

Class of instrument in which provisions are intended to be included

MORTGAGE

Person executing memorandum

BANK OF NEW ZEALAND

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

You have asked us to provide banking or other financial services to you, or at your request to someone else. In consideration of us doing so, you agree to all the things in this document.

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1. DEFINITIONS

Use of defined terms

1.1 In this Mortgage:

"**Bankruptcy Event**" in relation to a person (or their estate) includes:

- (a) any act of bankruptcy;
- (b) an application being made to declare that person bankrupt;
- (c) that person being declared bankrupt;
- (d) making or entering into a composition or proposal with creditors;
- (e) a summary instalment order being made against that person;
- (f) the person entering or applying to enter the no asset procedure; or
- (g) an application being made for that person or their estate to be administered as an insolvent estate,

under the Insolvency Act 2006, or any event similar to any of these, or any step being taken towards any of these.

"**BNZ Document**" means this Mortgage and any other document which relates to the Secured Money:

- (a) to which you and we are or become parties; and/or
- (b) under which you owe us obligations (including, if relevant, as a Guarantor),

even if:

- (c) other parties are also party to the document;
- (d) other parties also owe us obligations under the document; and/or
- (e) the obligations arise as a result of an assignment or a transfer.

"**Development Works**" includes the subdivision, development or improvement of the Land and also includes the construction, development, alteration, pulling down, removal, or significant repair of any buildings or other improvements on the Land.

"**Guarantee**" means:

- (a) a promise given by someone other than you to meet any of your obligations to us or to make good a loss we incur under or in relation to any BNZ Document; and
- (b) a promise you have given to us to meet someone else's obligations to us or to make good a loss we incur.

A "**Guarantor**" is a person who enters into a Guarantee for our benefit.

"Insolvency Event" in relation to a person or its assets, includes when:

- (a) the person is unable to pay its debts as they fall due, or is presumed unable to pay its debts in accordance with any law;
- (b) a receiver, receiver and manager, judicial manager, statutory manager, trustee, administrator, liquidator, interim liquidator or any similar officer is appointed to the person or its assets;
- (c) the person ceases to be registered under the law under which it was registered (even if it later becomes registered again) except for the purposes of a solvent amalgamation, reconstruction or transfer of registration on terms agreed in writing by us;
- (d) the suspension or prohibition of the person's constitutional documents or its officers' powers occurs;
- (e) any law or regulation prevents the person from carrying on any activity;
- (f) a security holder (for example, a mortgagee) seeks to exercise, or exercises, a power to take possession of or sell any of the person's property;
- (g) any of the person's property is seized, charged or sold by or on behalf of a creditor;
- (h) a judgment from a court is obtained against the person that is not satisfied within 10 days (unless the person contests the judgment in good faith to our satisfaction);
- (i) the person proposes any dealing with any of its creditors to avoid insolvency or in expectation of insolvency, or enters into any dealing of that nature with, or for the benefit of, any of its creditors (for example, proposes or makes any assignment, arrangement, compromise or composition to, with or for the benefit of any of its creditors);
- (j) any investigation or inspection of, or declaration is made against, the person under the Companies Act 1993 or the Corporations (Investigations and Management) Act 1989;
- (k) if the person is a limited partnership, it ceases to have a general partner, a terminating event occurs under the Limited Partnerships Act 2008, or any other step is taken to terminate or dissolve the partnership;
- (l) any equivalent event occurs under the laws of any country other than New Zealand; or
- (m) any event occurs which is similar to any of these or any step is taken towards any of these.

"Land" means the property described in the Mortgage Instrument. It includes anything the law considers to be part of the land (for example, buildings, fixtures, improvements and any trees or crops on the land) and all documents of ownership (including under any lease). It excludes anything that the law prevents us from taking Security over.

"Land Rights" means:

- (a) all your rights to receive payments due to your interest in the Land and includes payments under leases, licences, insurance policies and payments from the sale of crops, trees and other produce of the Land;
- (b) all insurance policies relating to the Land; and
- (c) all documents and consents relating to the Land.

A **"lease"** includes a licence.

"Mortgage" means this memorandum read together with the Mortgage Instrument.

"Mortgage Instrument" means a mortgage document or an "authority and instruction" form, authorising registration of a mortgage over the Land. You are bound by this Mortgage on signing the mortgage document or, if an "authority and instruction" is used, on this Mortgage being registered.

"Resource Consent" includes a resource consent issued under the Resource Management Act 1991 in relation to all or any part of the Land and any conditions of or attached to that resource consent.

"Secured Money" means any amount that you owe (or may owe) to us at any time, whether on the date of the Mortgage Instrument or after that time and whether or not any other person also has obligations to us in relation to that amount. It includes:

- (a) amounts in relation to advances made by us to you (or to a person you act as a Guarantor for) whether before or after the date of the Mortgage Instrument;
- (b) any "further advance by way of financial accommodation" (as defined in section 93 of the Property Law Act 2007) made by us to you (or to a person you act as a Guarantor for);
- (c) any amount you owe us (or may owe us in the future) under any BNZ Document (including, if relevant, as a Guarantor);
- (d) amounts that we are or may be required to pay to other people on your behalf (or on behalf of a person you act as Guarantor for) or if you ask us to (for example, if we agree to guarantee obligations you or someone else owes to another person);
- (e) interest and other fees, costs, commissions and expenses charged or incurred by us; and
- (f) all other amounts referred to in clause 3.

"Secured Property" means the Land, the Land Rights and any Resource Consent. Where this Mortgage refers to the Secured Property it means all or any part of the Secured Property. We may agree with you, in another BNZ Document, that some of the Secured Property is excluded from the security created by this Mortgage.

"Security" means any mortgage, charge, trust, encumbrance, lien or other security interest (however described) and includes any "security interest" under the Personal Property Securities Act 1999. In relation to any Security:

- (a) a **"Prior Ranking Security"** is a Security which ranks ahead of the security created by this Mortgage; and

- (b) a **"Subsequent Ranking Security"** is a Security **which** ranks behind the security created by this Mortgage.

For example, if you have given a mortgage to another bank before this Mortgage, it may be a Prior Ranking Security.

A **"Stratum Estate"** is a land ownership interest under the Unit Titles Act 2010. It usually involves ownership of a flat or apartment coupled with shared ownership of common areas.

"we", **"us"** and **"our"** mean Bank of New Zealand.

"you" and **"your"** mean the person or persons named in the Mortgage Instrument. You are the "mortgagor". If more than one person is named in the relevant Mortgage Instrument, "you" means each of those persons alone and all of them together.

Other rules that apply when interpreting this Mortgage

- 1.2 Headings do not affect the meaning of any clause.
- 1.3 References to any person include that person's executors, administrators, successors, permitted assignees and permitted transferees.
- 1.4 Examples do not limit what else may be included.
- 1.5 Unless the context requires otherwise:
- (a) the singular includes the plural, and the plural includes the singular;
 - (b) references to a "person" include companies, corporations, trusts, partnerships and other entities;
 - (c) a reference to any legislation includes reference to that legislation as amended, re-enacted or substituted and any regulations under that legislation; and
 - (d) a reference to any document includes that document as amended, varied, replaced or substituted from time to time.

2. SECURITY YOU MUST PROVIDE TO US

- 2.1 This Mortgage is security for the Secured Money you owe us at any time and from time to time. It operates irrespective of any payments you make to us, whether or not your accounts with us are in credit at any time, any settlement we reach with you and any other matters that might impact your liability to us.
- 2.2 By entering into this Mortgage and as security for your payment and other obligations to us under the BNZ Documents, you grant to us:
- (a) a mortgage of the Land; and
 - (b) Security over the Land Rights and all Resource Consents.
- 2.3 Unless another person holds a Prior Ranking Security, you must pay to us:
- (a) all amounts we specify on any sale of the Secured Property;

- (b) (if we request you to) all insurance payments received by you in relation to the Secured Property; and
 - (c) (unless we agree otherwise in another BNZ Document) all amounts you receive from any lease of the Secured Property.
- 2.4 This Mortgage will remain in full force and the security granted under it will continue until we give you a notice of final discharge.
- 2.5 Our rights under this Mortgage are additional to (and will not merge with) the rights we have against you or any other person under the BNZ Documents or any promissory note or other negotiable instrument. We can enforce our rights under any BNZ Document in any order we choose.
- 2.6 Our priority amount is the amount set out in your Mortgage Instrument (or, if not set out in those documents, is \$500,000,000). Our priority amount (plus interest on that amount, if specified in the Mortgage Instrument) is the minimum amount we are entitled to receive on a sale of the Secured Property before someone who holds a Subsequent Ranking Security is entitled to receive payments. It is not the maximum amount that can be secured against the Secured Property. You may owe more or less money to us. If the amount you owe to us is less than our priority amount, we can only recover the amount you owe to us.

3. AMOUNTS YOU MUST PAY TO US

- 3.1 Unless another BNZ Document says something different, we can make a demand on you at any time to pay all or part of the Secured Money to us.
- 3.2 We will charge interest on the Secured Money until it is repaid. Interest will be charged at the interest rate we have agreed in the other BNZ Documents.
- 3.3 We can charge default interest if the Secured Money is not paid when it is due for payment. You may also have to pay fees to us. More information about interest (including default interest) and fees is contained in your other BNZ Documents.
- 3.4 Whenever you owe us money you must pay the full amount due to us. You may also have to pay to us amounts that may become payable in the future, even if those amounts are not actually due and payable at the relevant time.
- 3.5 If a law requires you to make a deduction or withholding, you must increase the amount you pay to us so that the net amount we receive, after any deduction or withholding, is equal to the full amount we would have received if no deduction or withholding had been made.
- 3.6 You may not argue that amounts we might owe to you (for example, money in any account you have with us) can be or have been used to make a payment to us or that any set-off has occurred. You waive any rights of set-off that you might have. For example, a right of set-off may arise if you hold money in a bank account with us at the same time as owing us money (for example the Secured Money). In the example, because you have waived your rights of set-off, you are not entitled to claim that any amount you hold in a bank account with us reduces the amount you owe us under any BNZ Document.
- 3.7 If you owe us money, we can exercise rights of set-off and take money from any account you have with us and use that to pay the money you owe us.

3.8 You must pay and reimburse us for all charges and expenses (including legal costs and insurance premiums paid by us) we pay or incur in relation to the entry into, operation, discharge, attempted enforcement and enforcement of our rights under this Mortgage. This includes all charges and expenses we pay or incur doing any of the things set out in clause 9.2.

3.9 You may have to pay us a fee to discharge this Mortgage.

4. HOW WE GIVE NOTICES AND DEMANDS TO YOU

4.1 We can deliver demands and notices to you by letter or email to the address you have provided to us. You will be deemed to receive letters from us on the third working day after we post them and emails at the time they leave our information system, provided that we have not received a notification that the email has not been delivered.

4.2 If you ask us for any consent or approval under this Mortgage and we agree to that, our consent or approval will only be effective if it is in writing. An email is "in writing" for this purpose and all other purposes. If we tell you we agree to something over the phone or in person, it will not be effective until we confirm it in writing.

5. WHAT REPRESENTATIONS YOU MAKE

5.1 By entering into this Mortgage, you represent to us that:

- (a) you have the power and authority to:
 - (i) own your assets;
 - (ii) carry on your business as and where it is now being conducted;
 - (iii) enter into and exercise your rights and perform and comply with your obligations under this Mortgage;
- (b) your entry into and performance of this Mortgage will not:
 - (i) breach any law to which you are subject; or
 - (ii) conflict with, or result in a breach of, any other agreement, to which you are a party, or which is binding on you or your assets;

If you are an individual

(c) you are of full age and capacity;

If you are a company

- (d) you are duly incorporated and validly existing under the law of the country in which you are incorporated;
- (e) you have taken all necessary corporate action to authorise your entry into and performance of this Mortgage;
- (f) your entry into and performance of this Mortgage will not breach your constitutional documents or cause any limitation on any of your powers, or on the right or ability of your directors to exercise those powers, to be exceeded;

- (g) you have given us a complete and up to date copy of your constitutional documents;

If you are a trustee of a trust

- (h) the trust is valid;
- (i) no action has been taken to distribute or vest the Secured Property in the beneficiaries of the trust;
- (j) you are the sole trustee (or all the trustees) of the trust;
- (k) you have taken all necessary trust actions required to authorise your entry into and performance of this Mortgage on behalf of the trust;
- (l) you are entitled to be reimbursed out of the assets of the trust in relation to the BNZ Documents you are party to;
- (m) the entry into and performance of this Mortgage is:
 - (i) permitted by the trust deed;
 - (ii) prudent; and
 - (iii) in the interests of the beneficiaries of the trust;
- (n) you have given us a complete and up to date copy of the trust deed;

If you are a partnership

- (o) the partnership has not been terminated or dissolved;
- (p) you have taken all necessary partnership action to authorise your entry into and performance of this Mortgage;
- (q) you own all the assets of the partnership;
- (r) there are no limits on your rights to be reimbursed out of the assets of the partnership;
- (s) you have given us a complete and up to date copy of your partnership agreement;

If you are a limited partnership

- (t) you have taken all necessary limited partnership action to authorise your entry into and performance of this Mortgage;
- (u) you enter into this Mortgage as part of the proper administration of the partnership;
- (v) you are not in default under the partnership agreement;
- (w) you have given us a complete and up to date copy of your partnership agreement;
- (x) you are the sole general partner (or all the general partners) of the limited partnership.

- 5.2 Each of your representations to us in clause 5.1 will be treated as being repeated by you to us on each day until we give you a notice of final discharge of this Mortgage. If any of your representations is incorrect you must contact us immediately.

6. WHAT YOU PROMISE TO DO (OR NOT DO)

- 6.1 To protect our interest in and the value of the Secured Property you agree to do all (or, where stated, not do any) of the following things:

You must comply with laws and agreements

- 6.2 You must comply with all laws and agreements you are a party to if failing to do so might:

- (a) result in the Secured Property becoming subject to a Security;
- (b) result in the Secured Property becoming subject to a liability;
- (c) adversely affect this Mortgage; or
- (d) adversely affect the value of the Secured Property.

- 6.3 You must:

- (a) pay all amounts secured under any Prior Ranking Security when they fall due for payment; and
- (b) perform and observe all of your other obligations under any Prior Ranking Security.

You must maintain the Secured Property

- 6.4 You must pay all rates, taxes, charges, assessments and other outgoings imposed on you and payable in respect of the Secured Property when they fall due for payment.
- 6.5 You must make sure that you are allowed to occupy and use the Secured Property for the purpose you are occupying and using it. This includes obtaining, maintaining and complying with all consents (including under the Building Act 2004 and the Resource Management Act 1991), authorisations, licences and other rights (including forestry rights) and all notices or demands issued to you in relation to the Secured Property. You must not agree to any changes to or waive any of your rights under these consents or other rights that might adversely affect this Mortgage or the value of the Secured Property.
- 6.6 You must give us copies of all notices that you receive that might adversely affect this Mortgage or the value of the Secured Property. This includes building warrants of fitness, code compliance certificates, Earthquake Commission assessments, and notices issued under the Building Act 2004 (for example, a notice to fix or a dangerous or unsanitary building notice).
- 6.7 Where you carry on any business on the Land you must do so in accordance with best current business practice at all times and not change the type of business you are carrying on without our prior written consent.
- 6.8 If you lease or grant any occupation or use rights in relation to the Land you must use your best endeavours to make sure your tenant complies with the terms of the lease or other right and pays all rent and other amounts when they are required to be paid.

- 6.9 You must maintain and protect the Secured Property and keep it in a good and tenable state of repair and in good working order and condition. We can require you to fix something on the Secured Property. If we do, you must fix it immediately or within the timeframe we specify.
- 6.10 You must not without our prior written consent:
- (a) do any Development Works unless you hold all necessary approvals, consents and authorisations (including Resource Consents) for those works;
 - (b) do any Development Works that might adversely affect the value of the Secured Property; or
 - (c) change the use of any building on the Land that would require a consent to be issued by government or any local authority or which might adversely affect the value of the Secured Property.
- 6.11 You must allow us and/or our agents to inspect the Secured Property at any reasonable time to assess its value and condition. Our access is to be free of charge. Unless the law requires us to, we do not have to tell you what, if anything, we find out as a result of our inspection.

Farmland

- 6.12 If the Secured Property is used for an agricultural, pastoral or horticultural purpose, you must:
- (a) manage the Secured Property in accordance with accepted principles of farm management and keep the Secured Property clear of noxious animals and plants;
 - (b) take all reasonable steps to control disease; and
 - (c) not make any material change in the type of farming conducted on the Secured Property without our prior written consent.

Building and other Works

- 6.13 If we have agreed to you doing any Development Works, you must do those works:
- (a) in a workmanlike manner, with all reasonable skill and care;
 - (b) as required by any conditions we have agreed with you;
 - (c) as set out in any timetable, plans and specifications approved by us; and
 - (d) in accordance with all required approvals, consents and authorisations (including Resource Consents).

Forestry Rights

- 6.14 If the Secured Property is or includes a forestry right, you must:
- (a) undertake activities on the Secured Property (and maintain records of those activities) which are in all respects consistent with recognised good forestry practices and which are necessary or desirable to maintain and preserve the health and value of the trees; and

- (b) carry out regular inspections.

Licensed Premises

- 6.15 If you operate a business on the Land which requires you to hold a licence under the Sale and Supply of Alcohol Act 2012, you must operate the business in accordance with that Act and the conditions of any licence issued under that Act.

Unit Titles

- 6.16 If the Secured Property is or includes a Stratum Estate, you must:
- (a) comply with your obligations under the Unit Titles Act 2010 and the body corporate rules;
 - (b) pay all amounts you owe to the body corporate when they fall due for payment;
 - (c) if we require you to, keep and maintain a mortgage redemption insurance policy in our name for an amount that is sufficient to allow you to pay the Secured Money in full (after taking into account any obligations under a Prior Ranking Security); and
 - (d) not vote (or appoint someone else to vote on your behalf) on any resolution which might adversely affect the value of the Secured Property without our prior written consent. Resolutions that might adversely affect the value of the Secured Property include those relating to weathertightness (leaky buildings) and earthquake strengthening. When you do vote on any resolution, you must vote in accordance with our instructions (if we have given any).

Leases and Licences

- 6.17 If the Secured Property is or includes a lease, you must:
- (a) pay the rent and comply with all your obligations under the lease;
 - (b) at your cost, do everything necessary or desirable to maintain the lease in full force and effect (including by extension, renewal or replacement from time to time);
 - (c) take all reasonable steps to make sure that the lessor complies with its obligations under the lease;
 - (d) give us copies of all notices issued to or by you under the Property Law Act 2007 in relation to the lease;
 - (e) give us copies of all correspondence in relation to any arbitration proceeding in relation to the lease and comply with any instructions we give in relation to the arbitration; and
 - (f) if you acquire ownership of the Land, make sure we receive a registered mortgage over the Land.

You must maintain all necessary environmental and other consents and authorisations

- 6.18 You must:
- (a) obtain, maintain and comply with all Resource Consents and authorisations needed for your occupation and use of the Land; and
 - (b) comply with all notices and orders issued to you under the Resource Management Act 1991.
- 6.19 You must not deal with or dispose of any rights under any Resource Consent or other authorisation or consent in relation to the Secured Property without our prior written consent.
- 6.20 You must not do anything (or fail to do anything) which could cause an environmental liability to arise in relation to the Secured Property.
- 6.21 You must immediately notify us of all environmental liabilities which arise in relation to the Secured Property and provide us with details of all actions taken or proposed to be taken.

7. YOU MUST HAVE INSURANCE

- 7.1 You must obtain insurance for all buildings and other improvements on the Secured Property against loss or damage by fire, flood, storm, earthquake, natural disaster and any other risk required by us. The terms of the insurance policy must be consistent with standard, comprehensive insurance policies entered into in New Zealand and must not exclude anything material.
- 7.2 Your insurance must be with an insurance company acceptable to us.
- 7.3 You must comply with the terms of the insurance policy at all times.
- 7.4 You must maintain insurance for a sum insured which is not less than the full reinstatement value of the Secured Property at all times.
- 7.5 You must review your insurance annually and whenever you undertake any Development Works.
- 7.6 The insurance policy must be in your name as mortgagor and have our interest as secured party noted on it.
- 7.7 If we ask, you must provide evidence that the insurance policy is in place and any related information.
- 7.8 You must pay all premiums and other amounts required under the insurance policy when they fall due for payment. If you do not, we can pay those amounts on your behalf and require you to reimburse us by making demand on you.
- 7.9 You must let us know immediately if the insurance is cancelled or a new insurance company is appointed.
- 7.10 You must tell us immediately if something happens which may lead to a claim being made under your insurance policy and if you make a claim under the insurance policy.

- 7.11 You must tell your insurance company to make payments to us if we request it. If any Secured Property is destroyed or damaged we, in our sole discretion, can choose or require you to apply any amount received under the insurance policy towards either:
- (a) repairing or replacing the Secured Property; and/or
 - (b) payment of the Secured Money, even if we have not made demand for payment.
- 7.12 You must not settle or agree any insurance claim with your insurance company or waive any right you have under the insurance policy without our prior written consent. You authorise us to agree any insurance settlement or payment arrangements on your behalf.

8. IF YOU ARE A TRUSTEE

- 8.1 If we agree that you are party to this Mortgage as an independent trustee of a trust and have no interest in the assets of the trust (other than your interest as trustee), you will only be personally liable under this Mortgage to the extent of the assets of the trust that are available from time to time to meet your liability, plus:
- (a) any amount by which the value of those assets has been reduced by any breach of trust caused by your wilful default or dishonesty; and
 - (b) any amount we cannot recover due to your having acted in breach of trust and/or having lost your right of reimbursement out of the trust assets.
- 8.2 You will not be treated as acting as an independent trustee if you are, at any time, a beneficiary, discretionary beneficiary or appointor of or under the trust document.
- 8.3 We can determine the order in which we recover Secured Money from you in your capacity as trustee of a trust. We can choose in our sole discretion to recover out of the trust assets or (if available to us) your personal assets.
- 8.4 You must not:
- (a) resign as a trustee; or
 - (b) appoint or allow or agree to any new trustee being appointed,
- without our prior written consent.
- 8.5 You must use your best endeavours to make sure that, on the appointment of any new trustee, you and the new trustee enter into a new mortgage in our favour on identical terms to this Mortgage.

9. DEFAULT AND OUR RIGHTS FOLLOWING A DEFAULT

- 9.1 A "Default" will occur if:
- (a) you fail to pay any part of the Secured Money when you are required to;
 - (b) any of the representations you make in this Mortgage is untrue or incorrect;
 - (c) you fail to do anything you promised to do (or you do something you promised not to do) in this Mortgage;

- (d) you breach any of your other obligations under any BNZ Document;
- (e) a Guarantor (not being you) breaches any of its obligations to us;
- (f) a Bankruptcy Event or Insolvency Event occurs in relation to you or any Guarantor;
- (g) an event of default or a termination event (however described) occurs under any other BNZ Document;
- (h) you sell or lease the Secured Property without our prior written consent;
- (i) you grant any Security or other right in or over the Secured Property without our prior written consent; or
- (j) if the Land includes a Stratum Estate:
 - (i) any application is made to Land Information New Zealand or to a court for the cancellation of the unit scheme or for the settlement of any scheme which affects the estate; or
 - (ii) any step is taken for the appointment of an administrator of any body corporate.

9.2 If a Default occurs we may:

- (a) sell the Secured Property;
- (b) enter into and manage the Secured Property;
- (c) lease (or grant a licence in respect of) the Secured Property to any person on any terms we think are appropriate;
- (d) deal with any leases or tenancies of the Secured Property;
- (e) make arrangements with:
 - (i) the lessees, tenants or occupiers;
 - (ii) any other holder of Security over the Secured Property; and
 - (iii) any caveator or other claimant in respect of the Secured Property;
- (f) do all things and pay any amount necessary or appropriate (in our opinion) to remedy the Default to our satisfaction;
- (g) complete any Development Works;
- (h) make any variations to the plans and specifications for any Development Works that we consider appropriate; and/or
- (i) do anything necessary or appropriate (in our opinion) to remedy, prevent or mitigate deterioration in any Development Works.

10. WHAT RECEIVERSHIP INVOLVES

- 10.1 We may appoint any person to be a receiver of the Secured Property:
- (a) if a Default occurs; or
 - (b) if you ask us to.
- 10.2 If a receiver is appointed:
- (a) the receiver will be your agent; and
 - (b) you will be solely responsible for all the receiver's acts or defaults, except where the law says otherwise.
- 10.3 In addition to the powers that a receiver has under the Receiverships Act 1993, a receiver has the power to:
- (a) sell, dispose of, manage and do all things as if the receiver had absolute ownership of the Secured Property and carried on any of your business on the Secured Property; and
 - (b) exercise any powers which have been delegated to the receiver by us under this Mortgage.
- 10.4 If you establish that a receiver has exercised any of its powers improperly, you agree that damages are an adequate remedy to compensate you for the improper exercise of those powers.
- 10.5 No action by us or the receiver under this clause, including entry into or possession of any part of the Secured Property by the receiver, will cause us to have taken possession of any Secured Property.
- 10.6 Where two or more receivers are appointed, those receivers are authorised to act on their own or together.
- 10.7 A receiver may be removed and a new receiver may be appointed by us at any time.

11. USE OF MONEY RECEIVED UNDER THIS MORTGAGE

- 11.1 All amounts received by us (or a receiver) under this Mortgage will be used by us (or the receiver):
- (a) first, to pay costs of protecting, preserving and realising the Secured Property in accordance with the Property Law Act 2007;
 - (b) second, to pay any amounts due to creditors with Prior Ranking Securities or other rights ranking ahead of this Mortgage;
 - (c) third, to pay all costs, charges and expenses (including tax and legal costs and the remuneration of the receiver) of and relating to the exercise of our powers or the receiver's powers; and
 - (d) fourth, to pay the Secured Money to us in the manner and order we require.

Any surplus will be paid to you or any other person entitled to it.

12. POWER OF ATTORNEY

- 12.1 You appoint us, our officers and every receiver separately as your attorney to do anything that you are required to do under this Mortgage (if you have not done it) or that we or a receiver require to protect the Secured Property and our rights under this Mortgage. This includes a right to sign documents on your behalf.
- 12.2 You cannot revoke this appointment until we have given you a notice of final discharge.
- 12.3 We or a receiver can delegate our powers (including this power of delegation) to any person for any purpose and may revoke any delegation made by us.
- 12.4 If you are asked to do so, you must confirm that anything done by an attorney under this clause is done on your behalf and with your approval.

13. EXERCISE OF OUR POWERS

- 13.1 We can choose if and when we exercise and how often we exercise our rights under this Mortgage and at law. Any delay by us does not affect our right to choose when or if we exercise any of our rights.

14. LIABILITY FOR LOSSES

- 14.1 We will not be liable to you for any Loss you incur:
- (a) arising as a result of us entering into or exercising our rights under this Mortgage; or
 - (b) caused by circumstances outside of our control.
- 14.2 If we incur a Loss as a result of your failing to do any of the things you are required to do under this Mortgage, you must pay the amount of that Loss to us on demand. We may make more than one demand under this clause.
- 14.3 In this clause, "Loss" includes any direct or indirect loss of profit, business or opportunity and any related expense or liability.

15. NO INQUIRIES AS TO OUR POWERS REQUIRED

- 15.1 No one, including any person dealing with us, our agents or any receiver needs to ask:
- (a) whether the security created by this Mortgage has become enforceable;
 - (b) whether any power which we, our agent or any receiver is purporting to exercise has become exercisable or is being exercised in accordance with this Mortgage; or
 - (c) about the use of any amount paid to us or to any receiver.

16. HOW WE COLLECT AND SHARE INFORMATION ABOUT YOU

- 16.1 You authorise us to use, at any time, information either we or any of our related companies (as defined in section 2(3) of the Companies Act 1993, except that references in that section to "company" mean a company or corporation whether

incorporated or established in New Zealand or elsewhere) hold about you for the purpose of establishing and maintaining relationships between you and us or our related companies. You also authorise us to collect information about you and any Guarantor when we need that information in connection with our relationship with you, the operation of the BNZ Documents and/or our exercise of rights under the BNZ Documents.

16.2 Without limitation, you authorise us to disclose information about you:

- (a) to National Australia Bank Limited and any of our other related companies for the purpose of credit, risk and prudential assessment;
- (b) to any holder of a Security over any of the Secured Property;
- (c) to any insurer of the Land;
- (d) to any person performing services in connection with the Land;
- (e) to any person to whom we may assign or transfer any of our rights or obligations under this Mortgage or any other BNZ Document;
- (f) to any credit reporting agency; and
- (g) in the event of default in payment of all or any part of the Secured Money, to any credit agency,

provided that any such disclosure is limited to information reasonably required by the recipient.

16.3 You authorise us to make credit and other inquiries about you within our normal procedures and to obtain information about you from:

- (a) any holder of a Security over any of the Secured Property;
- (b) any insurer of the Land;
- (c) any government, territorial or other authority having jurisdiction in respect of the Land; and
- (d) any person performing services in connection with the Land,

provided that the information obtained is limited to information reasonably required by us.

16.4 If we assign or transfer any rights or obligations under this Mortgage or any other BNZ Document to another person:

- (a) you authorise the person to whom we assign or transfer those rights or obligations to use information about you, disclose information about you and make credit and other enquiries about you to the same extent that we are entitled to under this clause; and
- (b) you authorise us (in addition to any person we assign or transfer rights or obligations to) and our related companies to continue to use information we hold about you at any time as part of our continuing relationship with you.

16.5 Your agreement to the terms of this clause operates as authority to the persons identified in this clause to provide the relevant information to us.

17. OUR CERTIFICATES AS TO AMOUNTS OWING TO US ARE CONCLUSIVE

- 17.1 Our certificate as to any amount or fact relating to this Mortgage will be conclusive evidence (unless there is an obvious error or you prove that the certificate is incorrect) of that amount or fact. If we make an error in a certificate:
- (a) we will notify you; and
 - (b) that error will not restrict our right to recover all amounts owing to us.

18. TRANSFER OF RIGHTS UNDER THIS MORTGAGE

- 18.1 You may not assign or transfer any of your rights or obligations under this Mortgage to any other person.
- 18.2 We can at any time assign or transfer all or any part of our rights or obligations under this Mortgage to another person. We do not need your consent to do this. If we do so, the person we assign or transfer our rights or obligations to will be able to exercise those rights instead of us.
- 18.3 If we assign or transfer any of our rights or obligations under a BNZ Document, all references to "we", "us" or "our" in this Mortgage, any "BNZ Document" and "Secured Money" will mean:
- (a) in relation to rights or obligations not assigned or transferred by us, Bank of New Zealand; and
 - (b) in relation to the rights or obligations assigned or transferred by us, the person we have assigned or transferred those rights or obligations to.

19. GOVERNING LAW

- 19.1 This Mortgage is governed by New Zealand law.
- 19.2 Any disputes about this mortgage will be determined by the New Zealand courts.
- 19.3 You agree that you will not object to any action in relation to this Mortgage being brought in the courts of New Zealand.
- 19.4 Some compulsory laws apply to this Mortgage, including some which restrict how we can exercise our rights under this Mortgage. We must comply with those laws. They prevail over the terms of this Mortgage.
- 19.5 If you borrow (or guarantee) the Secured Money for the purposes of a business, nothing in the Consumer Guarantees Act 1993 will apply to this Mortgage.

Dated this 27th day of May 2015

Signed for and on behalf of **BANK OF
NEW ZEALAND** by its attorneys:

Adrienne Laurice Lynita Lorraine
Duarte

Name of Attorney

Signature of Attorney

Kate Elizabeth Strevens

Name of Attorney

Signature of Attorney

In the presence of:

Signature of witness

Name of witness

Occupation

City/town of residence

MEMORANDUM No. 2015/4324

Land Transfer Act 1952

MORTGAGE

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

**Registrar-General of Land
Land Registry**

(Abstract No/date

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