

# Deed of Priority and Subordination

**Property Improvements Limited**  
Junior Lender

and

**ASB Bank Limited**  
Senior Lender

and

**650 Great South Road Limited**  
Borrower

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This **Deed** is made on

2024

**between** (1) Property Improvements Limited (the **Junior Lender**)

**and** (2) ASB Bank Limited (the **Senior Lender**)

**and** (3) 650 Great South Road Limited (the **Borrower**)

## Introduction

The Senior Lender has agreed to make financial accommodation available to the Borrower on the condition that the Borrower and the Junior Lender enter into this Deed.

### It is declared

## 1. Interpretation

### 1.1 Definitions

In this Deed, unless the context otherwise requires:

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

**Costs of Realisation** means:

- (a) all costs incurred by a Secured Party in protecting or enforcing the security given by its Security Documents, or in contemplation thereof or in the exercise or the contemplated exercise by a Secured Party of all or any of the powers and authorities conferred upon that Secured Party by its Security Documents;
- (b) all costs, including, but not limited to, legal costs, incentive costs, valuation fees, marketing costs and real estate agents' commissions and charges incurred, paid or advanced by a Secured Party in connection with any action taken by that Secured Party or the Borrower in effecting or attempting to effect settlement of any sale or in realising or enforcing that Secured Party's Security Documents;
- (c) all costs incurred, paid or advanced by a Secured Party in respect of the protection, insurance, maintenance, preservation, or repair of the Land, any section, unit or any building comprised in the Land, rates or other outgoings and body corporate fees or levies; and
- (d) to the extent not included under paragraphs (a) – (c) above, all amounts paid or advanced as referred to in section 87(1) of the Property Law Act 2007, as if those amounts were expressly set out in this Deed,

and all references to Secured Party above shall be deemed to include any Receiver appointed by that Secured Party;

**Date of Enforcement** means, unless the Secured Parties agree in writing to the contrary, the first day on which a Secured Party becomes entitled to exercise any right of Enforcement available to it under its Security Documents;

**Enforcement** means the exercise by a Secured Party of a right available to it by way of enforcement or realisation of a security interest under its Security Documents including:

- (a) making demand for, taking steps to recover (whether directly or by set-off, counterclaim or otherwise) or accepting money or other property, or exercising or enforcing its rights, in respect of, its Indebtedness;
- (b) without limiting paragraph (a) above, taking any steps to enforce a Security Document; and
- (c) claiming, proving or accepting payment in composition by, or in a liquidation or administration of, the Borrower;

**Event of Default** means an event of default (however described) under or in connection with any agreement evidencing Senior Indebtedness;

**Facility Agreement** means the Senior Facility Agreement or the Junior Facility Agreement, as the context requires;

**Indebtedness** means the Senior Indebtedness or the Junior Indebtedness, as the context requires;

**Insurance Proceeds** means the proceeds of the Borrower's insurance in respect of the Secured Property;

**Junior Facility Agreement** means the facility agreement dated on or about the date of this Deed between the Junior Lender and the Borrower;

**Junior Indebtedness** means all indebtedness of the Borrower to the Junior Lender or incurred by the Junior Lender on behalf of the Borrower or sustained in any way by the Junior Lender in connection with any such indebtedness or the enforcement or attempted enforcement of any such indebtedness;

**Junior Security Documents** means each security agreement and mortgage granted in favour of the Junior Lender, as described in Part B of Schedule 2;

**Junior Security Interest** means each security interest created by the Junior Security Documents;

**Land** means the land described in Part C of Schedule 2 or any part of it and also includes any land which is comprised in a record or records of title which is or are issued as a result of the subdivision of any of that land and also any land which becomes subject to the Security Documents as a result of the operation of section 242 of the Resource Management Act 1991;

**Nominated Amount** means:

- (a) in the case of the Senior Lender \$14,805,000; and
- (b) in the case of the Junior Lender \$1,200,000,

or, in each case, such other amount as is agreed between the parties in writing from time to time;

**Other Property** means property of the Borrower (other than Personal Property) that is subject to a security interest under both the Senior Security Documents and the Junior Security Documents;

**Personal Property** means personal property of the Borrower that is subject to a security interest under both the Senior Security Documents and the Junior Security Documents;

**PPSA** means the Personal Property Securities Act 1999;

**Priority Amount** means, on any day and in relation to a Secured Party, the aggregate of:

- (a) an amount equal to its Secured Indebtedness as at that day, but limited to its Nominated Amount (including, for the avoidance of doubt, any capitalised interest);
- (b) an amount equivalent to the notional amount of interest calculated at the highest rate chargeable by that Secured Party to the Borrower under its loan agreements in respect of its Secured Indebtedness which would accrue over a period equal to 24 months on its Nominated Amount;
- (c) the Secured Party's Costs of Realisation (including all interest and taxes on that amount);
- (d) all preferential payments (if any) required by law to be paid prior to that Secured Party's Secured Indebtedness; and
- (e) the costs incurred by a Secured Party in relation to the entry into or closing out or terminating any risk management product relating to the Borrower,

for the avoidance of doubt, the amounts payable pursuant to paragraphs (b) – (e) above are in addition to and do not limit the amount payable pursuant to paragraph (a) above;

**Purchase Price** means the lesser of the Senior Lender's Priority Amount and the Senior Indebtedness outstanding as at the Settlement Date (as defined in clause 9.5(a) (Time of Completion));

**Receiver** includes a receiver and manager;

**Reference Rate** means, in relation to a Secured Party, the highest rate of interest chargeable by that Secured Party pursuant to its Facility Agreement;

**Secured Indebtedness** means, in relation to a Secured Party, all indebtedness of the Borrower to that Secured Party that is secured by its Security Documents;

**Secured Party** means the Junior Lender or the Senior Lender, as the context requires;

**Secured Property** means the Personal Property and the Other Property;

**Security Documents** means the Senior Security Documents or the Junior Security Documents, as the context requires;

**Security Interest** means the Senior Security Interest or the Junior Security Interest, as the context requires;

**Senior Facility Agreement** means the facility agreement dated 13 June 2016 between (amongst others) the Senior Lender and the Borrower as amended from time to time;

**Senior Indebtedness** means all indebtedness of the Borrower to the Senior Lender or incurred by the Senior Lender on behalf of the Borrower or sustained in any way by the Senior Lender in connection with the enforcement or attempted enforcement of any such indebtedness;

**Senior Security Documents** means each security agreement and mortgage granted in favour of the Senior Lender, as described in Part A of Schedule 2;

**Senior Security Interest** means each security interest created by the Senior Security Documents; and

**Termination Date** means the date the Senior Lender gives written notice to each of the Borrower and the Junior Lender that:

- (a) all of the Senior Indebtedness has been irrevocably paid to the Senior Lender; and
- (b) it is not required to provide any further financial accommodation to, or to the account of, the Borrower.

## 1.2 Construction of certain references

In this Deed, unless the context otherwise requires:

an **agreement** includes any legally enforceable arrangement (in each case, whether or not in writing, present and future) and includes that arrangement as amended, assigned, novated or substituted from time to time;

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

a **consent** includes an approval, authorisation, exemption, filing, licence, order, permit, recording or registration;

**costs** incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes incurred by that person;

a **guarantee** includes an indemnity, letter of credit, letter of comfort, suretyship and other agreement, the economic effect of which is to provide security, or otherwise assume responsibility, for the indebtedness or obligations of another person;

**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;

the **liquidation** of a person includes the dissolution, administration, winding-up and bankruptcy of that person and any analogous procedure under any relevant law;

**loss** includes loss of profit and loss of margin;

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

**property** includes the whole and any part of the relevant person's business, assets (including leased assets), undertaking, revenues and rights (in each case, present and future), and reference to any property includes any legal or equitable interest in it;

a **security interest** includes a security interest, mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor;

**tax(es)** includes any tax, levy, impost, stamp or other duty and any other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

**writing** includes an email communication and any means of reproducing words in a tangible and permanently visible form;

a reference to a **party, clause** or **schedule** is a reference to a party to, clause of or schedule to, this Deed;

the word **including**, when introducing an example, does not limit the meaning of the words to which the example relates;

an Event of Default **is continuing** until it has been waived in writing by, or remedied to the satisfaction of, the Senior Lender;

the singular includes the plural and vice versa;

where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

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 another agreement includes its successors and its permitted assignees, novatees and transferees.

If the Senior Lender considers that an amount of Senior Indebtedness paid by the Borrower is capable of being avoided or otherwise set aside on the liquidation of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

Headings and the table of contents are to be ignored in construing this Deed.

### 1.3 PPSA

The terms **collateral, debtor, financing change statement, financing statement, personal property, security agreement** and **seriously misleading** have the meanings given to them in, or in the context of, the PPSA.

## 2. Priority

### 2.1 PPSA

- (a) The Junior Security Interest in the Personal Property is subordinated to the Senior Security Interest in the Personal Property for the purposes of section 70 of the PPSA. On request by the Senior Lender, the Junior Lender will promptly register a financing change statement in relation to this subordination.
- (b) The Senior Lender has priority over the Junior Lender and may, in accordance with its Security Documents, take possession of and sell any Personal Property in terms of section 109 of the PPSA, subject to the terms of this Deed.

## 2.2 Priority

- (a) The Senior Security Interest, and all moneys from time to time secured under it, has first priority over the Junior Security Interest up to (and limited to) the Priority Amount of the Senior Lender.
- (b) The Junior Security Interest, and all moneys from time to time secured under it, has second priority for an amount up to (and limited to) the Priority Amount of the Junior Lender.
- (c) Subject to paragraphs (a) and (b), the Senior Security Interest will have priority over the Junior Security Interest for the balance (if any), of the moneys from time to time secured by the Senior Security Interest.
- (d) In respect of the Personal Property, the Senior Lender has priority over the Junior Lender for the purposes of Part 9 of the PPSA.
- (e) On request by the Senior Lender, the Junior Lender will promptly enter into and execute a memorandum of priority in registrable form reflecting the priority in respect of any Other Property set out in this Deed.

## 2.3 Sharing of proceeds

Notwithstanding:

- (a) the dates of execution or perfection or receipt of notice of the Security Documents; or
- (b) any amounts that may, from time to time, be paid to the credit of an account of the Borrower with a Secured Party; or
- (c) any rule of law; or
- (d) any other matter,

as between the Secured Parties, the proceeds of realisation of the Security Documents will be shared in the manner and according to the priorities set out in this Deed, provided that:

- (i) if a Security Interest of the Junior Lender is not perfected or not continuously perfected; or
- (ii) if a financing statement in relation to a Security Interest of the Junior Lender is held to be seriously misleading for the purposes of the PPSA; or
- (iii) if the Junior Lender takes, or omits to take, any other steps,

so that a security interest of a third party has priority over a Security Interest of the Junior Lender, then nothing in these subordination and priority arrangements will oblige the Senior Lender to do or suffer anything in relation to the affected Secured Property inconsistent with the Senior Lender's priority position outside of these arrangements where that priority position is or would be more favourable to the Senior Lender than under these arrangements.



## 2.4 Further advances

The Secured Parties may in their entire discretion, but subject always to the terms of this deed, make or provide any further advances or other accommodation or continue any advances or accommodation under and to be secured by their respective Security Interests.

# 3. Subordination

## 3.1 Subordination

Notwithstanding any agreement constituting or evidencing any of the Junior Indebtedness, each of the Borrower and the Junior Lender agrees for the benefit of the Senior Lender that the Junior Indebtedness is subordinated and subject in point of priority and (subject to clause 3.13 (Permitted Payment)) right of repayment to the prior payment in full of the Senior Indebtedness.

## 3.2 No payment of Junior Indebtedness

Each of the Borrower and the Junior Lender agrees for the benefit of the Senior Lender that, notwithstanding anything to the contrary contained in any agreement evidencing the Junior Indebtedness, it will not, prior to the Termination Date:

- (a) subject to clause 3.13 (Permitted Payment), directly or indirectly make or receive any payment or distribution to, or to the order of, the Junior Lender in respect of any of the Junior Indebtedness; or
- (b) sell, purchase or acquire any of the Junior Indebtedness in cash or in kind; or
- (c) create or permit to exist a security interest, or give a guarantee, over or affecting the Junior Indebtedness, other than the Junior Security Documents; or
- (d) discharge any of the Junior Indebtedness by set-off; or
- (e) take or omit to take any action that might result in the subordination created or expressed to be created by this Deed being impaired.

## 3.3 Enforcement of Junior Indebtedness

The Junior Lender agrees for the benefit of the Senior Lender that, notwithstanding anything to the contrary contained in any agreement constituting or evidencing any Junior Indebtedness, it will not exercise any right of Enforcement available to it.

## 3.4 Power to enforce Junior Indebtedness

### (a) Appointment of attorneys

The Junior Lender irrevocably appoints the Senior Lender, each nominee of the Senior Lender and each authorised officer or attorney of the Senior Lender severally to be its attorney, at the Junior Lender's cost, to do anything necessary or desirable in the opinion of the Senior Lender to (where the Senior Lender considers an Event of Default has occurred or is reasonably likely to occur or where the Junior Lender is required to do the relevant act or thing accordance with

this Deed and has failed to do so within five business days of being requested to do the particular act or thing by the Senior Lender):

- (i) complete the Junior Security Documents;
- (ii) give full effect to the Junior Security Documents;
- (iii) better secure the Secured Property to the Junior Lender in a manner consistent with the Junior Security Documents;
- (iv) assist in the execution or exercise of any right under the Junior Security Documents, including executing any transfer (including any transfer in blank) or other agreement;
- (v) execute, deliver and/or register any release or releases including, but not by way of limitation, an authority and instruction form or letter of authority of any of the Junior Security Documents which in the opinion of the Senior Lender is required to enable the settlement of any sale of the whole or any part of the Land;
- (vi) complete any partial deeds of release of the Junior Security Documents which are required to give effect to this Deed;
- (vii) enable the settlement of the sale of the whole or any part of the Land including, but not by way of limitation, the giving of any notice to the purchaser, underwriter or guarantor;
- (viii) remove any caveat lodged by the Junior Lender or any person claiming under it against the whole or any part of the Land;
- (ix) remove any other impediment to the exercise by the Senior Lender of any of its rights under this Deed; or
- (x) enable the issuing of any new records of title in relation to the whole or any part of the Land.

(b) **General**

- (i) Each Attorney may appoint and remove substitutes, and may delegate its powers (including this power of delegation) and revoke any delegation.
- (ii) An Attorney may do anything contemplated by this clause 3.4:
  - (A) even if there is an actual or potential conflict of interest or duty, or the Attorney might benefit from doing it; and
  - (B) in its name, or in the name of the Junior Lender.
- (iii) The Junior Lender must ratify anything done by an Attorney under this clause 3.4.
- (iv) The Junior Lender gives the power of attorney in this clause 3.4:
  - (A) to secure performance by the Junior Lender of its obligations to the Senior Lender under this Deed and any property interest of the Senior Lender under the Security Documents; and

- (B) for valuable consideration, receipt of which is acknowledged by the Junior Lender.

(c) **Ratification**

The Junior Lender hereby ratifies and confirms to each person dealing with the Senior Lender and each authorised Attorney whatever the Senior Lender or that Attorney does in the exercise of any of the rights referred to in this clause 3.4. Neither the Senior Lender nor any authorised officer, attorney or employee of the Senior Lender or its nominee will be liable in respect of any lawful exercise of the powers contained in this clause 3.4 and the Junior Lender agrees to indemnify the Senior Lender, each nominee of the Senior Lender and each such officer, attorney or employee of the Senior Lender or its nominee upon demand against any loss, cost, expense, charge, damage, claim or liability which any such person may suffer or incur as a direct or indirect consequence of the lawful exercise of such powers.

### 3.5 **Subordinated payments to be held on trust**

If, prior to the Termination Date, the Junior Lender receives any payment or accepts any property in respect of any Junior Indebtedness in breach of this Deed, whether on the liquidation of the Borrower or otherwise, the Junior Lender will pay or transfer it to the Senior Lender immediately and, pending that payment or transfer will hold it on trust for the Senior Lender.

### 3.6 **Trust terms**

The trust constituted by clause 3.5 (the **Turnover Trust**) shall be for a term of 125 years from the date of this Deed and:

- (a) the provisions of the Trusts Act 2019 (**Trusts Act**) set out in Schedule 2 of the Trusts Act that would otherwise be applicable to the Turnover Trust or the Junior Lender (in its capacity as trustee) shall be excluded and do not apply to the Junior Lender (in its capacity as trustee), this Deed or the Turnover Trust (other than sections 29 – 38 and section 56 of the Trusts Act); and
- (b) the provisions of the Trusts Act set out in clause 4(3) of Schedule 3 of the Trusts Act are excluded and do not apply to the Junior Lender (in its capacity as trustee), this Deed or the Turnover Trust (other than sections 45 to 54, sections 121-123 and sections 153 – 158 of the Trusts Act).

### 3.7 **Duties of Junior Lender as trustee**

Pending the payment by the Junior Lender to the Senior Lender of any of the Junior Indebtedness received or the turning over of any property accepted by the Junior Lender, the Junior Lender will:

- (a) not co-mingle any amount to be paid, or property to be turned over, to the Senior Lender with its other property; and
- (b) place any amount to be paid to the Senior Lender in a separate, interest-bearing account (to be designated as a trust account) with a bank or financial institution in New Zealand.

The Junior Lender will account to the Senior Lender for any Junior Indebtedness received or property accepted by it. The Junior Lender will indemnify the Senior Lender from and against all costs incurred by the Senior Lender arising out of the authority and power of attorney in clause 3.4 (Power to enforce Junior Indebtedness) or the receiving of any Junior Indebtedness or accepting of property.

### 3.8 Failure of trust

If and to the extent that, prior to the Termination Date, the trust constituted by clause 3.5 (Subordinated payments to be held on trust) is not properly constituted or otherwise is not effective, the Junior Lender agrees (on an indemnity basis) forthwith on demand to pay to the Senior Lender any of the Junior Indebtedness received, or property accepted by, the Junior Lender.

### 3.9 Enforcement by Senior Lender

If the Senior Lender enforces a security interest created by or pursuant to the Senior Security Documents, then:

- (a) the Junior Lender will not be entitled to take or have possession of any property subject to any such security, or maintain a receiver in possession in respect of such property (except with the prior written consent of the Senior Lender); and
- (b) the Senior Lender will control the entire conduct of any sale of property covered by any security interest created by or pursuant to a Senior Security Document.

If, following an Enforcement by the Senior Lender, the Senior Lender or any Receiver appointed by the Senior Lender sells any property over which the Junior Lender (or any trustee or agent on its behalf) has security for the Junior Indebtedness, or if the Borrower sells such property at the request of the Senior Lender following an Enforcement by the Senior Lender, then on such sale the Junior Lender will release its security over that property on receipt from the Borrower of any amount due to it under this Deed.

### 3.10 Waivers

The Junior Lender waives:

- (a) any existing or future right it may have to marshalling in respect of any security at any time held by the Senior Lender or by a trustee or agent on its behalf; and
- (b) any right it may have of requiring that Insurance Proceeds be applied in reinstatement of any property subject to a security interest under a prior ranking Security Document.

### 3.11 No enforcement

A Secured Party may, in its discretion, refrain from enforcing the security created by or pursuant to the Security Documents granted in its favour for as long as it sees fit.

### 3.12 Termination Date

Nothing in this clause 3 will apply after the Termination Date.

### 3.13 Permitted Payment

Notwithstanding anything to the contrary in this Deed, provided that there is no Event of Default that is continuing at the applicable time (other than an Event of Default that has been waived by the Senior Lender in accordance with the Senior Facility Agreement), the Borrower shall be entitled to pay to the Junior Lender, and the Junior Lender shall be entitled to receive from the Borrower:

- (a) interest payments due and payable to the Junior Lender in repayment of the Junior Indebtedness provided that the applicable interest rate is no greater than 9 per cent per annum; and
- (b) payment of expenses incurred or to be incurred by the Junior Lender pursuant to the Junior Facility Agreement provided that the aggregate amount of such expenses does not exceed \$40,000 per annum or any other amount approved by the Senior Lender from time to time.

## Representations

### 3.14 General representations

The Borrower and the Junior Lender represents that:

(a) **Existence, power and authority**

it:

- (i) is properly constituted (and, in the case of a company, incorporated);
- (ii) is validly existing under the laws of New Zealand and its constitutional documents (to the extent it has any); and
- (iii) has full power to enter into and comply with its obligations under this Deed and it has obtained all necessary resolutions, taken all other action and obtained all consents needed to enable it to do so; and

(b) **Obligations enforceable**

its obligations under this Deed are legal, valid, binding and enforceable in accordance with their respective terms, subject to equitable principles and insolvency laws of general application.

### 3.15 Representations relating to the Junior Indebtedness

The Borrower and the Junior Lender represents that:

- (a) (other than in terms of paragraph (c) below) neither the Junior Lender nor any other person holds the benefit of any security interest or guarantee over or affecting any Junior Indebtedness;
- (b) the information in Schedule 1 is true in all respects and includes the details of:
  - (i) all agreements constituting or evidencing the Junior Indebtedness; and
  - (ii) all amounts of the Junior Indebtedness that are outstanding at the date of this Deed; and
- (c) the Security Documents specifically listed in Part B of Schedule 2 includes details of all agreements constituting or evidencing security for the Junior Indebtedness.

## 4. Undertakings (Borrower and Junior Lender)

The Borrower and the Junior Lender undertakes that, prior to the Termination Date:

(a) **No variation of Junior Indebtedness**

it will not (without the prior written consent of the Senior Lender) agree to any amendment to, or substitution of, any terms and conditions of any agreement constituting or evidencing or security for any Junior Indebtedness;

(b) **Variation of Senior Indebtedness**

the provisions of this Deed shall not be affected by any amendment to, or substitution of, any agreement constituting or evidencing or security for any Senior Indebtedness;

(c) **Further assurance**

it will, at its own cost, promptly execute and deliver to the Senior Lender all agreements, and do anything else that the Senior Lender deems appropriate, to secure to the Senior Lender the full benefit of this Deed;

(d) **Notice of new Junior Indebtedness**

it will promptly notify the Senior Lender if it enters into any agreement that constitutes or evidences any Junior Indebtedness, giving details of the terms and a copy of the agreement to the Senior Lender; and

(e) **No assignment of Secured Indebtedness**

with regard to the Borrower, it will not assign, novate, transfer or otherwise dispose of any of its rights or obligations in respect of any Secured Indebtedness or under any agreement constituting or evidencing or security for any Secured Indebtedness.

## 5. Undertaking (Junior Lender)

The Junior Lender undertakes that, notwithstanding anything in this Deed to the contrary, it will not take any action whatsoever whether by way of the seeking of injunctive relief or howsoever to prevent the Senior Lender exercising any of its rights including, but not by way of limitation, under this Deed or the Senior Security Documents.

## 6. Distribution

All amounts received or recovered by a Secured Party under its Security Documents following the Date of Enforcement and any amount of Insurance Proceeds required under clause 7.2 (Insurance proceeds) to be applied in accordance with this clause will be applied as follows:

- (a) first, in or towards payment to the Senior Lender of its Secured Indebtedness but limited to its Priority Amount;
- (b) secondly, in or towards payment to the Junior Lender of its Secured Indebtedness but limited to its Priority Amount; and
- (c) thirdly, to the extent of any Secured Indebtedness owing to a Secured Party in excess of its Priority Amount, then to each Secured Party in turn (with the Senior Lender being paid in full first) until all its Secured Indebtedness is paid in full,

and the surplus (if any) shall be paid to those entitled to it (whether by virtue of section 117 of the PPSA or otherwise at law). This order of payment will not require payment of amounts to a Secured Party when the Other Property is sold subject to its Security Interest.

## 7. The Secured Parties

### 7.1 Enforcement

Each Secured Party will notify the other Secured Party promptly of any event giving rise to a Date of Enforcement, where the officers of that Secured Party having responsibility for its Secured Indebtedness have actual knowledge of such an event.

### 7.2 Insurance proceeds

If the Junior Lender receives Insurance Proceeds, it will immediately notify the Senior Lender and will immediately pay those Insurance Proceeds to the Senior Lender. Insurance Proceeds (regardless of to whom they have been paid) shall be applied in accordance with the terms of the Senior Facility Agreement. If, under the Senior Facility Agreement, the relevant Insurance Proceeds are required to be applied in prepayment of the Senior Indebtedness, the Insurance Proceeds shall be applied as set out in clause 6 (Distribution). If the Senior Facility Agreement is silent on the application of the relevant Insurance Proceeds, those Insurance Proceeds will be applied:

- (a) subject to paragraph (b) below, (at the Senior Lender's election) for the purpose of repairing, rebuilding, restoring or replacing the Secured Property concerned or as set out in clause 6 (Distribution); or
- (b) where the Insurance Proceeds are received under liability policies held by the Borrower that are required by the Borrower to satisfy established liabilities of the Borrower to third parties, to satisfy those liabilities.

### 7.3 Co-operation

Each Secured Party covenants (for the benefit only of the other Secured Party) that it will act in good faith towards, and co-operate with, the other Secured Party to give effect to this Deed.

### 7.4 Security interests

No Secured Party will accept any security interest from the Borrower (other than under its Security Documents) over any part of the Secured Property, without the prior written consent of the other Secured Party.

## 8. Discharge

If, at any time, the Junior Lender exercises in good faith its power of sale in respect of any Other Property with the Senior Lender's prior written consent, the Senior Lender will provide the Junior Lender with a registrable discharge of the Senior Security Interest over that Other Property if the Senior Lender receives an amount equal to at least the lesser of:

- (a) its Secured Indebtedness as at the date of payment; and
- (b) its Priority Amount.

## 9. Right to take out by Junior Lender

### 9.1 Option

For the consideration referred to in clause 9.2, the Senior Lender hereby grants the Junior Lender an option to either repay or take an assignment of that part of the Senior Indebtedness which represents the Purchase Price upon and subject to the terms and conditions of this Deed (the **Option**).

### 9.2 Consideration

The consideration for the grant of the Option shall be the Junior Lender's promise to pay the sum of \$1.00 upon demand being made by the Senior Lender (which promise is hereby acknowledged).

### 9.3 Exercise

The Junior Lender may exercise the Option by notice in writing to the Senior Lender signed by the Junior Lender and delivered to the Senior Lender within five business days following receipt of written notice from the Senior Lender (the **Notice Period**):

- (a) **Enforcement:** of the Senior Lender's intention to exercise all or any of its Enforcement rights under the Senior Security Documents; or
- (b) **Offer to Take Out:** offering the Junior Lender the opportunity to take out the Senior Lender pursuant to the provisions of this clause following the occurrence of an Event of Default,

such notice to indicate whether the Junior Lender intends repaying or taking an assignment of the Senior Indebtedness. Notwithstanding the above, if the Senior Lender reasonably believes that any property secured under the Security Documents is at risk or that the Junior Lender will not be able to pay the Purchase Price in full, then the Senior Lender may, prior to payment of the Purchase Price, exercise any of its Enforcement rights under the Senior Security Documents or otherwise take any action it is entitled to take under the Senior Facility Agreement or the Senior Security Documents or at law.

### 9.4 Purchase Price

The Junior Lender shall pay the Purchase Price to the Senior Lender at the time and in the manner set out in clause 9.5 (Conditions of Repayment/Sale and Purchase).



## 9.5 Conditions of Repayment/Sale and Purchase

Upon exercise of the Option, the following terms and conditions shall apply:

- (a) **Time of Completion:** the sale and purchase or repayment (as the case may be) shall be completed at or before midday in Auckland, New Zealand at the offices of the Senior Lender or its solicitors on the date being the fifteenth business day after the date of exercise of the Option (**the Settlement Date**);
- (b) **Payment of Purchase Price:** on the Settlement Date, the Junior Lender shall pay to the Senior Lender the Purchase Price in immediately available cleared funds;
- (c) **Senior Security Documents:** subject to:
  - (i) the contemporaneous receipt by the Senior Lender of the Purchase Price;
  - (ii) receipt by the Senior Lender of such documents and information as it may require in respect of the Junior Lender to satisfy the Senior Lender's anti-money laundering, counter-terrorism financing and sanctions compliance legal obligations and internal policies; and
  - (iii) the Senior Lender having received the documentation required pursuant to the provisions of clause 9.5(d),

on the Settlement Date, the Senior Lender will at the cost of the Borrower:

  - (iv) (if the Junior Lender has elected to purchase the Senior Indebtedness) deliver or procure delivery to the Junior Lender of the Senior Facility Agreement, the Senior Security Documents and all other loan agreements and other documents evidencing or securing the Senior Indebtedness, (but for an amount not exceeding the Purchase Price) and such assignments and transfers as would customarily be required to effect an assignment of the Senior Indebtedness;
  - (v) in its sole discretion either release the Senior Security Documents or enter into a memorandum of priority in respect of the mortgages over the Land and a deed of priority of securities with the Junior Lender pursuant to which those of the Senior Security Documents which relate specifically to the Land and which the Senior Lender wishes to retain will rank in order of priority behind the Junior Security Documents up to the Junior Lender's Priority Amount (it being confirmed for the sake of certainty that, as from the Settlement Date, the Junior Lender's Nominated Amount shall be increased by the amount of the Purchase Price) but, in the case of any general security agreement held by the Senior Lender, only in respect of those of the Borrower's assets which relate specifically to the Land; and
  - (vi) (in the event that the Senior Lender elects to retain some only of its Senior Security Documents) release those of its Senior Security Documents which it does not wish to retain;
- (d) **Secured Indebtedness exceeds Purchase Price:** if on the Settlement Date the Senior Indebtedness exceeds the Purchase Price (such amount being the **Excess Sum**) the Borrower must enter into such documentation as the Senior Lender may reasonably require to record the indebtedness of the Borrower to the Senior Lender in respect of the Excess Sum;

- (e) **Senior Lender's Warranties:** the Senior Lender upon completion warrants and represents to the Junior Lender that:
  - (i) **Debt Held Unencumbered:** that part of the Senior Indebtedness which represents the Purchase Price is now and will on completion be the unencumbered property of the Senior Lender; and
  - (ii) **Good Title Given:** it will convey to the Junior Lender (or its nominee or assignee) good and clear title to that part of the Senior Indebtedness which represents the Purchase Price;
- (f) **No Liability of Senior Lender:** subject to the warranties in clause 9.5(e), the Senior Lender will have no liability in contract, tort or otherwise howsoever for any loss or damage (whether financial or otherwise) which may be suffered either directly or indirectly by the Junior Lender as a result of the Junior Lender having exercised its Option under this clause 9 or as a result of the Senior Facility Agreement or any other document evidencing the Senior Indebtedness being defective in any way or not being enforceable and the Junior Lender confirms that, except for the warranties expressed in clause 9.5(e), the Senior Lender has not made or given any representation or warranty to the Junior Lender in respect of the Senior Indebtedness, the Borrower or any other person or any documents relating to the same and the Senior Lender shall not be obligated to monitor any accounts of the Borrower on the Junior Lender's behalf following the exercise by the Junior Lender of its Option. If required by the Senior Lender, the Junior Lender will enter into a deed of assignment in a form acceptable to the Junior Lender in all respects in connection with the exercise by the Junior Lender of its rights under this clause 9; and
- (g) **Excess Sum:** in the event that the Senior Lender determines to release the Senior Security Documents in terms of clause 9.5(c), the Excess Sum together with all interest on such sum shall remain a debt owing to the Senior Lender by the Borrower. It is agreed by the Borrower and the Senior Lender that, if following repayment of the Junior Indebtedness, there is any surplus available for distribution to the Borrower that surplus (up to an amount not exceeding the Excess Sum together with all interest on such sum) must be held in trust by the Junior Lender or Borrower (as the case may be) for and to the order of the Senior Lender and immediately paid to the Senior Lender. The Junior Lender shall have no obligations to the Senior Lender under this clause 9.5(g) unless it has received written notice from the Senior Lender of the fact that there is an Excess Sum outstanding.

## 9.6 Borrower's Acknowledgment

For the sake of certainty, the Borrower acknowledges and agrees that in the event that the Junior Lender takes an assignment of the whole or any part of the Senior Indebtedness (**Assigned Money**) pursuant to the provisions of this Deed, the Assigned Money will be deemed to form part of the moneys secured by the Junior Security Documents.

## 9.7 Indemnity

The Junior Lender shall keep the Senior Lender indemnified against all costs, losses and liabilities the Senior Lender may suffer or incur as a result of any actions or omissions by the Junior Lender in relation to the Senior Indebtedness that it has repaid or taken an assignment of under this clause 9.

## 9.8 Time of the Essence

Time shall be strictly of the essence for the performance by the Junior Lender of its obligations under this clause 9. Failure by the Junior Lender to so perform its obligations by the relevant time will

(without limiting clause 9.3 (Exercise)) entitle the Senior Lender to exercise any or all of its rights of Enforcement against the Borrower and the rights of the Junior Lender under this clause 9 will be lost. The Junior Lender hereby irrevocably and unconditionally indemnifies the Senior Lender and agrees to hold it harmless against losses, liabilities, damages and expenses (including legal expenses on a solicitor client basis) of any nature incurred as a result of the Junior Lender having exercised its Option pursuant to clause 9.3 (Exercise) and then failing to perform its obligations strictly in accordance with this clause 9.

## 10. Assignment

### 10.1 **Benefit and burden of this Deed**

This Deed is binding on and enures for the benefit of the parties and their respective successors and their permitted assignees, transferees or novatees.

### 10.2 **The Junior Indebtedness**

The Junior Lender may not assign, transfer or novate or otherwise dispose of any of its rights or obligations in respect of any Junior Indebtedness or under any agreement constituting or evidencing or security for any Junior Indebtedness without the prior written consent of the Senior Lender.

### 10.3 **Assignment by the Borrower**

The Borrower may not assign, transfer or novate any of its rights or obligations under this Deed without the prior written consent of the Senior Lender and the Junior Lender.

### 10.4 **Assignment by Junior Lender**

The Junior Lender may not assign, transfer or novate any of its rights or obligations under this Deed without the prior written consent of the Borrower and the Senior Lender.

### 10.5 **Assignment by Senior Lender**

The Senior Lender may assign, novate or transfer any of its rights or obligations under this Deed without the consent of the Borrower or the Junior Lender.

### 10.6 **Acknowledgment**

Subject always to clauses 10.2 and 10.4, no Secured Party will assign, transfer, novate or otherwise dispose of its rights under its Security Documents, or in relation to any Secured Indebtedness, to any person without first obtaining from that person an acknowledgement (in form and substance satisfactory to the other Secured Party) that it is bound by this Deed.

## 11. Notices

### 11.1 **Addresses**

Each notice or other communication (a **Communication**) under this Deed will be made in writing and sent by electronic mail, personal delivery or by post to the addressee at the electronic mail address

or postal address, and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party. The initial electronic mail address, postal address and relevant person or office holder of each party is set out under its name at the end of this Deed.

## 11.2 Delivery

### (a) General

No Communication will be effective until received. A Communication to the Borrower or the Junior Lender is, however, deemed to be received:

- (i) in the case of a letter, on the third business day after posting; and
- (ii) in the case of an electronic mail, when it is dispatched by the Senior Lender to the electronic mail address specified by the recipient.

### (b) Electronic mail

Electronic mail to the Senior Lender must:

- (i) be sent from a contact of the Borrower or the Junior Lender authorised by the Senior Lender to communicate by electronic mail; and
- (ii) be sent to the exact electronic mail address specified by the Senior Lender from time to time.

All parties acknowledge the risk of receiving non-encrypted electronic mail containing confidential information that may also be privileged and accept that the Senior Lender shall not be responsible for unauthorised access and/or alteration to any electronic mail, nor for the consequences arising as a result of use of information that may have been illegitimately accessed or altered, except in the case of gross negligence or wilful misconduct of the Senior Lender.

## 12. Costs

The Borrower will pay each cost incurred by the Senior Lender in connection with:

- (a) the preparation, negotiation, entry into, registration and release of this Deed;
- (b) each amendment to, waiver in respect of, or discharge of, this Deed; and
- (c) the exercise, protection or enforcement of the Senior Lender's rights under this Deed,

in each case, on demand and on a full indemnity basis and, in relation to sub-paragraphs (a) and (b) above, provided such costs are reasonably incurred.

## 13. Remedies and waivers

### 13.1 Exercise of rights and waivers

Time is of the essence in respect of all dates and times for compliance by the Borrower and the Junior Lender with their respective obligations under this Deed. However, no failure to exercise, and no delay in exercising, a right of the Senior Lender under this Deed 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 the Senior Lender of its rights under this Deed is effective unless it is in writing signed by the Senior Lender.

### 13.2 Remedies cumulative

The rights of the Senior Lender under this Deed are cumulative and not exclusive of any rights provided by law.

## 14. Miscellaneous

### 14.1 Disclosure of information

The Senior Lender may, in connection with the administration or maintenance of the Senior Facility Agreement, disclose, or allow access to, any information about the Borrower, whether or not that information:

- (a) was obtained in confidence; or
- (b) is held by the Senior Lender or stored with data storage providers (including cloud-based storage providers),

to:

- (c) its related entities and agents;
- (d) other financial institutions assisting with transactions related to the Senior Facility Agreement;
- (e) other persons the Senior Lender contemplates contracting with; and
- (f) any government agency or regulatory authority in any jurisdiction.

### 14.2 Custody of documents

So long as the Senior Security Documents are in force, the Senior Lender will be entitled to hold any title deeds, share certificates or other title documents, certificates or agreements in respect of any property subject to the security interest created by or pursuant to the relevant Senior Security Documents in priority to the entitlement of the Junior Lender. The Senior Lender has no responsibility to the Junior Lender to require or maintain custody of such agreements.

### 14.3 **Rights reserved**

Nothing in this Deed affects the rights of each Secured Party against the Borrower as set out in the Security Documents. As against the Borrower, each Secured Party remains entitled to exercise all its rights under its Security Documents unless specifically prohibited by this Deed. The provisions of each Security Document are confirmed, subject only to this Deed.

### 14.4 **Amendments**

No amendment to this Deed is effective unless it is in writing signed by all the parties.

### 14.5 **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.

### 14.6 **Certificates conclusive**

A certificate by the Senior Lender of any amount payable under this Deed, in the absence of manifest error, is conclusive evidence for all purposes, including for any proceedings.

### 14.7 **Counterparts**

This Deed may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

### 14.8 **Delivery**

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this Deed will be delivered by the Borrower and the Junior Lender (each a **Delivering Party**) immediately on the earlier of:

- (a) physical delivery of an original of this Deed, executed by the relevant Delivering Party, into the custody of the Senior Lender or the Senior Lender's solicitors; or
- (b) transmission by the relevant Delivering Party or its solicitors (or any other person authorised in writing by the relevant Delivering Party) of a photocopied or scanned copy of an original of this Deed, executed by the relevant Delivering Party, to the Senior Lender or the Senior Lender's solicitors.

### 14.9 **Entire agreement**

This Deed, together with each other agreement made in writing signed by all the parties, constitutes the entire agreement between the parties.

## 15. Governing law and Jurisdiction

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

## Execution

**Executed and delivered** as a Deed

**Borrower**

**Signed** on behalf of 650 Great South Road  
Limited as Borrower by

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Director

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Director

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Print Name

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Print Name

**Address for notices to the Borrower:**

Address: P O Box 301848, Albany, Auckland 0752

Email Address: info@maat.co.nz

Attention: Neil Tuffin

**Junior Lender**

**Signed** on behalf of Property Improvements  
Limited by

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Director

---

Director

---

Print Name

---

Print Name

**Address for notices to Junior Lender:**

Address: P O Box 301848, Albany, Auckland 0752

Email Address: info@maat.co.nz

Attention: Neil Tuffin



**Senior Lender**

**Signed** on behalf of ASB Bank Limited by  
two attorneys in the presence of:

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Attorney

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Attorney

---

Print Name

---

Print Name

Witness to signatures

---

Signature

---

Print name

---

Occupation

---

Address

**Address for notices to ASB Bank Limited:**

Address: PO Box 35, Shortland Street, Auckland 1140

Email Address: tom.bishop@asb.co.nz

Attention: Tom Bishop

## Schedule 1: Details of Junior Indebtedness

Details of agreements, etc. constituting Junior Indebtedness	Amounts of Junior Indebtedness Outstanding
The Junior Facility Agreement	\$1,200,000

## Schedule 2: Security Documents

### Part A

#### Senior Security Documents

- (a) Mortgage over the Land dated 15 June 2016 in favour of the Senior Lender.
- (b) General security deed given by the Borrower dated 13 June 2016 in favour of the Senior Lender.
- (c) Deed of Assignment over lease documents given by the Borrower dated 13 June 2016 in favour of the Senior Lender.

### Part B

#### Junior Security Documents

- (a) Mortgage over the Land dated on or about the date of this Deed in favour of the Junior Lender.
- (b) General security deed given by the Borrower dated on or about the date of this Deed in favour of the Junior Lender,

and any other security agreement or guarantee (howsoever described) granted by the Borrower in favour of the Junior Lender.

### Part C

#### The Land

The land located at 650 Great South Road, Auckland that is comprised in record of title NA108C/559 (North Auckland Registry).