



MEMORANDUM OF MORTGAGE

Form of Registrable Memorandum

Section 155A, Land Transfer Act 1952

Memorandum Number

2015/4330

LINZ Barcode

Class of instrument in which provisions are intended to be included:

Mortgage – All Obligations

Person executing Memorandum:

TSB Bank Limited

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

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Important Information: Please Read

This mortgage sets out the terms and conditions that apply to the **mortgage** over **your property** that you have given to us.

This mortgage is an important document. Please read it carefully and keep it in a safe place.

If you **breach this mortgage**, the consequences can be very serious (for example, we can sell **your property**). If you are unable to meet your obligations under **this mortgage** you should contact us immediately. We may be able to help you to remedy any **breach**.

If you are not sure about anything to do with **this mortgage**, you should seek advice from your lawyer.

1. Granting a mortgage

You will be bound by the terms and conditions set out in **this mortgage** once you have signed an **authority and instruction form**, authorising and instructing a lawyer or **conveyancer** to register **this mortgage** as an **electronic instrument** against **your property**.

2. What do certain words mean?

Throughout **this mortgage**, we use words that are in bold. These are words with specific meanings. The meanings of these words are set out in clause 26 of **this mortgage**.

Also:

- “you” means each **person** who signs the **authority and instruction form** granting the **mortgage** over **your property** and if there is more than one, each of you separately and all of you together. “your” has a corresponding meaning.
- “we” and “the bank” means TSB Bank Limited and our successors, assigns and authorised agents. “our” and “us” have corresponding meanings.

3. What each of us has agreed to do

We have agreed to lend money or provide financial services or products to you or to someone else when you have asked us to. Because of that you agree to:

- grant to us a **mortgage** over **your property** on the terms set out in **this mortgage**;
- comply with the terms and conditions set out in **this mortgage** and other **bank documents**;
- give us a **security interest** over all insurance policies over **your property**;
- give us a **security interest** over all licences, authorities or consents for **your property** or relating to the use of **your property**;
- give us a **security interest** over all payments of any nature you receive when others use **your property**;
- give us the right to have **this mortgage** and any other rights we have at law as mortgagee.

4. What amounts do you agree to pay?

All money owing

You agree to pay to the bank all **money owing**. You must pay the **money owing upon demand** except where a **bank document** says otherwise in which case you must pay any such money in the manner and at the time as agreed in that **bank document**.

Costs

You agree to reimburse us **upon demand** all **costs**.

Indemnity

You agree to indemnify us **upon demand** against any loss, liability or **costs** of any nature we may suffer or incur as a direct or indirect result of:

- you committing a **breach**;
- any exercise or attempted exercise by us of any right we have under **this mortgage** or any other **bank document**.

5. Priority limit

Where a priority limit is inserted in the **authority and instruction form**, then for the purposes of section 92 of the Property Law Act 2007, this priority limit, plus interest, is the maximum amount up to which we can recover before someone else who has a **security agreement** over **your property** can receive and keep payments. The priority limit is not the total amount you owe us under **this mortgage**.

Stating a priority limit does not limit the **money owing** or the total amount of money that is secured by **this mortgage**.

If the **authority and instruction form** doesn't state a priority limit, then our priority limit is \$10,000,000.00 plus interest.

6. Your responsibility to look after your property

You must:

- pay when due, all rates, taxes, body corporate levies and other charges payable in respect of **your property**;
- keep **your property** in good repair and condition;
- repair any damage to **your property** as soon as possible;
- allow us reasonable access to **your property** at any time to enable us to inspect **your property**;
- where **your property** is subject to any other **mortgage** or charge, comply with the terms and conditions and pay all amounts due under that **mortgage** or charge;
- tell us about anything that affects your use of **your property** or may have an adverse effect on the value of **your property**;
- comply with any land covenants relating to **your property**;
- obtain and keep current all resource consents and building consents that are necessary to maintain the current use of **your property** or part of it.

You must not without first getting our consent in writing:

- sell, transfer, subdivide, rent or otherwise dispose of **your property** or part of it;
- mortgage, charge, encumber or otherwise allow to be granted any other security over **your property**;
- consent to any resource consent application in relation to **your property**;
- do anything to **your property** that might affect its value in a negative way.

7. Your responsibility to insure your property

You must keep the **buildings** and all other **insurable improvements** on **your property** insured at all times to our satisfaction:

- against every risk normally covered in a comprehensive insurance policy, including loss or damage of any kind by fire, theft, flood, natural disaster (as defined in the Earthquake Commission Act 1993) and any other risk we require from time to time;
- for full replacement value or such other amount as we reasonably require;
- with an insurance company approved by us;
- in your name as owner and in our name as mortgagee for our respective rights and interests.

You must:

- pay the insurance premiums in full when they are due and if we ask, provide evidence of payment to us;
- provide a copy of the certificate of insurance to us when we ask for it. This includes any notice that amends any of your insurance policies;
- immediately notify us of any destruction or damage to any **buildings** or other **insurable improvements** on the **land**;
- on making a claim under an insurance policy, advise us that you have made the claim and give us full details of the claim;
- not cancel, vary, lapse or fail to renew an insurance policy;
- not do anything that could cause the insurance company not to pay out under an insurance policy;
- not arrange any further or other insurance on the **buildings** or other **insurable improvements** in your name;
- do everything necessary to enable us to make a claim under an insurance policy and collect or recover any money under the policy;
- provide us with such other information in relation to the insurance as we may require from time to time.

If the **buildings** or other **insurable improvements** are damaged or destroyed:

- you must hold any money you receive from the insurer on trust for us;
- we will decide how to use the insurance money and may request that it either be used to repay the **money owing** or to re-build or repair the **buildings** and other **insurable improvements**.

If you fail to insure or keep insured the **buildings** and other **insurable improvements**, we may arrange such insurance at your cost.

8. You must do certain things depending on the type of property

Unit Titles

Where the title to **your property** is a stratum estate under the Unit Titles Act 2010, you must:

- pay in full when due all body corporate levies;
- comply with the rules of the body corporate and the Unit Titles Act 2010;
- make sure the body corporate and the other unit proprietors comply with the Unit Titles Act 2010;
- require the body corporate to insure and keep insured everything owned by the body corporate for its full replacement value (or such other value as we agree in writing);
- ensure our interest as mortgagee is noted by the body corporate and by each insurer;
- arrange and maintain mortgage redemption insurance in our joint names for an amount and against such risks as we may reasonably require;
- request from the body corporate, and give to us, such information and documents as we reasonably require;
- pass on to us notices and other communications from the body corporate;
- not vote or abstain from voting in relation to a body corporate resolution to amend the body corporate rules or any other resolution put to a meeting of the body corporate, or which requires unanimous vote or special resolution, without getting our agreement in writing first.

Your voting rights under the Unit Titles Act 2010 and the rules of the body corporate may be exercised by us at your cost.

Leasehold (including cross lease)

Where **your property** is leasehold or includes a **lease**, you must:

- pay all rent when it is due;
- comply with all of the terms of the **lease** that apply to you;
- ensure other parties to the **lease** comply with the terms and covenants that apply to them;
- if you are the lessor, ensure that the lessees comply with their obligations under the **lease** and enforce the terms upon them;
- pass on any notices or other communications relating to the **lease** to us. You then must comply with our written directions in respect of all matters relating to the **lease**;
- do all things necessary to renew or extend the **lease** and advise us if the **lease** is terminated or if it expires;
- not amend or agree to amend the **lease**;
- in the case of a registered **lease**, promptly register the **lease** under the Land Transfer Act 1952 and ensure that any **lease** that is registered is noted as being in renewal or substitution of the previous **lease** so that our interest as mortgagee is retained in accordance with the Land Transfer Act 1952;
- if we require, apply to the court for relief against forfeiture or relief against refusal of the lessor to grant a renewal of the **lease** or a new **lease**;
- if we require, give notice or exercise any right or power under the **lease**.

If you acquire a freehold interest in **your property** you must ensure that you give us a **mortgage** over the freehold of **your property** as well.

Farming

If **your property** is used or could be used for farming, horticulture, agriculture, or a similar use, you must:

- farm and manage **your property** in accordance with established best farming practice;
- comply with all statutes, regulations and rules of any relevant regional or district plan, court notice, demand or by-laws relating to **your property**;
- not make any material change to the type of farming carried out on **your property** without getting our consent in writing first;
- where **your property** is farmed as a dairy farm, you will continue to be a supplying shareholder in accordance with the constitution of the relevant dairy company;
- notify us immediately if the amount or estimated amount of milk or milk solids supplied or to be supplied is expected to be less than the minimum amount you are required to supply to the relevant dairy company, the dairy company rejects any milk or milk solids, or the dairy company tells you that it will not accept milk or milk solids from you in the future;
- not agree with the dairy company to a surrender price for any shares without first getting our consent in writing;
- not transfer, charge, or in any way encumber the shares of the dairy company owned by you or under your control;
- if requested by us, provide a **specific security agreement** under the Personal Property Securities Act 1999 over your shares in the relevant dairy company or grant an assignment of your shares to enable us to receive from the dairy company the milk cheques, bonuses, or other money payable to you for the milk provided.

9. Other commercial provisions

Where **your property** is used for commercial purposes:

- you assign to us all rent and other money payable to you in respect of **your property**;
- if you commit a **breach**, we can demand all rent and other money payable in respect of **your property** by any method;
- we can but are not required to pay any outgoings relating to **your property** from any money received in relation to **your property**;
- where a business is carried out from **your property**, you will not without getting our consent in writing first, use the **property** for any other purpose;
- you will make sure that any business operated from **your property** is fully licensed and each licence necessary to run the business on **your property** is complied with, maintained and renewed where appropriate;
- you will comply with all statutes, regulations and by-laws of any local or central government authority and other public authority and with any request made by any relevant authority;
- if you cease carrying out the business from **your property** you will, if we direct, transfer all licences to us or allow us entry to **your property** to enable new licences to be granted to us;
- you will not without getting our consent in writing first, transfer, assign, mortgage, or otherwise encumber your right to income from **your property**;
- you will not without getting our consent in writing first, negotiate or agree any **lease** or tenancy relating to **your property**, or agree to any waiver or release or variation to any obligation which could have a material effect on our rights under **this mortgage**.

10. Development of your property

Where **your property** or any part of it is in the process of being developed:

- you must proceed with, immediately and continuously, the **development works** until completed in a proper and workman like manner and in accordance with the plans and specifications provided to and approved by us and in accordance with all the relevant approvals and consents issued by any regional or local authority;
- you will ensure that all activities carried out from **your property** are compliant with the Health and Safety in Employment Act 1992 and any other relevant legislation;
- if any part of the **money owing** is to be payable by us by way of progress payments, we shall set the amounts, terms and conditions for any such payments;
- we may require or arrange valuations of the **development works** at regular intervals and at your cost;
- if you commit a **breach** any of these obligations, we may complete the **development works** in such a manner as we decide;
- once personal property has been affixed to the **land**, then it is regarded as part of the **land**.

11. What other obligations must you comply with?

If we lend you any money for any particular purpose, then you must use that money for the purpose that we agreed to.

If you are engaged in any business or undertaking:

- you will ensure that proper accounting records are kept in relation to the business or undertaking and will let us inspect and take copies of any records when we ask for them;
- you will provide us with any financial information about you, your business or your undertaking when we ask for it.

You must pay all **money owing** to us without deduction or set-off. You must provide us with any information in your possession or control which we ask for within a reasonable time, including all financial information that we may request.

You must not hinder us from doing anything which we are entitled to do under **this mortgage**.

You must comply with all terms and conditions of **this mortgage**, each other **bank document** and any other **mortgage** or charge that ranks either before or after **this mortgage**.

You must advise us and provide us with details in relation to any:

- change in your contact details including name and address;
- any legal action or dispute claimed against you in relation to **your property**;
- any environment or building liabilities that you may become aware of in relation to **your property** that has occurred or may possibly occur in the future.

If you are a body corporate incorporated under the Companies Act 1993, Incorporated Societies Act 1908, the Charitable Trusts Act 1957 or any other law of New Zealand, you will ensure that you keep incorporated, file all necessary returns and comply with all laws that relate to you.

12. What happens if you commit a breach?

If you commit a **breach**, or allow a **breach** to occur, then we can, subject to the provisions of the Property Law Act 2007:

- require the immediate repayment of the **money owing** (even if some of the **money owing** isn't yet due);
- transfer money from any of the accounts which we hold on your behalf to pay any **money owing** to us. We can if need be, break any term deposit and buy any currencies;
- remedy the **breach** by doing anything or paying any amount which is in our opinion necessary to remedy the **breach** or the consequences of the **breach**;
- take possession of **your property**;
- sell, purchase, divide, dispose of, manage or otherwise deal with **your property**;
- do anything with **your property** that you are able to do, including making payments;
- make any tenancy arrangements relating to **your property**;
- appoint a receiver over **your property** and/or any business run from **your property** and income derived from **your property**;
- do anything else a mortgagee can do at law.

We may choose to do one or more of the above. However, we are not required to. Whether or not we choose to exercise our rights under **this mortgage** will not affect any rights or remedies we have under **this mortgage**.

The rights that we have under **this mortgage** are in addition to and not in substitution for any rights we have under any other **bank document** and we can enforce our rights under any other **bank document** instead.

Neither we nor any receiver or agent or manager of ours will be liable for any losses that may occur as a result of the exercise or attempted exercise of any rights we have under **this mortgage**.

13. Appointment of a receiver

If you commit a **breach**, we can appoint a receiver in respect of **your property** and/or any income relating to **your property**.

The appointment of a receiver is in addition to any other rights and powers we may have.

The receiver shall be your agent not ours, and you shall be solely responsible for the receiver's actions.

We will appoint the receiver in writing on any terms and conditions we decide and then notify you.

Only we may remove a receiver who we have appointed. If we choose, we can appoint a substitute receiver.

We will decide how to pay the receiver, however, you will be liable for the cost.

The appointment of a receiver or exercise of any powers that we may have will not be construed as entering into possession of **your property**.

The receiver may demand, recover and issue receipts for income from **your property**.

The receiver may employ others to assist with the management of **your property**.

The receiver may, out of income received, make any payment to a prior chargeholder or repair or maintain any **buildings** or improvements and do anything to **your property** which the receiver considers necessary or expedient.

The receiver can do anything under **this mortgage** that a receiver can do at law.

14. Indemnifying us

You protect us from any claim

If you are in **breach**, you agree to protect us from any claims that may be made against us or the receiver relating to **your property**. You also promise to protect us from any claims made against us because we have exercised our rights or have chosen not to exercise our rights under **this mortgage**.

We are not responsible for any damage or loss to you or that others may suffer because we have exercised our rights under **this mortgage** or because we have chosen not to exercise them.

15. We can transfer this mortgage

We may at any time transfer our rights and obligations under **this mortgage** to any other person without having to obtain your consent and you agree not to object. The person we may transfer **this mortgage** to can exercise all of the rights which we have under **this mortgage**.

As part of this process, we may disclose information about you, **your property**, **this mortgage** or any other **bank document** we have with you to any party. You must not transfer your rights and obligations under **this mortgage** to any person without getting our consent in writing first.

16. You appoint us as your attorney

An attorney is someone you appoint who has the right to act for you or to do things on your behalf.

By granting to us **this mortgage**, you appoint any manager of the **bank** or agent of the **bank** as your attorney to do anything that you agree to do under **this mortgage**. Any person so appointed can do anything on our behalf under this power of attorney.

We can do anything we believe needs to be done to protect **your property** or to enforce any of our rights under **this mortgage**, for example we can sign documents or enter into contracts on your behalf. Although you have appointed us as your attorney, we don't have to act even if you want us to. We are not responsible for damage or loss you or others suffer because of our actions or our failure to act as your attorney.

When we act as your attorney, you must immediately confirm any actions which we have taken on your behalf. If we ask you to, you must also immediately pay the costs we incur when we act as your attorney.

17. How can we give notices or demands to you

Any notice or demand under **this mortgage** or authorised or required by the Property Law Act 2007 may be signed by us or by our agent and served:

- by giving it to you personally; or
- by posting it by registered post or sending it by courier addressed to you at your main place of business or your home address last known to us; or

- by giving it in electronic form and by means of an electronic communication under the Electronic Transactions Act 2002; or
- in the case of a company, by delivering it to a director of the company, by delivering it to an employee of the company at the company's head office or principal place of business, or by leaving it at the company's registered office.

A notice or demand will be properly served:

- if served personally, on the same day that it is given to you; or
- if posted by registered post or sent by courier, when the notice or demand would normally have been delivered and confirmation of delivery by New Zealand Post or the courier firm will be evidence of service; or
- if given in electronic form by means of an electronic communication:
 - at the time the electronic communication enters your designated information system (as defined in the Electronic Transactions Act 2002); or
 - at the time the electronic communication comes to your attention; or
 - otherwise, when actually received by you or your agent.

The posting, delivery or giving of a notice or demand shall be valid, even if at the date of service, you, whether to our knowledge or not, are dead, mentally incapable, bankrupt, in liquidation or absent from New Zealand, or do not receive the notice or demand and despite anything else which might otherwise negate valid service.

The ways of service set out in this clause do not limit any other lawful mode of service.

For the purposes of this clause, "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 as a postal operator under the Postal Services Act 1998.

If you move overseas at any time after granting of **this mortgage**, you must prior to your departure irrevocably appoint an agent in New Zealand to accept service on your behalf under the Property Law Act 2007.

18. Our records

Our records are evidence of the **money owing** and such information contained in our records are admissible in all courts of law and certified copies and extracts from our records may be produced in evidence without the necessity of producing the complete records themselves.

19. Consumer Guarantees Act 1993

The Consumer Guarantees Act 1993 shall not apply if **this mortgage** is given for business purposes.

20. Property Law Act 2007

Schedule 2 of the Property Law Act 2007 sets out various covenants, conditions and powers that are implied in all **mortgages** over **land**.

You and we agree that:

- clause 3(2) of Part 1 of Schedule 2 relating to the application of insurance monies when money is still owing to the **bank** does not apply to **this mortgage**;
- if any of the other covenants, conditions or powers are different to any contained in **this mortgage**, then the provisions of those covenants, conditions or powers are modified or negated to the extent that they conflict with the provisions of **this mortgage**.

21. Invalidity

If any part of **this mortgage** is found to be illegal or otherwise not able to be enforced, then this will not affect the legality or enforceability of the rest of **this mortgage**.

22. What if you have granted this mortgage as a trustee of a trust?

If you have granted **this mortgage** as a trustee of a trust, you certify to us:

- you are able to grant **this mortgage** over the **land** under the terms of the trust document or under the Trustee Act 1956 and any trustee resolutions or other authorisations that may be required have been obtained or passed prior to the signing of the **authority and instruction form** to ensure that it is legally binding;
- you have properly signed the **authority and instruction form** in accordance with the terms of the trust;
- that your entry into the **authority and instruction form** granting **this mortgage** is for a proper purpose and for the benefit of the trust.

23. What if you are an independent trustee?

The terms of **this mortgage** will bind you personally unless you are an independent trustee. 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 a capacity as a trustee of the trust.

If you are an independent trustee, we will be entitled to recover any **money owing** from your personal assets if we are unable to recover any portion of the **money owing** from the assets of the trust because your certifications were incorrect. Even if your certifications were incorrect, we will only be entitled to recover from your personal assets the amount we would have recovered from the trust assets had your certifications been correct.

If you are not an independent trustee, we may recover any **money owing** from your personal assets as well as the trust assets.

24. Replacement security

Where **this mortgage** is over the same land as was previously mortgaged to us and **this mortgage** is given in replacement for that previous **mortgage**, then **this mortgage** is given in replacement for that **mortgage**.

25. When reading this mortgage, what do certain things mean?

- headings are for convenience only. They do not affect the meaning;
- a reference to a law includes any changes to that law or any new laws introduced to replace it;
- the singular includes many and vice versa.

26. What do the words in bold mean?

The words in bold in **this mortgage** have the following meanings:

authority and instruction form	means a Client Authority and Instruction Form for an Electronic Transaction given to you by your lawyer or conveyancer to be signed by you authorising registration of this mortgage against your property as an electronic instrument , and includes everything that is attached to that document
bank	means TSB Bank Limited
bank document	means any agreement or contract of any nature relating to the lending of money or the provision of a financial service or product to you or someone else at your request and includes any security agreement
breach	means a failure to: <ul style="list-style-type: none"> • pay any money owing when it is due to be paid by you; or • to otherwise comply with or perform any obligation which you have agreed to perform under this mortgage or any other bank document
building	means any structure attached to or erected on the land
conveyancer	has the same meaning as in the Lawyers and Conveyancers Act 2006
costs	means: <ul style="list-style-type: none"> • the costs of doing anything that you have agreed to do under this mortgage but have failed to do when asked by us to do so • the costs of obtaining any report of any nature relating to your property • the costs of obtaining any advice of any nature including legal advice relating to this mortgage or your property • the costs of taking any action against you to force you to comply with your obligations under this mortgage including legal action
development works	includes the subdivision, development or improvement of your property and also includes the construction, alteration or repair of any building or other improvements on the land
electronic instrument	means an instrument that has been prepared for registration in an electronic workspace
general security agreement	means an agreement that creates or provides a security interest over all of the assets of the party signing the agreement
guarantee	means a separate form of guarantee in whatever form entered into by a third party in favour of a lender
insurable improvements	means the buildings and other improvements on the land that are capable of being insured

land	means the land described in an authority and instruction form signed by you
lease	means any lease, sub-lease, cross-lease or licence to occupy
money owing	means any amount you owe us and includes: <ul style="list-style-type: none"> • amounts you owe either now or may in the future owe by yourself or with others under this mortgage or under any other bank document • amounts we lend others when you ask us to and amounts we pay or owe others on your behalf • amounts we pay when enforcing our rights under this mortgage • amounts we get in a court judgement against you • interest on any of those amounts at the rate we have agreed or if we haven't otherwise agreed, at our unarranged interest rate • costs we, or a receiver incurs including the fees paid to a receiver
mortgage	includes: <ul style="list-style-type: none"> • any charge over property securing payment of amounts or the performance of obligations; and • any registered mortgage
person	means an individual, firm, body corporate, an association of persons (whether corporate or not), trust or government agency and any other entity (in each case whether or not having a separate legal personality)
security agreement	means any mortgage, general security agreement, specific security agreement , lien over account or any other charge or guarantee
security interest	means an interest in personal property created to secure the payment or performance of an obligation
specific security agreement	means an agreement that creates or provides a security interest over specific assets of the party signing the agreement
this mortgage	means this memorandum of mortgage
unarranged interest rate	means the interest rate charged by the bank where no formal agreement has been made with the bank . That rate is 5% above the bank's standard overdraft interest rate
upon demand	means demand being made by notice in writing served on you in the manner set out in this mortgage
your property	means the land described in the authority and instruction form signed by you and includes all of the following: <ul style="list-style-type: none"> • rights and interests in the land • structures on the land such as the house, garage, shed etc • anything else attached to the land that is treated as being part of the land

Memorandum Number:

Land Transfer Act 1952

MORTGAGE

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

Registrar-General of Land

Land Registry

(Abstract number/date

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