**Mortgage Side Agreement**

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| --- | --- |
| **Mortgagee:** | **BC Invest Loans Pty Ltd**  **ACN 646 785 211** |
| **Borrower:** | **<<Bordetallnames>> ACN <<BORDET1ACN>> as trustee for <<BORDET1TRUSTNAME>>** |
| **Mortgagor:** | **<<GUARANTOR1FULLNAME>> ACN <<GUARANTOR1ACN>> as trustee for <<GUARANTOR1TRUSTNAME>>** |
| **Application Number:** | **<<ApplicationNumber>>** |
| **Loan Number:** | **<<LOANNUMBER>>** |

**SCHEDULE**

|  |  |  |
| --- | --- | --- |
| **Mortgagee** | Name: | BC Invest Loans Pty Ltd |
| **(*we*, *us* or *our*)** | ACN: | 646 785 211 |
|  | Address: | Level 1, 274 Coventry Street, South Melbourne VIC 3205 |
|  |  |  |
| **Mortgagor** | Name: | <<PROPDET1MORTGAGORS>> |
| **(*you*)** |  | as trustee for <<GUARANTOR1TRUSTNAME>> |
|  | ACN: | <<GUARANTOR1ACN>> |
|  | Address: | <<GUARANTOR1ADDRESSLINE1>>, <<GUARANTOR1SUBURB>> <<GUARANTOR1STATE>> <<GUARANTOR1POSTCODE>> |
|  | Email: | <<GUARANTOR1EMAILADDRESS>> |
|  |  |  |
| **SMSF Trustee** | Name: | <<BORDET1FULLNAME>> as trustee for <<BORDET1TRUSTNAME>> |
|  | ACN: | <<BORDET1ACN>> |
|  | Address: | <<BORDET1ADDRESSLINE1>>, <<BORDET1SUBURB>> <<BORDET1POSTCODE>> <<BORDET1STATE>> |
|  | Email: | <<BORDET1EMAILADDRESS>> |
|  |  |  |
| **SMSF Fund** | Trust name: | <<BORDET1TRUSTNAME>> |
|  | Trust deed: | A deed dated <<bordet1trustdate>> establishing the SMSF Fund |
|  |  |  |
| **Mortgaged Property** | <<PROPDETALLSECADD>> | |
|  |  |  |
| **Mortgage Common Provisions** | Registration number: | <<cs\_{property\_state = ACT}>>  ACT - 3033135  <<es\_>>  <<cs\_{property\_state = NSW}>>  NSW – AQ497600V  <<es\_>>  <<cs\_{property\_state = NT}>>  NT – 372325  <<es\_>>  <<cs\_{property\_state = QLD}>>  QLD – 720348916  <<es\_>>  <<cs\_{property\_state = SA}>>  SA – 13394261  <<es\_>>  <<cs\_{property\_state = VIC}>>  VIC – AA6817  <<es\_>>  <<cs\_{property\_state = TAS}>>  TAS – M664  <<es\_>>  <<cs\_{property\_state = WA}>>  WA – O533876  <<es\_>> |
|  |  |  |
|  |  |  |

**Executed as an agreement on: \sig2date\**

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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 (please print) | | <<Guarantor2Addressline1>>, <<Guarantor2Suburb>> <<Guarantor2State>> <<Guarantor2Postcode>> |   Address of director (please print) | )))) | |  | | --- | | <<cr\_{guarantor\_3\_name != null}>> | | Signature of director/company secretary | | <<guarantor\_3\_name>> | | Name of director/company secretary (please print) | | <<Guarantor3Addressline1>>, <<Guarantor3Suburb>> <<Guarantor3State>> <<Guarantor3Postcode>> | | Address of director (please print) | | <<er\_>> | |

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **EXECUTED** by **<<GUARANTOR1FULLNAME>> ACN <<GUARANTOR1ACN>>** in accordance with s. 127 of the Corporations Act 2001 (Cth):-   |  | | --- | | Signature of director | | <<guarantor\_2\_name>> | | Name of director (please print) | | <<Guarantor2Addressline1>>, <<Guarantor2Suburb>> <<Guarantor2State>> <<Guarantor2Postcode>> |   Address of director (please print) | )))) | |  | | --- | | <<cr\_{guarantor\_3\_name != null}>> | | Signature of director/company secretary | | <<guarantor\_3\_name>> | | Name of director/company secretary (please print) | | <<Guarantor3Addressline1>>, <<Guarantor3Suburb>> <<Guarantor3State>> <<Guarantor3Postcode>> | | Address of director (please print) | | <<er\_>> | |

|  |  |  |
| --- | --- | --- |
| **EXECUTED** on behalf of **BC INVEST LOANS PTY LTD**: | )  ) | A picture containing computer, dark, night sky  Description automatically generated |
|  |  | David Hinde – Director |

# DEFINITIONS & INTERPRETATION

## Words with special meanings

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

**Mortgage** means the mortgage of land granted by you in favour of us over the Mortgaged Property.

**Mortgaged Property** means the property mortgaged to us by you as specified in the Schedule as “Mortgaged Property”.

**Mortgagee Notice** means a notice given by us to you directing you to take action being an action which we are entitled to take under the Mortgage.

**Schedule** means the schedule that is attached to and forms part of this agreement.

**SMSF Fund** means the self-managed superannuation fund specified in the Schedule as “SMSF Fund”.

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

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

**you** means the person specified in the Schedule as “Mortgagor” and **your** has a corresponding meaning.

## Interpretation

In this Agreement, unless the context indicates otherwise:

### the singular includes the plural and vice versa;

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

### an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;

### an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally.

# MOrtgage of Land

### On or about the date of this agreement you granted the Mortgage to us.

### The parties agree that the provisions of this agreement are incorporated in the Mortgage as if set out in the Mortgage in full.

# Background

The Mortgage is granted in accordance with the provisions of section 67A of the *Superannuation Industry (Supervision) Act* (Cth) which permits a regulated superannuation fund to borrow money provided:

### the borrowed funds are used to purchase an asset (in this case the Mortgaged Property);

### the Mortgaged Property is held on trust for the SMSF Trustee as trustee of the SMSF Fund by another entity (in this case you);

### the SMSF Trustee has the right to acquire legal ownership of the Mortgaged Property on behalf of the SMSF Fund by making payments;

### our recourse against the SMSF Trustee and the SMSF Fund for default in respect of payment are limited to the Mortgaged Property.

# What the Mortgage Secures

Despite any other provision of the Mortgage:

### the SMSF Trustee directs you to grant the Mortgage to us;

### you grant the Mortgage to us at the direction of the SMSF Trustee;

### we enter the Mortgage at your request; and

### the Mortgage only secures money owing by the SMSF Trustee in its capacity as trustee of the SMSF Fund pursuant to the loan agreement made between the SMSF Trustee and us on or about the date of the Mortgage (***the loan agreement***) in respect of the loan to purchase the Mortgage Property subject to the Mortgage.

# Limited Recourse

Despite any other provision of any document, the loan agreement, the Mortgage Common Provisions or any right conferred or implied by law or statute, your rights against the SMSF Trustee in respect of any payment, cost, expense or anything else arising from or relating to the Mortgage are limited to the Mortgaged Property. For example, if you pay any money to us in response to a demand for payment by us, you will only be entitled to recourse against the Mortgaged Property and will not be entitled to claim any amount back from any other asset of the SMSF Trustee.

# Dealing with the Purchased Property

### We may direct you to deal with the Mortgaged Property as directed by us in a Mortgagee Notice.

### We may only make directions consistent with our interest as creditor secured by the Mortgaged Property being directions reasonably necessary to:

(i) recover the money due to us;

(ii) preserve the Mortgaged Property; or

(iii) take any action that we are authorised to take under the Mortgage.

### You are only obliged to deal with the Mortgaged Property in a lawful way and in accordance with usual commercial and conveyancing practice.

# Own enquiries

### We make no warranty or representation in relation to the structure under which you and the SMSF Fund has acquired the Mortgaged Property.

### You acknowledge that we have made no representation, given no advice and take no responsibility, in respect of the suitability of appropriateness of the Mortgaged Property as an investment for the SMSF Fund.

### The SMSF Trustee acknowledges that it has made its own enquiries in relation to the structure and has no claim whatsoever against us in relation to any aspect of the structure. For example, the SMSF Trustee has no claim against us if the entry of the structure, this document, or the transaction reflected by this document makes the SMSF Fund non-complying with any law or regulation. We can enforce the Mortgage in full despite any such non-compliance.

# Trustee provisions

You enter into the Mortgage only in your capacity as trustee of a trust and in no other capacity. Any liability or obligation arising under or in connection with the Mortgage is limited to, and can be enforced against you, only to the extent to which it can be satisfied out of the assets of the relevant trust and in respect of which you are actually indemnified for the liability.

# Acknowledgements

You acknowledge:

### that the reference to "lot" and to "land" in the Mortgage includes a reference to any fixture, structure or improvement on it or affixed to it;

### that a reference to "this mortgage" in the Mortgage, any enlarged panel or schedule to the Mortgage or the Mortgage Common Provisions is a reference to the Mortgage, any enlarged panel or schedule to it and that document;

### giving the Mortgage and incurring obligations and giving rights under it for valuable consideration received from us;

### having received and read a copy of the Mortgage and the Mortgage Common Provisions before signing it; and

### without limiting the scope of any provision in which "tax" is used, each reference to a tax is a reference to all taxes, levies, imposts, and withholdings levied or imposed by a government, a government agency or other entity controlled by a government or a government agency and includes GST as defined in the *A New Tax system (Goods and Services Tax) Act 1999* (Cth).