

*Form of Registrable Memorandum  
Section 155A, Land Transfer Act 1952*

Barcode

**Class of Instrument in which provisions are intended to be included:**

**Mortgage**

Person executing Memorandum:

**TSB Bank Limited at New Plymouth**

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

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## MEMORANDUM

**IN CONSIDERATION** of the Mortgagee providing or agreeing to provide financial services to or for the accommodation of the Mortgagor, by executing the Mortgage:

- (a) the Mortgagor covenants and agrees with the Mortgagee upon the terms set out in this Memorandum; and
- (b) the Mortgagor mortgages to the Mortgagee all of the Mortgagor's estate and interest in the land described in the Mortgage.

### 1. INTERPRETATION

- (a) **Construction of terms:** In this Memorandum, unless inconsistent with the context:
  - (i) Gender - words importing one gender shall include all genders;
  - (ii) Headings - clause and other headings are for ease of reference only and do not form part of the clause or affect the interpretation;
  - (iii) The singular includes the plural and vice versa;
  - (iv) A reference to a "person" extends to and includes an individual, a company or other body corporate, a trust, and a partnership;
  - (v) A reference to "property" means everything that is capable of being owned, whether real or personal, tangible or intangible and includes any estate or interest in property;
  - (vi) A reference to a Statute shall include reference to Regulations made pursuant to such Statute and all Statutes or Regulations passed in substitution for such Statute or Regulation.
- (b) **Meaning of certain words:** In this Memorandum, unless inconsistent with the context:
  - (i) "accommodated person" means any person:
    - (aa) with whom the Mortgagee contracts or makes any arrangements; or
    - (bb) to whom the Mortgagee provides any financial service or facility;

for the accommodation of, at the request of, at the direction of or on account of the Mortgagor;
  - (ii) "financial accommodation" means any financial facility of any nature whatsoever provided to or for the accommodation of the Mortgagor which is included in the definition of Secured Moneys;
  - (iii) "for the accommodation of the Mortgagor" means at the request of, at the direction of or on account of the Mortgagor and if there is more than one Mortgagor, any one of them;
  - (iv) "land" means the land described in the Mortgage being mortgaged to the Mortgagee pursuant to the terms of the Mortgage together with all buildings and other improvements;
  - (v) "Mortgage" and "this Mortgage" means this Memorandum and any electronic instrument or paper instrument that is signed by a Mortgagor or on behalf of a Mortgagor which incorporates the provisions contained or implied in this Memorandum;
  - (vi) "Mortgagee" means TSB Bank Limited and includes its assigns;
  - (vii) "Mortgaged Property" means the property mortgaged to the Mortgagee pursuant to the Mortgage;

- (viii) "Mortgaged Property Proceeds" means all moneys payable to the Mortgagor arising from any activity carried out on the land, from any profit a prendre or forestry right, or out of the ownership, use or occupation of the land or any agreement relating to its ownership, use or occupation including sale proceeds, any rents, any damages and any proceeds of any insurance in respect of loss of earnings or income, and any resource consent issued pursuant to the Resource Management Act 1991;
- (ix) "Mortgagor" means any person who executes a Mortgage which incorporates the provisions set out in this Memorandum and includes the Mortgagor's executors, administrators and assigns;
- (x) "priority limit" means the section 92 Priority Limit (if any) set out in the electronic instrument or paper instrument as the case may be;
- (xi) "Unarranged Interest Rate" means the interest rate charged by the Mortgagee where no formal agreement or arrangement has been made with the Mortgagee for the provision of financial accommodation;
- (xii) "Upon Demand" means upon demand being made by notice in writing and served in the manner prescribed by clause 37.
- (c) Terms implied in mortgages: The covenants, conditions and powers contained in Part 1 of Schedule 2 of the Property Law Act 2007 shall not apply to this Memorandum and are hereby negated.

## **2. "SECURED MONEYS" DEFINED**

- (a) In this Memorandum the expression "Secured Moneys" shall mean all moneys which are now or may at any time in the future be owing to the Mortgagee by the Mortgagor or any accommodated person including by way of example and not by way of limitation, all moneys owing in respect of:
  - (i) Loans, credit, advances or other financial services of any nature whatsoever made or given to or for the accommodation of or at the request of the Mortgagor or any accommodated person;
  - (ii) Any bill of exchange, promissory note, draft, order or other negotiable instrument drawn, accepted, endorsed, paid, discounted or held by the Mortgagee at the request of the Mortgagor notwithstanding that such bill of exchange, promissory note, draft, order or other negotiable instrument may not have arrived at maturity;
  - (iii) Any letter of credit or other facility for payment or receipt of moneys by or on behalf of the Mortgagor;
  - (iv) Payment made by the Mortgagee for the benefit of or at the request of the Mortgagor for goods or services acquired by or provided to the Mortgagor or any other person including but not limited to payment for Visa or other credit card facilities provided through the Mortgagee to the Mortgagor;
  - (v) The financing, shipment or confirming of goods on behalf or at the request of the Mortgagor;
  - (vi) The Mortgagee taking an assignment (whether absolute or by way of mortgage) of any debt or other obligation of the Mortgagor;
  - (vii) Any indebtedness arising out of any guarantee, indemnity, bond or other obligation given or undertaken by the Mortgagor to the Mortgagee or given or undertaken by the Mortgagee for or at the request of the Mortgagor;
  - (viii) All interest, commission, costs and charges payable by the Mortgagor to the Mortgagee or incurred by the Mortgagee in relation to this Mortgage or any indebtedness secured hereunder including all

those incurred by the Mortgagee in the exercise or attempted exercise of the Mortgagee's rights, powers and remedies hereunder;

- (ix) All amounts reasonably paid or advanced at any time by the Mortgagee for the protection, insurance, maintenance, preservation or repair of the Mortgaged Property or to remedy any default by the Mortgagor or and any other amounts contemplated by section 87 of the Property Law Act 2007;
  - (x) Any tax or other payment of any nature paid or payable to any government authority by the Mortgagee in relation to this Mortgage or the Secured Moneys whether in the exercise or attempted exercise of the Mortgagee's rights, powers or remedies under the Mortgage or otherwise;
  - (xi) Any other indebtedness whatsoever of the Mortgagor to the Mortgagee.
- (b) Any request by the Mortgagor to the Mortgagee to provide financial accommodation or undertake any financial obligation of the types specified in sub-clauses 2(a)(i)-(xi) (inclusive) above to or for any other person or persons shall result in the moneys owing by such person or persons to the Mortgagee being deemed to be moneys now or owing in the future to the Mortgagee by the Mortgagor.
- (c) Moneys are to be regarded as being included in the term "Secured Moneys":
- (i) Whether or not the liability for such moneys is matured or unmatured, actual or contingent, or liquidated or unliquidated;
  - (ii) Whether or not such moneys are also secured by any other security;
  - (iii) Whether or not any agreement or arrangement relating to such moneys expressly refers to this Mortgage;
  - (iv) Whether or not the liability for such moneys arises by agreement (express or implied), by operation of law or otherwise;
  - (v) Whether or not such moneys are owing by any Mortgagor or accommodated person (as the case requires) jointly with or otherwise in combination with any person who is not a Mortgagor or accommodated person.

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

- (a) **The Mortgagor must:**
- (i) Duly and punctually pay the Secured Moneys to the Mortgagee at the times and in the manner agreed upon between the Mortgagor and the Mortgagee from time to time or failing agreement Upon Demand served by the Mortgagee in the manner provided in clause 37; and
  - (ii) Observe, perform, fulfil and keep all of the other covenants and conditions in any agreement between the Mortgagor and the Mortgagee or between the Mortgagee and any other person or persons where the obligations of the other person or persons are guaranteed by the Mortgagor.
- (b) **Interest:** The Mortgagor must pay to the Mortgagee interest on the Secured Moneys from time to time (whether demand has been made or not) and where there is no express agreement or arrangement made between the Mortgagor and the Mortgagee (unless there is an express written agreement between the Mortgagor and the Mortgagee that no interest shall be payable) interest shall be payable at the Mortgagee's current Unarranged Interest Rate calculated with daily rests from the date on which the moneys become owing, and all such moneys and interest thereon shall be repayable Upon Demand.

#### **4. SECTION 92 PRIORITY LIMIT**

The provisions of this clause apply if a priority limit has been included in the Mortgage.

- (a) **Priority limit:** For the purposes of section 92 of the Property Law Act 2007, the maximum amount up to which the Secured Moneys will rank in priority to any subsequent mortgage, charge, security interest, or encumbrance is the priority limit recorded in the Mortgage;
- (b) **Stating priority limit neither a waiver nor representation:** Stating the priority limit does not act as a waiver of the Mortgagee's security under the Mortgage for so much of the Secured Moneys as may exceed the priority limit nor does it act as a representation of the total amount of credit to be provided to or for the accommodation of the Mortgagor or to be secured by the Mortgage.

#### **5. OTHER SECURITY PROVISIONS**

- (a) **Running and continuing security:** The Mortgage shall remain in full force and shall be a running and continuing security for the payment of the Secured Moneys and the observance and performance of all the covenants, conditions and agreements contained or implied in this Memorandum or in any deed or instrument collateral to this Memorandum notwithstanding that any sum or sums may from time to time be in credit and notwithstanding any settlement of account or other matter or thing whatsoever until a final discharge has been executed by the Mortgagee;
- (b) **Security not exclusive:** The remedies in the Mortgage are in addition to and not in substitution for any remedies provided by law and the Mortgage is in addition to and not in substitution for any other security or right the Mortgagee may now or in the future have and may be enforced against the Mortgagor or any other person without first having recourse to any such securities or rights;
- (c) **Rights unchanged:** The Mortgagee's rights will not be affected at any time by any amendment to the Mortgage, or (in respect of one party) the invalidity or unenforceability of the Mortgage against any other party or the release of any other party from the Mortgage or the failure of any other party to execute or otherwise be bound by the Mortgage for whatever reason and whether or not known to the Mortgagee, or 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).

#### **6. EXTENT OF SECURITY AND NEGATIVE PLEDGE**

- (a) The Mortgagor hereby mortgages to the Mortgagee all of the Mortgagor's right, title and interest in the land and assigns to the Mortgagee absolutely all of the Mortgagor's right, title and interest (present, future, legal and equitable) in the Mortgaged Property Proceeds;
- (b) The Mortgagor will not further mortgage, charge or otherwise encumber the land or any part of the land or any buildings, fixtures, fittings, or other improvements on the land without the prior written consent of the Mortgagee.

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

The Mortgagor represents and warrants to the Mortgagee that:

- (a) **Properly authorised and valid, binding and enforceable:** The 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) The Companies Act 1993 (where applicable);

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 obligations to the Mortgagee, legal, valid and binding;

- (b) **Inclusion of all other representations and warranties:** All representations and warranties given by the Mortgagor form representations and warranties of the Mortgage and the Mortgage must be read and construed to include such representations and warranties;
- (c) **Default:** No event of default has occurred and the Mortgagor 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, the company satisfies the solvency test as that term is defined in section 4 of the Companies Act 1993;
- (e) **Information:** The information provided by the party giving the Mortgage in connection with the Mortgage is true and accurate and remains true and accurate to the date of the 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;
- (f) **Continuation:** Each representation and warranty in the Mortgage is deemed to continue for as long as the 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.

## **8. INSURANCE**

### **(a) The Mortgagor must at all times:**

- (i) Insure and keep insured all buildings and insurable improvements on the land against such risks of loss or damage of any kind (including loss or damage by fire, earthquake, natural land-slip, volcanic eruption, hydro-thermal activity and tsunamis, fire resulting from any of the foregoing events, storm, flood, and such other risks as are normally covered by a comprehensive policy) which the Mortgagee may from time to time require;
- (ii) Obtain the insurance from an insurance company approved by the Mortgagee and in the joint names of the Mortgagor and the Mortgagee for their respective rights and interests;
- (iii) Obtain the insurance for full replacement value and on full replacement terms;
- (iv) If required by the Mortgagee, deliver to the Mortgagee the policy or policies of insurance;
- (v) Not later than midday on the day on which the premium falls due, pay such premium and upon request deposit with the Mortgagee the receipt for such premiums.

### **(b) The Mortgagor must not:**

- (i) Do or permit to be done anything that may prejudice or render void or voidable any such policy of insurance;
- (ii) Effect any further or other insurance on the buildings or other insurable improvements in the name of the Mortgagor.

- (c) **Application of insurance proceeds:** Where any insurance moneys become payable in respect of the destruction of or damage to any building or other improvements on the land, 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).

## **9. COVENANTS RELATING TO THE MORTGAGED PROPERTY**

- (a) **Pay outgoings:** The Mortgagor will punctually 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:** The Mortgagor will keep in good and substantial repair and condition, all buildings and other improvements on the land;
- (c) **Not alter or remove improvements without Mortgagee's consent:** The Mortgagor will not, without the Mortgagee's prior written consent (which consent may be arbitrarily withheld at the Mortgagee's sole discretion), cause or permit any buildings or improvements on the land to be removed, dismantled or altered in any way in whole or in part;
- (d) **Permit Mortgagee to access and inspect land:** The Mortgagee and the Mortgagee's agents may, at any reasonable time, enter upon the land and any buildings or other improvements erected on the land to view and inspect it or, where applicable, to exercise the powers contained in clause 18;
- (e) **Comply with all other obligations:** The Mortgagor will comply with:
  - (i) All obligations binding on the owner or occupier 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 Mortgagor or the Mortgagee under any Statute, Regulation or Bylaw.
- (f) **Comply with all land covenants:** The Mortgagor will 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 Mortgagor will comply with any restrictive covenant and any other covenant to which the land is subject.

## **10. COMPLIANCE WITH THE RESOURCE MANAGEMENT ACT 1991**

- (a) Any term defined in the Resource Management Act 1991 ("the RM Act") has the same meaning in this clause as it has in the RM Act. "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;
- (b) **Covenants:**
  - (i) **Comply with obligations under the RM Act:** The Mortgagor will, in respect of the land, comply with all obligations binding on the owner or occupier of the land under the RM Act, the rules of any relevant regional or district plan, the conditions of any resource consent or 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 RM Act. This sub-clause 10(b)(i) does not affect the generality of clause 10(c) of this clause;
  - (ii) **Not deal with resource consent:** The Mortgagor will not, without the Mortgagee's prior written consent, transfer or surrender any resource consent relating to the land;
  - (iii) **Not allow any resource consent to lapse:** The Mortgagor will 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 RM Act to carry on any non-complying use of or activity on the land;
  - (iv) **Notify the Mortgagee of certain events:** The Mortgagor will immediately notify the Mortgagee in writing of the occurrence of any of the following events or circumstances:

- (aa) The taking of any resource management step by any Mortgagor in relation to the land;
  - (bb) The receipt by the Mortgagor 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;
  - (cc) 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 RM Act;
  - (dd) The lapse of any such right;
  - (ee) The receipt by any Mortgagor of notice of any proposal by any authority to exercise any compulsory statutory power in respect of the land.
- (c) **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 sub-clause 10(b)(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 Mortgagor will take all reasonable and lawful steps required by the Mortgagee to prevent or mitigate the outcome (including any appropriate submission, appeal or other objection).

## **11. COMPLIANCE WITH THE BUILDING ACT 2004**

- (a) **Covenants:** Without limiting clause 9(e), the Mortgagor must at all times:
- (i) **Comply with the Building Act 2004:** comply and procure compliance by its agents, officers, employees, tenants and lessees with the Building Act 2004 including all Regulations and building codes in connection with the Building Act 2004 in respect of any land or buildings occupied or owned by the Mortgagor;
  - (ii) **Provide information to Mortgagee:** promptly upon receipt and promptly on request by the Mortgagee provide to the Mortgagee copies of all building consents, building certificates, code compliance certificates, compliance schedules, annual warrants of fitness and all other notices, applications, consents, demands and requests received or made by the Mortgagor in connection with the Building Act 2004 in respect of any land or buildings occupied or owned by the Mortgagor.
- (b) **Mortgagee to make communication and undertake works:** The Mortgagee shall be entitled, but not obliged, at the cost of the Mortgagor to give all notices, make all communications and applications, complete all works and do all things and take all steps on behalf of the Mortgagor as the Mortgagee may in its sole discretion deem necessary in order to ensure that any land occupied or owned by the Mortgagor and all buildings and structures on the land comply with the Building Act 2004. The Mortgagor shall on demand pay to the Mortgagee the amount of all costs, expenses and liabilities incurred by the Mortgagee pursuant to this clause. The Mortgagor irrevocably grants to the Mortgagee the right to enter on the land and all buildings or other improvements on the land the subject of this Mortgage, together with its employees, consultants, workmen and contractors to undertake and complete any works which the Mortgagee may deem necessary under this clause.

## **12. UNIT TITLES**

This clause applies where the estate in the land is or includes any stratum estate under the Unit Titles Act 1972.

- (a) **Covenants:** The Mortgagor must at all times:
- (i) **Pay Body Corporate levies:** duly and punctually pay to the Body Corporate all moneys from time to time that are payable by the Mortgagor pursuant to the Unit Titles Act 1972 and the Rules of the Body Corporate;



- (ii) **Comply with Rules of the Body Corporate and Unit Titles Act 1972 and enforce against others:** comply with all other obligations pursuant to the Unit Titles Act 1972 and the Rules of the Body Corporate and take all reasonable steps from time to time necessary to enforce the obligations of the Body Corporate and the other proprietors under the Unit Titles Act 1972;
  - (iii) **Effect redemption insurance:** keep and maintain a Mortgage Redemption Policy pursuant to Section 39(1)(b) of the Unit Titles Act 1972 in the name of the Mortgagee for an amount not less than such sum as the Mortgagee may reasonably require;
  - (iv) **Effect other insurance:** require the Body Corporate to insure and keep insured all buildings and other improvements on the land in accordance with the provisions of Section 15(1)(b) of the Unit Titles Act 1972;
  - (v) **Provide information to Mortgagee:** give the Mortgagee such information relating to the affairs of the Body Corporate as the Mortgagee requires from time to time.
- (b) **Secured Moneys payable upon certain events:** The Secured Moneys shall at once become due and payable and may be called up by the Mortgagee in the event of either:
- (i) The destruction of or damage to the principal unit so that the same shall no longer be habitable or usable; or
  - (ii) The appointment of an administrator pursuant to Section 40 of the Unit Titles Act 1972.
- (c) **Voting:** The Mortgagor's voting rights under Section 41 of the Unit Titles Act 1972 may be exercised by the Mortgagee and the Mortgagor shall not vote on any resolution put at a meeting of the Body Corporate requiring a unanimous vote of its passing without the prior consent of the Mortgagee and then the Mortgagor shall vote only as directed by the Mortgagee.

### **13. LEASEHOLD (INCLUDING CROSS-LEASE)**

This clause applies where the estate in the land includes a lease (including a cross-lease) or a licence ("the lease").

- (a) **Representation and warranties:** The Mortgagor represents and warrants to the Mortgagee that at the date of the Mortgage there is no subsisting default under the lease and that the lease is not liable for forfeiture or cancellation.
- (b) **Covenants:** The Mortgagor must:
  - (i) **Pay the rent, comply with the terms of the lease and exercise rights:** 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 exercise the rights of 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 terms of the lease;
  - (ii) **Ensure lessor complies:** take all reasonable steps to enforce compliance by the lessor with the lessor's obligations under the lease and, if a cross-lease, then also 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 Mortgagor, 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 Mortgagor, serve on the Mortgagee a copy of any submission to arbitration of any matter under the

lease or if the lease is a cross-lease, under any of the other cross-leases;

- (v) **Comply with the 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, are necessary or expedient to exercise any right of renewal contained in the lease and to secure the registration of a renewal or a renewed lease;
  - (vii) **Deliver mortgage over renewed lease to the Mortgagee:** either execute and deliver to the Mortgagee a valid and registrable mortgage granting a new mortgage over any 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 the renewed lease of a statement pursuant to section 117 of the Land Transfer Act 1952;
  - (viii) **Apply to court for relief against forfeiture or relief against refusal to grant a renewal of or new lease:** where required by the Mortgagee so to do, execute and perform all acts, deeds, matters and things 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;
  - (ix) **Exercise rights under lease:** on instructions of the Mortgagee, give any notice and exercise any right or power under the lease or, if this Mortgage is a mortgage of a cross-lease, under any of the other cross-leases.
- (c) **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 Mortgagor Upon Demand if the lease is cancelled or otherwise comes to an end or if the lease becomes invalid.

#### **14. FARMING PROVISIONS**

This clause applies where the land is used or is suitable for agricultural or horticultural purposes. The Mortgagor will from time to time and at all times during the currency of this Mortgage at the cost of the Mortgagor:

- (a) **Clear weeds:** Keep down, clear and eradicate all blackberry, gorse, noxious weeds and plants, and vermin from and off the land and comply with the law for the time being in force relating to such matters and for any of such purposes will do such acts and things as shall be required by the Mortgagee;
- (b) **Control disease:** Take all reasonable steps to control disease in crops, pastures, plants and stock on the land;
- (c) **Comply with Statutes, Regulations, Ordinances and Bylaws:** Generally comply with all Statutes, Regulations, Ordinances and Bylaws for the time being in force governing or relating to fences, to the condition of the land or buildings or to any business carried on upon the land and will comply with all notices lawfully given by any person pursuant to any such Statute, Regulation, Ordinance or Bylaw;
- (d) **Farm and manage:** Farm and manage the land in accordance with established farm management practice and keep the land or such part as is or has been usually cultivated properly cultivated and fertilised in accordance with established farm management practice;
- (e) **Keep in good repair:** To the reasonable satisfaction of the Mortgagee keep in good repair, order and condition all fences, drains, sewers, buildings and other improvements now or from time to time erected, laid or made on the land;

- (f) **Not to change type of farm without Mortgagee's consent:** Not (without the Mortgagee's prior written consent) make any material change in the type of farming conducted on the land;
- (g) **Where land is a dairy farm:** If the land is a dairy farm farmed by the Mortgagor, the Mortgagor will:
- (i) Ensure that the Mortgagor continues to be a supplying shareholder (within the meaning of Section 34 of the Co-operative Companies Act 1996) and in accordance with the constitution of the relevant dairy company;
  - (ii) Immediately notify the Mortgagee if:
    - (aa) The amount or estimated amount of milk or milk solids supplied or to be supplied by the Mortgagor to the relevant dairy company is, or is expected to be, less than any minimum amount specified in the constitution of the relevant dairy company as an amount of milk or milk solids which a person is required to supply to that dairy company either for that person to be a supplying shareholder of that dairy company, or for the dairy company to allot shares to that person;
    - (bb) That dairy company rejects any milk or milk solids offered for supply to that dairy company by the Mortgagor; or
    - (cc) That dairy company advises the Mortgagor that the dairy company will not accept milk or milk solids supplied by the Mortgagor in the future.
  - (iii) Not agree with the dairy company a surrender price for any shares which is less than the nominal value of those shares under the constitution of the relevant dairy company;
  - (iv) Not transfer, charge or in any way encumber the shares in the dairy company owned or under the control of the Mortgagor;
  - (v) Whenever requested by the Mortgagee so to do from time to time execute and deliver to the Mortgagee a Specific Security Agreement under the Personal Property Securities Act 1999 ("PPSA") over the Mortgagor's shares in the relevant dairy company or will grant an assignment of such shares to enable the Mortgagee to receive from the dairy company the whole or such portion of all milk cheques, bonuses or other moneys from time to time payable to the Mortgagor for such milk as may be required by the Mortgagee;
  - (vi) Nothing in this Mortgage nor any security collateral hereto will be prejudicially affected by the Mortgagee (if in its sole discretion it shall elect so to do) allowing the Mortgagor to receive the whole or any part of any monthly milk cheque, bonus or other moneys referred to above and nothing in this clause 14 shall limit or control the order of application by the Mortgagee of any moneys from time to time received by the Mortgagee pursuant to any assignment of shares or pursuant to a Specific Security Agreement under the PPSA.

## **15. BUILDING AND OTHER WORKS**

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

- (a) **Definition of "development works":** For the purposes of this clause, "development works" includes the subdivision, development or improvement of the land and also includes the construction, development, alteration or repair of any building or other improvements on the land;
- (b) **Undertake development:** The Mortgagor 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, where applicable, in accordance with a

building permit or other approval or consent issued by the relevant authority;

- (c) **Progress payments:** If any part of the Secured Moneys shall be payable by way of progress payments, the amounts and times for making of the progress payments shall be at the Mortgagee's sole discretion and subject to such conditions as the Mortgagee shall require;
- (d) **Valuations:** The Mortgagee shall be entitled at the Mortgagee's sole discretion to arrange or require at regular intervals, valuations of the development works and/or the Mortgaged Property, such to be at the cost of the Mortgagor in all respects;
- (e) **Mortgagee may complete if default:** In exercising, in relation to clause 15(b), the powers contained in clause 18, 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;
- (f) **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.

## **16. WHEN DEFAULT OCCURS**

Default occurs if the Mortgagor fails to do anything or to pay any part of the Secured Moneys which the Mortgagor has pursuant to this Mortgage agreed to do or pay.

## **17. DEFAULT AND ENFORCEMENT**

- (a) **Rights and powers generally if default occurs:** Where the Mortgagor makes default in payment of the Secured Moneys in whole or in part or makes default in the observance or performance of any other covenant expressed or implied in the Mortgage the Mortgagee may, in addition to any rights, remedies or powers otherwise conferred upon the Mortgagee by law, exercise all or any of the following powers:
  - (i) Call up and compel payment of all or any part of the Secured Moneys, notwithstanding that the time or times otherwise appointed for payment of the Secured Moneys may not have arrived; or
  - (ii) Remedy the default by doing any thing or paying any sum, in whole or part, which in the Mortgagee's opinion is necessary or expedient to rectify the consequences of the default; or
  - (iii) Enter into possession of the Mortgaged Property; or
  - (iv) Sell the Mortgaged Property or any part of it; or
  - (v) By writing appoint any person to be a receiver of the income of the Mortgaged Property or any part thereof or any business run from the Mortgaged Property.

The Mortgagee may exercise and enforce all or any of the remedies contained in this clause 17(a) and any other remedies contained in or arising out of this Mortgage separately or any two or more of them concurrently;

- (b) **Mortgagee not obliged to exercise rights, remedies or powers:** The Mortgagee shall not be obliged to exercise any of the rights, remedies or powers contained in this clause 17. The exercise of those remedies shall be without prejudice to the Mortgagee's other remedies in relation to the relevant defaults;
- (c) **Costs of default are payable and are secured:** All sums expended by the Mortgagee pursuant to this clause 17 or otherwise by reason of any default by the Mortgagor or in exercising or enforcing or attempting to exercise or enforce any power, right or remedy contained or implied in this Mortgage shall be payable by the Mortgagor to the Mortgagee on demand, and shall be secured by this Mortgage together with interest computed from the respective dates on which those sums are expended. This

clause does not limit any other term of this Mortgage relating to costs, nor is it limited by any other such term.

## **18. RIGHTS AND POWERS RELATING TO LAND**

- (a) **Exercise of power of sale:** In respect of any sale, the Mortgagee:
- (i) **Sell:** may sell the Mortgaged Property, on the conditions set out in section 178 of the Property Law Act 2007 or any of them, either all together in lots, by public auction, by tender or by private contract or partly by one or more of such methods or such other methods of sale and subject to such conditions as to title or evidence of title, time or mode of payment of purchase moneys or otherwise as the Mortgagee thinks fit;
  - (ii) **Buy:** may buy in the Mortgaged Property or any part of it at any sale by auction in accordance with section 196 of the Property Law Act 2007, or an order of court under section 200 of the Property Law Act 2007;
  - (iii) **Cancel sale and re-sell:** may cancel any contract for sale pursuant to section 178(2) of the Property Law Act 2007 and 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 of 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:** shall not be obliged to account for or apply any sale proceeds unless and until actually received by the Mortgagee so that the Mortgagor shall remain liable for all moneys owing under this Mortgage beyond those actually so received;
  - (vi) **Not responsible for acts of purchaser:** shall not be responsible for anything done or omitted by any purchaser nor be bound to enforce any remedy under any agreement;
  - (vii) **May sign and give receipts:** may execute assurances, give effectual receipts for the purchase moneys and do all such other acts and things for completing the sale as the Mortgagee may think proper;
  - (viii) **Incidental powers:** may exercise such other incidental powers in relation to the sale as are conferred upon mortgagees by law.
- (b) **Protection of purchaser at sale by Mortgagee:** In accordance with section 184(2) and 184(3) of the Property Law Act 2007 no purchaser at any sale by the Mortgagee:
- (i) **Purchase moneys:** shall be answerable for the loss, misapplication or non-application of the purchase moneys paid for the Mortgaged Property, or be obliged or concerned to see to its application;
  - (ii) **Purchaser not to be concerned as to procedural matters:** shall be obliged or concerned to enquire whether any default has been made, whether any notice has been given as required by the Property Law Act 2007, whether the power of sale has been exercisable or otherwise as to the necessity, expediency, regularity or propriety for or of the sale.
- (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) **If Mortgagee calls up the Secured Moneys:** If the Mortgagee calls up the Secured Moneys pursuant to sub-clause 17(a)(i) or pursuant to any other right of the Mortgagee, the Mortgagor shall forthwith pay the amount so called up;
- (e) **Rights of receiver of income:** In relation to any receivership pursuant to this clause 18:
- (i) **Agent of the Mortgagor:** the receiver shall be deemed to be the agent of the Mortgagor who shall 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) **Receiver may be removed:** the Mortgagee may from time to time by writing remove any receiver or 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 shall 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% of the gross amount of all moneys received;
  - (v) **Repairs by receiver:** the receiver may, out of the moneys received, make any payment on account of any moneys secured by any prior mortgage or charge, repair and maintain any buildings, improvements or effects (whether affixed to the land or not), keep such buildings, improvements or effects insured against such risks as the receiver considers appropriate, pay all management expenses and do anything which the receiver considers necessary or expedient in order to procure continued receipt by the receiver of the income of the Mortgaged Property;
  - (vi) **Application of moneys received:** the receiver shall apply all moneys received:
    - (aa) **Costs:** firstly, in payment of all outgoings and expenses incurred or outlaid by the receiver in or about the exercise of the receiver's functions and powers including the receiver's reasonable remuneration;
    - (bb) **Preferential claims:** secondly, in payment of preferential claims (if any) payable by the receiver under the provisions of section 30 of the Receiverships Act 1993;
    - (cc) **Secured Moneys:** thirdly, in payment to the Mortgagee of all the Secured Moneys;
    - (dd) **Surplus:** fourthly, in payment of any residue, subject to the rights of any subsequent chargeholder of whom the Mortgagee has notice, to the person who is the registered proprietor of the Mortgaged Property immediately prior to the appointment of the receiver.
  - (vii) **Rights of authority or department of government:** the order of application by the receiver of moneys received as set out in sub-clause 18(e)(vi) above shall be subject in all respects to any rights or authority that any department of government may have to receive any such moneys;
  - (viii) **Appointment of receiver is not entry into possession:** neither the appointment of a receiver nor the exercise of any of the powers contained in clause 18(e) shall be deemed to be an entry into possession of the land by the Mortgagee.
- (f) **Protection of lessee or tenant:** No lessee or tenant paying moneys to or dealing with a receiver:
- (i) **Payment of moneys:** shall be answerable for the loss, misapplication or non-application of such moneys or be obliged or concerned to see to its application;

- (ii) **Lessee or tenant not to be concerned as to procedural matters:** shall be obliged or concerned to enquire whether any of the powers which the receiver or Mortgagee purports to exercise have become exercisable or otherwise as to the necessity, expediency, regularity or propriety for or of any exercise of those powers.

## **19. RIGHT OF SET OFF**

- (a) **Mortgagee entitled to set off:** At all times (and whether or not the Mortgagor is bankrupt, or in receivership or liquidation) the Mortgagee shall be entitled to set off any moneys owed to the Mortgagor by the Mortgagee or property claimed by the Mortgagor from the Mortgagee against any moneys owing to the Mortgagee or property claimed by the Mortgagee from the Mortgagor and included in the Secured Moneys;
- (b) **Mortgagee entitled to appropriate moneys:** The Mortgagee shall be entitled at any time to appropriate any moneys paid to the Mortgagee or held to the credit of the Mortgagor with the Mortgagee on any account or otherwise coming into the hands of the Mortgagee in or towards payment or satisfaction of the Secured Moneys or any part of the Secured Moneys. In doing this, the Mortgagee may break any term deposit and buy any currencies, necessary for the Mortgagee to exercise this right.

## **20. MORTGAGOR INCLUDES ALL PERSONS SIGNING**

The expression "Mortgagor" includes jointly and severally all persons executing this Mortgage and the covenants contained and implied in this Mortgage shall bind all such persons or corporations jointly and severally as principal debtors.

## **21. DEALING WITH THE PROPERTY**

The Mortgagor will not transfer, subdivide, or otherwise deal with the Mortgaged Property in any way which could adversely affect the interests of the Mortgagee without having first obtained the consent in writing of the Mortgagee. The Mortgagee should be entitled to grant or refuse its consent at its sole discretion.

## **22. COLLATERAL SECURITIES**

- (a) This Mortgage is, and shall be deemed for all purposes to be:
- (i) **Collateral to all other securities:** collateral to all other securities at any time held by the Mortgagee (whenever such other security is given) in respect of any part of the Secured Moneys whether directly or contingently;
- (ii) **Mortgage and other securities to be read and construed together:** the Mortgage and each such other security shall be read and construed together so that a default under any one or more of them shall be deemed to be a default under each of them and the Mortgagee may exercise any of its rights, powers, and remedies under any one or more of them separately or concurrently.

## **23. ASSIGNMENT BY MORTGAGEE**

The Mortgagee shall be entitled at any time to assign its rights or interest under this Mortgage to any other party without the consent of the Mortgagor being required to be obtained. The benefit of any of the covenants, terms or conditions in this Mortgage whether expressed or implied, given by the Mortgagor and/or the Covenantor (if any) shall extend to and include any assignee or transferee from the Mortgagee, whether for value or otherwise and howsoever arising.

## **24. OTHER MORTGAGES OR CHARGES**

If and so long as the Mortgaged Property is subject to any other mortgages or charges, the Mortgagor will

duly and punctually pay all moneys secured by, and comply with the terms contained or implied in, every other mortgage or charge.

## **25. ENCROACHMENTS**

The Mortgagor covenants with the Mortgagee that the Mortgagor will at the Mortgagor's own expense rectify to the entire satisfaction of the Mortgagee any encroachment by or upon the Mortgaged Property if and when required by the Mortgagee during the currency of this Mortgage.

## **26. OTHER SECURITIES**

The remedies herein are in addition to and not in substitution for any other security or right the Mortgagee may now or hereafter have and may be enforced against the Mortgagor without first having recourse to any such securities or rights.

## **27. NO LIABILITY**

Neither the Mortgagee nor any receiver, agent or manager of the Mortgagee shall be liable or accountable for any losses which may occur in or as a result of the exercise, purported exercise or non-exercise of any of their rights, powers or remedies and those losses shall where borne by the Mortgagee or such other person form part of the Secured Moneys.

## **28. FINANCIAL INFORMATION**

- (a) **Where Mortgagor or accommodated person is engaged in business:** If the Mortgagor is engaged in any business or undertaking or the Mortgage is given as security for any financial facilities provided to or at the request of an accommodated person, and such accommodated person is engaged in any business or undertaking:
- (i) **Mortgagor to keep proper accounting records:** the Mortgagor will ensure that proper accounting records are kept in relation to such business or undertaking and will ensure that the Mortgagee or its authorised agent is permitted at all reasonable times to inspect and take copies of such records;
  - (ii) **Mortgagor to provide Mortgagee with financial information:** the Mortgagor will provide to the Mortgagee or arrange for the Mortgagee to be provided:
    - (aa) As soon as available and in any event within three (3) months of the end of each financial year a balance sheet and profit and loss accounts for the business or undertaking of the Mortgagor or the accommodated person as the case may be, audited if requested by the Mortgagee for that financial year; and
    - (bb) As and when requested by the Mortgagee from time to time, such financial information relating to the Mortgagor, the Mortgagor's business affairs, the accommodated person or the accommodated person's business affairs as the Mortgagee may require.

## **29. MORTGAGEE'S RECORDS PRIMA FACIE EVIDENCE**

The records of the Mortgagee shall be prima facie evidence of the Secured Moneys and of all other particulars entered in such records and shall be admissible as evidence accordingly in all Courts of Law and before all persons acting judicially and certified copies or extracts from the said records may be produced in evidence without the necessity of producing the records themselves.

## **30. COMMERCIAL PROVISIONS**

This clause applies where the Mortgaged Property is used for commercial purposes.



- (a) **Assignment of rental income:** The following shall apply in relation to rental income:
- (i) **The Mortgagor assigns to the Mortgagee all rent and other moneys:** the Mortgagor as beneficial owner of the Mortgaged Property assigns to the Mortgagee all the rents and other moneys now due or owing or after the execution of this Mortgage become due and owing under and by virtue of any lease or tenancy of the Mortgaged Property or any part of the Mortgaged Property together with power for the Mortgagee to sue for recovery and give effectual discharges for the same in the name of the Mortgagor or otherwise;
  - (ii) **Mortgagee can demand and recover rents and other moneys:** the Mortgagee shall have power to demand and recover all such rents and other moneys by any proceeding;
  - (iii) **Mortgagee will only exercise powers on default:** the Mortgagee will exercise its power to receive rentals and other moneys pursuant to this clause 30 only upon the happening of any of the events of default specified under this Mortgage or any agreement, arrangement, deed or instrument collateral hereto;
  - (iv) **Production of Mortgage sufficient:** production of this Mortgage by the Mortgagee to any lessee, tenant or other person liable for the payment of rents and other moneys assigned by this Mortgage shall be sufficient authority for such lessee, tenant or other person to pay such rents and other moneys to the Mortgagee. No such lessee, tenant or other person shall be concerned to enquire whether any event has happened to authorise the Mortgagee to require payment of such moneys to the Mortgagee;
  - (v) **Mortgagee not obliged to pay outgoings from moneys received:** the Mortgagee shall not be obligated to pay any moneys received by it in discharge of any outgoings affecting any part of the Mortgaged Property but shall be entitled to apply the same in such manner and for such purpose as the Mortgagee shall in its sole discretion determine;
  - (vi) **Anything which may be done:** anything which may be done by the Mortgagee pursuant to this clause may be done by any agent or nominee of the Mortgagee (including any Director or Manager for the time being of the Mortgagee).
- (b) **Mortgagee as Mortgagor's Attorney:** The appointment of the Mortgagee as the Mortgagor's Attorney pursuant to clause 31 shall include the power to:
- (i) **Negotiate and conclude:** negotiate and conclude any lease, tenancy agreement or similar arrangement together with any renewal, variation or replacement thereof in whole or in part upon such terms and conditions as the attorney may think fit and to enter into and execute and register any instrument in writing whatsoever which may be necessary or desirable in the opinion of the Mortgagee in relation thereto and for the purposes thereof;
  - (ii) **Mortgagee may do any thing to preserve security:** give any notice, comply with any requisition, lodge any objection, engage in and settle or compromise any form of litigation including arbitration and appearance before any tribunal whether in support of or as objector to any application and appointment of Counsel, advisers, valuers, arbitrators and other persons who may be necessary or in the opinion of the Mortgagee desirable for the conduct thereof, and generally to do all such acts and things as if the attorney were the Mortgagor and which the Mortgagor would do in relation thereto as may be necessary or in the opinion of the Mortgagee desirable to protect or preserve the security of this Mortgage or to ensure the availability of an adequate financial return from the land (whether by legal suit or otherwise);
  - (iii) **Collect the rentals and other moneys:** collect (whether by legal suit or otherwise) the rentals and other moneys or other consideration payable in respect of the occupation or use of any part of the Mortgaged Property by any person for any reason whatsoever, to pay the same to the Mortgagee on deposit in the name of the Mortgagor and the Mortgagee jointly, after deduction therefrom of all

normal commissions, costs, charges and expenses incurred in the collection thereof or otherwise in the exercise of its powers under this clause 30 and whether due or payable to the Mortgagee or any other person and to withdraw any moneys or any part thereof so deposited at any time and to apply the same to the payment of any part of the Secured Moneys as and when they fall due for payment from time to time;

- (iv) **Arrange or complete development or subdivisional works:** arrange or complete any development or subdivisional works which the Mortgagee may decide to undertake or complete pursuant to clause 30(g) hereof;
  - (v) **File GST returns and account to IRD:** file any GST returns or otherwise account to the Inland Revenue Department for any payments made or payments received on behalf of the Mortgagor in respect of the land, leases or tenancies or any such development or subdivision undertaken on behalf of the Mortgagor.
- (c) **Conduct of business:** This clause applies:
- (i) **Where trade or business carried on:** where any trade or business is carried on upon or from the Mortgaged Property or any part of the Mortgaged Property, the Mortgagor shall:
    - (aa) **Use of the Mortgaged Property:** not without the consent of the Mortgagee being first obtained, use any part of the Mortgaged Property otherwise than for the purpose of such trade or business (in this clause called “such trade or business”);
    - (bb) **Trade or business to be fully licensed:** cause such trade or business to be fully licensed to such extent as may be required to operate such trade or business on a legal and proper commercial basis and to continuously and fully carry on or cause to be carried on such trade or business;
    - (cc) **Trade or business to be operated in proper and orderly manner:** where the trade or business operated from the Mortgaged Property is operated by the Mortgagor, strive to extend the business and custom of such trade or business and conduct or cause to be conducted the operation of such trade or business in a proper and orderly manner;
    - (dd) **Comply with licences:** comply with all responsibilities imposed on the Mortgagor by any licences from time to time held in respect of such trade or business and not do or suffer to be done on or in connection with any part of the Mortgaged Property or such trade or business anything by reason of which any of such licences may become liable to cancellation or suspension or be otherwise endangered and use its best endeavours to ensure that any manager of such trade or business from time to time similarly complies with all responsibilities and obligations imposed by the licences;
    - (ee) **Comply with Statutes, Regulations and Bylaws:** comply without delay with the provisions of all Statutes, Regulations and Bylaws of Government, local and other public authorities and with any and every requisition that may be made by any relevant authority having jurisdiction in respect of such trade or business.
  - (ii) **If trade or business ceases to be carried on:** if such trade or business ceases to be carried on upon such part of the Mortgaged Property or if the Mortgagor commits any other breach of the covenants expressed or implied in the Mortgage (including all those covenants listed in clause 30), the Mortgagor shall in accordance with the directions of the Mortgagee:
    - (aa) **Transfer licences:** transfer or do all things necessary to enable to be transferred to the Mortgagee or its nominee any of the licences held in respect of such trade or business that may be transferable;

- (bb) **Permit Mortgagee to enter the Mortgaged Property:** permit the Mortgagee or its agent or nominee to enter upon any part of the Mortgaged Property and all buildings and other improvements on the Mortgaged Property and affix and keep affixed all such notices and do all such other things whatsoever as may be necessary to enable new licences to be granted to the Mortgagee or its nominee in respect of any such trade or business for any licence or licences that may not be transferable.
- (d) **Non-Charging of Rental Income:** The Mortgagor will not without first having the written consent of the Mortgagee (which consent the Mortgagee may at its discretion withhold without being required to give any reason) transfer, assign, mortgage or in any way whatsoever encumber the Mortgagor's right to income from the Mortgaged Property or any part of the Mortgaged Property;
- (e) **The Mortgagor Not To Deal With Leases:** The Mortgagor will not (without the prior written consent of the Mortgagee) negotiate or agree, in relation to any lease or tenancy or like arrangement relating to all or part of the Mortgaged Property, any waiver or release of any obligation or any variation which would have a material effect on the value of the security held by the Mortgagee or which would in any way be to the detriment of the Mortgagee and, without limitation, such variation will include any surrender of lease or prepayment or discount of rental pursuant to any lease, tenancy or like arrangement or prepayment or discount of rental or income;
- (f) **Non Removal of Deemed Fixtures:** All buildings, fixtures, fittings, chattels, plant and machinery now or subsequently acquired by the Mortgagor and then placed on or in the Mortgaged Property shall be deemed as between the Mortgagor and Mortgagee to have become fixtures to the Mortgaged Property and to be included in the Mortgage, and the Mortgagor shall not remove the same from the Mortgaged Property without the prior written consent of the Mortgagee. The Mortgagor assigns to the Mortgagee all the Mortgagor's rights under and by virtue of any and every hire purchase, lease or other agreement affecting goods situated on or in the Mortgaged Property to the intent that the Mortgagee may at any time acquire the said goods by purchase on payment of the balance at any time owing or outstanding to the owner of the goods, but in any such event, the Mortgagee shall hold the said goods as part of the Mortgaged Property and as security for the Secured Moneys. All purchase and other moneys paid by the Mortgagee in accordance with the rights set out in this clause 30(f) shall be treated as further advances and included in the Secured Moneys and shall bear interest in the manner prescribed in the agreement;
- (g) **Development:** Where the land is in the process of being developed or subdivided or is suitable for a development or subdivision, then the Mortgagee shall be entitled to (but not obliged to) in its sole discretion in all respects, take over or undertake any such development or subdivision, to commission at the cost of the Mortgagor in all respects any architects, surveyors, builders, tradesmen, solicitors, consultants or others, and do all that is required in order to undertake or complete any such development or subdivision;
- (h) **Health and Safety in Employment Act 1992:** The Mortgagor will ensure that all activities carried out on the Mortgaged Property are carried out in compliance in all respects with the provisions of the Health and Safety in Employment Act 1992.

### **31. APPOINTMENT OF MORTGAGEE AS MORTGAGOR'S ATTORNEY**

- (a) **Appointment of Mortgagee as Attorney:** In consideration of the financial accommodation provided to the Mortgagor by the Mortgagee, and, notwithstanding and in addition to any other provision herein expressed or implied the Mortgagor irrevocably appoints the Mortgagee and any Director or Manager of the Mortgagee or agent of such Director or Manager jointly and severally the attorney of the Mortgagor, for the Mortgagor, in the Mortgagor's name and on the Mortgagor's behalf to enter into, execute, sign and do all such acts, deeds, matters and things whatsoever which the Mortgagor by virtue of this Mortgage expressly or impliedly covenants to do or for which the Mortgagor is liable under this Mortgage and which the Mortgagor for any reason refuses or fails to do and the Mortgagor irrevocably undertakes and agrees to pay to the Mortgagee Upon Demand any moneys at any time expended by the Mortgagee

for any of the purposes mentioned in this clause 31 (including all legal costs computed as between solicitor and own client) together with interest computed thereon at the Unarranged Interest Rate from the date upon which such moneys shall have been paid by the Mortgagee until the date of payment thereof by the Mortgagor and all such moneys (including interest thereon as aforesaid) shall be included in the Secured Moneys;

- (b) **No liability:** The Mortgagee and all persons employed or engaged by it shall be under no liability whatsoever to the Mortgagor or any other persons by reason of any exercise or failure to exercise any of its rights or powers conferred by this clause 31;
- (c) **No person shall be concerned to enquire:** No person dealing with any Attorney appointed pursuant to this clause 31 shall be concerned to enquire whether any breach or default shall have occurred hereunder or whether the powers which the Mortgagee or the attorney purport to exercise have become exercisable or whether anything done purportedly under the powers hereby conferred has been validly done or whether any moneys remain due and unpaid under this Mortgage. The remedy of the Mortgagor in respect of any actionable impropriety or irregularity in the execution of any such power shall be in damages;
- (d) **Mortgagor to ratify:** The Mortgagor agrees to ratify and confirm whatsoever the Mortgagee, any Director, Manager or agent shall lawfully do or cause to be done by virtue of the provisions of this clause 31.

## **32. MORTGAGOR'S LIABILITY FOR COSTS**

- (a) **Costs payable by the Mortgagor:** The Mortgagor will pay to the Mortgagee upon demand the Mortgagee's legal costs (as between solicitor and own client) for:
  - (i) **Documentation:** the arranging, preparation and registration of the 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 the Mortgage or the enforcement or exercise or attempted enforcement or exercise of any of the Mortgagee's rights, remedies and powers under the Mortgage (including the giving or attempted giving of any notice under the Property Law Act 2007 or any enactment in substitution for that Act) and the inspection and valuation of the Mortgaged Property;
  - (iii) **Costs of variation, waiver or change demand:** dealing with any request by the Mortgagor for a variation, waiver or other concession in relation to the 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 Mortgaged Property;
  - (v) **Legal costs of Mortgage:** legal services relating to the protection of the Mortgagee's security interest under the Mortgage (including the investigation of any claim relating to the Mortgaged Property which might affect that interest);
  - (vi) **Where Mortgagor's prior written consent is required:** where pursuant to the terms of the Mortgage, the prior written consent of the Mortgagee is required to any thing, matter or document, then the Mortgagee may, as a condition of giving any such consent, require that all its costs (including, without limitation, legal and any other consultant costs) associated with the giving of such consent are first paid by the Mortgagor;
  - (vii) **Without prejudice:** this clause is without prejudice to the Mortgagee's other rights to recover costs as permitted in the Mortgage.

### **33. SUBSTITUTED SECURITY**

Where the Mortgage is over the same land as was previously mortgaged to the Mortgagee or the Mortgage over the land is given in replacement for a mortgage over other land, then the Mortgage is in substitution for that mortgage.

### **34. ELECTRONIC DISCLOSURE**

The Mortgagor consents to any legal requirement for the Mortgagee to give information in writing to the Mortgagor including that required by the Credit Contracts Act 1981/Credit Contracts and Consumer Finance Act 2003, being satisfied by the Mortgagee giving that information to the Mortgagor in electronic form and by electronic means.

### **35. CONSUMER GUARANTEES ACT 1993**

No provision of the Mortgage is intended to have the effect of contracting out of the Consumer Guarantees Act 1993 except to the extent allowed by law, and the Mortgage will be modified to the extent necessary to give effect to that intention. Every warranty and guarantee from the Mortgagee implied by custom or law is excluded to the extent allowed by law.

### **36. PRIVACY/USE OF INFORMATION**

(a) **Authorisation by Mortgagor:** The Mortgagor authorises the Mortgagee to:

- (i) **Collect:** collect information about the Mortgagor or the Mortgaged Property from any source;
- (ii) **Use:** use any information about the Mortgagor or the Mortgaged Property for any purpose within the usual business functions and activities of the Mortgagee; and
- (iii) **Pass on:** pass on that information to:
  - (aa) Any person who provides credit or legal support in relation to the Mortgagor's obligations to the Mortgagee; or
  - (bb) Any potential assignee, transferee or other person with whom the Mortgagee may wish to contract in relation to the Mortgagor or any contractual document relating to the Mortgagor.

(b) **If Mortgagor a company:** If the Mortgagor is a company the Mortgagor will procure each of its directors to give the same authority in relation to themselves. The Privacy Act 1993 may entitle the Mortgagor to access or request the correction of information held by the Mortgagee about the Mortgagor.

### **37. NOTICES**

Any notice or demand pursuant to the Mortgage or authorised by the Property Law Act 2007 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 Mortgagor personally; or
- (ii) By posting it by registered post or sending by courier addressed to the Mortgagor at the Mortgagor's principal place of business or residence last known to the Mortgagee; or
- (iii) In the case of a company under the Companies Act 1993, in a manner provided for in section 387(1) (other than paragraph (e)) or section 388 of that Act.

- (b) **When service effected:** Such notice or demand shall be deemed to have been served on the same day as delivered or if posted by registered post or sent by courier, shall be deemed to have been served when the notice or demand would in the ordinary course of post or delivery by courier have been delivered and the receipt from New Zealand Post for a registered letter so addressed or confirmation of delivery by the courier firm shall be conclusive evidence of service;
- (c) **Service valid when effected:** The posting or delivery of a notice or demand as specified in this clause 37 shall be deemed to be valid and effectual service, notwithstanding that at the date of service, the Mortgagor, 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 notice or demand and notwithstanding any other matter or event whatsoever;
- (d) **Other modes of service:** The modes of service provided by this clause 37 do not limit any other sufficient and lawful modes of service and are subject to any mandatory provisions in any Statute;
- (e) **Definition of “registered post”:** For the purposes of this clause 37 “registered post” includes any service that provides a system of recorded delivery and is similar in nature to a registered post service provided by a person registered as a postal operator under the Postal Services Act 1998;
- (f) **Appointment of New Zealand agent by overseas owner of land:** If the Mortgagor is not resident in New Zealand, then the Mortgagee may withhold any advance or the making of any financial accommodation for the accommodation of the Mortgagor until the Mortgagor 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;
- (g) **Where Mortgagor moves overseas:** If the Mortgagor moves overseas following entry into the Mortgage, the Mortgagor must prior to departure irrevocably appoint an agent in New Zealand for the purpose of accepting service under sections 353 to 355 of the Property Law Act 2007.

### **38. EXECUTION BY A TRUSTEE**

This clause 38 only applies if a signatory of the Mortgage is a trustee of a Trust (“the Trust”) and signs the Mortgage as trustee of that Trust.

- (a) **Trustee certifications:** By executing the Mortgage as trustee of the Trust, the signatory certifies:
  - (i) **Execution of Mortgage authorised:** the execution of the Mortgage has been authorised by the terms of the Trust document or the provisions of the Trustee Act 1956 and all necessary steps have been taken and all authorisations, including trustees’ resolutions, have been obtained or passed prior to execution of the Mortgage to ensure their effectiveness;
  - (ii) **Mortgage properly executed:** the signatory has properly signed the Mortgage as trustee in accordance with the terms of the Trust documents of the Trust;
  - (iii) **Powers:** the Trust has unrestricted power to borrow, guarantee, give security and/or enter into any future financial accommodation which the Mortgagee may from time to time provide against security of the Mortgage;
  - (iv) **Proper purpose:** the entry into this Mortgage is for a proper purpose and for the benefit of the Trust under which the signatory holds property.
- (b) **Execution of the Mortgage will bind the signatory as a trustee of the Trust:** Execution of the Mortgage will also bind the signatory personally unless the signatory is an independent trustee. For the purposes of this clause, an independent trustee is a trustee who does not have any right to, or interest in, any of the assets of the Trust except in his capacity as a trustee of the Trust;

- (c) **The Mortgagee's rights against a signatory will be limited only if the signatory is an independent trustee:** If the signatory is an independent trustee, the Mortgagee will only be entitled to recover the Secured Moneys from the personal assets of a signatory if the Mortgagee is not able to recover the Secured Moneys from the assets of the Trust because the certifications set out above were incorrect. Even if the certifications were incorrect, the Mortgagee will only be entitled to recover from the personal assets of a signatory the amount it would have recovered from the assets of the Trust had those certifications been correct;
- (d) **If signatory is not an independent trustee:** If a signatory is not an independent trustee, the Mortgagee may seek to recover any Secured Moneys from the personal assets of a signatory as well as the assets of the Trust;
- (e) **The Secured Moneys:** In this Mortgage, the expression "Secured Moneys" includes all money owed by a signatory in his capacity as a trustee of the Trust including moneys owed under a Revolving Credit Facility (whether or not actually within the signatory's powers or properly authorised) as well as any former, present or future trustees of the Trust;
- (f) **Revolving Credit Facility/Overdraft Facility:** Where trustees of the Trust have entered into, or may in the future enter into, a Revolving Credit Facility or Overdraft Facility with the Mortgagee and have authorised or may in the future authorise a party or parties ("the Authorised Party") to draw on such Revolving Credit Facility or Overdraft Facility from time to time in the manner prescribed by the Mortgagee, the Mortgagor does hereby indemnify the Mortgagee against any claim that may be made or loss of any nature whatsoever which may be suffered by the Trust or any beneficiary of the Trust relating to the operation of the Revolving Credit Facility or Overdraft Facility by the Authorised Party.

### **39. EXECUTION UNDER POWER OF ATTORNEY**

Where a signatory has signed the Mortgage under a Power of Attorney ("the Power of Attorney"), by executing the Mortgage, the signatory certifies:

- (a) That a copy of the Power of Attorney has been registered at Land Information New Zealand in the Registry where the Mortgage is to be registered;
- (b) That at the date of execution, the signatory has not received any notice or information of the revocation of that appointment;
- (c) That the Power of Attorney is in all respects in force at the date of execution by virtue of its terms;
- (d) That the signatory is authorised by the Power of Attorney to sign the Mortgage;
- (e) That the signing of the Mortgage complies in all respects with the conditions and restrictions as set out in the Power of Attorney.

DATED this	day of	2008
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Execution

<b>Signed by TSB Bank Limited</b>
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**MEMORANDUM NO. 2008/4271**

**Land Transfer Act 1952**

**MORTGAGE**

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

**Registrar-General of Land  
Land Registry**  
(Abstract number/date )