



## GENERAL SECURITY DEED (All Obligations)

THIS DEED is made on the 17<sup>th</sup> day of September 2014

BY MUTUAL CREDIT FINANCE LIMITED

("the Debtor" and referred to in this Deed as "you" and "yours" )

IN FAVOUR OF ASB Bank Limited

("the Lender" and referred to in this Deed as "we", "us" and "our(s)" )

In consideration of all Advances made by us, from time to time and to secure the payment of the Secured Indebtedness and compliance with the Secured Obligations, you charge and assign in our favour and grant to us a security interest in the Collateral on the terms and conditions set out in our General Security Deed Standard Terms and Conditions" (reference no. **G06/2010**) which are deemed to form part of this Deed.

You agree that this General Security Deed may be signed in any number of counterparts all of which when taken together shall constitute the one and the same General Security Deed. A party may enter into this General Security Deed by executing any counterpart.

### Address for Notices to us

**Physical Address:** 360 Dominion Road, Mt Eden, AUCKLAND  
**Postal Address:** P O Box 35, Shortland Street, AUCKLAND 1140  
**Facsimile No:** 64 9 630 3918  
**Phone No:** 64 9 377 8930  
**Email Address:** [LendingPPSRAAdministrator@asb.co.nz](mailto:LendingPPSRAAdministrator@asb.co.nz)  
**Attention:** PPSA Administrator

### Address for Notices and Disclosure to you

**Physical Address:**

**Postal Address:**

**Facsimile No:**


**Phone No:**

**Email Address:**

**Attention:**

**SIGNED by**

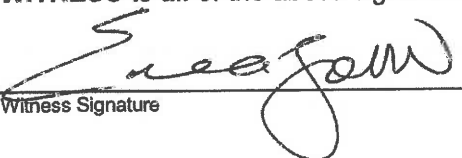
**MUTUAL CREDIT FINANCE LIMITED**

by  \_\_\_\_\_  
Director

and by  \_\_\_\_\_  
Director

each being a Director of the above Company

**WITNESS to all of the above signatures (otherwise specify)**

  
\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Occupation

**Elizabeth Lucia Neazor**  
\_\_\_\_\_  
**Solicitor**  
**Christchurch**

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Witness Address

# GENERAL SECURITY DEED STANDARD TERMS AND CONDITIONS

# ASB

Reference Number: G06/2010

The following provisions form part of the General Security Deed (All Obligations) entered into by you in favour of us.

## 1. INTERPRETATION

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

**"Advances"** means the payment of money, the provision of credit, or the giving of value including guarantees and other financial accommodation by us to you or your request and includes "future advances" as defined in the PPSA, and any liability of you to us to pay in respect of the foregoing any interest, credit costs, and other charges or costs to enforce this Deed or any security collateral to this Deed;

**"Attorney"** means an attorney appointed under this Deed;

**"Collateral"** has the meaning set out in clause 3.1;

**"Deed"** means the General Security Deed (All Obligations) including the terms and conditions contained herein;

**"Distribution"** means a distribution as defined by s 2 of the Companies Act 1993;

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

**"Event of Default"** means any of the events specified in clauses 7.1, 19.1(b), 19.2(b) and any other event or circumstance which, with the giving of notice, lapse of time or fulfillment of any other requirement, would constitute such an event;

**"General Security Deed"** means the Deed entered into by you in our favour, which includes these standard terms and conditions;

**"Insolvency Event"** means, in relation to a person:

- (a) is insolvent or unable to pay its indebtedness as it falls due; or;
- (b) suspends, stops or threatens to suspend or stop payment of a material part of its indebtedness; or
- (c) commences negotiations or takes any proceedings with a view to the general deferral, readjustment or rescheduling of its indebtedness or a material part of its indebtedness; or
- (d) makes, or proposes to make, any assignment, arrangement or composition for the benefit of its creditors generally or a moratorium is agreed or declared in respect of or affecting all or any material part of its indebtedness.

**"Insurances"** means all policies and contracts of insurance which are from time to time taken out or entered into in respect of any of the Collateral and includes all proceeds of them and rights at any time arising in connection with them;

**"Major Transaction"** has the meaning set out in s 129 of the Companies Act 1993;

**"Personal Property"** has the meaning set out in the PPSA;

**"PPSA"** means the Personal Property Securities Act 1999 and any Act passed in substitution therefore;

**"Proceeds"** has the meaning set out in the PPSA;

**"Receiver"** means a person appointed under this Deed as a receiver or receiver and manager;

**"Relevant Documents"** means this Deed and all other agreements present or future, evidencing or relating to Secured Indebtedness or Secured Obligations and all other agreements required or contemplated thereby;

**"Secured Indebtedness"** means all your indebtedness to us, or any indebtedness that is incurred by us on your behalf (including all interest, costs, taxes, stamp and similar duties and taxes, commissions, charges and expenses (including legal fees and expenses on a solicitor and own client basis) incurred or sustained in any way by us in connection with that indebtedness or the enforcement or attempted enforcement of this Deed);

**"Secured Obligations"** means all your obligations (whether present or future but other than obligations to pay money) to us under or in connection with this Deed; and

**"Solvency Test"** has the meaning ascribed to that term by s 4 of the Companies Act 1993.

**"Us", "our", "we"** means the ASB Bank Limited;

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

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

**"assets"** also includes the whole and any part of your business, undertaking, property, revenues and rights (in each case, present and future) and reference to an asset includes any legal or equitable interest in it;

a **"book debt"** includes the proceeds of that book debt;

a **"business day"** means a day (other than Saturday or Sunday) on which registered banks are open for general banking business in New Zealand;

**"compromise"** includes a compromise as defined by s 227 of the Companies Act 1993;

a **"consent"** also includes an approval, authorisation, exemption, filing, licence, order, permit, recording and registration (and references to obtaining consents are to be construed accordingly);

one person being **"controlled"** by another means that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

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

a **"disposal"** of an asset includes the grant of an option in respect of it, the payment of money (including a dividend) and an agreement for any disposal, but excludes the creation of a security interest (and references to **"dispose"** are to be construed accordingly);

**"GST"** means goods and services tax payable under the Goods and Services Tax Act 1985;

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

something having a **"material adverse effect"** on a person is a reference to it having a material adverse effect on that person's commercial or financial prospects or on its ability or willingness to perform and comply with its obligations under this Deed and references to **"material adverse change"** are to be construed accordingly;

**"partner"** means, in the context of a limited partnership:

- (a) each general partner of a limited partnership from time to time, being each person whose name is entered as a general partner of the relevant limited partnership; and
- (b) each limited partner of a limited partnership from time to time, being each person whose name is entered as a limited partner of the relevant limited partnership, in the register of limited partnerships maintained by the Registrar of Companies;

**"partnership agreement"** means:

- (a) (in the case of a limited partnership) the partnership agreement between each general partner and each limited partner relating to the relevant limited partnership; or
- (b) (in the case of any other type of partnership) the partnership agreement between each partner relating to the relevant partnership;

a **"person"** includes an individual, body corporate, an association of persons (whether corporate or not), a trust and a state and agency of a state (in each case, whether or not having separate legal personality);

**"real property"** includes 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;

**"rights"** includes authorities, consents, discretions, remedies, powers and things in action;

a **"security interest"** includes a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, or other security arrangement of any kind, the practical effect of which is to secure a creditor and in the case of Personal Property includes any arrangement which falls within the definition of a "security interest" in the PPSA;

a **"subsidiary"** of a person includes:

- (a) a subsidiary as defined in the Companies Act 1993; and
- (b) any other person treated as a subsidiary in terms of any statement of accounting practice issued from time to time by the New Zealand Society of Accountants;

"**tax(es)**" includes any present and future tax, levy, impost, duty, rate, charge, fee, deduction and withholding of any nature regardless of where and by whom imposed, levied, collected, withheld and assessed and includes interest, penalties, fines, costs, charges and expenses and other amounts relating to and arising in connection with taxes;

a **gender** includes each other gender;

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

any **legislation** includes a modification and re-enactment of, legislation enacted in substitution for and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation; and

a **party** to this Deed or any other agreement includes, if an individual, that person's executors and administrators and, in the case of a body corporate or any other person, its successors and, in our case, also our assignees and transferees.

Indebtedness which is payable "**on demand**" is due and payable on the date on which demand is made (or if a later date is specified in the demand on that date).

**Headings** are to be ignored in construing this Deed.

## **2. COVENANT TO PAY AND PERFORM**

**2.1 Covenant:** You covenant that you will duly pay the Secured Indebtedness and perform and comply with the Secured Obligations. Unless otherwise agreed in writing, all Secured Indebtedness is payable on demand made by us (which demand may be made by us at any time at our absolute discretion).

**2.2 Interest:** Interest is payable on the Secured Indebtedness at the rates and upon the terms from time to time as we both agree. If no rate of interest is agreed, interest is payable at the rate and time determined by us from time to time. Unless otherwise agreed, interest is to be computed daily and compounded monthly or as otherwise determined by us.

**2.3 Default Interest:** If we do not receive, when due, an amount of Secured Indebtedness payable to us then, without prejudice to any other right exercisable by us, you must pay interest on that amount (including interest payable under this sub-clause) calculated from its due date to the date of its receipt by us (after as well as before judgment) compounded and payable at intervals selected by us at our discretion. The obligation to pay default interest is to arise without the need for a notice or demand. The rate of default interest is to be determined by us from time to time.

## **3. SECURITY**

**3.1 Security:** You grant to us a security interest in all your right, title and interest (present and future, legal and equitable) in, to, under or derived from all your present and hereafter acquired property ("the Collateral") whether situated in New Zealand or elsewhere, including without limitation:

- (a) real property;
- (b) uncalled or called but unpaid capital;
- (c) goodwill, patents, trade marks, copyrights, designs and other intellectual property rights;
- (d) fixtures, fittings, machinery, plant, equipment and other chattels (including stock in trade);
- (e) books of account, vouchers, Insurance policies and other documents, data, software and records relating to your business or the Collateral;
- (f) bonds, debentures, shares, stock, options and securities and any other instruments, rights and obligations, negotiable or otherwise;
- (g) all book debts and other indebtedness owing and to become owing to you;
- (h) interests in Personal Property and rights not referred to above that are not normally acquired and disposed of in the ordinary course of your ordinary business;
- (i) any of your rights in Personal Property arising by virtue of the PPSA;
- (j) proceeds derived directly or indirectly from the Collateral;
- (k) all agreements and documents evidencing your title to, right to possession of or other right or interest in, to, under or derived from, any of the Collateral listed above; and
- (l) after acquired property to the extent that it replaces or restores the Collateral pursuant to or as required by this Deed.

**3.2 Assignment of Rights:** The security interest created by you in clause 3.1 is an absolute assignment by way of mortgage of all Collateral consisting of existing or future rights. You must give notice in writing of this assignment promptly:

- (a) to each insurer of the Collateral;

- (b) if required by us at any time, to each other person against whom you have any rights.
- 3.3 **Dealing with Assets in Ordinary Course of Business:** Notwithstanding clauses 3.1 and 3.2, but subject to any other agreements with us relating to the Collateral, you may deal with any of the Collateral in the ordinary course of, and for the purposes of carrying on, your ordinary business.
- 3.4 **Continuing Security:** This Deed and each security interest created under this Deed:
- (a) is a continuing security, notwithstanding intermediate payments, settlement of accounts or any other matter or thing whatsoever;
  - (b) is in addition to and not to be merged in any other security interest, guarantee, agreement or right which we may at any time have; and
  - (c) will remain in full force and effect until the execution by us of an unconditional release of this Deed.
- 3.5 **Unconditionality of Security:** This Deed and each security interest created under it will not be discharged, nor will your obligations be affected, by:
- (a) any time, indulgence, waiver or consent given to you or another person; or
  - (b) any amendment to a Relevant Document or to any other security, guarantee or agreement (whether or not that amendment increases the liability of you); or
  - (c) the existence, validity or enforcement of, or failure to enforce, or the release of any person or property from, or the failure of a person to execute or otherwise be bound by, any Relevant Document or other security interest, guarantee or agreement for any reason, whether or not known to us; or
  - (d) your dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation or any other person (or the commencement of steps to effect any of them); or
  - (e) anything else whatsoever.
- We are under no liability to you in relation to any of these matters, even if your rights are prejudiced as a result.
- 3.6 **Further Assurance:**
- (a) At our request, you must, at your own cost, promptly execute and deliver to us all assignments, transfers, security interests and other agreements and documents, and do anything else which we may deem appropriate to:
    - (i) perfect your title to any Collateral; or
    - (ii) perfect a security interest intended to be created under this Deed; or
    - (iii) vest, or enable you to vest, any Collateral in yourself (or your nominee) or in a purchaser; or
    - (iv) facilitate the realisation of any of the Collateral; or
    - (v) secure to us the full benefit of our rights and intended rights under this Deed.
  - (b) Without limiting clause 3.6(a), at our request, you must, at your own cost promptly:
    - (i) provide to us full details of the Collateral which may be required by us in order to perfect our security interest in that item, including any registration number, registration mark, serial number or identification number;
    - (ii) deliver to us any "chattel paper", "document of title", "investment security" or "negotiable instrument" as those terms are defined in the PPSA;
    - (iii) execute and deliver a mortgage over any Collateral in respect of which a mortgage may be created. This mortgage will, if requested by us, be a legal mortgage in respect of any Collateral. All agreements and documents which we deem necessary or desirable in this connection are to be provided by you in whatever form and substance we may require.
  - (c) Where any of the Collateral comprises property acquired after the date on which this Deed is entered into, and is either a motor vehicle or an aircraft and does not comprise inventory (as that term is defined in the PPSA), you must immediately following acquisition thereof provide to us full details of such Collateral which may be required by us in order to perfect our security in that item, including any registration number, registration mark, serial number or identification number.
- 3.7 **Partial Release of Security:** We may, on your request in writing and on the terms and conditions which we may deem appropriate, execute a partial release of any Collateral from the provisions of this Deed, subject to clause 16.1. All agreements and documents which are necessary in connection with this release are to be in whatever form and substance we may require.
- 3.8 **Unconditional Release of Security:** If, in our opinion:
- (a) you have paid all the Secured Indebtedness and performed and complied with all the Secured Obligations;

- (b) we are under no obligation to make available any further credit, advance or facility in respect of any Secured Indebtedness; and
- (c) there is no reasonable possibility that any Secured Indebtedness received or recovered by us from you or any other person will or may have to be refunded or repaid under any applicable law (including, without limitation, any law relating to preferences or insolvency),

we will, on your request in writing, execute a release of this Deed subject to clause 16.1. All agreements and documents which are necessary in connection with this release are to be in whatever form and substance we may require.

#### 4. REPRESENTATIONS AND WARRANTIES

##### 4.1 Representations and Warranties Relating to Collateral: You represent and warrant that:

- (a) **Sole Owner:** except as disclosed to and accepted in writing by us, you are the sole legal and beneficial owner of all the Collateral;
- (b) **No Security Interests:** except as disclosed to and accepted in writing by us, no security interest exists over or affects any Collateral, nor is there any agreement to give or permit to exist a security interest over or affecting any asset of yours or any of your subsidiaries; and
- (c) **Ability to Create Security:** you are lawfully entitled to create a security interest over all the Collateral in favour of us.

Whenever any Collateral is acquired by you or arises after the date of this Deed, you will be deemed to have given the representations and warranties set out in this clause in respect of that Collateral.

##### 4.2 General Representations and Warranties: You represent and warrant that:

- (a) **Obligations Binding:**
  - (i) you have full power and authority to enter into and comply with your obligations under the Relevant Documents and have obtained all consents needed to enable you to do so;
  - (ii) each Relevant Document to which you are a party has been duly authorised and entered into by you; and
  - (iii) your obligations under the Relevant Documents are legal, valid, binding and enforceable against you;
- (b) **No Event of Default:** other than as disclosed to us in writing, no Event of Default has occurred;
- (c) **Information:** all information provided by you to us in connection with the Relevant Documents was true and accurate when provided and except as disclosed to and accepted in writing by us remains so, and there are no facts or circumstances which have not been disclosed to us which would make that information untrue, inaccurate or misleading;
- (d) **Accounts:** your latest financial statements (and, if you have subsidiaries, your latest consolidated financial statements) as delivered to us:
  - (i) were prepared in accordance with accounting principles and practices generally accepted and consistently applied in New Zealand and have been prepared, reported on and approved in accordance with all applicable laws;
  - (ii) give a true and fair view of your and your subsidiaries financial and consolidated position as at the date and for the period to which they relate; and
  - (iii) include a true and complete copy of any auditors' report (if such report is prepared);
- (e) **Solvency:** you satisfy the Solvency Test; and
- (f) **Relevant Documents:** each of the representations and warranties in the Relevant Documents is true and accurate and has been complied with.

##### 4.3 Representations and Warranties Continuing: Each of the representations and warranties in this clause will be deemed to be repeated continuously so long as this Deed remains in effect by reference to the facts and circumstances then existing.

#### 5. UNDERTAKINGS

##### 5.1 Undertakings Relating to the Collateral: You undertake that you will at all times during the continuance of this security:

- (a) **Conduct of Business:** conduct your business in an efficient, prudent and business-like manner;
- (b) **Dealings with Collateral:** not allow any Personal Property to become an "accession" to property which is not part of the Collateral, nor dispose of, vary the terms of, part with possession of or otherwise deal with any Collateral or agree to do so, other than:

- (i) with our prior written consent; or
  - (ii) in the ordinary course of, and for the purpose of carrying on, your ordinary business; or
  - (iii) in the case of Insurance proceeds, in accordance with clause 6; or
  - (iv) as otherwise permitted by this Deed;
- (c) **Payment to Account:** pay the proceeds of all book debts and all other indebtedness owing and to become owing to you into an account opened by you with us or our nominee;
  - (d) **Delivery of Certificates:** deposit with us on request all documents of title relating to the Collateral over which a security interest is created pursuant to this Deed;
  - (e) **No Security Interests:** not, without our prior written consent, create or permit to exist a security interest affecting any Collateral or permit any of your subsidiaries to do so affecting any of your assets (except for a security interest created under this Deed);
  - (f) **Registration of Security:** if required by us, promptly register this Deed and each other Relevant Document or register the security interest thereby created in each jurisdiction in which registration may be required or advisable in order to ensure its enforceability, validity and priority over any Collateral (whether located in or outside New Zealand) and otherwise to give full effect to each security interest intended to be created under it;
  - (g) **Access:** provide to us full and unfettered access at all times to the Collateral;
  - (h) **No Prejudicial Actions or Omissions:** not do, omit to do or allow to occur anything which might render any of the Collateral or a security interest created under any Relevant Document invalid or unenforceable, or liable to forfeiture or cancellation, or which may cause or contribute to a deterioration in the value of the Collateral or adversely affect our security under a Relevant Document;
  - (i) **Maintain and Repair Collateral:** maintain all Collateral in good and substantial repair and in good working order and condition;
  - (j) **Administration:** notify us if an order is made, resolution passed or other step taken by a person in connection with you being placed into voluntary administration, immediately upon becoming aware of it, giving full details of it and any action taken (or to be taken); and
  - (k) **Valuations:** arrange at our request, but at your sole cost, such valuations of all or any part of the Collateral, by a registered valuer approved by us and for a copy of the valuer's report to be provided to us promptly on completion of the same.

**5.2 General Undertakings:** You undertake that you will:

- (a) **Events of Default:** notify us of the occurrence of any Event of Default and any event or circumstance which may have a material adverse effect, immediately upon your becoming aware of it;
- (b) **Information to be True:** ensure that all information provided to us is true and accurate when provided and does not omit to state anything which would make that information untrue, inaccurate or misleading;
- (c) **Compliance with Laws:** duly and promptly comply with:
  - (i) all laws, directives and consents the non-compliance with which might adversely affect our rights or security; and
  - (ii) the provisions of the Insurances, including all warranties expressed or implied in them; and
- (d) **Pay Taxes:** duly and promptly file all tax returns as required by law, and pay and discharge all taxes, assessments and governmental charges payable in respect of the Collateral prior to the date upon which penalties become payable, except only to the extent that those taxes, assessments or governmental charges are being contested in good faith by appropriate proceedings and adequate reserves are set aside for their payment;
- (e) **Change of Name:** Notify us immediately if you intend to, or do change your name. Following such notification and the change of name, you will take all steps necessary to enable us to amend the registration of the security interest in the Collateral created by this Deed.

**5.3 Negative Undertakings:** You undertake that you will not and will ensure that none of your subsidiaries will without our prior written consent:

- (a) **Formation of Subsidiaries:**
  - (i) form or acquire a subsidiary unless such subsidiary immediately enters into a deed of cross guarantee with you and each of your other subsidiaries in our favour together with a debenture in our favour (in each case in a form acceptable to us); or
  - (ii) make any change in the shareholding of a subsidiary which causes you no longer to control that subsidiary; or
- (b) **Acquisition of Shares:** purchase or subscribe for shares in any company; or



- (c) **Loans and Guarantees:** except in the ordinary course of business and then only on proper commercial terms, lend money to another person or give a guarantee; or
- (d) **Change of Business:** make or threaten to make a substantial change in the nature or scope of your business or relocate your business outside of New Zealand;
- (e) **Provide Services:** provide services to or accept services from a person other than for proper value and on reasonable commercial terms; or
- (f) **Amalgamation:** pass any resolution for or in contemplation of your amalgamation with, or involving, any company then existing or yet to be formed; or
- (g) **Distributions:** make or attempt to make a Distribution, except on such terms and in compliance with such conditions previously agreed between you and us in writing; or
- (h) **Major Transactions:** enter into a Major Transaction.

**5.4 Financial and Reporting Covenants:** You covenant that you will:

- (a) **Accounts:** as soon as available and in any event within 90 days after the end of each of your financial years if accounts are prepared for each half-year, for each half-year, deliver your financial statements to us, and if you have subsidiaries, their consolidated financial statements as at the end of that financial year or half-year;
- (b) **Other Information:** promptly deliver to us within seven days of request, any other information with respect to your, or any of your subsidiaries, business affairs, financial condition or operations which we may from time to time request;
- (c) **Acquisitions:** give details to us of each agreement to acquire or dispose of real property entered into by you and any of your subsidiaries;
- (d) **Disposal of Shares:** give notice to us, immediately upon you becoming aware of any disposal or intended disposal of your shares;
- (e) **Inventory:** promptly, upon our request, provide to us a full and complete inventory of the Collateral including the value and location of each item of the Collateral.

**5.5 Environmental Undertakings:** You undertake that you will:

- (a) institute and at all times maintain and comply with proper procedures which are adequate to monitor compliance with your Environmental Obligations, and environmental directives and consents
- (b) obtain, maintain in full force and effect and comply, with all consents and other material requirements in relation to your Environmental Obligations and any environmental directives, which may be necessary or desirable in respect of the land, buildings, water or other property or assets owned, occupied or otherwise used by you or any Group Member;
- (c) notify us of any actual or potential environmental liability, encumbrance, judgment, claim, order, obligation, penalty, fine, loss, cost or expense of any nature which might have a material adverse effect on any of you and provide us with full details of all action taken or proposed to be taken in relation to such liability; and
- (d) provide us on request, at your sole cost, with environmental audits and reports in respect of its assets, in a form and from an independent consultant acceptable to us;

**5.6 Disclosure of Financial Information:** You authorise us to discuss your financial statements and financial affairs at any time with:

- (a) your accountants, auditors and financial advisers, and irrevocably authorise and request your accountants, auditors and financial advisers to participate in these discussions and provide any information we request; and
- (b) any guarantor of your indebtedness or other obligation to us.

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

**6. INSURANCE**

**6.1 Insurance:** You undertake to us that you will:

- (a) keep all your insurable Collateral insured for full replacement value against loss or damage by fire, explosion, earthquake, flood, environmental impairment and all other risks which should prudently be insured against and maintain insurance against any third party liability which it is prudent to insure against, in each case in accordance with the best commercial practice;
- (b) effect all Insurances on terms, and with insurers (and through brokers) approved by us and provide us with particulars of the Insurances and, as soon as they are available, the policies;

- (c) duly and punctually pay all premiums and money necessary to maintain the Insurances and, on our request, deliver to us any receipts for those payments;
  - (d) ensure that each Insurance policy provides that:
    - (i) we are named as co-insured for our own interest;
    - (ii) the insurer will give to us copies of all notices given by the insurer which affect the Insurance cover or its terms;
    - (iii) no cancellation, change or reduction of Insurance is effective until at least 5 business days after receipt by us of written notice to that effect;
    - (iv) we are named as loss payee of all claims without any consent being required from you or any other insured person as a pre-requisite to such payment;
    - (v) all claims for Insurance premiums or commissions or additional premiums or assessments against us are waived;
    - (vi) the insurer will give us at least 5 business days written notice of any lapse or non-renewal of the policy; and
    - (vii) each renewal and substitute policy will also contain the provisions required by this and the preceding paragraphs;
  - (e) notify us promptly:
    - (i) of any Insurance claim made or to be made;
    - (ii) of the cancellation, variation of, lapse or non-renewal of any insurance policy; and
    - (iii) of anything which may materially prejudice your or our rights under any policy.
- 6.2 **Bank's Powers under Insurance:** We shall have the sole and exclusive right and power to make, enforce, settle or compromise any and every insurance claim and to sue for, recover, receive and give discharges for all moneys payable by virtue of such insurance whether such insurance is in your or our name, or otherwise and whether or not such insurance covers other property as well as the Collateral and any such of your rights which exists will be (and are hereby) assigned to us.
- 6.3 **Maintenance of Insurance:** If you shall fail to insure, maintain or repair the Collateral in accordance with the terms of this Deed, we may do so and all costs and expenses incurred by us shall be part of the Secured Indebtedness and shall be payable by you on demand being made by us.
- 6.4 **Application of Insurance Proceeds:** Money recoverable under any Insurance on the Collateral is to be applied at the option of us either:
- (a) in or towards rebuilding, repairing, restoring or replacing the relevant Collateral or meeting the liability insured against; or
  - (b) in reduction of the Secured Indebtedness.
7. **ENFORCEMENT**
- 7.1 **Events of Default:** If, at any time and for any reason, whether or not within the control of a party:
- (a) **Default under Relevant Documents:** an Event of Default or termination event (however described) occurs under any Relevant Document; or
  - (b) **Non-Payment:** you fail to pay on its due date any amount of the Secured Indebtedness or any Secured Indebtedness becomes capable of being declared due before it would otherwise become due; or
  - (c) **Breach of Obligations:** you do not perform or comply with any of your obligations under any Relevant Document; or
  - (d) **Statements Incorrect:** any statement by you made in, or in connection with any Relevant Document is or becomes untrue, inaccurate or misleading or is not complied with when made or repeated; or
  - (e) **Avoidance or Repudiation:** the enforceability of any Relevant Document is contested by any person or it becomes unlawful for you to comply with any of your obligations under a Relevant Document; or
  - (f) **Insolvency:** an Insolvency Event occurs in relation to you or any of your subsidiaries; or
  - (g) **Enforcement:** any legal process is levied or enforced against your assets or the assets of your subsidiary and is not discharged or stayed within 5 business days or a receiver, trustee or similar officer is appointed in respect of you, your subsidiary, or any assets of yours or your subsidiary; or
  - (h) **Cessation of Business:** you or your subsidiary ceases or threatens to cease to conduct all or a substantial part of its business, or disposes of, or threatens or agrees to dispose of (either by a single transaction or series of transactions, whether related or not and whether voluntary or involuntary) all or a substantial part of its assets except in circumstances where the business of the relevant Debtor is, or is to be, transferred to you; or

- (i) **Cross Default:** any indebtedness of yours or a subsidiary exceeding \$5,000 is not paid when due or any security interest affecting any of your or your subsidiary's assets becomes enforceable; or
- (j) **Material Adverse Change:** in our opinion, a material adverse change occurs in relation to you or your subsidiary; or
- (k) **Change in Control:** without our prior written consent, there is any change in the effective control of you; or
- (l) **Minority Buy-Out Rights:** you or your subsidiary agrees to purchase all or any of the shares of a shareholder following receipt by you of a notice by that shareholder pursuant to s 111(1) of the Companies Act 1993, or
- (m) **Collateral "At Risk" within the meaning of the PPSA:** we believe on reasonable grounds that any Personal Property forming part of the Collateral has been destroyed, damaged, endangered, disassembled, removed, concealed, sold or otherwise disposed of contrary to the provisions of this Deed.

then such event shall constitute an Event of Default and this Deed and each security interest created under the Relevant Documents will become immediately enforceable (without notice to, or the consent of you or any other person and without prejudice to any right we may already or otherwise have) and we may, at any time, by notice to you declare all or any part of the Secured Indebtedness to be, and that indebtedness will be, due and payable (if not already so) either immediately or upon demand or at a later date as we may specify.

## 7.2

**Rights of Bank on Default:** on a security interest created under this Deed becoming enforceable, we may, in your name or otherwise, at any time do anything and exercise any right which you could do or exercise in relation to the Collateral, including the right to:

- (a) **Appoint Receiver:** appoint a Receiver or Receivers in accordance with Clause 8.1;
- (b) **Take Possession:** take possession of, demand, collect and get in any Collateral;
- (c) **Entry on Land and Premises:** enter on any land or premises where the Collateral may be situated and take possession thereof and use such force as may reasonably be necessary to do so;
- (d) **Dealing with Collateral:** insure, repair, improve, replace, exploit and develop the Collateral in any manner;
- (e) **Sell:** sell and dispose of the Collateral whether together or in lots or by public auction, private contract or otherwise and upon such conditions in all respects that we think fit;
- (f) **Buy In:** buy in and resell the Collateral without being liable for any loss however incurred;
- (g) **Cancellation of Contracts:** buy in, cancel or vary any contract, right or obligation;
- (h) **Carry on Business:** carry on or manage your business;
- (i) **Let or Bail:** let or bail any of the Collateral for such term and for such rent and subject to such conditions as we think fit;
- (j) **Acquisition of Property:** acquire any assets for inclusion in the Collateral;
- (k) **Borrowing of Money:** advance money to, or raise borrowed money from, any person and create a security interest over any Collateral;
- (l) **Settlement of Disputes:** bring, defend, arbitrate, compromise or abandon any claim or proceeding relating to any Collateral;
- (m) **Execution of Documents:** do anything or execute any agreement or document which we consider expedient on your behalf;
- (n) **Employ Consultants:** appoint, employ and pay for all repossession agents, auctioneers, salesmen, contractors, managers, agents and other consultants as we may consider necessary or expedient;
- (o) **Execute Documents:** execute all documents and agreements that we consider necessary for effecting any sale or other disposition;
- (p) **Exercise Powers:** exercise and enforce all other powers, rights and remedies that are conferred upon mortgagees by law notwithstanding any prior waiver or neglect;
- (q) **Terms of Sale:** leave the purchase price pursuant to any sale or other disposition owing over such period of time as we may think fit with or without interest and with or without security;
- (r) **Delegation:** delegate any of the rights conferred upon us under this Deed or by law;
- (s) **Authorise Transactions:** generally carry out, or cause or authorise to be carried out, any transaction, scheme or arrangement whatsoever in relation to the Collateral which we consider necessary or expedient;

(t) **GST Tax Invoices:** prepare, sign and deliver any tax invoice, tax receipt or other documentation required by the Goods and Services Tax Act 1985, should you be required to do so, and fail to do so on our demand; and

(u) **Incidental Rights:** do or omit to do anything incidental to the rights contained in this sub-clause.

AND all sales and things authorised by this clause shall be as valid and effective as if done by you. We shall, in addition, be accountable only for so much of the moneys actually received by us pursuant to any sale or disposition less any costs and charges incurred by us and you shall remain liable for the balance of the principal, interest or other Secured Indebtedness.

7.3 **Withdrawal:** We may at any time give up possession of any Collateral or discontinue any receivership.

## 8. RECEIVER

8.1 **Appointment of Receiver:** On the occurrence of an Event of Default, or on your request, or if any of the Collateral appears to us to be in danger of being taken or affected under any process of law by any creditor or to be otherwise in jeopardy in any respect, we may (in addition to and without prejudice to any of our other rights) at any time appoint in writing (and remove, replace and fix the terms of appointment of) one or more Receivers (jointly and severally) on terms considered necessary or expedient by us. Such appointment may be made either before or after we have taken possession of any Collateral or any winding-up or liquidation of you.

8.2 **Receiver Agent of Debtor:** A Receiver will be your agent. You will be solely responsible for the acts and defaults (including misconduct, negligence or default) of a Receiver.

8.3 **Receiver's Rights:** Subject to any restriction imposed by us, a Receiver will have all the rights conferred on receivers and managers by law, all the rights (*mutatis mutandis*) which are mentioned in clause 7.2 (whether or not those rights are yet enforceable by us) and all rights which you may have in relation to the Collateral.

8.4 **Receiver's Remuneration:** The remuneration of a Receiver may be fixed by us. However, this remuneration is payable by you and forms part of the Secured Indebtedness, secured by the Collateral.

## 9. PROCEEDS OF ENFORCEMENT

9.1 **Proceeds of Enforcement:** All money arising from the exercise of the enforcement rights of a Receiver or us, and all other money received by a Receiver or us after an Event of Default has occurred is to be applied by them or us, subject to any claim ranking in priority to the Secured Indebtedness, in the following order of priority, towards:

(a) all costs and expenses (including taxes and legal fees on a solicitor and own client basis) incurred by a Receiver or us in connection with, or as a result of the exercise of their respective rights (including the remuneration of a Receiver) under any Relevant Document in the order determined from time to time by the Receiver or us;

(b) all other Secured Indebtedness, in the order determined from time to time by us; and

(c) the claims of those entitled to any surplus.

9.2 **GST:** In the event of any sale or other disposition of the Collateral by us or by a Receiver being taxable under the Goods and Services Tax Act 1985 you shall on demand:

(a) **Pay GST:** Pay or refund to us the amount of such tax when it is due for payment (and such tax shall form part of the Secured Indebtedness); and

(b) **Invoices:** Supply or provide to us any GST tax invoice statement pursuant to s 5 of the Goods and Services Tax Act 1985 or such other information as we shall require in relation to that Act.

9.3 **Liability to Account:** We shall not be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss in realisation or for any loss or accidents occurring in any business or operations carried on or for any negligence, default, or omission for which a mortgagee in possession might be liable.

9.4 **Contingent Amounts:** If, at the time of distribution of any money under clause 9.1, any of the Secured Indebtedness is contingently owing to us, we or a Receiver may retain an amount equal to all or part of that contingent indebtedness. This amount is to be placed in an interest bearing deposit account until that contingent indebtedness becomes actually due and payable or ceases to be contingently owing.

## 10. PROTECTION PROVISIONS

10.1 **Performance of Debtor's Obligations by Bank:** We incur no liability and undertake no obligation of you, by virtue of this Deed or any security interest created under the Relevant Documents. However, in default of you doing so, we may (but need not) pay or discharge any liability or perform or comply with any of your obligations in respect of any Collateral. Each amount spent for that purpose (including costs and expenses (including legal fees on a solicitor and own client basis)) must be reimbursed by you on demand by us.

10.2 **Protection of Bank and Receiver:** Neither we nor any Receiver is:

- (a) obliged to:
    - (i) give notice of this Deed to a debtor of yours or to any other person; or
    - (ii) make any enquiry as to the nature or sufficiency of any payment received by us or a receiver in respect of any book debt or other indebtedness owing to you; or
    - (iii) enforce payment of the Secured Indebtedness or performance of, or compliance with, the Secured Obligations; or
    - (iv) take any action or bring any proceedings for any of those purposes; or
  - (b) liable in respect of any loss or damage which results from the exercise or attempted or purported exercise or the non-exercise by us or a Receiver of our rights under this Deed or at law; or
  - (c) liable to account as a mortgagee in possession in respect of any Collateral if we, or a Receiver, takes possession.
- 10.3 **Protection of Third Parties:** A purchaser from, or other person dealing with, us or a Receiver exercising or purporting to exercise rights conferred under this Deed (including any person to whom is tendered for registration a document executed by either of them):
- (a) need not enquire whether the relevant rights were exercised or are exercisable, or about the propriety or regularity of any transaction or dealing; and
  - (b) will not be affected by notice that any transaction or dealing is unnecessary or improper.
- as regards other parties, each such transaction or dealing will be deemed to be authorised by those rights and to be valid regardless of any irregularity or impropriety in it.
- 10.4 **Indemnity:** You will indemnify us, each Attorney and each Receiver against each cost, loss, expense (including all legal expenses on a solicitor and own client basis and taxes) and other liability (including loss of profit or margin) sustained or incurred by us, an Attorney or Receiver as a result of:
- (a) the occurrence or continuance of an Event of Default; or
  - (b) anything done or omitted, or purported to be done or omitted, by us, an Attorney or Receiver in the exercise or purported exercise of our rights under this Deed or conferred by law (and whether or not arising by reason of mistake, oversight, negligence or error of judgment); or
  - (c) a defect in your title to any property which is, or appears to be, Collateral;
- by payment to us on demand, the amount which we certify is required to compensate us for that cost, loss, expense or other liability.
- 10.5 **No Obligation:** We need not marshal, enforce or apply under, or appropriate, recover or exercise:
- (a) any security interest, guarantee or other entitlement held at any time by us; or
  - (b) any moneys or assets which we at any time hold or are entitled to receive,
- before this Deed is enforced.
11. **PAYMENTS AND SET-OFF**
- 11.1 **Mode of Payments:** Each payment to us under a Relevant Document must be made by 3.00 p.m. on the due date in immediately available freely transferable funds in the manner and to the account which we specify from time to time.
- 11.2 **Payments to be Free and Clear:** Each payment by you to us is to be unconditional and is to be in full, without any deduction or withholding whatsoever (whether in respect of tax, set-off, counterclaim or otherwise) unless such deduction or withholding is required by law. If any deduction or withholding is required by law, you will pay to us an additional amount so that the net amount actually received and retained by us on the due date (free from any liability in respect of any deduction or withholding, and ignoring any amount which we are deemed to have received by reason of any legislation) equals the full amount which we would have received had no deduction or withholding been made or required.
- 11.3 **Reinstatement:** If a payment made by you to us pursuant to a Relevant Document is avoided by law:
- (a) that payment will be deemed not to have discharged or affected your obligation in respect of which that payment was made or received; and
  - (b) we both will be deemed to be restored to the position in which each would have been, and will be entitled to exercise all the rights which each would have had, if that payment had not been made.
- 11.4 **Set-Off:** You irrevocably authorise us to apply (without prior notice or demand) any of your credit balances on any account, in any currency and of our offices in or towards satisfaction of any indebtedness then due to us and unpaid. If at any time an amount contingently due to us or an amount due is not quantified, we may retain and withhold payment of any such credit balance or other moneys pending that amount becoming due or being

quantified and may set off the maximum liability which may at any time be or become owing to us by you (or partly the one and partly the other) in each case without prior notice. We:

- (a) may use any credit balance to buy other currencies and break any term deposit to effect that application; and
- (b) need not exercise our rights under this sub-clause, which are without prejudice and in addition to our rights under the Relevant Documents and any other right of set-off, combination of accounts, lien or other right to which we are at any time entitled (by law or contract).

11.5 **Authority to Debit:** We are authorised to debit any of your accounts held with us with any amount of Secured Indebtedness due from time to time. We may exercise this right even if the account concerned is already in debit, and even if the amount debited takes the debit balance of the account over any approved limit.

11.6 **Deposits with Us:** Each credit balance you have with us will be held on the following basis:

- (a) the credit balance, and all your rights in relation to it, are incapable of assignment or of being the subject of a security interest (other than in our favour, or with our prior written consent); and
- (b) if at any time an Event of Default has occurred and has not been remedied, you will have no right to withdraw (and we will have no obligation to repay) any moneys from that credit balance (other than with our prior written consent).

11.7 **Bills of Exchange:** Your giving to us of any bill of exchange or promissory note for the whole or any part of the Secured Indebtedness shall not, until such bill or note is honoured or met, be considered as payment of or on account of the Secured Indebtedness.

## 12. POWER OF ATTORNEY

12.1 **Appointment:** You irrevocably appoint us, each Receiver, each of our nominees in whose name any Collateral is registered and each of our duly authorised officers or attorneys severally to be your Attorney (with full power to appoint substitutes and to sub-delegate) on behalf of you and in your name or otherwise and at your expense to complete, execute (under seal or otherwise) and otherwise perfect all assignments, security interests and other agreements and documents, and generally to do all other things which:

- (a) you should do under any Relevant Document; or
- (b) the Attorney may consider necessary or expedient to:
  - (i) secure to us the full benefit of our rights and intended rights under each Relevant Document; or
  - (ii) secure payment of the Secured Indebtedness and compliance with the Secured Obligations; or
- (c) are incidental to any of those matters.

12.2 **Ratification:** You ratify and confirm, and agree to ratify and confirm to each person dealing with us, a Receiver and each Attorney whatever we, a Receiver or that Attorney does or purports to do in the exercise or purported exercise of any of the rights referred to in clause 12.1.

## 13. STATUTORY RIGHTS

13.1 **Rights Conferred on Mortgagees:** The rights conferred on a mortgagee by law are in addition to the rights conferred by this Deed and may, subject to clause 13.2, be exercised by us without notice to or the consent of any person.

13.2 **Other Rights:** The rights conferred on a mortgagee by law are deemed negated or varied to the extent they are inconsistent with this Deed.

13.3 **Terms implied under Property Law Act 2007:** The covenants set out in clauses 6(2) and 12 of Part 2 of Schedule 2 to the Property Law Act 2007 are excluded from this Deed. The remaining provisions of Part 2 of Schedule 2 to the Property Law Act 2007 apply to this Deed, but in the event of any conflict with the provisions of this Deed this Deed shall prevail.

## 14. ASSIGNMENT

14.1 **Us:** We may assign or transfer any of our rights or obligations under this Deed without your consent. Each assignee or transferee will have the same rights against you under this Deed (or relevant portion of those rights if it is the assignee or transferee of part only) as if named as us in this Deed.

14.2 **Disclosure of Information:** We may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with this Deed are contemplated, any information about you whether or not that information was obtained in confidence and whether or not that information is publicly available.

14.3 **You:** You may not assign or transfer any of your rights or obligations under a Relevant Document without our consent.

## 15. NOTICES

- 15.1 **Delivery:** Any notice or document required or permitted to be given by any party to another party under this Deed or under the PPSA must be in writing and in addition to any method of service permitted by law may be delivered to the other party by:
- (a) delivery to a director;
  - (b) leaving it at the registered office of that party or the address of that party specified in this Deed;
  - (c) sending it by facsimile transmission to the facsimile number specified in this Deed in respect of which a transmission report is produced which indicates that the facsimile was sent in full to the recipient;
  - (d) posting it to the address specified for this purpose in this Deed; or
  - (e) email or electronic transmission to the address specified for this purpose in this Deed, in respect of which no record has been generated that the notice has failed to be transmitted.
- any address specified in this Deed as the address for the purposes of service of a party may by notice given in accordance with this clause 15 be changed from time to time.
- 15.2 **When Notice Received:** Any notice sent by post will be treated as having been received by the recipient for the purposes of this Deed three business days (or ten business days if sent to another country) after being put in the post, and in the case of any other means of service, on the day of delivery or transmission as the case may be whether or not the notice is actually received by the recipient.
- 15.3 **Credit Contracts Act Disclosure:** The "Address for Disclosure to You" specified in this deed is the address for service specified by you pursuant to s 35 (l) (b) of the Credit Contracts and Consumer Finance Act 2003 for the purpose of giving initial, guarantee, variation, request or continuing disclosure or any other communication.

## 16. EXPENSES AND TAXES

- 16.1 **Expenses:** You will pay each cost and expense (including all legal expenses on a solicitor and own client basis and taxes) sustained or incurred by us in connection with:
- (a) the preparation, negotiation, entry into and registration of a financing statement for each Relevant Document and each other transaction required or contemplated thereby;
  - (b) the preparation, registration, entry into and registration of a financing change statement in relation to each renewal or amendment to or discharge of a registration, or any subordination or release or partial release of any of the Collateral from the security interest under any Relevant Document or another transaction required or contemplated by a Relevant Document, and
  - (c) the exercise, protection or enforcement of, or otherwise in connection with, our rights under a Relevant Document or another transaction required or contemplated by a Relevant Document,
- in each case on demand and on a full indemnity basis.
- 16.2 **Taxes:** You will pay promptly any stamp or similar duty and any tax (including GST) and registration fee payable in connection with:
- (a) the entry into, performance, registration, enforcement or admissibility in evidence of any Relevant Document; and
  - (b) an amendment to, or waiver in respect of, any Relevant Document,
- and will indemnify and hold us harmless against any liability with respect to, or resulting from, any failure to pay, when due, any duty, tax or fee.

## 17. MISCELLANEOUS

- 17.1 **Rights and Waivers:** Time is of the essence in respect of all dates and times for performance by you of your obligations under this Deed. Our rights under this Deed are cumulative, may be exercised as often as we consider appropriate and are in addition to our rights provided by law. No failure to exercise, and no delay in exercising, any such right will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by us of our rights will be effective unless it is in writing signed by us.
- 17.2 **Amendments:** No amendment to this Deed will be effective unless it is in writing signed by you and us.
- 17.3 **Partial Invalidity:** The illegality, invalidity or unenforceability of a provision of this Deed under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.
- 17.4 **Certificates Conclusive:** A certificate by us of any amount payable under this Deed is to be conclusive evidence for all purposes including for any proceedings.

17.5 **Waiver for Verification Statement:** Pursuant to s 148 of the PPSA, you waive the right to be given a copy of any verification statement in relation to any financing statement or financing change statement registered by us in relation to this Deed.

17.6 **Governing Law:** This Deed is governed by and to be construed in accordance with New Zealand law and you submit to the exclusive jurisdiction of the courts of New Zealand.

## 18. TRUST PROVISION

18.1 **Trustee:** If you are described (in the Agreement or elsewhere) as a trustee of a trust:

- (a) **Warranties:** You warrant and undertake to us that the entering into of the Agreement is authorised by the relevant trust deed and/or by the Trustee Act 1956. The warranties and undertakings which have been given by trustees in any trustee certificate will also continue to apply.
- (b) **Enforcement:** In enforcing the Agreement we:
  - (i) may have full recourse to all of the assets of the trust and will be subrogated to each trustee's right to be indemnified from those assets or by any other person (including any beneficiary of the trust); and
  - (ii) may have recourse to the personal assets of any trustee unless that trustee is a Limited Liability Trustee in which case clause 18.1(c) applies.
- (c) **Limited Liability Trustee:** If we have agreed in writing that a trustee is a "Limited Liability Trustee", then its personal liability will be limited to the assets of that trust. However, this limitation of personal liability will not apply, and we may exercise all the rights we have against the Limited Liability Trustee personally if the Limited Liability Trustee:
  - (i) is in wilful breach of trust or has acted dishonestly; or
  - (ii) loses his or her right to be indemnified out of the assets of the trust for any reason,
- (d) **Events of Default:** It shall be an Event of Default if any of the following occur without our prior written consent:
  - (i) you cease to be a trustee of the trust;
  - (ii) a resolution is passed by the trustees or beneficiaries of the trust, or any other action is taken, to wind up the trust; or
  - (iii) the trust deed is amended, varied or revoked.
- (e) **Trustee Retirement:** Each trustee confirms and undertakes that the retirement of any trustee shall be effected in terms of section 45 of the Trustee Act 1956 and that it will notify us in writing that a trustee intends to retire in accordance with those provisions. Each trustee remains liable under the Agreement after it ceases to be a trustee until released in writing by us. We will release such trustee from its liabilities under the Agreement (in its capacity as trustee and not, if applicable, in its personal capacity) when we are satisfied that all things required for vesting the secured property in the continuing or new trustees have been executed and done.

## 19. PARTNERSHIPS AND LIMITED PARTNERSHIPS

19.1 **Partnership:** If you are described (in the Agreement or elsewhere) as a partner of a partnership:

- (a) **Acknowledgement:** you acknowledge that:
  - (i) distinct from your joint liability as a partner, you have separate personal liability for all the obligations of the partnership so that we may have recourse to your personal assets on the same basis as any other personal creditor; and
  - (ii) you will notify us immediately upon the appointment of each new partner and the retirement or death of any partner; and
- (b) **Events of Default:** it shall be an Event of Default if any of the following occur without our prior written consent:
  - (i) the Mortgagor ceases to be a partner of the partnership;
  - (ii) a resolution is passed by the partners or any other action is taken to wind up, dissolve or terminate the partnership; or
  - (iii) the partnership agreement is amended, varied or revoked.

19.2 **Limited Partnership:** If you are described (in the Agreement or elsewhere) as a limited partnership:

- (a) **Acknowledgement:** each general partner of the limited partnership acknowledges that:
  - (i) as general partner it is jointly and severally liable with the limited partnership and the other general partners for the unpaid debts and liabilities of the limited partnership so that we may



have recourse to the general partner's personal assets on the same basis as any other personal creditor; and

- (ii) it will notify us immediately upon the appointment of each new partner and the removal, retirement or death of any partner; and

(b) **Events of Default:** it shall be an Event of Default if any of the following occur without our prior written consent:

- (i) a general partner ceases to be a general partner of the limited partnership;
- (ii) a resolution is passed by the partners or any other action is taken to wind up, dissolve or terminate the limited partnership;
- (iii) the partnership agreement is amended, varied or revoked; or
- (iv) a terminating event occurs under the Limited Partnerships Act 2008 or the partnership agreement.

