

# SMSF LRBA Trustee Acknowledgement

## Complete this section if a corporate trustee of the SMSF

To be signed by:

- The corporate trustee of the SMSF under the Corporations Act (as applicable); or
- All individual trustees of the SMSF.

I am/ We are the directors of

ACN

as trustee ("SMSF trustee") for the

to be referred to hereafter as the "SMSF"

## Complete this section if individual trustee/s of the SMSF

I am/ We are the trustees ("SMSF trustee") of

to be referred to hereafter as the "SMSF"

## To be completed by all Trustee/s of the SMSF

and hereby confirm the following:

### 1. The SMSF wishes to borrow \$

(the "Loan") from BNY Trustee Company of Australia Limited ABN 49 050 294 052 (the "Lender") and Think Tank Group Pty Ltd ABN 75 117 819 084 ("Thinktank") to enable the SMSF trustee to finance a single acquirable asset located at the following address

("Property").

### 2. The SMSF trustee has considered and attests to the following

Series of facts to consider	Check
<p><b>SIS Act compliance</b></p> <p>In addition to matters particularly related to borrowing by SMSF's, all other requirements under the Superannuation Industry (Supervision) Act ("SIS Act") along with any other relevant legislation must be complied with by the SMSF during the term of the Loan. The SMSF trustee confirms that it has sought advice on its obligations under the SIS Act and any other legislation. The SMSF trustee further understands and confirms that the SMSF must remain compliant with the SIS Act and any other relevant legislation throughout the term of the Loan.</p>	<input type="checkbox"/>
<p><b>Corporate SMSF trustee</b></p> <p>Where the SMSF trustee is a company, unless specifically waived by the Lender, it is a condition of provision of the Loan that the company does not carry on any other activities and has not granted a mortgage or a charge to any other finance provider.</p>	<input type="checkbox"/>
<p><b>Property trustee company</b></p> <p>The entity appointed to hold the Property on trust for the SMSF trustee ("Property trustee") for the term of the Loan must be a company and must be different from any company appointed as SMSF trustee. It is a condition of provision of the Loan that the company does not carry on any other activities and has not granted a mortgage or a charge to any other finance provider.</p> <p>The SMSF trustee understands and confirms that the Lender requires the Property trustee to be a company that has been established solely for the purpose of acting as trustee of a bare trust used by the SMSF in relation to the Loan and in compliance with the SIS Act.</p>	<input type="checkbox"/>
<p><b>Taxation considerations</b></p> <p>There are serious taxation consequences in each state and territory of Australia that are associated with the declaration of the Property Trust. The SMSF trustee understands these taxation issues and confirms and acknowledges that neither the Lender nor its legal advisers can provide it with advice on the taxation effects of the proposed transaction.</p>	<input type="checkbox"/>

## Property occupancy

The SMSF trustee acknowledges and confirms that where the Property is residential in nature, a related party is prohibited from occupying the Property at any time, and in the case of a commercial Property, a related party must have an “arm’s length” lease in place at market rates and conditions at all times.

## Advice on proposed structure and loan

Neither the Lender nor its legal advisers can provide the SMSF trustee with advice on the appropriateness of the proposed Loan and, where occurring, the acquisition of the Property. The SMSF trustee confirms that the acquisition, or refinance, of the Property is within the investment strategy of the SMSF.

The SMSF trustee understands and confirms that it must seek its own independent financial advice as to the suitability of the proposed Property finance, the taxation implications of the proposed purchase or refinance and the Loan having regard to the particular needs and financial situation of the SMSF.

The SMSF trustee understands and confirms that it must seek its own independent legal advice on the proposed transaction and Loan and is not relying on information provided by the Lender or its legal advisers when entering into this Loan.

## Related party transaction

The SMSF trustee is not permitted to purchase property that is not “business real property” from a related party. Any “business real property” acquired from a related party must be on an “arm’s length” basis at market value.

The SMSF trustee understands and confirms that if the Property is being purchased from a “related party”

- a. The Property is “business real property” as defined by the SIS Act; and
- b. The Property will be purchased on an “arm’s length” basis at market value.

## Single acquirable asset

The property purchased by the SMSF using the Loan must be a “single acquirable asset” as defined by the SIS Act.

The SMSF trustee understands and confirms that:

- a. The Lender will only advance the Loan to finance a “single acquirable asset”;
- b. It has taken all necessary advice to confirm the Property is a “single acquirable asset”; and
- c. If, for any reason, the Property is deemed to not be a “single acquirable asset” the acquisition or refinance of the Property will need to be restructured before the Lender will advance the Loan.

## Property repair, maintenance or improvement

The Lender will not, unless specifically waived by the Lender, advance funds to the SMSF for the purpose of repairs or maintenance of the Property. The SIS Act otherwise prohibits improvements which may change the nature of the property.

The SMSF trustee confirms and acknowledges it will only use the Loan to pay the purchase price to the vendor, or current loan balance where a refinance, and to cover the costs associated with the transaction.

## Variation

No variation of a loan to the SMSF can result in an increase in the principal amount of the loan at the time of the variation or refinance. Further, variations may only be offered for the following purposes:

- Extension of term;
- Change of product;
- Change of SMSF trustee or Property trustee; and
- Release of Guarantor where a member leaves the SMSF.

The SMSF trustee understands that:

- a. The Lender is not under any obligation to agree to a request to vary the Loan;
- b. Any variation agreed to by the Lender at any time will be limited to the four items listed above; and
- c. The Lender, by virtue of the SIS Act, is not empowered to advance additional funds once the Loan is drawn down.

## Refinance

If the Lender agrees to refinance an existing loan made by another lender, including a related party, the maximum amount that may be refinanced by the Lender is limited to the amount outstanding under the existing loan at the time the existing loan is refinanced along with costs directly associated with the transaction.

The SMSF trustee acknowledges and confirms that if the Lender agrees to refinance an existing loan made by another lender:

- a. The SMSF trustee will be required to provide independent evidence of the amount outstanding under the existing loan at the time of the refinance; and
- b. The maximum that will be refinanced by the Lender is the amount outstanding under the existing loan at the time.

## Redraw

The SMSF trustee understands and confirms that redraw is not available under the Loan.

If additional payments are made during the term of the Loan such that the amount outstanding under the Loan is less than the balance that would be outstanding if only the scheduled repayments had been made, these additional repayments can not be redrawn. As soon as additional repayment of principal is made, the Loan limit will be reduced and can not subsequently be increased to its former level.

## Repayment of the loan and transferring the property to the SMSF

The SIS Act makes it clear that the Property may not be transferred from the Property trustee to the SMSF trustee unless the SMSF has made one or more "repayments". The Lender requires that the Property not be transferred to the SMSF trustee until the Loan is repaid in full. Once the Loan is fully repaid, the SIS Act requires the Property to be transferred to the SMSF trustee.

The SMSF trustee acknowledges and confirms that:

- a. The legal title to the Property can not and will not be transferred by the Property trustee to the SMSF trustee until the Loan is repaid in full; and
- b. Once the Loan is repaid in full, the legal title to the Property must be transferred to the SMSF trustee.

## Guarantees by the member of the SMSF

A condition of the Loan is that all members over the age of 18 years must provide a personal guarantee limited to the amount of the Loan plus interest, fees and charges.

The SMSF trustee acknowledges and confirms that if the Loan is approved, all members over the age of 18 years will provide a personal guarantee to support the Loan before the Loan proceeds will be advanced to the SMSF trustee.

## Investment Strategy

It is a requirement of the SIS Act that a current Investment Strategy is reviewed regularly and reflects that this loan is suitable for the SMSF as it is allowing the SMSF to purchase a "single acquirable asset" that is direct real property on a geared basis via a Limited Recourse Borrowing Arrangement.

## Broker/Financial Advisor

We have made our own inquiries and are satisfied that there are no inappropriate arrangements between our Broker and Financial Advisor with respect to this transaction.

## Solicitor

We have engaged a solicitor to advise on the Loan and associated documents. We have made our own inquiries and are satisfied that the solicitor we have engaged is qualified to advise on and where necessary prepare the documentation for this transaction on our behalf.

The SMSF trustee understands all of the facts listed above and confirms that it also understands the risks associated with borrowing money to purchase, or refinance a loan supported by, real property.

The SMSF trustee has freely applied for this Loan.

### Execution by corporate trustee of the SMSF\*

Director's name

Director's/ Secretary name

Director's signature

Director's/ Secretary signature

Date

Date

\* If the SMSF trustee is a company, this document can be signed by:

- Where the SMSF trustee has two or more directors by:
  - Two directors of the SMSF trustee; or
  - A director and a secretary of the SMSF trustee; or
- Where the SMSF trustee has only one director, by:
  - That person if they are the sole director and also the sole company secretary.

Please refer any questions about execution directly to Thinktank before you sign.

### Execution by individual trustees of the SMSF (all individuals trustees must sign)

SMSF trustee 1 name

SMSF trustee 2 name

SMSF trustee 1 signature

SMSF trustee 2 signature

Date

Date

SMSF trustee 3 name

SMSF trustee 4 name

SMSF trustee 3 signature

SMSF trustee 4 signature

Date

Date

SMSF trustee 5 name

SMSF trustee 6 name

SMSF trustee 5 signature

SMSF trustee 6 signature

Date

Date