

BANK OF BARODA (NEW ZEALAND) LIMITED

MEMORANDUM OF GENERAL TERMS AND CONDITIONS

Registered Pursuant to Section 155A Land Transfer Act 1952

Class of instrument in which provisions are intended to be included:
Mortgage (all obligations) General Security Agreement

Person executing Memorandum:
Bank of Baroda (New Zealand) Limited at Auckland

TERMS OF MORTGAGE

1. INTERPRETATION

1.1 Definitions: In this Mortgage, unless the context otherwise requires:

“**Amount Owing**” means the sum of the principal amount outstanding and all other money payable by the Mortgagor to the Bank from time to time including accrued interest (including default interest), fees, indemnities, costs and expenses;

“**Attorney**” means an attorney appointed under this Mortgage;

“**Bank**” means Bank of Baroda (New Zealand) Limited and its successors, assigns and transferees;

“**Environmental Law**” means any law relating to the environment, land or water use, noise, smell, pollution or contamination, toxic or hazardous substances, waste disposal or conservation (including the Resource Management Act 1991) and any consent, order or notice under any such law;

“**Environmental Obligation**” means any obligation pursuant to Environmental Law or relating to the occupation or use of the Land or the use of assets, development, pollution, waste disposal, toxic and hazardous substances or conservation of natural or cultural resources, whether or not arising pursuant to any law (including the Resource Management Act 1991 and the Building Act 2004) or pursuant to any contract or arrangement with a governmental agency;

“**Event of Default**” means any of the events specified in clauses 7.1 or 14.2(d) and any other event or circumstance which, with the giving of notice, lapse of time or fulfilment of any other requirement, would cause an occurrence of such an event;

“**Insurances**” means all policies or contracts of insurance taken out or entered into in respect of any of the Land, and includes their proceeds and the rights arising in connection with them and “Insurance” shall mean any such policy or contract;

“**Land**” means the land described in this Mortgage and includes all buildings and improvements thereon;

“**Land Income**” means all money payable to the Mortgagor during the term of this Mortgage arising out of:

- (a) the ownership, use or occupation of the Land;
- (b) the cultivation, harvesting, selling or other utilisation of trees, timber, logs or crops to be grown or growing from the Land;
- (c) any agreement relating to the Land including, without limitation, rent, sale proceeds, any damages and the proceeds of any insurance in respect of loss of earnings or income; and
- (d) any profit-a-prendre or forestry rights;

“**Loan Terms**” means each agreement, security, instrument, assurance, deed, guarantee, and each funding, credit or loan arrangement of any kind evidencing, relating to, entered into or granted in relation to, or secured by, this Mortgage, and as may be modified, varied, extended, novated or substituted from time to time with the Bank’s written agreement or consent;

“**Major Damage**” means damage to the Land which results in:

- (a) a loss or claim totalling 20% or more of the full replacement value of the improvements and buildings for insurance purposes; or
- (b) the Land becoming substantially uninhabitable either as a dwelling place in the manner as before the occurrence of the damage, or so that the trade or business normally carried on from it can no longer be efficiently carried on;

“**Mortgage**” means a mortgage over Land (including all building, structures and improvements thereon) where the Mortgagor has either:

- (a) signed a paper document entitled “Mortgage Instrument (all obligations);” or
- (b) signed an authority and instruction form to register a Mortgage against the Land electronically;

and, for the purposes of these terms and in relation to personal property, includes a security interest;

“**Mortgagor**” means each party named as such in the Mortgage and includes, for the purposes of these terms, a party who has granted a security interest over personal property to the Bank;

“**PPSA**” means the Personal Property Securities Act 1999;

“**Receiver**” means a person appointed under this Mortgage as a receiver or receiver and manager;

“**Secured Indebtedness**” means all of the Mortgagor’s existing indebtedness to the Bank including indebtedness incurred by the Bank on behalf of the Mortgagor (including all interest, costs, taxes, stamp and similar duties and taxes, commissions, charges and expenses (including legal fees on a solicitor and own client basis) and expenses incurred or sustained in any way by the Bank in connection with that indebtedness or the enforcement or attempted enforcement of this Mortgage) and includes without limitation:

- (a) the Amount Owing;
- (b) where the Mortgagor consists of partners in a partnership, all indebtedness of all former, present and future partners to the Bank; and
- (c) where the Mortgagor is described (in the Loan Terms) as the trustee of a trust, all indebtedness to the Bank of all former, present and future trustees of the trust incurred (or purporting to be incurred) as trustee of the trust;

“**Secured Obligations**” means all obligations (whether present or future but other than obligations to pay money) of the Mortgagor to the Bank;

“**Secured Property**” means the assets of the Mortgagor which are the subject of a security interest created under this Mortgage; and

“**Solvency Test**” has the meaning ascribed to that term by section 4 of the Companies Act 1993.

1.2 **Construction of Certain References:** In this Mortgage, unless the context otherwise requires, any reference to:

an “**agreement**” also includes a contract, deed, licence, franchise, undertaking and other document (in each case, oral and written) and includes that agreement as modified, supplemented, novated or substituted from time to time;

“**assets**” also includes the whole and any part of the relevant persons business, undertaking, property, revenues and rights (in each case present and future), and reference to an asset includes any legal or equitable interest in it; a “business day” means a day on which registered banks are open for general banking business in New Zealand; a “consent” also includes an approval, authorisation, exemption, filing, licence, order, permit recording and registration (and references to obtaining consents are to be construed accordingly);

one person “**being controlled**” by another means that that other person (whether directly or indirectly and by any means):

- (a) has the power to appoint or remove the majority of the members of the governing body of that person; or
- (b) otherwise controls or has the power to control the affairs and policies of that person; or
- (c) is in a position to derive the whole or a substantial part of the benefit of the existence or activities of that person, and “control” shall be construed accordingly;

a “**disposal**” of an asset includes any sale, assignment, exchange, transfer, loan, lease, concession, waiver, compromise, dealing with, release, parting with possession, the grant of an option in respect of it, the payment of money, any distribution by way of dividend and an agreement for any of these, but excludes the creation of a security interest (and references to “dispose” are to be construed accordingly);

the “**dissolution**” of a person also includes the winding-up, bankruptcy or liquidation of that person. and an equivalent and analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, carries on business or has assets;

a “**guarantee**” also includes:

- (a) an obligation of a person to pay, purchase, provide funds (whether by the advance of money, the purchase or subscription of shares or other securities, the purchase of assets or services or otherwise) or provide a security interest for the payment or performance of, or to indemnify against the consequences of default in the payment or performance of, or otherwise to be responsible for, indebtedness or obligations of another person; and
- (b) an obligation of a person to redeem or purchase share capital of another person incurred in connection with the purchase of that share capital by another person or the granting of any security interest in relation to that share capital;

“**indebtedness**” includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money;

a “**lease**” includes a lease or licence which is included in the Secured Property;

something having a “**material adverse effect**” on a person is a reference to it having, in the Bank’s opinion, a material adverse effect on that person’s commercial or financial prospects including a deterioration:

- (a) in that person’s creditworthiness; or
- (b) on its ability to comply with its obligations under the Mortgage; or
- (c) as the context may require, on the Bank’s ability to:
 - (i) recover any amount payable by the Mortgagor under the Mortgage; or
 - (ii) enforce performance of that person’s obligations under the Mortgage;

(and references to “**material adverse change**” shall be construed accordingly);

there is a “**material reduction in the value of the Land**” if:

- (a) any resource consent is granted or there is any change in the relevant regional or district plan in either case affecting the Land; or
- (b) 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
- (c) any right under sections 10, 10A or 20 of the Resource Management Act 1991 to carry on any non-complying uses of or activity on the Land lapses; or

- (d) any enforcement order is made under the Resource Management Act 1991; or
- (e) any authority exercises any compulsory statutory power, and, in any such case, the value of the Land or of the Bank's security is, in the Bank's reasonable opinion, thereby materially reduced or likely to be so reduced;

a "person" includes an individual, firm, company, corporation, an association of persons (whether corporate or not), a trust, or governmental agency and any other entity (in each case, whether or not having a separate legal personality);

a "security interest" includes a mortgage, pledge, charge, encumbrance, lien, hypothecation, deferred purchase, title retention or other security arrangement of any kind, the practical effect of which is to secure a creditor and in the case of personal property includes any arrangement which falls within the definition of a "security interest" in section 17(1)(a) of the PPSA;

a "subsidiary" of a person includes:

- (a) a subsidiary as defined in the Companies Act 1993; and
- (b) an 'in-substance' subsidiary or any other person treated as a subsidiary of another person under "generally accepted accounting practice" as defined in section 3 of the Financial Reporting Act 1993;

"taxes" includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature or whatever called (including interest, penalties, fines and charges in respect of taxes) imposed, levied, collected, withheld or assessed by any governmental agency, on whomsoever imposed, levied, collected, withheld or assessed;

a gender includes each other gender;

the singular includes the plural and vice versa;

a reference in any provision of this memorandum to any law is a reference to that law as at 5 March 2010 unless the provision requires the Mortgagor to comply with that law and that law has changed in which case the requirement to comply with the relevant law is a requirement to comply with the amended law, A reference to any legislation includes reference to that legislation as modified, re-enacted or substituted from time to time;

a party to this Mortgage or another agreement includes its successors and, in the case of the Bank, its assignees and transferees;

any indebtedness which is payable on demand" is due and payable on the date on which demand is made (or, if a later date is specified in the demand, on that date); and

all headings and the table of contents are to be ignored in construing this Mortgage.

2. COVENANT TO PAY AND PERFORM

2.1 **Covenant:** The Mortgagor covenants to duly pay the Secured Indebtedness and perform and comply with the Secured Obligations. Unless otherwise agreed in writing, all Secured Indebtedness is payable on demand made by the Bank (which demand may be made by the Bank at any time in its absolute discretion).

2.2 **Interest:** Interest is payable on the Secured Indebtedness at the rates and upon the terms from time to time agreed between the Mortgagor and the Bank. If no rate of interest is agreed, interest is payable at the rate and time determined by the Loan Terms. Unless otherwise agreed in writing, all interest will be calculated on the basis of the number of days elapsed and a 365 day year.

2.3 **Default Interest:** If:

- (a) the Bank does not receive, when due, an amount of Secured Indebtedness payable to it; or
- (b) the Mortgagor breaches any of its obligations to the Bank under any document;

then, without prejudice to any other right exercisable by the Bank, the Mortgagor must pay default interest on that overdue amount (including interest payable under this sub-clause) calculated from its due date to the date of its receipt by the Bank (after as well as before judgment) compounded and payable at intervals selected by the Bank at its discretion. This obligation to pay default interest shall arise without the need for a notice or demand. The rate of default interest shall be determined by the Bank from time to time.

3. SECURITY

3.1 **Mortgage:** The security created by the terms of this Mortgage takes effect as:

- (a) a mortgage of all the Mortgagor's right, estate and interest in the Land;
- (b) an absolute assignment to the Bank of all the Mortgagor's right, title and interest (present and future, legal and equitable) in and to:
 - (i) the Insurances;
 - (ii) the Land Income; and
 - (iii) all agreements, documents, rights and consents (excluding any consents under the Resource Management Act 1991) existing at any time relating to the purchase or sale, construction, maintenance, repair or condition of any of the Land, or which contain any warranties relating to any of the Land; and
- (c) a charge to the Bank, in terms of section 122(3) of the Resource Management Act 1991, of any resource consent issued in respect of the Land pursuant to that Act;
- (d) where this instrument is a security interest over personal property, a security interest over such personal property in terms of section 17(1)(a) of the PPSA;

and secures the due payment of the Secured Indebtedness and the performance of and compliance with the Secured Obligations.

3.2 **Land Transfer Act Registration:** Nothing in this Mortgage is intended to constitute entry in the register of any security interest under the Land Transfer Act 1952 other than over an estate or interest in land (except as may be permitted by law).

3.3 **Notice of Security:** The Mortgagor must promptly give written notice of the security interests created under this Mortgage:

- (a) to each insurer of the Land; and
- (b) upon request of the Bank at any time, to each other party to any agreement comprised in the Secured Property,

in each case in such form and manner as the Bank requires.

3.4 **Continuing Security:** This Mortgage and each security interest created under it is in addition to (and not to be merged in) any other security interest, guarantee, agreement or right which the Bank may at any time have and will continue and remain in full force and effect (notwithstanding intermediate payments, settlement of accounts or anything else) until the execution by the Bank of an unconditional release of it as required by clause 3.7.

3.5 **Unconditionality of Security:** This Mortgage and each security interest created under it will not be discharged, nor will the obligations of the Mortgagor be affected, by:

- (a) any time, indulgence, waiver or consent at any time given to the Mortgagor or another person; or

- (b) any amendment to this Mortgage or to any other security, guarantee or agreement (whether or not that amendment increases the liability of the Mortgagor); or
- (c) the existence, validity or enforceability of, or the enforcement of, or failure to enforce, or the release of any person or property from, or the failure of a person to execute or otherwise be bound by, this Mortgage or other security interest, guarantee or agreement for any reason, whether or not known to the Bank; or
- (d) the dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation of the Mortgagor or any other person (or the commencement of steps to effect any of these); or
- (e) anything else whatsoever.

The Bank is under no liability to the Mortgagor in relation to any of these matters, even if the Mortgagor's rights are prejudiced as a result.

3.6 **Further Assurance:** The Mortgagor must, whenever required to do so by the Bank, promptly execute and deliver to the Bank all assignments, transfers, security interests and other agreements and documents, and do anything else which the Bank may deem appropriate to:

- (a) perfect title to the Land; or
- (b) any security interest intended to be created under this Mortgage; or
- (c) secure to the Bank the full benefit of its rights and intended rights under this Mortgage;

at the Mortgagor's sole cost.

3.7 **Release of Mortgage:** If:

- (a) the Mortgagor has paid all the Secured Indebtedness and performed and complied with all the Secured Obligations;
- (b) the Bank is under no obligation to make available any further credit, advance or loan in respect of any Secured Indebtedness; and
- (c) there is no reasonable possibility that any Secured Indebtedness received or recovered by the Bank from the Mortgagor or any other person will or may need to be refunded or repaid under any applicable law (including, without limitation, any law relating to preferences or insolvency),

the Bank will, at the written request and at the cost of the Mortgagor, execute a discharge of the security interest created by this Mortgage or provide a letter of authority to effect the discharge electronically, in each case in a form acceptable to the Bank.

4. REPRESENTATIONS AND WARRANTIES

4.1 **Secured Property:** The Mortgagor represents and warrants that:

- (a) **Sole Owner:** it is the sole legal and beneficial owner of all the Secured Property;
- (b) **No Security Interests:** except as disclosed to and accepted in writing by the Bank no security interest or other interest to any party other than the Bank exists over or affects any Secured Property, nor is there any agreement to give or permit to exist any security interest or other interest to any party other than the Bank over or affecting any Secured Property; and
- (c) **Ability to Create Security:** it is lawfully entitled to create a security interest over all the Secured Property in favour of the Bank.

4.2 **In General:** The Mortgagor represents and warrants that:

- (a) **Obligations Binding:**

- (i) it has full power and authority to enter into and comply with its obligations under this Mortgage and has, obtained all consents and resolutions to enable it to do so;
 - (ii) this Mortgage has been duly authorised and entered into by it; and
 - (iii) its obligations under this Mortgage are legal, valid, binding and enforceable against it;
- (b) **No Event of Default:** other than as disclosed to the Bank in writing, no Event of Default has occurred or is occurring;
- (c) **Information:** all information provided by it to the Bank in connection with this Mortgage was true and accurate when provided and, except as disclosed to and accepted in writing by the Bank, remains so and there are no facts or circumstances which have not been disclosed to the Bank which would make that information untrue, inaccurate or misleading;
- (d) **Accounts:** its latest financial statements (and, if it has subsidiaries, its latest consolidated financial statements) as delivered to the Bank:
- (i) were prepared in accordance with accounting principles and practices generally accepted and consistently applied in New Zealand and have been prepared, reported on and approved in accordance with all applicable laws;
 - (ii) give a true and fair view of its financial position and the consolidated financial position of it and its subsidiaries as at the date and for the period to which they relate;
 - (iii) include a true and complete copy of any auditors' report (if such report is prepared); and
- (e) **Solvency:** if it is a company it satisfies the Solvency Test and, if an individual, has never been adjudicated bankrupt.

4.3 **Representations and Warranties Continuing:** Each of the statements and warranties in this clause will be deemed to continue so long as this Mortgage remains in effect by reference to the facts and circumstances then existing.

5. UNDERTAKINGS

5.1 **Undertakings Relating to Secured Property:** The Mortgagor undertakes that it will:

- (a) **Pay Outgoings:** pay all rates, water rates, local authority levies, taxes and charges from time to time payable in respect of the Land by the due date and, at the request of the Bank, provide the Bank with a receipt for each of these payments and access to the Mortgagor's accounts and other records relating to the Land;
- (b) **Access:** provide to the Bank, and ensure that each person in possession of any of the Secured Property will provide to the Bank, full and unfettered access at all times to the Secured Property;
- (c) **Maintenance:** maintain the Land in good repair and condition and, on request of the Bank, remedy every defect in its repair or condition;
- (d) **Proceeds:** ensure that (except as otherwise agreed in writing) the Land Income is paid without deduction or set off to such account of the Mortgagor with the Bank as the Bank from time to time directs;
- (e) **Compliance:** ensure compliance with:
 - (i) all laws and requirements (statutory or otherwise) and consents applicable to any of the Secured Property or its use (including, without

limitation, compliance with any requirements under the Building Act 2004); and

- (ii) the provisions of the Insurances, including all warranties expressed or implied in them;
- (f) **Records:** maintain proper records and books of account in respect of the Land, its management, maintenance, use and income, and provide to the Bank (as and when it requires) copies of those records and books for inspection;
- (g) **Registration of Security:** promptly register this Mortgage pursuant to the Land Transfer Act 1952;
- (h) **Notice to Bank:** notify the Bank of any:
 - (i) claim or dispute which might arise in respect of or in connection with any Secured Property;
 - (ii) repair, construction or maintenance work being required in respect of any of the Land or any occurrence which may result in this being required; and
 - (iii) Major Damage,
 in each case, promptly upon becoming aware of it;
- (i) **Information:** furnish to the Bank promptly:
 - (i) any information concerning the Secured Property (including, without limitation, any building consents, certificates, schedules, annual warrants of fitness or other information provided in connection with or required under the Building Act 2004); and
 - (ii) copies of any agreements or documents relating to any Secured Property, as the Bank may from time to time request;
- (j) **Consents:** do everything necessary to maintain any necessary or desirable consents or rights relating to the Land or its use;
- (k) **Zoning:** notify the Bank in writing immediately on receiving notification of any proposed change of zoning or change of land use controls in respect of any of the Land and, if required by the Bank, take all reasonable steps to oppose any re-zoning or change of land use controls which would or might be expected to reduce the value of any of the Land;
- (l) **Evidence of Security Interests:** provide evidence to the Bank in a form and substance satisfactory to the Bank of the Bank's security interest in the Land and Secured Property; and
- (m) **Prior Charges:** if and so long as this Mortgage is subject to any prior mortgage, encumbrance or charge the Mortgagor shall duly and punctually pay all monies secured by, and comply with the terms contained or implied in such mortgage, encumbrance or charge.

5.2 **Negative Undertakings relating to Secured Property:** The Mortgagor undertakes that it will not, without the prior written consent of the Bank:

- (a) **Security Interests:** create or permit to exist any security interest over or affecting any Secured Property, except for a security interest created under this Mortgage; or
- (b) **Dealings with Secured Property:** dispose or part with possession of or grant a lease, easement, or licence in respect of, any Secured Property (and any consent which the Bank may give in relation to any such disposal, parting of possession, lease, easement or licence will not, unless it expressly says so render this

Mortgage subject to the rights of any other person in connection with such disposal, parting of possession, lease, easement or licence); or

- (c) **No Prejudicial Actions or Omissions:** do, omit to do, or allow to occur, anything which might render any of the Secured Property or a security interest created under this Mortgage invalid or unenforceable, or liable to forfeiture or cancellation, or which may cause or contribute to a deterioration in the value of any Secured Property, or which may otherwise adversely affect the security of the Bank under this Mortgage; or
- (d) **Modifications:** cause or permit any:
 - (i) modification to the Land or Secured Property which would materially reduce its value; or
 - (ii) building or other improvement on the Land to, be removed, dismantled or structurally altered; or
- (e) **Change of Use:** use the Land or permit its use for any purpose, trade or business except as used at the date of this Mortgage; or
- (f) **Change of Status:** apply for a change, or agree to change the status of the Land pursuant to the Te Ture Whenua Maori Act 1993; or
- (g) **Consent:** suspend, cancel, dispose of or transfer to another person or premises any consent, right or name in respect of any use, trade or business conducted or allowed on the Land; or
- (h) **Manager:** appoint any manager or enter into any agreement for the management of the Land; or
- (i) **Amalgamation:** pass any resolution for or in contemplation of the amalgamation of the Mortgagor with, or involving, any other company then existing or yet to be formed.

5.3 **General Undertakings:** The Mortgagor undertakes that it will:

- (a) **Events of Default:** notify the Bank of the occurrence of any Event of Default and any event or circumstance which may have a material adverse effect on it, immediately upon becoming aware of it;
- (b) **Compliance With Laws:** duly and punctually comply with all laws, directives and consents the non-compliance with which might adversely affect the rights or security of the Bank; and
- (c) **Change of Name:** give the Bank 14 days prior notice of any change of its name.

5.4 **Reporting and Financial Undertakings:** Unless otherwise agreed in writing by the Bank, the Mortgagor undertakes that it will:

- (a) **Accounts:** as soon as available and, in any event within 90 days after the end of each financial year and, if accounts are prepared for each half-year, for each half-year, deliver to the Bank its financial statements and, if it has subsidiaries, its consolidated financial statements as at the end of that financial year or half-year; and
- (b) **Other Information:** promptly deliver to the Bank within seven days of request, any other information with respect to the business affairs, financial condition or operations of the Mortgagor which the Bank may from time to time request.

5.5 **Environmental Undertakings:** The Mortgagor undertakes that it will:

- (a) comply with all Environmental Obligations and any Environmental Law in respect of the Land;

- (b) not, without the Bank's prior written consent, transfer, grant a security interest in, or surrender any resource consent relating to the Land;
- (c) not, without the Bank's prior written consent, allow any event likely to cause a material reduction in the value of the Land to occur;
- (d) immediately notify the Bank in writing if a material reduction in the value of the Land occurs; and in such an event, take all reasonable steps to mitigate such reduction in the value of the Land.

5.6 **Disclosure:** The Mortgagor authorises the Bank to discuss its financial statements and financial affairs at any time with:

- (a) its accountants, auditors and financial advisers, and irrevocably authorises and requests its accountants, auditors, financial advisers, solicitors, credit reference agencies, previous and current employers and any providers of credit to provide to the Bank any information regarding it upon request by the Bank; and
- (b) any guarantor of any indebtedness or other obligation of the Mortgagor to the Bank.

Nothing in this clause shall oblige the Bank to provide any information concerning the financial statements, financial affairs (including, without limitation, details of any indebtedness) or any other matter concerning the Mortgagor to a guarantor or any other person.

6. **INSURANCE**

6.1 **Insurance:** The Mortgagor undertakes to the Bank that it will:

- (a) keep insured all buildings and other erections on the Land against loss or damage by fire, explosion, earthquake flood, environmental impairment and all other risks which should prudently be insured against and maintain insurance against third party liability which it is prudent to insure against, in each case in accordance with the best commercial practice and in amounts approved by the Bank;
- (b) maintain full replacement insurance cover for all insurable Secured Property charged under this Mortgage;
- (c) effect all Insurances on terms and with insurers (and through brokers) approved by the Bank and provide the Bank with particulars of the Insurances and, as soon as they are available, the policies;
- (d) duly and punctually pay all premiums and money necessary to maintain the Insurances and on the request of the Bank, deliver to the Bank any receipts for those payments;
- (e) ensure that each Insurance policy provides that:
 - (i) the Bank is named as co-insured for its own interest;
 - (ii) the insurer will give to the Bank copies of all notices given by the insurer which affect the Insurance cover or its terms;
 - (iii) no cancellation, change or reduction of Insurance is effective until at least seven days after receipt by the Bank of written notice to that effect;
 - (iv) the Bank is named as loss payee of all claims without any consent being required from the Mortgagor or any other insured person as a prerequisite to such payment;
 - (v) all claims for Insurance premiums or commissions or additional premiums or assessments against the Bank are waived;

- (vi) the insurer will give the Bank at least seven days written notice of any lapse or non-renewal of the policy; and
- (vii) each renewal and substitute policy will also contain the provisions required by this and the preceding paragraph; and
- (f) notify the Bank promptly:
 - (i) of any Insurance claim in excess of \$5000;
 - (ii) of the cancellation, variation of, lapse or non-renewal of any insurance policy; and
 - (iii) of anything which may materially prejudice the rights of the Mortgagor or the Bank under any policy.

6.2 **Application of Insurance Proceeds:** Money recoverable under any of the Insurances effected in compliance with this clause is to be applied at the option of the Bank either:

- (a) in or towards rebuilding or repairing any buildings or other improvements on the Land (in the case of third party insurance) meeting the liability insured against; or
- (b) in or towards repairing or replacing insured Secured Property meeting the liability insured against; or
- (c) in reduction of the Secured Indebtedness even though those moneys may not have otherwise fallen due. Any money released to or received by the Mortgagor is to be held by the Mortgagor on trust for the Bank until applied in the manner required by this clause.

7 ENFORCEMENT

7.1 **When Enforceable:** If, at any time and for any reason, whether or not within the control of a party:

- (a) **Non-Payment:** the Mortgagor fails to pay on its due date any amount of the Secured Indebtedness; or
- (b) **Breach of Undertaking:** the Mortgagor does not perform or comply with any of its obligations under this Mortgage; or
- (c) **Statements Incorrect:** any statement by the Mortgagor in, or in connection with this Mortgage is not true, accurate and complied with when made or repeated; or
- (d) **Insolvency:** the Mortgagor, if an individual, commits an act of bankruptcy or the Mortgagor is insolvent or unable ' (to pay its indebtedness as it falls due or proceedings are commenced (and not dismissed within 30 days) or an order is made or any step is taken by a person for the dissolution of the Mortgagor; or
- (e) **Enforcement:** any legal process is levied or enforced against the Mortgagor or its assets or a resolution is passed or an order made for appointment of a liquidator to the Mortgagor, or a receiver, administrator, liquidator, provisional liquidator or statutory manager or other similar functionary is appointed in respect of the Mortgagor or the Land; or
- (f) **Cross Default:** any indebtedness of the Mortgagor (other than that owed to the Bank) exceeding \$5,000 is not paid when due or any security interest affecting any of its assets becomes enforceable; or
- (g) **Material Adverse Change:** in the opinion of the Bank, a material adverse change occurs in relation to the Mortgagor; or
- (h) **Incapacity:** the Mortgagor, being an individual, dies or becomes insane or becomes in any way legally incapacitated; or

- (i) **Avoidance or Repudiation:** the enforceability of this Mortgage is contested by any person or it becomes unlawful for the Mortgagor to comply with any of its obligations under this Mortgage; or
- (j) **Change in Control:** without the prior written consent of the Bank, there is any change in the control of the Mortgagor or any person controlling the Mortgagor; or
- (k) **Change Affecting Land:** all or any part of the Land:
 - (i) is sold, transferred, exchanged, leased or possession is relinquished or the Land is otherwise disposed of or the Mortgagor agrees to do any of these things without the Bank's prior written consent: or
 - (ii) is taken under any statute; or
 - (iii) is sold under a power of sale contained in any other Mortgage or charge affecting the Land; or
 - (iv) suffers a material reduction in the value of the Land: or
- (l) **Major Damage:** any Major Damage occurs and the Bank does not receive payment of the Secured Indebtedness within one month (or such longer period as the Bank may in its absolute discretion specify in writing); or
- (m) **Unit Title:** where the Secured Property includes any stratum estate under the Unit Titles Act 1972 and:
 - (i) the principal unit is damaged or destroyed so that it is no longer habitable by the Mortgagor; or
 - (ii) any application is made to a District Land Registrar or a Court for the cancellation of the unit plan or settlement of any scheme which affects any part of the Land or if any such cancellation or settlement is made; or
 - (iii) an application is made for the appointment of an administrator of the Body Corporate under section 40 of the Unit Titles Act 1972; or
- (n) **Other Default:** any event or circumstance (however described) which in accordance with any of the Loan Terms constitutes an event or circumstance which entitles the Bank to demand repayment of all or any of the Secured Indebtedness and/or to exercise all or any of the Banks rights (including enforcement rights), powers, discretions and/or remedies under any of the Loan Terms,

then the security constituted by this Mortgage will become immediately enforceable (without notice to or the consent of the Mortgagor or any other person and without prejudice to any other right the Bank may have) and the Bank may, at any time, by notice to the Mortgagor declare all or any part of the Secured Indebtedness to be, and that indebtedness will be, due and payable (if not already so) either immediately or upon demand or at a later date as the Bank may specify.

8. RIGHTS OF BANK ON DEFAULT

- 8.1 **Rights:** On the security created under this Mortgage becoming enforceable, the Bank may in the name of the Mortgagor or otherwise, at any time do anything and exercise any right which the Mortgagor could do or exercise in relation to the Secured Property, including (without limitation) the right to:
 - (a) **Take Possession:** take possession of the Secured Property, wherever held and whomever held by;
 - (b) **Dealing with Secured Property:** insure, repair, improve, maintain, replace, or operate the Secured Property in any manner;

- (c) **Disposal of Secured Property:** dispose of or concur in the disposal of any of the Secured Property and any interest in the Secured Property together or in parts, for cash or as credit or for other assets or consideration, and upon whatever terms it thinks fit;
 - (d) **Cancellation of Contracts:** buy in, rescind or vary any agreement, right or obligation;
 - (e) **Lease:** whether or not the Bank has taken possession:
 - (i) lease any of the Land (with or without any purchase or renewal option) to any person for any term at such rent, and subject to such covenants and conditions and, if with a purchase option, at such price as the Bank may consider expedient;
 - (ii) accept surrenders of any present or future leases or tenancies;
 - (iii) determine any such leases or tenancies; and
 - (iv) make any arrangements with any lessee, tenant or occupier of the Land, or the holder of any security interest affecting any Secured Property;
 - (f) **Severance of Fixtures:** sever fixtures;
 - (g) **Giving of Receipts:** give a receipt for money paid to or an asset received by it (which receipt will discharge the payer or the person delivering that asset);
 - (h) **Acquisition of Property:** acquire any asset for inclusion in the Secured Property;
 - (i) **Borrowing of Money:** advance money to, or raise borrowed money from, any person with or without a security interest over the Secured Property;
 - (j) **Settlement of Disputes:** bring, defend, submit to arbitration, compromise or abandon any claim or proceeding relating to any Secured Property;
 - (k) **Authorise Transactions:** generally carry out, or cause or authorise to be carried out, any transaction, scheme or arrangement whatsoever in relation to the Secured Property which it may consider necessary or expedient;
 - (l) **Delegation:** delegate any of the rights conferred upon it under this Mortgage or bylaw; and
 - (m) **Incidental Rights:** do or omit to do anything incidental to the rights contained in this clause 8.1.
- 8.2 **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 this Secured Indebtedness and secures all amounts owing by the Mortgagor to the Bank. Default under the provisions of such collateral securities will be a default under this Mortgage and remedies of the Bank under such collateral securities and this Mortgage will be collateral and coexistent and may be exercised at the same time or at different times and in any order.
- 8.3 **Costs:** All sums expended by the Bank in the exercise of the Bank'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:
- (a) payable by the Mortgagor; and
 - (b) secured by this Mortgage.
9. **RECEIVER**
- 9.1 **Appointment of Receiver:** On the occurrence of an Event of Default, or on the request of the Mortgagor, or if any of the Secured Property appears to the Bank to be in

danger of being taken or affected under any process of law by any creditor or to be otherwise in jeopardy in any respect, the Bank may (in addition to and without prejudice to any of its other rights) at any time appoint in writing (and remove, replace and fix the terms of appointment of) one or more Receivers jointly and severally) in respect of the Land Income or the Secured Property on terms considered necessary or expedient by the Bank. Such appointment may be made either before or after the Bank has taken possession of any Secured Property or any dissolution of the Mortgagor.

- 9.2 **Receiver Agent of Mortgagor:** A Receiver will be the agent of the Mortgagor. The Mortgagor will be solely responsible for the acts and defaults (including misconduct, negligence or default) of a Receiver
- 9.3 **Receiver's Rights:** Subject to any restriction imposed by the Bank, a Receiver will have all the rights conferred on receivers and managers by law, all the rights (*mutatis mutandis*) which are mentioned in clause 8.1 whether or not those rights are yet enforceable by the Bank and all the rights which the Mortgagor itself may have in relation to the Land Income and the Secured Property.
- 9.4 **Receiver's Remuneration:** The remuneration of a Receiver may be fixed by the Bank. However, this remuneration is payable by the Mortgagor and forms part of the Secured Indebtedness, secured by the Secured Property.

10. PROCEEDS OF SALE

- 10.1 **Proceeds of Sale:** All money received by a Receiver or the Bank after the exercise of any enforcement right is to be applied, and any money received by the Bank after an Event of Default has occurred is to be applied by it, subject to any claim ranking in priority to the Secured Indebtedness (and subject to any law to the contrary), in the following order of priority towards:
- (a) all costs and expenses (including legal fees (on a solicitor and own client basis) and taxes) incurred by a Receiver or the Bank in connection with, or as a result of the exercise of, their respective rights (including the remuneration of a Receiver) under or otherwise in relation to this Mortgage in the order determined from time to time by the Receiver or the Bank;
 - (b) all other Secured Indebtedness, in the order determined from time to time by the Bank; and
 - (c) the claims of those entitled to any surplus.
- 10.2 **Contingent Amounts:** If, at the time of distribution of any money under clause 10.1, any part of the Secured Indebtedness is contingently owing to the Bank or is not yet due and payable, the Mortgagor will pay to the Bank or the Receiver (failing which the Bank or a Receiver may retain) an amount equal to all or part of that contingent indebtedness. This amount is to be placed in an interest bearing deposit account until that contingent or future indebtedness becomes actually due and payable or otherwise ceases to be contingently owing.

11. PROTECTION PROVISIONS

- 11.1 **Performance of Mortgagor's Obligations by Bank:** The Bank incurs no liability and undertakes no obligation of the Mortgagor in respect of the Secured Property by virtue of this Mortgage or any security interest created under this Mortgage. However, in default of the Mortgagor doing so, the Bank may (but need not) pay or discharge any liability, or perform or comply with any obligation, of the Mortgagor in respect of any Secured Property. Each amount spent for that purpose (including costs and expenses (including legal fees on a solicitor and own client basis)) must be reimbursed by the Mortgagor on demand by the Bank.
- 11.2 **Protection of Bank and Receiver:** Neither the Bank nor any Receiver is:
- (a) obliged to:

- (i) give notice of this Mortgage to a debtor of the Mortgagor or to any other person; or
 - (ii) make any enquiry as to the nature or sufficiency of any payment received by it in respect of the Land Income or any indebtedness owing to the Mortgagor, or be accountable for any such amount not received or collected by it; or
 - (iii) enforce payment of the Secured Indebtedness or performance of, or compliance with, the Secured Obligations; or
 - (iv) take any action or bring any proceedings for any of those purposes; or
- (b) liable in respect of any loss or damage which results from, or is contributed to by, the exercise or attempted or purported exercise or the non by the Bank or a Receiver of its rights under this Mortgage or conferred by law.

11.3 **Protection of Third Parties:** Any person dealing with the Bank or a Receiver exercising or purporting to exercise rights under this Mortgage:

- (a) need not enquire whether the relevant rights were exercised or are exercisable, or about the propriety or regularity of any transaction or dealing; and
- (b) will not be affected by notice that any transaction or dealing is unnecessary or improper.

Any such transaction or dealing will, as regards other parties, be deemed to be authorised by those rights and to be valid regardless of any such irregularity or impropriety.

11.4 **Indemnity:** The Mortgagor will on demand indemnify and hold the Bank and each Receiver, and each Attorney harmless against each cost, loss, expense, liability sustained or incurred by it as a result of:

- (a) the occurrence or continuance of an Event of Default; or
- (b) anything done or omitted, or purported to be done or omitted, by the Bank in the proper exercise or purported proper exercise of its rights under this Mortgage or conferred by law; or
- (c) a defect in the Mortgagor's title to any property which is, or appears to be, Secured Property;

by payment to the Bank of the amount the Bank certifies is required to indemnify it for that loss, expense or other liability.

11.5 **No Obligation to Marshal:** The Bank need not marshal, enforce or apply under, or appropriate, recover or exercise:

- (a) any security interest, guarantee or other entitlement held at any time by it; or
- (b) any moneys or assets which it at any time holds or is entitled to receive, before this Mortgage is enforced.

12. PAYMENT

12.1 **Currency:** Unless otherwise agreed in writing, the New Zealand Dollar is the currency of account and payment for each amount at any time due under this Mortgage.

12.2 **Mode of Payments:** Each payment due to the Bank under this Mortgage is to be made during normal banking hours, in each such case on the due date, in immediately available freely transferable cleared funds and to the bank account which the Bank specifies from time to time. Amounts due and payable by the Mortgagor will be debited from the Bank account nominated by the Mortgagor. If the Mortgagor does not nominate an account, the Bank may, at any time, debit from any of the Mortgagor's accounts with the Bank any amounts due and payable.

- 12.3 **Payments to be Free and Clear:** Each payment under this Mortgage shall be unconditional and free and clear of any restriction, and shall be in full, without any deduction or withholding whatsoever (whether in respect of tax, set-off, counterclaim, charges or otherwise) unless such deduction or withholding is required by law.
- 12.4 **Reinstatement:** If any payment to the Bank under this Mortgage is avoided by law, the Mortgagor's obligation to have made such payment will be deemed not to have been affected or discharged and the Mortgagor shall on demand indemnify the Bank against any costs, claim, loss, expense or liability (together with any taxes thereon) sustained or incurred by the Bank as a result of the Bank being required for any reason (including any dissolution law) to refund all or part of any amount received or recovered in respect of such payment and in any event pay to the Bank on demand the amount so refunded, In any such case each party will be deemed to be restored to the position in which each would have been, and will be entitled to exercise the rights they respectively would have had, if that payment had not been made.
13. **SET- OFF**
- 13.1 **Set-Off:** The Mortgagor authorises the Bank to apply (without prior notice or demand) any credit balance of the Mortgagor on any account, in any currency and at any of the Bank's offices in or towards satisfaction of any Secured Indebtedness then due to the Bank under this Mortgage and unpaid.
- 13.2 **Contingent Amounts:** If at any time an amount is contingently due to the Bank or an amount due is not quantified, the Bank may retain and withhold repayment of any such credit balance and the payment of interest or other moneys pending that amount becoming due or being quantified and may set off the maximum liability which may at any time be or become owing to the Bank by the Mortgagor and in each case without prior notice or demand.
- 13.3 **Rights:** The Bank:
- (a) may use any credit balance to buy other currencies and may break any term deposit to effect that application; and
 - (b) need not exercise its rights under this paragraph, which are without prejudice and in addition to the rights of the Bank under this Mortgage and any right of set-off, combination of accounts, lien or other right to which it is at any time entitled (whether by law or contract).
- 13.4 **Authority to Debit:** The Bank is authorised to debit any account of the Mortgagor with any amount of Secured Indebtedness due from time to time, The Bank may exercise this right even if the account concerned is already in debit, and even if the amount debited takes the debit balance of the account over any approved limit.
- 13.5 **Deposits with Bank:** Each credit balance of the Mortgagor with the Bank will be held on the following basis:
- (a) the credit balance, and all Mortgagor's rights in relation to it, are incapable of assignment or of being the subject of a security interest (other than in favour of, or with the prior written consent of, the Bank); and
 - (b) if at any time an Event of Default has occurred and has not been remedied, the Mortgagor will have no right to withdraw (and the Bank will have no obligation to repay) any moneys from that credit balance (other than with the prior written consent of the Bank).
14. **TYPE OF MORTGAGOR**
- 14.1 **More than One Mortgagor:** If more than one person is named as the Mortgagor, then:

- (a) **References to Mortgagor:** unless the context otherwise requires, each reference to the “Mortgagor” will be a reference to each of them separately as well as to all of them together;
 - (b) **Joint and Several:** each of them is jointly and severally liable for all obligations of the Mortgagor;
 - (c) **Release:** the Bank may, in its discretion, release any one or more of them provided that:
 - (i) no release shall be of any effect unless it is in writing and signed on behalf of the Bank;
 - (ii) no other Mortgagor shall be discharged, nor shall its obligations be affected by such release; and
 - (iii) the Bank shall be under no obligation to any other Mortgagor in respect of such release even though that Mortgagor’s rights in subrogation, contribution or otherwise may be prejudiced as a result; and
 - (d) **Partnership:** where the Mortgagor also consists of partners in a partnership, each of them acknowledges (in addition to the above) that:
 - (i) distinct from its joint liability as a partner, it undertakes a separate liability for all obligations of the Mortgagor so that the Bank may have recourse to its personal assets on the same basis as any other personal creditor; and
 - (ii) it is obliged to inform the Bank immediately upon the appointment of a new partner or any dissolution of the partnership.
- 14.2 **Trustee:** If the Mortgagor has entered into the Mortgage in the capacity as a trustee of a trust:
- (a) **Trustee Warranties:** the Mortgagor warrants and undertakes to the Bank that the entering into of this Mortgage is authorised by the relevant trust deed and/or by the Trustee Act 1956. The warranties which have been given by the trustee in any trustee certificate will also continue to apply;
 - (b) **Enforcement:** in enforcing this Mortgage the Bank:
 - (i) **Recourse to Trust Assets:** may have full recourse to all of the assets of the trust and will be subrogated to the trustee’s right to be indemnified from those assets or by any other person (including any beneficiary of the trust); and
 - (ii) **Personal Assets:** may have recourse to the personal assets of the trustee unless that trustee is a Limited Liability Trustee in which case clause 14.2(c) applies;
 - (c) **Limited Liability Trustee:** if the Bank has agreed in writing that the Mortgagor is a “Limited Liability Trustee”, then its personal liability will be limited to the assets of that trust. However, this limitation of personal liability will not apply and the Bank may exercise all the rights it has against the Limited Liability Trustee personally if the Limited Liability Trustee:
 - (i) is in wilful breach of trust or has acted dishonestly; or
 - (ii) lacks the power or authority to sign this Mortgage or any of the Loan Terms in the capacity as a trustee; or
 - (iii) makes or has made representations or warranties under clause 4 which are or become untrue or incorrect; or

- (iv) is in breach of any of the obligations specified in this clause 14.2, and in each such case, the Limited Liability Trustee will have full personal liability under this Mortgage, and the Bank may have recourse to its personal assets as well as to the trust assets.
- (d) **Events of Default:** it shall be an Event of Default if any of the following occur without the Banks prior written consent:
 - (i) the Mortgagor ceases to be a trustee of the trust;
 - (ii) a resolution is passed by the trustees or beneficiaries of the trust, or any other action is taken, to wind up the trust; or
 - (iii) the trust deed is amended or varied,
- (e) **Trustee Retirement:** each trustee confirms and undertakes that the retirement of a trustee shall be effected in terms of section 45 of the Trustee Act 1956 and that, on retirement, he she or it will notify the Bank in writing that a trustee has retired in accordance with those provisions. Each trustee is to remain liable under this Mortgage after he she or it ceases to be a trustee until released in writing by the Bank. The Bank will release such trustee from its liabilities under this Mortgage (in its capacity as trustee and not, if applicable, in its personal capacity) when the Bank is satisfied that all things required for vesting the Secured Property in the continuing or new trustee have been executed and done.

This clause 14.2 is not intended to enter notice of a trust in the register, in contravention of section 128 of the Land Transfer Act 1952.

15. LEASES

- 15.1 Where the Secured Property includes a lease the Mortgagor will pay the rent due and perform all its obligations under the lease and will do all things necessary or expedient to obtain an extension or renewal of the lease,
- 15.2 The Mortgagor irrevocably appoints the Bank, each receiver and each duly authorised officer or attorney of the Bank severally, to be its attorney (with full power to appoint substitutes and to sub-delegate) on behalf of the Mortgagor and in its name or otherwise and at its expense to do any of the following at any time:
 - (a) make any enquiry of the lessor under the lease concerning the observance of its terms;
 - (b) anything necessary to apply for and obtain relief against forfeiture of the lease or relief against refusal of the lessor to grant a renewal of or a new lease in place of the lease or to assure to the Mortgagor the lessor's reversion expectant in the Lease;
 - (c) anything necessary to obtain a new or a renewed lease or an assurance of the reversion in place of the lease pursuant to the provisions contained or implied therein (whether or not at the same rent or for any similar term or upon the same or any other covenants conditions and provisions);
 - (d) give and/or take any security by way of mortgage of any such new or renewed lease or reversion in substitution for or addition to this security upon and subject to terms covenants and conditions as similar to those of this Mortgage as the circumstances will permit;
 - (e) ask, demand, recover receive and give good and valid receipts and discharges for any compensation damages or other moneys for any cause including the value of improvements and buildings which shall or may be payable if any person other than the Mortgagor becomes the purchaser at auction of any right to a lease of the Land or otherwise; and

- (f) enter into execute and register any instrument in writing whatsoever necessary or expedient for any of the purposes aforesaid including a request to the District Land Registrar under section 117 or under section 1 18A of the Land Transfer Act 1952.

16. UNIT TITLES

16.1 **Unit Title Requirements:** Where the Secured Property includes any stratum estate under the Unit Titles Act 1972 the Mortgagor will:

- (a) duly and punctually pay to the Body Corporate all moneys payable by the Mortgagor pursuant to the Unit Titles Act 1972 and the rules of the Body Corporate; and
- (b) comply with all other obligations under the Unit Titles Act 1972 and the Body Corporate rules.

16.2 **Voting:** The Mortgagor's voting rights under section 41 of the Unit Titles Act 1972 may be exercised by the Bank or by its Attorney. The Mortgagor will not vote on any resolution put at a meeting of the Body Corporate requiring a unanimous vote for its passing without the prior consent of the Bank, and then the Mortgagor will vote only as directed by the Bank.

16.3 **Bank to be Attorney:** The Mortgagor hereby irrevocably appoints the Bank to be the attorney of the Mortgagor, and at the Mortgagor's costs to:

- (a) receive notice or, attend, vote at and otherwise take part at meetings and other proceedings of the Body Corporate;
- (b) appoint proxies for voting at meetings;
- (c) sign resolutions passed by entry into the Body Corporate minute book; and
- (d) obtain information from the Body Corporate concerning the affairs of the Body Corporate and compliance by the Mortgagor with the rules.

17. FARMING PROVISIONS

17.1 **Farm Land:** Where the Secured Property includes any Land which is used or is suitable or use for agricultural, pastoral, orchard or other farming purposes the Mortgagor will, at its own expense:

- (a) keep the land clear of all blackberry, gorse, noxious plants and animal and insect pests;
- (b) take all reasonable steps to control disease in crops, pastures, plants and stock on the Land;
- (c) 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;
- (d) not (without the prior written consent of the Bank) make any material change in the type of farming conducted on the Land or permit a security interest to attach to crops.

18. DEVELOPMENT

18.1 **Continuance of Construction:** The Mortgagor will immediately and continuously proceed with any construction on the Land of buildings which it has indicated to the Bank it will start or continue with construction of (such buildings being referred to as "the Development") in a good and workmanlike manner and in accordance with all relevant building codes, regulations and statutes and plans and specifications submitted to and approved by the Bank and any approval or consent issued by the relevant authority.

18.2 **Completion by the Bank:** If the Mortgagor fails to comply with any provision of this clause or an Event of Default occurs, the Bank may (without prejudice to any of its other rights herein or at equity or at law) immediately or at any later time do anything that may, in the opinion of the Bank, be necessary or expedient in order to complete the Development and the deposit of any necessary plan (either wholly or to such extent as the Bank may think fit) and without in any way limiting the generality of the above, the Bank may:

- (a) (but need not) call tenders or accept the lowest of any tender if tenders are called;
- (b) enter into, with any person who may have contracted with or have been employed by the Mortgagor, any agreement or arrangement as the Bank considers desirable for the completion of any of the Development and to any such person any amount which the Bank thinks desirable for any work previously done or materials previously supplied by such person;
- (c) make any deviation from the Mortgagor's plans and specifications as may in the opinion of the Bank be necessary or desirable;
- (d) carry out any work and do anything else which the Bank considers necessary or expedient to preserve, secure, protect and maintain any partly finished portion of the Development;
- (e) take any step, incur any liability and pay any expense which the Bank may consider necessary or expedient for the purpose of procuring the removal from the title to the Land of any security interest, whether or not it has priority over this Mortgage;
- (f) enter on to any of the Land for the purposes of doing any of these things, and exclude the Mortgagor from any of the Land;
- (g) effect any Insurance which the Bank may think fit;
- (h) employ consultants, contractors, servants, agents and workmen; and
- (i) do anything necessary or desirable to deposit any Land Transfer Plan required to facilitate completion of the Development and the conversion of the Development to strata titles under the Unit Titles Act 1972, or (at the Banks discretion) to cross-lease the title to the Land, or to amalgamate the title to the Land or whatever other title arrangements that the Bank considers necessary.

Without limiting the effect of clause 11.4, the Mortgagor agrees to indemnify the Bank against any claims or demands made against the Bank in exercising its rights under this clause. Each amount paid by the Bank pursuant to this clause must be reimbursed by the Mortgagor to the Bank upon demand,

18.3 **No Liability:** The Bank:

- (a) assumes no responsibility or liability to the Mortgagor for any matter relating to the Development or its completion, even if the Bank may have purported to approve the Development or its completion; and
- (b) if the Bank decides in its discretion not to complete the Development, or having commenced to do so decides to discontinue completion, may abandon all further work and will not incur any liability as a result of or for any work carried out before abandonment.

18.4 **No Implication of Skill:** Completion or partial completion by the Bank in accordance with this clause will not imply the exercise by or on behalf of the Bank of any care or skill nor relieve the Mortgagor from its warranties, covenants and obligations to ensure good and workmanlike construction of the Development.

19. **POWER OF ATTORNEY**

- 19.1 **Appointment:** The Mortgagor irrevocably appoints the Bank, each Receiver and each duly authorised officer or attorney of the Bank severally to be its attorney (with full power to appoint substitutes and to sub-delegate) on behalf of the Mortgagor and in its name or otherwise and at its expense to complete, execute (under seal or otherwise) and otherwise perfect all assignments, transfers, security interests and other agreements and documents, and generally to do all other acts and things which:
- (a) the Mortgagor should do under this Mortgage; or
 - (b) the attorney may consider necessary or expedient to:
 - (i) secure to the Bank the full benefit of their rights and intended rights under this Mortgage; or
 - (ii) secure the payment of the Secured Indebtedness and performance of and compliance with the Secured Obligations; or
 - (c) are incidental to any of those matters.
- 19.2 **Ratification:** The Mortgagor ratifies and confirms, and agrees to ratify and confirm, to each person dealing with the Bank, a Receiver and each Attorney whatever the Bank, a Receiver or that Attorney does or purports to do in the exercise or purported exercise of any of the rights referred to in this clause.
- 19.3 **Registration:** Upon registration of this Mortgage under the Land Transfer Act 1952, the power of attorney contained in this clause will be deemed to be deposited in the Land Registry Office concerned.
20. **RIGHTS AND RESTRICTIONS AT LAW**
- 20.1 **Rights Conferred on Mortgagees:** The Bank will have all rights conferred on or implied in favour of a mortgagee by any law in addition to the rights conferred by this Mortgage where those rights are consistent with and have not been excluded by the provisions of this Mortgage. In the case of any inconsistency, the provisions of this Mortgage will take priority to the extent permitted by law,
- 20.2 **Subject to Law:** Where the rights of the Bank under this Mortgage exceed or are inconsistent with any restrictions imposed by law which may not lawfully be varied or excluded, those rights will be subject to that law and may be exercised to the fullest extent permitted by it.
- 20.3 **Terms implied under Property Law Act 2007:** The covenants set out in clauses 3(2), 8(2), 16(2) and 18 of Part 1 of Schedule 2 to the Property Law Act 2007 are excluded from this Mortgage. The remaining provisions of Part 1 of Schedule 2 to the Property Law Act 2007 apply to this Mortgage, but in the event of any conflict with the provisions of this Mortgage or any associated loan agreement, this Mortgage or that loan agreement shall prevail.
- 20.4 **Personal Property Securities Act 1999:** The Mortgagor waives any right to receive a copy of a verification statement confirming registration of a financing statement or a financing change statement under the PPSA and agrees, to the extent permitted by law, that in respect of any arrangement between the Mortgagor and the Bank that:
- (a) **Rights:** the Mortgagor shall have no rights under (or by reference to) sections 114(1), 133 or 134 of the PPSA;
 - (b) **Part 9 Provisions:** the provisions of Part 9 of the PPSA which are for the benefit of the Mortgagor, or place obligations on the Bank, shall apply only to the extent that either they are mandatory or the Bank agrees to their application;
 - (c) **Additional Rights:** where the Bank has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply; and

- (d) **Change Demands:** where the Mortgagor registers a change demand under section 162 of the PPSA, the Bank may at its absolute discretion charge a fee for complying with the change demand.

21. ASSIGNMENT

- 21.1 **The Bank:** The Bank may assign or transfer any of its rights or obligations under this Mortgage without the consent of the Mortgagor. Each assignee or transferee will have the same rights against the Mortgagor under this Mortgage (or relevant portion of those rights if it is the assignee or transferee of part only) as if named in this Mortgage as the Bank.
- 21.2 **Disclosure of Information:** The Bank may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with this Mortgage are contemplated, any information about the Mortgagor whether or not that information was obtained in confidence and whether or not that information is publicly available,
- 21.3 **The Mortgagor:** The Mortgagor may not assign or transfer any of its rights or obligations under this Mortgage without the consent of the Bank.

22. NOTICES

- 22.1 **Notices:** Any demand or notice required or authorised to be served on the Mortgagor under or in relation to this Mortgage may be signed by the Bank or the Bank's agent in accordance with this clause.
- 22.2 **Method of Service:** The demand or notice may be served:
- (a) by delivering it to the Mortgagor personally; or
 - (b) by posting it addressed to the Mortgagor at the Mortgagor's place of residence or place of business last known to the Bank; or
 - (c) by facsimile to the facsimile number last known to the Bank; or
 - (d) in the case of a company, by leaving it at its registered office or by posting it addressed to the Mortgagor at its registered office or addressed to it at its place of business last known to the Bank or by delivering it to any person who is named on the public register as a director or secretary of the company.
- 22.3 **When Service is Effected:** Subject to clause 22.2, a demand or notice is deemed served at the time:
- (a) in the case of personal delivery, when delivered;
 - (b) if posted by mail or delivered to a document exchange, on the third working day in the place of receipt (or fifth working day if sent to another country) after posting or delivery to the document exchange; and
 - (c) in the case of a facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile number of the recipient designated for the purpose of this Mortgage, provided that any notice or demand received or deemed to have been received after 5pm or on a day which is not a working day in the place to which it is delivered, posted or sent shall be deemed not to have been received until the next working day in that place.
- 22.4 **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 Mortgagor, whether to the knowledge of the Bank 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.

- 22.5 **Other Modes of Service:** The modes of service provided by this clause do not limit any other sufficient and lawful mode of service and are subject to any mandatory provisions in any statute.
- 22.6 **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 Mortgagor.
- 22.7 **Appointment of New Zealand Agent by Overseas Owner:** If the Mortgagor is not resident in New Zealand, the Bank may withhold any advance or making of any accommodation to the Mortgagor until the Mortgagor has appointed an agent in New Zealand for the purposes of accepting service on its behalf of any notice, cross-notice or other documents issued under the Property Law Act 2007.
23. **COSTS**
- 23.1 **Expenses:** The Mortgagor will pay all costs, expenses and administrative fees (including all legal expenses on a solicitor and own client basis) and taxes sustained or incurred by the Bank in connection with:
- (a) the preparation, negotiation, entry into and registration of this Mortgage and each other transaction required or contemplated by this Mortgage;
 - (b) each amendment to, or waiver in respect of, and discharge of this Mortgage or any transaction required or contemplated by this Mortgage; and
 - (c) the exercise of, or in protecting or enforcing the Bank's rights or attempting to do so, or otherwise in connection with the Bank's rights, under this Mortgage or in respect of any transaction required or contemplated by this Mortgage,
- in each case on demand and on a full indemnity basis.
- 23.2 **Taxes:** The Mortgagor will pay promptly any stamp or similar duty and any tax (including Goods and Services Tax under the Goods and Services Tax Act 1985) and registration fee payable in connection with:
- (a) the entry into, performance, registration, enforcement or admissibility in evidence of this Mortgage; and
 - (b) an amendment to, or waiver in respect of, this Mortgage, and will indemnify and hold the Bank harmless against any liability with respect to, or resulting from, any failure to pay, when due, any duty, tax or fee.
24. **MISCELLANEOUS**
- 24.1 **Rights and Waivers:** Time is of the essence in respect of all dates and times for performance by the Mortgagor of its obligations under this Mortgage. The rights of the Bank under this Mortgage are cumulative, may be exercised as often as it considers appropriate and are in addition to its rights provided by law. No failure to exercise, and no delay in exercising, any such right will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by the Bank of its rights will be effective unless it is in writing signed by the Bank.
- 24.2 **Production of Documents:** The Bank is not bound to produce at a Land Registry office or elsewhere any document of title or this Mortgage:
- (a) while the Mortgagor is in default under a Mortgage;
 - (b) until the reasonable costs of production have first been paid to the Bank.
- 24.3 **Party Granting Security is Principal and not Surety:** Although as between the parties giving this Mortgage one such party giving this mortgage may be a surety only, nevertheless as between the Bank and each party giving this Mortgage the party giving this Mortgage will, in relation to the Secured Indebtedness, be a principal party and will

