**Letter - Fund Borrower to Lender Seeking Relief**

[FundName]

[FundPostalAddressBlock]

<<INSERT LENDER NAME>>

<<INSERT LENDER ADDRESS>>

Dear <<INSERT GREETING>>,

**<<INSERT PROPERTY ADDRESS>>**

**LIMITED RECOURSE BORROWING ARRANGEMENT**

**LOAN REPAYMENT RELIEF REQUEST (COVID-19)**

We are writing in relation to our loan agreement (**Loan Agreement**) regarding the limited recourse borrowing arrangement (**LRBA**) for the acquisition of the abovementioned property (**Property**).

We note that you (**Lender**) are a related party of the Fund for the purposes of the *Superannuation Industry (Supervision) Act* 1993.

Due to the economic impact of the COVID-19 global pandemic, the Fund has suffered financial hardship, for example:

* <<LIST ECONOMIC/FINANCIAL CONSEQUENCES ON THE FUND>>
* <<LIST ECONOMIC/FINANCIAL CONSEQUENCES ON THE FUND>>
* <<LIST ECONOMIC/FINANCIAL CONSEQUENCES ON THE FUND>>

The Australian Taxation Office (**ATO**) has publicly stated that:

“We understand that temporary repayment relief may be offered in relation to an existing LRBA between an SMSF and a related party due to the financial effects of COVID-19.

If the repayment relief reflects similar terms to what commercial banks are currently offering for real estate investment loans as a result of COVID-19, we will accept the parties are dealing at arm’s length and the NALI [non-arm’s length income] provisions do not apply. For example, these terms currently include temporary repayment deferrals for most businesses of up to 6 months, with unpaid interest being capitalised on the loan.

The parties to the arrangement must also document the change in terms to the loan agreement and the reasons why those terms have changed. It is also expected that there is evidence that interest continues to accrue on the loan and that the SMSF trustee will catch up any outstanding principal and interest repayments as soon as possible.

Any further repayment relief needed due to the continued effects of COVID-19 should be reviewed at the end of the agreed deferral period and remain in line with what the commercial banks are offering at that time.

See also:

* You can refer to the Australian Banking Association’s website for current information on COVID-19 bank relief.”

[See <https://www.ato.gov.au/misc/downloads/pdf/qc61775.pdf>]

For your reference, the Australian Banking Association’s website is available here - <https://www.ausbanking.org.au/>.

Based on the above, we request the following relief <<INSERT RELIEF>> (**Relief**).

If agreed, the terms and conditions of the Relief will act as an amendment to the terms of the Loan Agreement to the relevant extent.

Kind regards,

[FundName]

|  |  |
| --- | --- |
| [TrusteesSignatureBlock] |  |

**Lender Resolution Approving Relief**

**<<INSERT LENDER ENTITY>>**

**RESOLUTION OF [TRUSTEESORDIRECTORSFULLNAMES] (LENDER)**

**Background:** The [TrusteeName] as trustee for the [FundName] (**Fund**) borrowed funds from the Lender under a limited recourse borrowing arrangement (LRBA) to acquire the property at <<INSERT ADDRESS>> (**Property**).

The Lender is a related party of the Fund for the purposes of the *Superannuation Industry* *(Supervision) Act* 1993.

The Lender has received correspondence from the Fund highlighting that it has suffered financial hardship due to the COVID-19 global pandemic, including:

* <<LIST ECONOMIC/FINANCIAL CONSEQUENCES ON THE FUND>>
* <<LIST ECONOMIC/FINANCIAL CONSEQUENCES ON THE FUND>>
* <<LIST ECONOMIC/FINANCIAL CONSEQUENCES ON THE FUND>>

The Fund then requested that the Lender provide relief in the form of <<INSERT RELIEF SOUGHT>> (**Relief**).

The Australian Taxation Office (**ATO**) has publicly stated that:

“We understand that temporary repayment relief may be offered in relation to an existing LRBA between an SMSF and a related party due to the financial effects of COVID-19.

If the repayment relief reflects similar terms to what commercial banks are currently offering for real estate investment loans as a result of COVID-19, we will accept the parties are dealing at arm’s length and the NALI [non-arm’s length income] provisions do not apply. For example, these terms currently include temporary repayment deferrals for most businesses of up to 6 months, with unpaid interest being capitalised on the loan.

The parties to the arrangement must also document the change in terms to the loan agreement and the reasons why those terms have changed. It is also expected that there is evidence that interest continues to accrue on the loan and that the SMSF trustee will catch up any outstanding principal and interest repayments as soon as possible.

Any further repayment relief needed due to the continued effects of COVID-19 should be reviewed at the end of the agreed deferral period and remain in line with what the commercial banks are offering at that time.

See also:

* You can refer to the Australian Banking Association’s website for current information on COVID-19 bank relief.”

Consideration was given to providing the Relief which, if provided, is intended to operate as an amendment to the terms and conditions of the loan agreement between the parties governing the Loan (**Loan Agreement**) to the relevant extent.

**RESOLUTION(S): RESOLVED THAT** the Lender provides the Relief outlined above.

**FURTHER RESOLVED** **THAT** the terms and conditions of the Relief outlined above operate to amend the Loan Agreement to the relevant extent.

|  |  |
| --- | --- |
| **Signed** by **<<INSERT LENDER>>**: |  |
| Signature |  |
|  |  |

Date

**Letter - Lender to Fund Borrower Approving Relief**

<<INSERT LENDER NAME>>

<<INSERT LENDER ADDRESS>>

[FundName]

[FundPostalAddressBlock]

Dear <<INSERT GREETING>>,

**<<INSERT PROPERTY ADDRESS>>**

**LOAN REPAYMENT RELIEF REQUEST (COVID-19)**

We refer to your previous correspondence seeking loan repayment relief under the loan agreement in relation to the limited recourse borrowing arrangement (**Loan Agreement**) for the acquisition of the abovementioned property (**Property**), specifically <<INSERT RELIEF SOUGHT>> (**Relief**).

We are the lender under the Loan Agreement (**Lender**).

Based on the information provided as to the Fund’s financial circumstances on account of the COVID-19 global pandemic, and having reviewed the Australian Taxation Office’s guidance and the relevant loan relief arrangements being put in place between arm’s length parties as outlined in guidance provided by the Australian Banking Association and elsewhere, the Lender agrees to provide the Relief and that the terms and conditions of the Loan Agreement are amended to the relevant extent to accommodate same.

Kind regards,

<<INSERT LENDER>>