

2015/4328

# FORM OF REGISTRABLE MEMORANDUM

Section 155A, Land Transfer Act 1952

BARCODE

Class of instrument in which provisions intended to be included:

**Mortgage – (all obligations)**

The following provisions are intended for inclusion in instruments of the above class.

## **PLEASE READ THIS PAGE FIRST**

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This document contains terms and conditions that bind you when you agree to borrow against the security of a mortgage of land and the mortgage instrument selected in Landonline is "All Obligations". If you are borrowing money under a consumer credit contract, you must be given a copy of this document. You must also be given a copy of the consumer credit contract that applies to your loan.

In this mortgage, when we use the words "you" or "the party giving this mortgage" we mean the person or persons to whom we lend money against the security of this mortgage as well as the person or persons who are registered as the owner or owners of the land over which this mortgage is secured.

This mortgage secures all obligations that you owe the mortgagee being loans or credit made available to you by the mortgagee relying upon the security of this mortgage. The details of these obligations may be recorded in a "secured agreement" or any other document.

You are bound by these terms and conditions as if they had been set out at full length in the document that you sign that results in your borrowing money and giving a mortgage.

This document does not create the mortgage on its own nor does it contain all of the terms that relate to your borrowing. The terms and conditions that apply to your credit contract (other than those implied by law) are set out in the following documents:

- either:
  - a "Mortgage Instrument (all obligations)" including each Annexure Schedule attached to it; or
  - a "Mortgage Agreement (all obligations)";
- and
- this Registerable Memorandum 2015/4328

Whenever we refer to "this mortgage" we mean all of these documents together.

Some of the words and expressions used in this mortgage are defined terms. The meaning of these defined terms is set out in Part 1, clause 1.

## **HOW YOU GIVE A MORTGAGE OVER LAND**

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You will have given a mortgage over land if you sign an Authority and Instruction to a solicitor to register a mortgage against the land electronically (an electronic mortgage).

From the time that you give this mortgage you agree that you will be bound by its terms as if it were a deed.

From the time this mortgage is registered against the title to your land, your land is charged as security for repayment of debt. This means that if you fail to pay any amounts when they are due, the land may be sold and the proceeds of sale applied to repay or reduce the debt.

If the proceeds of sale do not repay the debt in full then, unless we have agreed in writing to the contrary or the law requires otherwise, you will remain liable to repay the balance of the debt owing.

**WE RECOMMEND THAT YOU OBTAIN LEGAL ADVICE FROM A SOLICITOR  
INDEPENDENT OF THE LENDER BEFORE YOU GIVE THIS MORTGAGE.**

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**1. INTERPRETATION – GENERAL**

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- (a) **Inclusion in mortgages:** The words "**this mortgage**" mean this memorandum and any document that contains a provision incorporating into that document any or all of the provisions set out in this memorandum as amended, added or varied specifically by the terms of any annexure or schedule attached to that document.

This memorandum on its own does not create a security interest in any property.

- (b) **Construction of terms:** In this mortgage, unless inconsistent with the context:
- (i) any expression that corresponds to a heading means and includes the information and particulars inserted against that heading; and
  - (ii) the expression "**party giving this mortgage**" and the word "**you**" includes all persons executing this mortgage regardless of how they may be described in the mortgage and any person who accepts, subject to this mortgage, a transfer, assignment, or transmission of the land the subject of this mortgage and the covenants contained and implied in this mortgage will bind all such persons jointly and severally as the principal party giving this mortgage;
  - (iii) a reference to a person (whether by name or position) extends to and includes the executors, administrators, transferees and assigns of that person; and
  - (iv) the "**mortgagee**" means the party named as such in the mortgage instrument;
  - (v) the singular includes the plural and vice versa; and
  - (vi) a reference in any provisions of this memorandum to any law is a reference to that law as at 1 January 2008 unless the provision requires the party giving this mortgage to comply with that law and that law is changed in which case the requirement to comply with the relevant law is a requirement to comply with the amended law.

In this memorandum, clause and paragraph headings are included to assist with navigation through the memorandum and do not affect the content of the clause or paragraph.

- (c) **Meaning of certain words:** In this mortgage, unless inconsistent with the context:

"**accommodated person**" means any person:

- (i) with whom the mortgagee contracts or makes any arrangement; or
- (ii) to whom the mortgagee provides any financial services or facility

for the accommodation of the party giving this mortgage;

"for the **accommodation of the party giving this mortgage**" means for the accommodation of, at the request of, at the direction of or on account of the party giving this mortgage or, if there are more than any one of them, any one or more of them;

"**development works**" in relation to any land includes the subdivision, development or improvement of the land and also includes the construction, development, alteration, addition of fixtures or repair of any building or other improvement on the land;

"**interest period**" means the period from (and including) one interest date to (but excluding) the next interest date;

"**land proceeds**" means:

- (i) all moneys payable to the party giving this mortgage arising:
  - (A) from the cultivating, harvesting, selling or otherwise utilising of trees, timber, logs or crops to be grown or growing on the land now at any time in the future;
  - (B) from any profit à prendre or forestry right;
  - (C) out of the ownership, use or occupation of the land or any agreement relating to its ownership use or occupation including any sale proceeds, any rents, any damages and any proceeds of any insurance including insurance in respect of loss of earnings or income; and
- (ii) any resource consent issued in respect of the land pursuant to the Resource Management Act 1991;

"**law**" and "**laws**" means any Act of Parliament, Regulation, Order in Council, local authority by-law;

"**mortgage**" and "**land**" have the meanings set out in the Land Transfer Act 1952;

"**mortgage instrument**" means the document signed by the party giving this mortgage and entitled Mortgage Instrument (all obligations) and includes each schedule annexed or attached to it;

"**person**" includes a company or other body corporate;

"**receiver**" has the meaning set out in the Property Law Act 2007;

"rules" in clause 11 means both body corporate rules under the Unit Titles Act 1972 and body corporate operational rules under the Unit Titles Act 2010;

"secured agreement" means any agreement under which the mortgagee agrees to make an advance to a party giving this mortgage that specifies that that advance is to be secured by this mortgage and includes the mortgage instrument and any agreement in the future recording a further advance;

"security interest" means an interest in land under a mortgage and includes any unregistered charge on any land and any interest in any land granted or created for securing money or the payment or performance of an obligation;

"schedules" refers to one or more of them as the context requires;

"taxes" includes any present and future tax, levy, impost, duty, rate, charge, fee, deduction and withholding of any nature regardless of where and by whom imposed, levied, collected, withheld and assessed and includes interest, penalties, fines, costs, charges and expenses and other amounts relating to and arising in connection with taxes;

"taxpayer's paying rate" has the meaning set out in section 120C of the Tax Administration Act 1994;

- (d) **Relationship with laws:** If any provision in this mortgage conflicts with, varies or is contrary to the provisions of any law or any provisions implied in mortgages by any law then:
- (i) if the provisions of or implied by that law may be varied or negated, the provisions of this mortgage will take precedence and the provisions of or implied by that law will be deemed not to apply to this mortgage or to apply only as varied by the provisions of this mortgage;
  - (ii) if the provisions of or implied by that law may not be varied or negated, then the provisions of this mortgage must be read subject to the provisions of or implied by that law.

The provisions in this memorandum are not exclusive and all laws that would otherwise apply to this mortgage continue to apply unless they have been varied or negated by the provisions of this memorandum.

- (e) **Meaning of change in control of company:** For the purposes of this mortgage, there is a material change in the control of a company if:
- (i) shares carrying between them the right to exercise or control the exercise of 25% or more of the voting power in the company become held legally or beneficially by any person or persons not holding any shares in the company at the date of this mortgage; or
  - (ii) any one person who at the date of this mortgage has the right to exercise or control the exercise of 50% or more of the voting power in the company ceases to have that right.
- (f) **Meaning of material reduction in value of land:** For the purpose of this mortgage, there is a material reduction in the value of the land within the ambit of clause 15(d)(iv) if:
- (i) any resource consent is granted or there is any change in the relevant regional or district plan in either case affecting the land; or
  - (ii) any resource consent or any permission deemed to be a resource consent granted in respect of the land lapses, is cancelled or is changed; or
  - (iii) any right under sections 10, 10A or 20 of the Resource Management Act 1991 to carry on any non-complying use of or activity on the land lapses; or
  - (iv) any enforcement order is made under the Resource Management Act 1991; or
  - (v) any authority exercises any compulsory statutory power,

and, in any such case, the value of the land or of the mortgagee's security is, in the mortgagee's reasonable opinion, thereby materially reduced or likely to be so reduced.

## 2. "THE SECURED MONEYS" DEFINED

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- (a) In this mortgage, "the secured moneys" means:
- (i) all moneys which are now or at any time in the future owing by the party giving this mortgage or an accommodated person to the mortgagee;
  - (ii) all advances, reasonable costs incurred and expenditure made for the protection, maintenance, preservation or repair of any charged property or for the enforcement of any security interest under this mortgage and any other amounts contemplated by section 87 of the Property Law Act 2007; and
  - (iii) each and every payment or performance of an obligation:
    - (A) by a party giving this mortgage or, if there is more than one, any one or more of them; or
    - (B) by any accommodated person, in respect of any secured agreement;]

and, without limiting the generality of the foregoing, includes all moneys owing in respect of:

- (iv) loans, credits, advances or other financial services or facilities made or provided to the party giving this mortgage or to any one or more of them or to any other person for the accommodation of the party giving this mortgage;
  - (v) any bill of exchange, promissory note, draft, order or other negotiable instrument drawn, accepted, endorsed, paid, discounted or held by the mortgagee or to which the party giving this mortgage or any one or more of them is or are also a party or parties in any capacity or which the mortgagee has drawn, accepted, endorsed, paid, discounted or holds for the accommodation of the party giving this mortgage;
  - (vi) any property or services disposed of or provided by the mortgagee to the party giving this mortgage or to any one or more of them or to any other person for the accommodation of the party giving this mortgage;
  - (vii) payment made by the mortgagee for any property or services acquired by or provided to the party giving this mortgage or to any one or more of them or to any other person for the accommodation of the party giving this mortgage;
  - (viii) the financing, shipment or confirming of goods on behalf of the party giving this mortgage or any one or more of them or any other person for the accommodation of the party giving this mortgage;
  - (ix) any bailment, hire purchase instrument, conditional purchase instrument or similar instrument entered into by the mortgagee with the party giving this mortgage or with any one or more of them or with any other person for the accommodation of the party giving this mortgage or the acquisition by the mortgagee of any property intended to be the subject of a bailment or any such instrument as aforesaid or any assignment (whether absolute or by way of security) taken by the mortgagee from the party giving this mortgage or from any one or more of them or from any other person for the accommodation of the party giving this mortgage, of any bailment or any such instrument or any such property;
  - (x) any debt assigned (whether absolutely or by way of security) to the mortgagee;
  - (xi) any guarantee, indemnity, bond, letter of credit or other obligation provided by the party giving this mortgage to or in favour of the mortgagee or provided by the mortgagee for or on account of the party giving this mortgage or any one or more of them or any other person for the accommodation of the party giving this mortgage;
  - (xii) all interest, commission, costs and charges payable to or incurred by the mortgagee under or in relation to this mortgage or any indebtedness secured by this mortgage; and
  - (xiii) any moneys owing prior to the date of this mortgage for which the mortgagee has agreed to forbear from suing.
- (b) Moneys are to be regarded as being included in "**the secured moneys**":
- (i) whether or not the liability for such moneys is matured or not matured, actual or contingent, or liquidated or not liquidated;
  - (ii) whether or not such moneys are also secured by any other security;
  - (iii) whether or not any instrument or arrangement relating to such moneys expressly refers to this mortgage;
  - (iv) whether or not the liability for such moneys arises by instrument (express or implied), by operation of law or otherwise; and
  - (v) whether or not such moneys are owing by any party giving this mortgage or accommodated person (as the case requires) jointly with or otherwise in combination with any person who is not a party giving this mortgage, party giving this mortgage or accommodated person.

## **PART 2 PAYMENT**

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### **3. COVENANT TO PAY AND TO COMPLY WITH OBLIGATIONS**

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- (a) **Pay and comply:** The party giving this mortgage must:
- (i) pay the secured moneys at the times and in the manner provided by any secured agreement and, to the extent that there is no such agreement, then upon demand;
  - (ii) comply with all of the obligations contained in every secured agreement or arrangement relating to the secured moneys where such obligations are:
    - (A) undertaken by any person liable for payment of the secured moneys; and
    - (B) intended to be for the benefit of the mortgagee; and
  - (iii) comply with the terms of every other security at any time held by the mortgagee for the secured moneys.
- (b) **Pay interest:** If there is no agreement between the relevant parties as to the liability for payment of interest, the party giving the mortgage will pay to the mortgagee interest on the secured moneys (whether or not demand has been made) on the last day of each month at the prescribed interest rate, calculated with daily rates from the date on which the moneys become owing.

## **PART 3 SECURITY**

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### **4. EXTENT OF SECURITY INTERESTS**

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The party giving this mortgage mortgages to the mortgagee all of its right title and interest in the land and assigns to the mortgagee absolutely all of its right title and interest (present, future, legal and equitable) in the land proceeds.

### **5. SECURITY PROVISIONS**

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The provisions of this clause 5 apply if a priority sum has been included in the mortgage instrument.

- (a) **Section 92 maximum amount:** For the purposes of section 92 of the Property Law Act 2007, the maximum amount up to which the sum owing under this mortgage will rank in priority to any subsequent mortgage, charge or security interest is the priority sum recorded in the mortgage instrument.
- (b) **Maximum amount neither waiver nor representation:** Stating a maximum amount does not act:
  - (i) as a waiver of the mortgagee's security under this mortgage for so much of the secured moneys as may exceed the priority sum; nor
  - (ii) as a representation of the total amount of secured moneys to be provided by the mortgagee or intended to be secured by this mortgage.
- (c) **Running security:** Until the mortgagee executes a final discharge of this mortgage in writing, it will be a running and continuing security for payment of the secured moneys and compliance with its terms despite:
  - (i) payment of any sums to the mortgagee from time to time; or
  - (ii) any account between the party giving this mortgage and the mortgagee being in credit at any time; or
  - (iii) any settlement of account or other circumstance whatsoever.
- (d) **Security not exclusive:** This mortgage and the security interest witnessed by this mortgage are in addition to and not in substitution for any other security interest now or in future held by the mortgagee from the party giving the mortgage, or from any other person.
- (e) **Rights unchanged:** The mortgagee's rights will not be affected at any time by:
  - (i) any amendment to this mortgage; or
  - (ii) (in respect of one party) the invalidity or unenforceability of this mortgage against any other party or the release of any other party from this mortgage or the failure of any other party to execute or otherwise be bound by this mortgage for whatever reason and whether or not known to the mortgagee; or
  - (iii) the dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation of any party (or the commencement of any steps to effect any of this).
- (f) **Further assurance:** If the mortgagee requires, the party giving this mortgage must promptly execute and deliver to the mortgagee all assignments, transfers, security interests and any other agreements and documents, and do anything else which the mortgagee may deem necessary to perfect a security interest created under this mortgage or secure the full benefit of the mortgagee's rights under this mortgage.
- (g) **Attorney to provide further assurance:** The party giving this mortgage for so long as any of the secured moneys are outstanding, irrevocably appoints the mortgagee and any director, manager or officer of the mortgagee to be its lawful attorney to act for and on its behalf for the purpose of executing, delivering and doing anything that the party giving this mortgage is required to do under clause 5(f) and any action taken by the attorney for the purposes of clause 5(f) is hereby ratified and approved. This power may only be exercised if the party giving this mortgage has failed to act in accordance with clause 5(f) and only if the exercise of the power is not prohibited by any law, for example any Act or regulation protecting the interests of consumers.

### **6. NEGATIVE PLEDGE**

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The party giving this mortgage must not create or allow the creation of or allow to remain any mortgage, charge or other security interest in the land without the prior written consent of the mortgagee.

## **PART 4 REPRESENTATIONS AND WARRANTIES**

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### **7. REPRESENTATIONS AND WARRANTIES**

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Each party giving this mortgage represents and warrants to the mortgagee that:

- (a) **properly authorised and valid binding and enforceable:** this mortgage is granted in accordance with:

- (i) the resolutions of the directors and shareholders (where applicable) or of the partners, as the case may be, of the party giving the mortgage; and
- (ii) (if applicable) the Companies Act 1993;

and that all other matters and things have been done and performed so as to authorise and make the execution and delivery of this mortgage, and the performance of the party giving the mortgage's obligations to the mortgagee legal, valid, and binding;

- (b) **inclusion of all other representations and warranties:** all representations and warranties given by the party giving this mortgage under any secured agreement form representations and warranties of this mortgage and this mortgage must be read and construed to include such representations and warranties;
- (c) **default:** no event of default has occurred and the party giving this mortgage has no knowledge that an event of default is about to occur nor does it reasonably suspect that an event of default will occur;
- (d) **solvency:** if a company, that it is solvent according to the meaning of the term in section 4 of the Companies Act 1993;
- (e) **information:** the information provided by the party giving this mortgage in connection to this mortgage is true and accurate and remains true to the date of this mortgage and there are no facts or circumstances that have not been disclosed to the mortgagee which would make any information untrue, inaccurate or misleading; and
- (f) **continuation:** each representation and warranty in this mortgage is deemed to continue for as long as this mortgage is in effect by reference to the facts and circumstances as they exist, except that each reference to financial statements must be construed as a reference to the latest available financial statements of the relevant person.

## **PART 5 COVENANTS RELATING TO THE LAND**

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### **8. INSURANCE**

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- (a) **Obligation to insure:** The party giving this mortgage must at all times:
  - (i) insure and keep insured all buildings and insurable improvements on any land that is collateral against fire, all other risks normally covered by a comprehensive policy, and natural disaster as defined in the Earthquake Commission Act 1993;
  - (ii) obtain the insurance from an insurance company approved by the mortgagee and in the names of the party giving this mortgage and the mortgagee for their respective rights and interests;
  - (iii) if required by the mortgagee arrange for the insurance company to note the several interests of the party giving this mortgage and the mortgagee;
  - (iv) obtain the insurance for full insurable value and, if the mortgagee so requires, on normal replacement terms but if insurance of this type and to this extent is not available in respect of the buildings or improvements then for such amount and on such terms as the mortgagee may reasonably require to ensure that the building and improvements are able to be repaired or replaced so that after repair or reinstatement there is no material reduction in value of the land as that expression is explained in clause 1(f) of this mortgage;
  - (v) pay all premiums, valuation fees and other sums payable to keep the insurance in force and on request, immediately deliver to the mortgagee the receipt or other evidence of payment; and
  - (vi) allow the mortgagee (if the mortgagee so requests) to hold the policy document.
- (b) **Application of insurance proceeds:** If insurance moneys become payable in respect of the destruction of or damage to any building or other improvements on the land then the mortgagee may, at the mortgagee's sole option, apply the insurance proceeds or direct that they be applied either in or towards rebuilding or repairing the buildings and improvements or in or towards payment of the secured moneys (even though those moneys may not have otherwise fallen due). If the mortgagee exercises the latter option, the party giving this mortgage may, at any time within 2 months after the insurance proceeds have been so applied, pay off any balance remaining so secured. Interest will cease to accrue on any principal moneys repaid pursuant to this subclause as from the date of application or payment (as the case requires).
- (c) **Obligation to notify mortgagee of any loss:** The party giving the mortgage, immediately on the happening of loss or damage to the collateral, must notify the mortgagee of the loss or damage and furnish to the mortgagee at the party giving the mortgage's expense, any necessary proof and do any necessary act to enable the mortgagee to obtain payment of the insurance proceeds.



## 9. USE AND MAINTENANCE OF LAND

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The party giving this mortgage must at all times:

- (a) **pay outgoing:** pay all rates, taxes and charges from time to time payable in respect of the land by their due date;
- (b) **repair and maintain improvements:** put and keep in good and substantial repair and condition, all buildings and other improvements on the land;
- (c) **not alter or remove improvements without consent:** not, without the mortgagee's prior written consent, cause or permit any buildings or improvements on the land to be removed, dismantled or structurally altered, in whole or in part and the mortgagee may not unreasonably withhold or delay such consent;
- (d) **permit mortgagee to access and inspect land:** allow the mortgagee and the mortgagee's agents, at any reasonable time, to enter upon the land to view and inspect it or, where applicable, to exercise all or any of the powers contained in clause 19;
- (e) **comply with all other obligations:** comply with:
  - (i) all obligations binding on the owner or occupier of the land in respect of the land or any business conducted on the land; and
  - (ii) all notices and demands relating to the land or any such business served on the party giving this mortgage or the mortgagee,under any statute, regulation or bylaw; and
- (f) **comply with all land covenants:** do all things and pay all sums required to be done or paid by the occupier of the land under any covenant to which the land is subject being a covenant positive in effect to which section 303 of the Property Law Act 2007 applies and the party giving this mortgage will comply with any restrictive covenant to which the land is subject.

## 10. COMPLIANCE WITH RESOURCE MANAGEMENT ACT 1991

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Any term defined in the Resource Management Act 1991 has the same meaning in this subclause as it has in the Resource Management Act 1991. "To take a resource management step" means to apply for, request, initiate, notify, implement, grant or issue (as applicable) a resource consent, a review, change or cancellation of a resource consent or of a permission deemed to be a resource consent, a change in any plan, an enforcement order or an abatement notice.

- (a) **Covenants:** The party giving this mortgage must at all times:
  - (i) **comply with obligations under the Resource Management Act 1991:** in respect of the land, comply with all obligations binding on the owner or occupier of the land under the Resource Management Act 1991, the rules of any relevant regional or district plan, the conditions of any resource consent and of any permission deemed to be a resource consent and any consent notice, bond, enforcement order, abatement notice or other requirement made or given under the Resource Management Act 1991. This paragraph (i) does not affect the generality of subclause (b) of this clause;
  - (ii) **not deal with resource consent:** not, without the mortgagee's prior written consent, transfer, grant a security interest in, or surrender any resource consent relating to the land;
  - (iii) **not allow any resource consent to lapse:** not, without the mortgagee's prior written consent, by any act or omission cause or allow the lapse of any right under sections 10, 10A or 20 of the Resource Management Act 1991 to carry on any non-complying use of or activity on the land; and
  - (iv) **notify mortgagee of certain events:** immediately notify the mortgagee in writing of the occurrence of any of the following events or circumstances:
    - (A) the taking of any resource management step by any party giving this mortgage in relation to the land;
    - (B) the receipt by any party giving this mortgage of formal notice of the taking by any other person or by any Court or tribunal of any resource management step affecting or likely to affect the land;
    - (C) any act or omission which is likely to cause the lapse or cancellation in respect of the land of any resource consent of any permission deemed to be a resource consent or of any right under sections 10, 10A or 20 of the Resource Management Act 1991;
    - (D) the lapse of any such right; and
    - (E) the receipt by any party giving this mortgage of notice of any proposal by any authority to exercise any compulsory statutory power in respect of the land.
- (b) **Mitigate any reduction in value of land:** If in the mortgagee's reasonable opinion, an outcome of any event or circumstance of the kind mentioned in clause 10(a)(iv) has been to materially reduce, or will or might be to materially reduce, the value of the land or the mortgagee's security, the party giving this mortgage must take all reasonable and lawful steps required by the mortgagee to prevent or mitigate that outcome (including any appropriate submission, appeal or other objection).

## 11. UNIT TITLES

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This clause applies if the land is or includes a stratum estate under the Unit Titles Act 2010 ("the UTA"). Any term within this clause 11 which is defined in the UTA has the meaning set out in that Act.

- (a) **Covenants:** The party giving this mortgage must:
- (i) **pay body corporate levies:** duly and punctually pay all moneys from time to time that are payable by the party giving the mortgage, its representative, agent or tenant, to the body corporate under the UTA or in accordance with the rules;
  - (ii) **comply with rules (etc.)** comply with all other obligations of the party giving this mortgage under the UTA, Unit Titles Regulations 2011, and the rules;
  - (iii) **ensure rules are enforced against others:** take all reasonable steps from time to time necessary to enforce the obligations of the body corporate and the other owners under the UTA and the rules; and
  - (iv) **give information to mortgagee:** give the mortgagee such information concerning the land and the affairs of the body corporate as the mortgagee requires from time to time.
- (b) **Insurance Covenants:** The party giving this mortgage must, if requested by the mortgagee, effect and maintain a mortgage redemption policy under section 137 of the UTA for the whole of the sum from time to time secured by this mortgage and providing cover against such risks as the mortgagee may require. Clause 8(a) will apply (with any necessary modifications) to such insurance.
- (c) **Mortgagee may vote:** On giving written notice to the body corporate the mortgagee will be entitled to exercise the party giving the mortgage's voting rights under the UTA and the rules (whether exercisable at a meeting or by an entry in the body corporate minute book or otherwise).
- (d) **Pass on notices:** The party giving this mortgage will, immediately after its receipt, give the mortgagee written notification of having received:
- (i) notice of any meeting or resolution to be passed without general meeting of the body corporate at which it is proposed to move any resolution requiring a unanimous vote for its passing, any resolution altering the rules or any special resolution, or
  - (ii) a notice under section 86 of the UTA requiring the party giving this mortgage to sign any document.
- (e) **Vote in accordance with directions:** If the voting rights referred to in clause 11(c) are not exercised by the mortgagee, the party giving this mortgage must exercise them in accordance with any written directions given by the mortgagee.
- (f) **Secured moneys payable upon certain events:** Notwithstanding anything to the contrary contained in this mortgage or in any other contract or arrangement, the secured moneys will be due and payable by the party giving this mortgage upon demand if:
- (i) any principal unit contained in this mortgage is destroyed or so damaged as to be no longer habitable or usable; or
  - (ii) an administrator is appointed under section 141 of the UTA.
- (g) **Mortgagee to be attorney:** The party giving this mortgage hereby irrevocably appoints the mortgagee (including the person for the time being entitled to give a receipt or discharge for the secured moneys) (if more than one, severally) the attorney of the party giving this mortgage at the party giving the mortgage's cost to receive notice of, attend, vote at and otherwise take part in meetings and other proceedings of the body corporate, appoint proxies for voting at meetings, sign resolutions passed by entry in the body corporate minute book, appoint an agent under section 81 of the UTA, and obtain information (including any information required for a disclosure statement under sections 144 to 153 of the UTA) from the body corporate concerning the land and the affairs of the body corporate and compliance by the party giving this mortgage with the rules.

## 12. LEASEHOLD (INCLUDING CROSS-LEASE):

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This clause applies if any collateral is, or includes, a leasehold or a licence. If any collateral is, or includes, a licence in respect of any land, this clause 12 (except for this opening paragraph) must be read as if the expressions "lease", "lessor", "lessee" and "rent" included a licence, a licensor, a licensee and amounts payable under a licence respectively and with all other necessary or consequential modifications so that it meets the case of and applies to the mortgaged licence (as well as a mortgaged lease, if any).

- (a) **Representation that no existing default:** The party giving this mortgage represents and warrants to the mortgagee that, as at the date of this mortgage, there is no subsisting default by the party giving this mortgage under the lease and the lease is not liable to forfeiture or cancellation.
- (b) **Covenants:** The party giving this mortgage must:
- (i) **pay rent and comply with lease:** duly and punctually pay the rent payable from time to time and comply with the terms to be complied with by the lessee under the lease, and keep the mortgagee indemnified against all

actions, expenses and claims on account of non-payment of the rent or non-compliance with any of the said terms;

- (ii) **ensure lessor complies:** take all reasonable steps to enforce compliance by the lessor with the lessor's obligations under the lease and, if this is a transfer of a cross-lease, by the respective lessees of their obligations under the other cross-leases;
  - (iii) **deliver copies of notices to the mortgagee:** immediately after service of the same on the party giving the mortgage, serve on the mortgagee a copy of any notice relating to the lease and given by the lessor under the Property Law Act 2007 or any enactment in substitution for that Act;
  - (iv) **deliver copies of arbitration submissions:** immediately after service of the same on or by the party giving the mortgage, serve on the mortgagee a copy of any submission to arbitration of any matter under the lease and, if this is a mortgage of a cross-lease, under any of the other cross-leases;
  - (v) **comply with mortgagee's directions on arbitration:** comply with the mortgagee's written directions as to the conduct of any such arbitration;
  - (vi) **renew the lease:** do all things and execute all documents that, in the mortgagee's opinion, is necessary or expedient to exercise any right of renewal contained in the lease and to secure the registration of a renewal or renewed lease; and
  - (vii) **deliver mortgage renewing lease to mortgagee:** either execute and deliver to the mortgagee a valid and registrable mortgage granting a security interest in any such renewal or renewed lease having the same priority, securing the same moneys and containing (with any necessary or consequential modifications) the same terms as this mortgage or procure the entry in the memorial of the renewal or renewed lease of a statement pursuant to section 117 of the Land Transfer Act 1952.
- (c) **Appointment of mortgagee as attorney:** The party giving this mortgage hereby irrevocably appoints the mortgagee (including the person for the time being entitled to give a receipt or discharge for the secured moneys)(if more than one, severally) the attorney or attorneys of the party giving this mortgage at the party giving the mortgage's cost to:
- (i) **obtain information:** obtain information from the lessor concerning the lease and compliance by the party giving this mortgage with its terms;
  - (ii) **enforce obligations:** enforce any of the obligations mentioned in clause 12(b)(ii);
  - (iii) **renew lease:** do all things and execute all documents necessary or expedient in the mortgagee's opinion to obtain pursuant to the lease an assurance of the lessor's reversion or a new or renewed lease in place of the lease (whether or not for the same term or at the same rent or containing the same terms);
  - (iv) **execute security over new lease:** give and execute a mortgage of any such reversion or new or renewed lease, having the same priority, securing the same moneys and containing (with any necessary and consequential modifications) the same terms as this mortgage including this clause;
  - (v) **apply to bring down encumbrances:** make any request to the Registrar-General of Land under sections 117 or 118A of the Land Transfer Act 1952;
  - (vi) **apply to Court for relief against forfeiture:** do all things and execute all documents necessary or expedient in the mortgagee's opinion to apply for and obtain from the Court any form of relief in relation to the lease;
  - (vii) **arbitrate or litigate:** conduct, prosecute or compromise any arbitration or litigation relating to the lease or, if this is a mortgage of a cross-lease, to any of the other cross-leases;
  - (viii) **receive compensation:** recover and give receipts and discharges for any compensation, damages or other moneys for any cause including the value of improvements payable by any person purchasing any right to a lease of the land;
  - (ix) **exercise rights under lease:** give any notice and exercise any right or power under the lease and, if this is a mortgage of a cross-lease, under any of the other cross-leases;
  - (x) **appoint further attorneys:** appoint and remove any person as a substitute attorney; and
  - (xi) **sign and register any power of attorney:** execute and register any mortgage necessary or expedient in the mortgagee's opinion for the purposes of this subclause.
- (d) **Secured moneys payable if lease cancelled or invalid:** Notwithstanding anything to the contrary contained in this mortgage or in any other contract or arrangement, the secured moneys will be due and payable by the party giving this mortgage upon demand if the lease is cancelled or otherwise comes to an end or if the lease is or becomes invalid.

### 13. FARMING PROVISIONS

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This clause applies if any collateral being land is used or is suitable for use for agricultural, pastoral, orchard or other farming purposes.

The party giving this mortgage must:

- (a) **clear weeds:** keep the land clear of all blackberry, gorse, noxious plants and animal and insect pests;
- (b) **control disease:** take all reasonable steps to control disease in crops, pastures, plants and stock on the land;
- (c) **farm and manage:** farm and manage the land in accordance with established farm management practice and cultivate and keep cultivated such part of the land as is or has been usually cultivated; and
- (d) **not change type of farm without consent:** not (without the mortgagee's prior written consent) make any material change in the type of farming conducted on the land or permit a security interest to attach to crops without the prior written consent of the mortgagee.

#### 14. BUILDING AND OTHER WORKS

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This clause applies if any development works are in the course of being, or are intended to be, carried out.

- (a) **Undertake development:** The party giving this mortgage must proceed with, immediately and continuously, the development works until their completion in a workmanlike manner and in accordance with plans and specifications submitted to and approved by the mortgagee and/or mortgagee and, where applicable, in accordance with a building permit or other approval or consent issued by the relevant authority.
- (b) **Mortgagee may complete if default:** In exercising, in relation to clause 14(a), the powers contained in clause 19, the mortgagee may complete the development works with such variations to the plans and specifications as the mortgagee considers expedient and may do any thing necessary or expedient in the mortgagee's opinion to remedy, prevent or mitigate any deterioration of the development works.
- (c) **Fixtures to be part of land:** The parties agree that once personal property has been fixed to the development works so that it may be regarded fixed for the purpose it was designed, then it will be regarded as part of the land.

### PART 6 DEFAULT AND ENFORCEMENT

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#### 15. WHEN DEFAULT OCCURS

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Default occurs if:

- (a) **breach of obligation to pay money:** any party giving this mortgage fails to pay any part of the secured moneys in accordance with clause 3;
- (b) **breach of non-monetary obligation:**
  - (i) any party giving this mortgage fails to comply with any of the other obligations set out in clause 3(a)(ii) and 3(a)(iii) and, unless the agreement or arrangement relating to the obligation provides otherwise, where such failure is capable of remedy, the failure continues for a period of seven (7) days after the mortgagee has served on the party giving the mortgage, a notice requiring it to remedy such failure; or
  - (ii) a default (however described) occurs in any agreement, deed or document under which the party giving this mortgage has obligations to the mortgagee (other than an agreement or arrangement referred to in clause 15(b)(i)) and, unless the agreement deed or document under which that default occurs provides otherwise, where such default is capable of remedy, the default continues for a period of seven (7) days after the mortgagee has served on the party giving this mortgage a notice requiring it to remedy such failure;
- (c) **party giving this mortgage requests enforcement:** the party giving this mortgage asks the mortgagee to appoint a receiver over the collateral or any part of the collateral;
- (d) **change relating to land:** any part of the land:
  - (i) is sold, transferred, exchanged, leased, or possession is relinquished or the land is otherwise disposed of or any part of it or the party giving this mortgage agrees to do any of those things without the mortgagee's prior written consent; or
  - (ii) any part of it is taken under any statute; or
  - (iii) any part of it is sold under a power of sale contained in any other mortgage or charge affecting the land; or
  - (iv) suffers a material reduction in its value as determined in accordance with clause 1(f);
- (e) **change to a company giving this mortgage:** any party giving this mortgage is a company and:
  - (i) there is a material change in the control of the company as determined in accordance with clause 1(e); or
  - (ii) that party becomes insolvent or in the opinion of the mortgagee it appears from any balance sheet or other company record that the party is insolvent or is unable to pay its debts within the meaning of section 287 of the Companies Act 1993; or
  - (iii) a resolution is passed or an order made for the appointment of a liquidator to the party giving the mortgage, or a receiver, liquidator, provisional liquidator or statutory manager or other such similar functionary is appointed in respect of the party giving the mortgage, or any of the collateral and/or land; or

- (iv) that party purchases or redeems or agrees to purchase or redeem any of its shares, or provides or agrees to provide financial assistance either directly or indirectly for those purposes; or
  - (v) a change of name is entered into the Companies Register without the written consent of the mortgagee;
- (f) **change to a natural person giving this mortgage:** any party giving this mortgage is a natural person and dies, changes their name without the written consent of the mortgagee, becomes bankrupt or in the opinion of the mortgagee it appears from any balance sheet or other record of the party giving this mortgage that the party giving this mortgage has committed an act of bankruptcy;
- (g) **liability:** the party giving this mortgage acts so that it contravenes any law or incurs legal liability or if it contravenes any part of this mortgage including any collateral guarantee or agreement or if litigation, arbitration or administrative proceeding is current, pending or to its knowledge is threatened.

## 16. RIGHTS AND POWERS OF MORTGAGEE ON DEFAULT

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- (a) **Rights and powers generally:** If default occurs, the mortgagee may at any time or times thereafter, in addition to any rights, remedies or powers otherwise conferred upon the mortgagee by law, exercise all or any of the following rights and powers separately or any two (2) or more of them concurrently:
- (i) call up the balance of the secured moneys in accordance with clause 17; or
  - (ii) remedy the default in accordance with clause 18; or
  - (iii) sell, enter into possession of or appoint a receiver of rental income of that land in accordance with clause 19; or
  - (iv) obtain judgment and enforce such judgment against the party giving this mortgage (and if more than one all or any one of them) for all of the secured moneys or if the amount realised from the exercise of any of the mortgagee's rights and powers is not sufficient to pay the secured moneys in full, the amount of such deficiency.
- (b) **Delay does not affect exercise of powers:** The mortgagee's rights under this mortgage will not be affected by any delay in exercising them (whether or not the mortgagee knows that they have become exercisable). The mortgagee may only be held to have acquiesced in or waived any matter in relation to this clause if and to the extent that the acquiescence or waiver is expressed in writing.
- (c) **When notice required:** Except as required by law or the terms of this mortgage, the mortgagee need not give any notice before exercising all or any of its rights and powers following a default.
- (d) **Persons dealing with mortgagee:** No person dealing with the mortgagee (or any receiver appointed by the mortgagee) exercising any of these rights and powers will be:
- (i) **not answerable for any loss:** answerable for the loss, misapplication or non-application of any money paid to the mortgagee, or be obliged or concerned to see to its application; or
  - (ii) **not obliged to enquire:** obliged or concerned to enquire whether any default has been made, whether any notice has been given, whether the right or power has been exercised or has become exercisable or otherwise as to the necessity, expediency, regularity or propriety for or of the action taken by the mortgagee or the receiver or be affected by notice that no such default has been made, that no notice has been given, that the right or power has not become exercisable or that the exercise of that right or power is otherwise unnecessary, inexpedient, irregular or improper.
- (e) **Relationship with other securities held:** This mortgage is collateral with each and every other security held by the mortgagee for all or any part of the secured moneys and secures all amounts owing by the party giving this mortgage to the mortgagee. Default under the provisions of such collateral securities will be a default under this mortgage and remedies of the mortgagee under such collateral securities and this mortgage will be collateral and co-existent and may be exercised at the same time or at different times and in any order and accordingly the mortgagee may:
- (i) enforce this mortgage without first having recourse to any other securities or rights; or
  - (ii) exercise the mortgagee's remedies under each security for the secured moneys separately or under any two (2) or more of them concurrently; or
  - (iii) exercise the rights and powers at any time and will not be liable to the party giving this mortgage either because the mortgagee waited or delayed the exercise of any right or power, or exercised any right or power without delay or waiting any time; or
  - (iv) agree to suspend the exercise of any right or power for any period and on such terms as the mortgagee may elect without the need to give any further notice of intention to exercise that right or power at the end of the period of suspension.
- (f) **Rights once acquired are not lost:** Once acquired, a mortgagee will not lose a right or power unless the mortgagee agrees in writing to waive or release it.
- (g) **Costs of default are payable and are secured:** All sums expended by the mortgagee in the exercise of the mortgagee's rights and powers following a default or in exercising or enforcing or attempting to exercise or enforce any power, right or remedy contained or implied in this mortgage will be:

- (i) payable by the party giving this mortgage to the mortgagee upon demand; and
- (ii) secured by this mortgage together with interest computed from the respective dates on which those sums are expended at the prescribed interest rate.

This clause does not limit any other term of this mortgage relating to costs; nor is it limited by any other such term.

#### 17. ACCELERATING PAYMENT OF SECURED MONEYS ON DEFAULT

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If default occurs, the secured moneys will become due and payable by the party giving this mortgage in accordance with the provisions in any agreement relating to their payment or, to the extent any notice is required by law to be given before the secured moneys become payable, immediately on expiry of the relevant notice period, without the need for any further notice or demand.

#### 18. PAYMENT OF MONEYS BY MORTGAGEE

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If the party giving this mortgage fails to do any thing or pay any sum which it has agreed to do or pay, the mortgagee may (but is not obliged to) do such thing or pay such sum, in whole or in part which, in the mortgagee's opinion, is necessary or expedient to rectify the consequences of the default. Any payment by the mortgagee is without prejudice to the rights and powers of the mortgagee under any other provision in this mortgage or any secured agreement.

#### 19. RIGHTS AND POWERS RELATING TO LAND

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- (a) **Powers:** At any time after default, the mortgagee may (subject to the expiry of any applicable notice period required by law) do any or all of the following:
  - (i) **enter into possession:** enter into possession of the land;
  - (ii) **sell:** sell the land or any part of it; and
  - (iii) **appoint receiver of income:** by writing appoint any person to be a receiver of the income of the land or any part of the land.
- (b) **Exercise of power of sale:** In respect of any sale, the mortgagee:
  - (i) **sell in whole or part:** may sell the mortgaged property on the conditions set out in section 178 of the Property Law Act 2007, or any of them;
  - (ii) **buy in:** may buy in the mortgaged property or any part of it in accordance with section 196, or an order of court under section 200, of the Property Law Act 2007;
  - (iii) **cancel sale and resell:** may cancel any contract for sale, may resell the mortgaged property without being answerable for any loss or diminution in price and may allow or refund to the purchaser any sum which the purchaser may be entitled to upon such cancellation and to that extent may reverse any application of sale proceeds previously made;
  - (iv) **rights against purchasers:** may recover the expenses for the exercise or attempted exercise by the mortgagee of any rights and powers against any purchaser, with interest, as provided by clause 3(b);
  - (v) **only account for what is received:** is not obliged to account for or apply any sale proceeds unless and until they are actually received by the mortgagee so that the party giving this mortgage will remain liable for all moneys owing under this mortgage beyond those actually so received;
  - (vi) **not responsible for acts of purchaser:** is not responsible for any thing done or omitted by any purchaser nor is the mortgagee bound to enforce any remedy under any contract of sale;
  - (vii) **may sign and give receipts:** may execute assurances, give effectual receipts for the purchase money and do all such other acts and things for completing the sale as the mortgagee may think proper; and
  - (viii) **incidental powers:** may exercise such other incidental powers in relation to the sale as are conferred upon mortgagees by law.
- (c) **Application of proceeds:** The mortgagee must apply the money arising from any sale in accordance with section 185 of the Property Law Act 2007.
- (d) **Rights of receiver of income:** In relation to any receivership pursuant to this clause 19.
  - (i) **agent of party giving the mortgage:** the receiver will be deemed to be the agent of the party giving this mortgage who will be solely responsible for the receiver's acts or defaults whether occurring in relation to the purposes and matters mentioned in this clause or otherwise;
  - (ii) **may be removed:** the mortgagee may from time to time in writing remove any receiver and appoint a substitute;
  - (iii) **demand income:** the receiver may demand, recover (by action or otherwise) and issue receipts for the income of the land or any part thereof and may exercise any other powers conferred on the receiver by law;

- (iv) **receiver's remuneration:** the receiver will be entitled, by way of remuneration, to a commission at such rate as is specified in the receiver's appointment and if no rate is so specified then at the rate of 6 per cent of the gross amount of all money received;
- (v) **repairs by receiver:** the receiver may, out of the money received, make any payment on account of any money secured by any prior mortgage or charge, may repair and maintain any buildings, improvements or effects (whether affixed to the land or not), may keep such buildings, improvements or effects insured against such risks as the receiver considers appropriate, may pay all management expenses and may do any thing which the receiver considers necessary or expedient in order to procure continued receipt by the receiver of the income of the land;
- (vi) **application of moneys received:** the receiver must apply all money received subject to the claims of all secured and unsecured creditors (if any) ranking in priority to any security interest created by this mortgage:
  - (A) **costs:** first in payment of all costs, charges and expenses (including tax and legal costs as between solicitor and client) of and incidental to the appointment of the receiver and the exercise by the receiver or the mortgagee of all or any of the powers under the general security agreement/this mortgage including the receiver's reasonable remuneration;
  - (B) **preferential claims:** second in payment of preferential claims (if any) payable by the receiver under the provisions of section 30 of the Receiverships Act 1993;
  - (C) **secured moneys:** third in payment to the mortgagee of all the secured moneys;
  - (D) **surplus:** fourth in payment of any residue to those entitled to any surplus; and
- (vii) **appointment of receiver is not entry into possession:** neither the appointment of a receiver nor the exercise of any of the powers contained in this clause 19 will be an entry into possession of the land by the mortgagee.

## **PART 7 MISCELLANEOUS TERMS**

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### **20. TRANSFER BY MORTGAGEE**

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The mortgagee may without notice at any time assign or transfer, or grant a security interest in this mortgage and the security interests witnessed therein. The party granting security agrees that the assignee, or transferee will have all the rights and remedies available under this mortgage and further agrees that it will not assert any right of set-off or enter a claim which it has or acquires against the mortgagee and will pay the secured moneys as they come due to the assignee or transferee as the case may be.

### **21. PRIOR CHARGES**

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If and so long as this mortgage is subject to any prior encumbrance or charge, the party giving this mortgage must duly and punctually pay all money secured by, and comply with the terms contained or implied in, every prior general security agreement, encumbrance or charge. If and to the extent that:

- (a) any term relating to insurance (an "insurance term") in any prior general security mortgage or charge conflicts with any insurance term in the general security agreement; and
- (b) the party giving this mortgage complies with the first-mentioned insurance term;

such compliance will be compliance with the relevant conflicting insurance term in this mortgage.

### **22. SERVICE OF NOTICES**

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The parties agree that any demand or notice required or authorised to be served on the party giving this mortgage under or in relation to this mortgage may be signed by the mortgagee or by the mortgagee's agent and the following provisions apply:

- (a) **method of service:** the notice may be served:
  - (i) by delivering it to the party giving this mortgage personally; or
  - (ii) by posting it by registered letter addressed to the party giving this mortgage at the party giving the mortgage's place of residence or place of business last known to the mortgagee; or
  - (iii) in the case of a company, by leaving it at its registered office or by posting it by registered letter addressed to the party giving this mortgage at its registered office or addressed to it at its place of business last known to the mortgagee or by delivering it to any person who is named on the public register as a director or secretary of the company;
- (b) **when service effected:** a demand or notice posted by registered letter is deemed served at the time when the registered letter would in the ordinary course of post delivery have been delivered;
- (c) **service valid when effected:** any service effected in accordance with this clause will be valid and effectual notwithstanding that at the date of service, the party giving the mortgage, whether to the knowledge of the

mortgagee or not, is dead, mentally incapable, bankrupt, in liquidation or absent from New Zealand or does not receive the demand or notice and notwithstanding any other matter or event whatsoever;

- (d) **other modes of service:** the modes of service provided by this clause do not limit any other sufficient and lawful modes of service and are subject to any mandatory provisions in any statute;
- (e) **actual receipt is valid notice:** where a demand or notice is not served in accordance with any of the foregoing methods, it will nevertheless be sufficiently served if actually received by the party giving the mortgage; and
- (f) **appointment of New Zealand agent by overseas owner of land:** if this mortgage is a mortgage of land and the party giving this mortgage is not resident in New Zealand, then the mortgagee may withhold any advance or the making of any accommodation for the accommodation of the party giving this mortgage until the party giving this mortgage has appointed an agent in New Zealand for the purpose of accepting service on its behalf under sections 353 to 355 of the Property Law Act 2007.

## 23. COSTS

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- (a) **Costs payable by the party giving the security:** The party giving this mortgage must pay to the mortgagee upon demand, the mortgagee's legal costs (as between solicitor and client) for:
  - (i) **documentation:** the arranging, preparation and registration of this mortgage and any variation or discharge or transfer in lieu of discharge;
  - (ii) **costs on default:** legal services arising from or relating to any default under this mortgage or the enforcement or exercise or attempted enforcement or exercise of any of the mortgagee's rights, remedies and powers under this mortgage (including the giving or attempted giving of any notice under the Property Law Act 2007 or any enactment in substitution for that Act, the inspection and valuation of the land and, if the mortgagee is a solicitor's nominee company, the cost of compliance by the relevant solicitor with the Solicitors Nominee Company Rules 1988 or any similar rules in relation to the matters mentioned in this paragraph (ii));
  - (iii) **costs of variation, waiver or change demand:** dealing with any request by the party giving this mortgage for variation of or waiver, change demand or other concession in relation to this mortgage;
  - (iv) **other consents and requests:** dealing with any request or requirement made of the mortgagee by any person having or claiming any interest in the land; and
  - (v) **legal costs of mortgagee:** legal services relating to the protection of the mortgagee's security interest under this mortgage (including the investigation of any claim relating to the land which might affect that interest).
- (b) **Costs payable despite nature of mortgagee:** This clause applies notwithstanding that the mortgagee may be a solicitor or a solicitor's nominee company.

## 24. MISCELLANEOUS PROVISIONS

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- (a) **Prescribed interest rate:** The mortgagee may from time to time by written notice to the party giving this mortgage nominate a rate of interest as the prescribed interest rate for purposes of this mortgage. Until a prescribed interest rate is nominated, the rate will be 2% per annum above the taxpayer's paying rate as at the date of this mortgage.
- (b) **Limitation on prescribed rate:** Where at the date of the nomination there is in force any mortgage between the mortgagee and any party giving this mortgage or any accommodated person relating to the secured moneys and providing for the payment of interest on the secured moneys or any part thereof, the rate nominated must not exceed the highest rate of interest at the date of the nomination payable under any such mortgage on any part of the secured moneys (being the highest default or penalty rate if such a rate is payable). If there is no such mortgage in force at the date of the nomination then the rate nominated will not exceed a rate 2% per annum above the rate which at such date is the taxpayer's paying rate.
- (c) **Production of documents by mortgagee:** The mortgagee is not bound to produce at a Land Registry Office or elsewhere any document of title or mortgage:
  - (i) whilst the party giving this mortgage is in default under a mortgage; or
  - (ii) if production is required for the purpose of registering or giving effect to a dealing of any kind mentioned in clause 15(d)(i) or 15(d)(iii) or clause 6 to which the mortgagee has not given prior written consent; or
  - (iii) until the reasonable costs of production have been first paid to the mortgagee.
- (d) **Mortgagee's rights not prejudiced by waiver or acquiescence:** No waiver or acquiescence by the mortgagee in relation to any default by the party giving this mortgage or in relation to any other event or circumstance will prejudice the mortgagee's rights in respect of any other or future default, event or circumstance, whether of a similar nature or not.
- (e) **Judgment interest payable at prescribed interest rate:** If the mortgagee obtains judgment against the party giving this mortgage for any sum payable under this mortgage, the party giving this mortgage must pay to the mortgagee interest on that sum from the date of judgment until the date such sum is paid. Such interest will be calculated at the prescribed interest rate.



- (f) (i) **Set off:** The mortgagee may set off any moneys owed to the party giving this mortgage by the mortgagee or property claimed by the party giving this mortgage from the mortgagee against any of the secured moneys.
- (ii) **Application of moneys:** The mortgagee may appropriate any sum paid by or otherwise credited to the party giving this mortgage in or towards payment of such part or parts of the secured moneys as the mortgagee may in the mortgagee's absolute discretion determine.
- (iii) **Set off and application of moneys not affected:** This subclause will apply whether or not the party giving this mortgage is bankrupt or in receivership or liquidation.
- (g) **Multiple mortgagees:** If the mortgagee comprises more than one person, every right and thing which may be exercised or done by the mortgagee may be exercised or done by any one or more of them and, in such event, will have effect as if each were the authorised agent of the other or others to exercise or do such right or thing.
- (h) **Party granting security is principal and not surety:** Although as between parties giving this mortgage one such party giving this mortgage may be a surety only, nevertheless as between the mortgagee and each party giving this mortgage the party giving this mortgage will, in relation to the secured moneys, be a principal party and will not be released by any act, matter or thing which would release one liable only as a surety.
- (i) **Conditions applying to mortgagees consents:** Where the party giving this mortgage covenants or agrees not to do a specific act or thing without obtaining the prior written consent of the mortgagee, then the mortgagee may grant such consent subject to conditions and the party giving this mortgage will be permitted to do such act or thing only to the extent, and/or subject to the conditions set out in the mortgagee's consent.
- (j) **Obtain all necessary consents:** The party giving this mortgage must do all things necessary to effect all laws, directives and consents that are or may become required to perform or comply with its obligations under this mortgage.
- (k) **Partial invalidity:** The illegality, invalidity or unenforceability of a provision of this mortgage under any law does not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

## 25. TRUSTEES

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- (a) **Representations by trustees:** If any party granting this security or entering into any secured agreement is entering into it as the trustee of a trust then that person represents and warrants to the mortgagee that:
  - (i) **powers:** the party has the power under the instrument under which the party holds property on trust to enter into this mortgage and/or each secured agreement;
  - (ii) **proper purposes:** the entry into this mortgage and/or the secured agreements is for a proper purpose and for the benefit of the trust under which the party holds property;
  - (iii) **right to be indemnified:** the party has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of the party including the entry into this mortgage and each secured agreement; and
  - (iv) **all trustees approve or assent:** all of the persons who are trustees of the relevant trust have approved and have signed or assented to this mortgage and each secured agreement.
- (b) **Trustees have full and unlimited personal liability:** Unless a party granting this security has been named in this mortgage or in any secured agreement as a limited liability trustee (in which case the provisions of clause 26(c)) will apply) every party granting this security has full and unlimited personal liability for the repayment of the secured moneys and the compliance with all obligations in this mortgage and in any secured agreement.
- (c) **Limited liability trustees:** If a party granting this security has been named in either this mortgage or in any secured agreement as a limited liability trustee the liability of that party is not personal and unlimited but will be limited to an amount equal to the value of the assets of the trust under which that party has entered into this mortgage as a trustee that are (or, but for default would be) available to meet that party's liability for the secured moneys (the "limited amount") unless the right of that party as a trustee to be indemnified from the assets of the trust has been lost and, as a result, the mortgagee is unable to recover from that party the limited amount.

## 26. LICENCE TO USE MEMORANDUM

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The mortgagee acknowledges that copyright in the form and content of this memorandum is claimed and is owned by the Auckland District Law Society Incorporated (the ADLSi) and the mortgagee represents and warrants to the party granting the security and to the ADLSi that upon registration of the mortgage instrument incorporating the terms of this memorandum it has paid the required licence fee and has acquired the right to incorporate these terms in the mortgage instrument. The provisions of this clause confer a benefit on the ADLSi to the intent that a breach of this representation and warranty by the mortgagee is enforceable by the ADLSi. A breach of this provision does not, however, invalidate the incorporation of the terms of the memorandum into the mortgage instrument.

**Execution**

Dated this 18<sup>th</sup> day of **May 2015**

Executed on behalf of the Auckland District Law Society Incorporated by:



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Ben Thomson, Documents and Precedents Manager



**MEMORANDUM No. 2015/4328**

Land Transfer Act 1952

**MORTGAGE – (all obligations)**

**Registered pursuant to Section 155A  
Land Transfer Act 1952**

**Registrar-General of Land  
Land Registry**

**(Abstract number/date )**