

**DEED OF SUBORDINATION AND PRIORITY (PPSA AND NON-PPSA)**

DATED *17<sup>th</sup>* September 2014

**PARTIES**

1.

Mutual Credit Finance Limited

(the "Debtor")

2.

ASB BANK LIMITED

(the "First Secured Party")

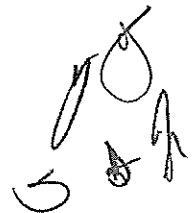
3.

Trustees Executors Limited

(the "Second Secured Party")

**BACKGROUND**

The Debtor has executed, or intends to execute, the Securities. The parties wish to enter into this Deed to subordinate and arrange priorities in respect of the First Secured Party Securities and the Second Secured Party Securities.

Handwritten signature and initials in the bottom right corner of the page.

**TERMS OF THIS DEED**

**1. INTERPRETATION**

**1.1 Definitions:** In this Deed, unless the context otherwise requires:

**"Collateral"** means the collateral or any part of it described in Part A of the Schedule, being personal property in respect of which a security interest is granted by the Debtor under any First Secured Party Securities Security Agreement and any Second Secured Party Securities Security Agreement, and including and extending to proceeds.

**"Enforcement Date"** means the earlier of:

- (a) the date on which a Secured Party enforces (including, but not limited to, appointing a receiver) that Secured Party's rights under a Security of that Secured Party; and
- (b) the expiry date of a notice issued in respect of a Secured Party's Security under section 118, 119 or 128 of the Property Law Act 2007, pursuant to which a Secured Party enters into possession, or exercises that Secured Party's power of sale, of any land or goods.

**"First Secured Party Amount"** means the amount specified as such in Part C of the Schedule.

**"First Secured Party Priority Amount"** means the aggregate of:

- (a) the First Secured Party Amount;
- (b) all interest, whether capitalised or not and including default interest, accrued prior to the Enforcement Date on the balance secured by and outstanding under the First Secured Party Securities, calculated on a daily basis;
- (c) interest, for the Interest Period commencing on the Enforcement Date, calculated on a daily basis at the highest rate payable by the Debtor to the First Secured Party immediately before the Enforcement Date, on the lesser from time to time of:
  - (i) the First Secured Party Amount; and
  - (ii) the balance secured by, and outstanding under, the First Secured Party Securities;
- (d) the amount of all fees, bank charges, taxes and reasonable expenses (including legal expenses, remuneration of a receiver, and goods and services and similar taxes on those amounts) incurred by the First Secured Party, or by any receiver appointed by the First Secured Party, in protecting any Collateral or Other Property, or exercising any powers or rights under the First Secured Party Securities, but in each case only to the extent that they relate to Collateral or Other Property subject to both of the First Secured Party Securities and the Second Secured Party Securities;
- (e) the amount of any preferential payments required by law to be paid; and
- (f) interest, calculated on a daily basis at the greater of a rate equivalent to the cost of funds of the First Secured Party or the relevant receiver (as the case may be) and the highest rate payable by the Debtor to the First Secured Party immediately before the Enforcement Date on the amounts in (d) and (e) above from the date of payment of the relevant amounts until the date of reimbursement of those amounts to the First Secured Party or the relevant receiver (as the case may be).

**"First Secured Party Securities"** means the securities described as such in Part D of the Schedule and **"First Secured Party Security"** means any of them.



"Interest Period" means the interest period specified in Part E of the Schedule.

"Land" means the land or any part of it described in Part B of the Schedule, and includes any land which is comprised in any computer register (certificate of title) which is issued as a result of the subdivision of that land and also any land which becomes subject to the mortgages over the Land as a result of the operation of section 242 of the Resource Management Act 1991.

"PPSA" means the Personal Property Securities Act 1999.

"Other Property" means all of the Debtor's assets and property, including the Land and any other land, but excluding the Collateral, that is subject to any First Secured Party Security and any Second Secured Party Security, and includes any part of it.

"Second Secured Party Amount" means the amount specified as such in Part C of the Schedule.

"Second Secured Party Priority Amount" means the aggregate of:

- (a) the Second Secured Party Amount;
- (b) all interest, whether capitalised or not and including default interest, accrued prior to the Enforcement Date on the balance secured by and outstanding under the Second Secured Party Securities, calculated on a daily basis;
- (c) interest, for the Interest Period commencing on the Enforcement Date, calculated on a daily basis at the highest rate payable by the Debtor to the Second Secured Party immediately before the Enforcement Date, on the lesser from time to time of:
  - (i) the Second Secured Party Amount; and
  - (ii) the balance secured by, and outstanding under, the Second Secured Party Securities;
- (d) the amount of all fees, bank charges, taxes and reasonable expenses (including legal expenses, remuneration of a receiver, and goods and services and similar taxes on those amounts) incurred by the Second Secured Party, or by any receiver appointed by the Second Secured Party, in protecting any Collateral or Other Property, or exercising any powers or rights under the Second Secured Party Securities, but in each case only to the extent that they relate to Collateral or Other Property subject to the First Secured Party Securities and the Second Secured Party Securities;
- (e) the amount of any preferential payments required by law to be paid; and
- (f) interest, calculated on a daily basis at the greater of a rate equivalent to the cost of funds of the Second Secured Party or the relevant receiver (as the case may be) and the highest rate payable by the Debtor to the Second Secured Party immediately before the Enforcement Date on the amounts in (d) and (e) above from the date of payment of the relevant amounts until the date of reimbursement of those amounts to the Second Secured Party or the relevant receiver (as the case may be).

"Second Secured Party Securities" means the securities described as such in Part D of the Schedule and "Second Secured Party Security" means any of them.

"Secured Parties" means the First Secured Party and the Second Secured Party, and "Secured Party" means either of them.

"Securities" means First Secured Party Securities and the Second Secured Party Securities, and "Security" means any of them.

**1.2 Miscellaneous:** In this Deed, unless the context otherwise requires:

a reference to **at any time** includes from time to time;

references to **clauses** and **schedules** are references to clauses of and schedules to this Deed;

if more than one person is named as the **Debtor**, each reference to the Debtor is a reference to each Debtor separately and to all Debtors together;

if more than one person is named as the **Second Secured Party**, each reference to the Second Secured Party is a reference to each Second Secured Party separately and to all Second Secured Parties together;

**derivatives** of any defined word or term shall have a corresponding meaning;

a **gender** includes each other gender and a reference to "its" includes a reference to "his" or "her" as the context requires;

the **headings** to clauses shall be ignored in construing this Deed;

the word **including** and other similar words do not imply any limitation;

a reference to **land** includes any interest in land;

a reference to **law** includes any common law, equity and any statute;

a reference to any **legislation** is a reference to that legislation as from time to time amended, re-enacted or substituted, includes regulations, orders-in-council and other instruments from time to time issued or made under, that legislation and, unless otherwise stated, is a reference to New Zealand legislation;

a **party** to this Deed includes its successors and permitted assignees and transferees; a **person** includes that person's successors, permitted assigns, executors, and administrators (as applicable);

the **singular** includes the plural and vice versa;

a **receiver** includes a receiver and manager, and a receiver of any income from any land; and

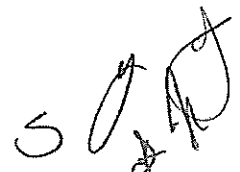
a reference to a **time of day** is to New Zealand time.

**1.3 PPSA:** the terms "at risk", "default", "financing change statement", "financing statement", "perfection", "personal property", "possession", "proceeds", "security interest", and "seriously misleading" each have the respective meanings given to them under the PPSA.

**2. SUBORDINATION**

**2.1** The Second Secured Party's security interest in the Collateral is subordinated to the First Secured Party's security interest in the Collateral for the purposes of section 70 of the PPSA.

**2.2** If required by the First Secured Party, the Second Secured Party will immediately register a financing change statement or statements in relation to that subordination.

Handwritten signature and initials in black ink, located at the bottom right of the page.

2.3 If at any time, the First Secured Party has received the lesser of:

- (a) the total amount secured, whether actually or contingently, under the First Secured Party Securities at that time; and
- (b) the First Secured Party Priority Amount,

and if required by the Second Secured Party, the First Secured Party will immediately register a financing change statement or statements recording the subordination of that First Secured party's security interest for the purposes of section 70 of the PPSA.

**3. EXTENT OF PRIORITIES BETWEEN SECURED PARTIES**

- 3.1 The First Secured Party Securities, and all moneys from time to time secured under them, will have first priority over the Second Secured Party Securities for an amount not exceeding the First Secured Party Priority Amount.
- 3.2 The Second Secured Party Securities, and all moneys from time to time secured under them, will have second priority for an amount not exceeding the Second Secured Party Priority Amount.
- 3.3 Subject to clauses 3.1 and 3.2, the First Secured Party Securities will, in respect of the Collateral and Other Property, have priority over the Second Secured Party Securities for the balance (if any), of the moneys from time to time, secured by, and outstanding under, the First Secured Party Securities.
- 3.4 Nothing in this Deed prevents the Second Secured Party from enforcing any Security in accordance with its terms.

**4. PERFECTION**

4.1 Each Secured Party ("warranting party"):

- (a) represents and warrants to the other Secured Party that the warranting party has perfected, by registering a financing statement, the warranting party's security interest in the Collateral; and
- (b) will ensure that the warranting party's security interest in the Collateral is continuously perfected.

4.2 If, at any time, a Secured Party has possession of any Collateral, for the purposes of perfection and/or priority in relation to that Secured Party's security interest, that Secured Party will not release or give up that possession to any person other than the other Secured Party except as, but only to the extent, required by law or order of a court of competent jurisdiction or with the written consent of the other Secured Party.

**5. PARAMOUNTCY AS BETWEEN SECURED PARTIES**

5.1 This Deed will have effect despite anything (including, but not limited to, in the case of Other Property, any application of the rule in *Clayton's Case* (1816) 1 Mer. 529 or the rule in *Hopkinson v Rolt* (1861) 9 H.L. Cas. 514) that might alter or affect the priorities provided by this Deed, except to the extent that:

- (a) a Security or a security interest is not enforceable; or
- (b) a Security has been released unless, but only to the extent that, it is capable of, and is, legally and effectively reinstated against the Debtor,

provided that:

- (i) if the representation and warranty given by a Secured Party in clause 4.1(a) is at any time incorrect, or a Secured Party breaches clause 4.1(b), and that incorrect representation and warranty, or that breach, would result in a security of a third party having priority over a Security of that Secured Party; or
- (ii) if a Secured Party's financing statement in relation to that Secured Party's security interest in the Collateral is held to be seriously misleading,

nothing in this Deed will oblige the other Secured Party to do or suffer anything inconsistent with that other Secured Party's priority position outside of this Deed where that priority position is or would be more favourable to that other Secured Party than under this Deed.

- 5.2 Any provision in any Security, or any other agreement or arrangement entered into before the date of this Deed, which is inconsistent with this Deed, will be superseded or varied to the extent necessary to give full effect to this Deed.

**6. PRIORITY INSTRUMENT**

If required by the First Secured Party, the Second Secured Party will immediately sign, and consent to the registration in the relevant registry office of, a priority instrument under which the First Secured Party is granted priority over the Second Secured Party in any Other Property that requires (whether by law or otherwise) registration of priority instrument.

**7. LOWER PRIORITY OVER THIRD PARTY IN RESPECT OF OTHER PROPERTY**

- 7.1 If, in respect of any one or more of a Secured Party's Securities over any Other Property:

- (a) the amount shown in that Security for the purposes of section 80A(2) of the Property Law Act 1952 or the amount that Secured Party can recover under that Security in priority to any third party for the purposes of section 92 of the Property Law Act 2007 (as applicable) in respect of that Other Property is less than the First Secured Party Amount or the Second Secured Party Amount (as the case may be); or
- (b) that Security does not specify any amount for the purposes of section 80A(2) of the Property Law Act 1952 or section 92 of the Property Law Act 2007 (as applicable) in respect of that Other Property,

and the amount by which that Secured Party is entitled under any law to be paid in priority to any third party in respect of that Other Property ("Other Party Priority Amount") is less than the First Secured Party Amount or the Second Secured Party Amount (as the case may be), then notwithstanding any other provision of this Deed the priority of that Secured Party over the other Secured Party in respect of that Other Property shall be limited to the Other Party Priority Amount.

**8. DISCHARGE OF ANY FIRST SECURED PARTY SECURITY OVER LAND**

- 8.1 If, at any time, the Second Secured Party disposes of any land under the power of sale contained in a Second Secured Party Security or by law, the First Secured Party will provide the Second Secured Party with a registrable discharge of the First Secured Party Security in respect of that land (but not any other property) upon payment by the Second Secured Party of the lesser of:

- (a) the total amount outstanding under the First Secured Party Securities including all interest, fees, other bank charges and taxes at the date on which that payment is to be made; and

**ASB**

- (b) the First Secured Party Priority Amount provided that all proceeds from the sale are distributed in accordance with this Deed.

**9. DIRECTION TO PAY**

Each Secured Party irrevocably and unconditionally authorises and directs a liquidator, official assignee, administrator, receiver, or similar person appointed or acting in respect of the Debtor to pay the proceeds of the realisation of any Collateral or any Other Property in accordance with the provisions of this Deed.

**10. DEBTOR ACKNOWLEDGEMENT**

The Debtor acknowledges the First Secured Party and the Second Secured Party are entering into this Deed.

**11. TRANSFER OR ASSIGNMENT**

Neither Secured Party will transfer or assign any interest or right in or to any of that Secured Party's Securities to any person unless that person has agreed to be bound by this Deed.

**12. COSTS**

The Debtor agrees to pay on demand all costs incurred by the Secured Parties in connection with this Deed, its preparation, negotiation and execution.

**13. GOVERNING LAW AND JURISDICTION**

This Deed is governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

**14. MISCELLANEOUS \***

**EXECUTED AS A DEED**

SIGNED by the Debtor:

in the presence of:

Witness signature

Full name Elizabeth Lucia Neazor

Address Solicitor

Christchurch

Occupation

- \* 14.1 the Debtor covenants with the First Secured Party to notify... the First Secured Party a reasonable time prior to the Debtor acquiring any interest in land.

- 14.2 The First Secured Party and the Second Secured Party each agree to notify the other if they become aware that the Debtor has acquired any interest in land.

- 14.3 The parties may sign in counterpart  
PPSA + Land2 (04/08) as provided for in  
Schedule 2.

**ASB**

SIGNED by ASB Bank Limited  
by its attorneys:

Attorney

in the presence of:

Witness signature

Full name

**Uratua Patia**

Address

Occupation

**Bank Officer  
AUCKLAND**

SIGNED by the Second Secured Party:

in the presence of:

Witness signature

Full name

**Manmeet Kaur  
Administrative Assistant  
Wellington**

Occupation



CTS 2014-126  
(3/3)

Yogesh Mody

Authorised Signatory

**Stuart McLaren**

Authorised Signatory

**[Notes on Execution:**

1. All signatories shall clearly print their name where indicated\*.
2. Where signed by two or more Directors, the signatures do not need to be witnessed.
3. Where signed by only one Director, or one Director and another authorised person, or duly authorised attorneys, all signatures must be witnessed.
4. If signed by duly authorised attorneys, certificates of non-revocation of power of attorney must be provided.]

*Handwritten initials/signature*



**SCHEDULE**

**Part A – Collateral**

Collateral all of the Debtor's right, title and interest (present and future, legal and equitable) in, to, under or derived from all of the Debtor's present and hereafter acquired property.

**Part B – The Land**

The Land described in as  
~~Identifier (certificate of title)~~ all of the Debtor's freehold and leasehold land, all estates and  
interests in land and all buildings, structures and fixtures (including trade fixtures) for the time  
being on that land  
~~Registry the relevant applicable land registry of the Land described above~~  
and includes any part of it.

**Part C – The Secured Party Amounts**

First Secured Party Amount \$ 1,000,000.00 plus interest

Second Secured Party Amount \$ unlimited

**Part D – The Securities**

*First Secured Party Securities*

- The security agreement dated / / given by the Debtor, under which a security interest is granted over the Collateral in favour of the First Secured Party (whether or not it also extends to any other property).
- ~~The mortgage instrument dated / / registration number (if any) granted by the debtor in favour of the First Secured Party over the Debtor's interest in the Land (whether or not that mortgage is also over other interests in land).~~
- The General Security Deed dated / / granted by the Debtor in favour of the First Secured Party over the Debtor's interest in Other Property including the Land.

*Second Secured Party Securities*

- The security agreement dated 01/02/1985,<sup>\*</sup> given by the Debtor, under which a security interest is granted over the Collateral in favour of the Second Secured Party (whether or not it also extends to any other property).
- ~~The mortgage instrument dated / / registration number (if any) granted by the Debtor in favour of the Second Secured Party over the Debtor's interest in the Land (whether or not that mortgage is also over other interests in land).~~
- The Debenture Trust Deed dated 01/02/1985<sup>\*</sup> granted by the Debtor in favour of the Second Secured Party over the Debtor's interest in Other Property including the Land.

**Part E – Interest Period**

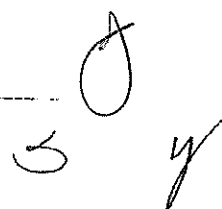
24 Months

- \* as subsequently varied pursuant to a Deed of Variation of Trust Deed dated 5 March 1999, 12 December 2005, 14 September 2010, 30 November 2010 and 20 September 2012.

## **Schedule 2 - Counterpart execution**

---

This Deed may be executed in any number of counterparts, all of which together shall constitute one and the same Deed. Any of the parties may execute this Deed by signing any such counterpart.



**MORTGAGE HOLDING TRUST COMPANY LIMITED**

**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I **Sharyn Bagley** of Auckland, New Zealand, hereby certify:

- 1 THAT by a Deed dated **18 April 2012** and deposited in the Land Information New Zealand office as **No. 9052798.1**, Mortgage Holding Trust Company Limited appointed the persons holding, or from time to time acting in, the following ASB Bank offices as its attorneys on the terms and subject to the conditions set out in the said Deed:

Head of Lending Operations  
Manager Lending Operations  
Legal Executive, Lending Operations  
General Manager, Lending Operations  
General Manager, Retail Credit  
Head of Financial Help and Recoveries  
Senior Credit Recoveries Manager  
Credit Recoveries Manager  
Manager Business Risk

Being appointed officers of ASB Bank Limited

2. That I hold the appointment of Manager Lending Operations with ASB Bank Limited.
3. THAT at the date of signing I have not received any notice of or information of the revocation of that appointment by the winding up of the said company or otherwise.

  
\_\_\_\_\_  
**Sharyn Bagley**

SIGNED at Auckland this 22 day of September 2014