial, legal, brokers) regarding their advice to you and in respect of the Mortgaged Property acquisition (including any payments or commissions related to the acquisition);

### you must ensure that the Bare Trustee complies with all of its obligations under any mortgage granted in respect of the Mortgaged Property; and

### our recourse against you and the SMSF Fund for default on the borrowing are limited as set out in clause 5 above; and

### we are relying on you entering this Agreement before signing or accepting the SMSF Trustee Documents and the Bare Trustee Documents; and

### we have relied on the correctness of the declarations contained in clause 2.1 and clause 2.2 above in entering into the SMSF Trustee Documents and the Bare Trustee Documents and will continue to do so in dealing with you; and

### each time we give or continue to provide financial accommodation to the SMSF Trustee under the SMSF Trustee Documents or we give or continue to provide to any person financial accommodation of which the SMSF Trustee or Bare Trustee guarantees repayment, we will be relying on your not having breached this Agreement.

## SMSF Trustee undertakings

The SMSF Trustee agrees:

### to do everything necessary to bind itself and its successors under the SMSF Trustee Documents; and

### to comply with all of its obligations as SMSF Trustee; and

### to ensure that it is at all times the sole beneficiary of the Bare Trust.

## Bare Trustee undertakings

The Bare Trustee agrees:

### to do everything necessary to bind itself and its successors under the Bare Trustee Documents ; and

### to comply with all of its obligations as Bare Trustee; and

### to transfer the Mortgaged Property to the SMSF Trustee once all amounts secured by the mortgage over the Mortgaged Property has been repaid in full and the mortgage discharged; and

### to ensure that the SMSF Trustee is at all times the sole beneficiary of the Bare Trust.

## General undertakings

You agree to ensure that, without our consent:

### the SMSF Trustee does not retire or cease to act and is not removed or replaced as trustee of the SMSF Trust; and

### the Bare Trustee does not retire or cease to act and is not removed or replaced as trustee of the Bare Trust; and

### the SMSF Trustee's right to be indemnified out of the assets of the SMSF Fund for obligations it incurs in relation to the SMSF Trustee Documents is not restricted; and

### the Bare Trustee's right to be indemnified out of the assets of the Bare Trust for obligations it incurs in relation to the Bare Trustee Documents is not restricted; and

### the assets of the SMSF Fund are not mixed with other property, resettled or sought to be brought under court control; and

### the assets of the Bare Trust are not mixed with other property, resettled or sought to be brought under court control; and

### no other person is appointed as joint or alternate trustee of the SMSF Trust; and

### no other person is appointed as joint or alternate trustee of the Bare Trust; and

### the SMSF Trust is not terminated and a vesting date is not declared; and

### the Bare Trust is not terminated and a vesting date is not declared; and

### the SMSF Fund Trust Deed is not changed and the terms of the SMSF Trust are not otherwise varied; and

### the Bare Trust Deed is not changed and the terms of the Bare Trust are not otherwise varied; and

### nothing is done to restrict the ability of the SMSF Trustee to comply with its obligations in relation to the SMSF Trustee Documents; and

### nothing is done to restrict the ability of the Bare Trustee to comply with its obligations in relation to the Bare Trustee Documents .

# General Provisions

## Approvals and consents

Any authority, consent or other thing to be given, made or exercised by us under this Agreement may be done, given or made how and when we decide and on such terms and conditions as we consider appropriate, but will not be unreasonably withheld.

## Severability

If any provision of this Agreement is illegal, invalid or unenforceable in whole or in part, the affected provisions will cease to have effect, but the balance of this Agreement will remain valid and enforceable, and we may by notice vary this Agreement so that the provisions are no longer invalid.

## Further assurances

You must do anything we reasonably ask (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) to bind yourself under this Agreement.

## No waiver

No failure to exercise, and no delay in exercising, our rights, powers or privileges under this Agreement operates as a waiver. No waiver of our rights, powers or privileges under this Agreement is effective unless made in writing. We may exercise all of our rights at any time and more than once.

## Governing law and jurisdiction

This Agreement is governed by and interpreted in accordance with the laws for the time being in force in the state or territory in which the Jurisdiction. You submit to the non-exclusive jurisdiction of the courts of that place.

## Assignment

We may assign, novate or otherwise deal with our rights and obligations under this Agreement in any way we wish. We do not need your consent to do this. You must sign anything and do anything we reasonably require to enable any dealing with this Agreement. Any dealing with our rights does not change your obligations under this Agreement in any way.

You must not assign, novate or otherwise deal with your rights or obligations under this Agreement.

We may disclose any information about you, this Agreement, or the Mortgaged Property to anybody involved in an actual or proposed assignment, novation or dealing by us with our rights under this Agreement.

## Variations

Unless specified otherwise in this Agreement, an amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

## Credit Legislation

### This clause 7.8 applies only to the extent that this Agreement is regulated by the Credit Legislation. This Agreement does not:

### exclude, modify or restrict any rights or duty given to, or imposed on, us or you under the Credit Legislation;

### require you to perform an obligation that is prohibited by the Credit Legislation; or

### give us any right which is prohibited by the Credit Legislation,

but if a term purports to have this effect, then the term is varied to the extent necessary to comply with the Credit Legislation or, if necessary, limited or severed to the extent it has that effect.

## Execution

### You acknowledge entering into this Agreement, and incurring obligations and giving rights under this Agreement, for valuable consideration received from us.

### You agree that you are bound by this Agreement even if a person who was intended to sign this Agreement or similar document does not do so or does not do so effectively.

### Where a party to this Agreement is a party in more than one capacity, the proper execution of this Agreement once will bind that party in each of its capacities.