

ANNEXURE SCHEDULE

The terms of Memorandum Number 2018/4346 are hereby deleted in their entirety and replaced with the following terms.

Mortgage

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Background

In consideration of the Lender, at the request of the Obligors, now or in the future making financial accommodation available to, or at the request or for the account of, the Obligors, the Mortgagor has agreed to grant the Mortgage on the terms of this document.

Incorporated provisions

1. Defined terms and interpretation

1.1 Defined terms from other documents

In this document, unless otherwise defined herein or the context requires otherwise, capitalised terms have the meaning given to them in the Loan Agreement (as defined below).

1.2 Other defined terms

In this document:

Attorney means a person (including a Receiver) appointed as attorney under this document, and includes any agent or delegate;

Collateral Security means each agreement at any time executed or delivered and intended to guarantee or secure the Mortgagor's obligations under the Loan Agreement (whether or not it guarantees or secures other obligations as well);

Environmental Obligations means any obligation relating to the occupation or use of the Mortgaged Property 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;

Improvements includes all buildings, erections, fences, structures, fixtures and fittings on the Real Property, whether built or acquired before or after the date of this document;

Land Transfer Act means the *Land Transfer Act 1952* (to the extent not

repealed), and from its commencement, or to the extent of the commencement of any provision therein, the *Land Transfer Act 2017*;

Lender means Squirrel P2P Trustee Limited and its successors, assigns and transferees;

Loan Agreement means the Loan Agreement Summary (incorporating the General Terms and Conditions) between, among others, the Lender and the Mortgagor;

Major Damage means, in relation to the Mortgaged Property, damage which results in:

- (a) a loss or claim totalling 20% or more of the full replacement value of the improvements and buildings for insurance purposes; or
- (b) the Mortgaged Property becoming substantially inhabitable as a personal residence in the same manner as previously, or so that the trade or business normally carried on from it can no longer be efficiently carried on;

Mortgage means the mortgage of the Mortgaged Property granted by the Mortgagor in favour of the Lender which has been registered with Land Information New Zealand Limited and which incorporates the terms and conditions set out in this document;

Mortgaged Property means:

- (a) the Mortgagor's estate or interest from time to time in the Real Property and where the context requires, the Real Property itself, together with the benefit of any easements, paths, rights of way, mines, quarries, water, trees, timber and other benefits on or used with the Real Property;

- (b) the Mortgagor's estate or interest from time to time in any present or future Improvements;
- (c) the Mortgagor's estate or interest from time to time in any present or future lease of the Real Property or any part of it, together with any extension or renewal of that lease, and any agreement to enter into a new lease of the same property;
- (d) any other property deemed by this document to form part of the Mortgaged Property; and
- (e) any certificate, registration, title or other evidence of ownership of, or rights to, anything described in paragraphs (a) to (d) above,

and a reference to the **Mortgaged Property** means any part of it;

Mortgagor means each party named as such in this Mortgage;

Obligations means all covenants, conditions, stipulations, representations, warranties, guarantees, undertakings, assurances, agreements and other obligations of any nature (whether present or future, express or implied, actual or contingent, secured or unsecured and whether incurred alone, jointly, severally, or jointly and severally, as principal, surety or otherwise) of the Mortgagor to or for the benefit of the Lender on any account whatever;

Other Property means all of the Mortgagor's present and future interests in, and all of the Mortgagor's present and future rights in relation to, any real property and any other property to which the PPSA does not apply;

Permitted Security Interest means, any Security Interest in respect of the assets of the Mortgagor which has been expressly permitted by the Lender;

PLA means the *Property Law Act 2007*;

PPSA means the *Personal Property Securities Act 1999*;

Real Property means all Property, as defined in the Loan Agreement;

Receiver means a receiver, or receiver and manager, appointed under this document;

Receiverships Act means the *Receiverships Act 1993*;

Secured Indebtedness means any and all indebtedness and monetary liabilities (in any currency) that an Obligor is or may become liable at any time (whether alone or not or in any capacity) to pay to, or for the account of, the Lender;

Secured Obligations means all present and future obligations which an Obligor (whether alone or with any other person and in any capacity) has or owes to the Lender (whether alone or with any other person in any capacity), other than obligations to pay or deliver any Secured Indebtedness.

Security Interest means:

- (a) a mortgage, pledge, charge, lien, assignment, 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; and
- (b) a "security interest" as defined in the *Personal Property Securities Act 1999*;

Solvency Test means the meaning ascribed to that term by section 4 of the *Companies Act 1993*;

Title Documents means each certificate, confirmation, grant, assurance, conveyance, deed and other document of title or evidencing title to, or rights to acquire, possess, use or dispose of, any

Mortgaged Property. It includes any lease, will, probate or abstract of title.

1.3 Interpretation

The provisions relating to interpretation in the Loan Agreement are incorporated in, and apply to, this document as if set out in full with any necessary amendments.

2. Mortgage

2.1 Creation

The Mortgagor as legal and beneficial owner of the Mortgaged Property acknowledges and agrees that it has granted a charge in and over the Mortgaged Property to the Lender as security for payment or delivery of the Secured Indebtedness and performance of the Secured Obligations.

2.2 Ranking

The Mortgage ranks in priority ahead of all other Security Interests over the Mortgaged Property, other than Permitted Security Interests.

2.3 Priority Sum

The maximum amount recorded as the "Priority Sum" in the mortgage instrument is a statement made for the benefit of the Lender. It does not mean that:

- (a) the Lender will provide financial accommodation to the Obligors up to the priority sum; or
- (b) that the priority sum is the total amount that this Mortgage is capable of securing.

3. Representations, warranties and undertakings incorporated

The representations, warranties and undertakings contained in clauses 19 to 30 (inclusive) of the General Terms and Conditions are deemed incorporated and repeated here in full (with any necessary amendments).

4. Representations and warranties

The Mortgagor represents and warrants to the Lender that, unless the Lender has otherwise consented in writing:

- (a) **(Ownership of Mortgaged Property)** it is the sole legal owner of the Mortgaged Property, and it will be the sole legal owner of any property or asset it acquires as Mortgaged Property;
- (b) **(Indefeasible Title)** it has an absolute and indefeasible title to the Mortgaged Property, and it will have an absolute and indefeasible title to any interest in land it acquires as Mortgaged Property;
- (c) **(No Security Interests)** no Security Interest exists over or affects any of the Mortgaged Property (other than the Mortgage and any other Permitted Security Interest);
- (d) **(Obligations Binding)**
 - (i) it has full power and authority to enter into and comply with its obligations under the Mortgage and has obtained all consents and resolutions to enable it to do so;
 - (ii) the Mortgage has been duly authorised and entered into by it; and
 - (iii) its obligations under this Mortgage are legal, valid, binding and enforceable against it;
- (e) **(Information)** all information provided by it to the Lender in connection with the Mortgage was true and accurate when provided and, except as disclosed

to and accepted in writing by the Mortgagor, remains so and there are no facts or circumstances which have not been disclosed to the Lender which could make that information untrue, inaccurate or misleading;

- (f) Each of the statements and warranties in this clause will be deemed to be repeated continuously so long as this Mortgage remains in effect by reference to the facts and circumstances then existing.
(Solvency)
- (g) it satisfies the Solvency Test, and if an individual, has never been bankrupted.

5. Undertakings

5.1 Further assurances

The Mortgagor shall, at its own expense and promptly at the request of the Lender, complete, execute and deliver all such transfers, assignments, Security Interests and other agreements (in form and substance acceptable to the Lender) and do all such things (or ensure the same are done) as may, in the Lender's opinion, be necessary or desirable for perfecting or protecting any Mortgaged Property or any Security Interests intended to be created by or pursuant to the Mortgage or for facilitating the enforcement or realisation thereof or for the protection of all or any of the Lender's rights and interests under or pursuant to this document or a Finance Document. This includes:

- (a) granting a legal or statutory mortgage over all or any part of the Real Property;
- (b) paying any Taxes on and registering the Mortgage with the priority required by the Lender; and
- (c) executing and delivering to the Lender signed irrevocable

authority and instruction forms in relation to the Mortgaged Property, undated and blank as to transferee and consideration, together with written acknowledgement that the Lender may complete these details at any time in the future pursuant to the terms of this document.

5.2 Registering the Mortgage

- (a) If required to do so by the Lender, the Mortgagor must immediately do or cause to be done all things necessary to cause this document to be registered under the Land Transfer Act.
- (b) If this document cannot be registered because it is not in registrable form, the Mortgagor must do or cause to be done all things necessary to render this document in registrable form. If so required by the Lender, the Mortgagor must grant to the Lender another Security Interest over the Mortgaged Property in registrable form.

5.3 Positive Undertakings

The Mortgagor undertakes that it will:

- (a) **(Access)** provide to the Lender, and ensure that each person in possession of any of the Mortgaged Property will provide to the Lender, full and unfettered access at all times to the Mortgaged Property;
- (b) **(Maintenance)** maintain the Mortgaged Property in good repair and condition;
- (c) **(Compliance)** ensure compliance with:
 - (i) all laws and requirements (statutory or otherwise) and consents applicable to the Mortgaged Property or its use

- (including, without limitation, compliance with any requirements under the *Building Act 2004* and the *Overseas Investment Act 2005*; and the provisions of the insurances, including all warranties expressed or implied in them;
- (d) **(Notice to Lender)** notify the Lender of any:
- (i) claim or dispute which might arise in respect of or in connection with the Mortgaged Property;
 - (ii) repair, construction or maintenance work required in respect of any of the Mortgaged Property or any occurrence which may result in this being required; and
 - (iii) Major Damage,
- in each case, promptly upon becoming aware of it; and
- (e) **(Consents)** do everything necessary to maintain any consents or rights relating to the Mortgaged Property or its use that are, in the Lender's opinion, necessary or desirable.

5.4 Negative Undertakings

The Mortgagor undertakes that it will not, without the prior written consent of the Lender:

- (a) **(Security Interests)** create or permit to exist any Security Interest over or affecting the Mortgaged Property, except for a security interest created under the Mortgage;
- (b) **(Dealings with Secured Property)** dispose or part with possession of or grant a lease,

- easement, or licence in respect of the Mortgaged Property;
- (c) **(Modifications)** cause or permit any:
 - (i) modification to the Mortgaged Property which would materially reduce its value; or
 - (ii) building or other improvement on the Mortgaged Property to be removed, dismantled or structurally altered.

6. Default

To the extent permitted by law, if an Event of Default occurs, in addition to the exercise of any other rights the Lender may have at law or under the Finance Documents, the Lender may:

- (a) do all of the things and exercise all of the rights set out in clause 7; and
- (b) appoint any person or persons to be a Receiver of all or any part of the Mortgaged Property (including but not limited to receiver of rent of the Mortgaged Property).

7. Enforcement

7.1 Powers on Enforcement

If an Event of Default is continuing, and without notice or further demand, the Lender may, in the Mortgagor's name or in its own name, do any thing and exercise any right which the Mortgagor or its directors could do or exercise in relation to the Mortgaged Property, including the power to:

- (a) **(Possession)** take immediate possession of, demand, recover, collect or get in all or any of the Mortgaged Property;
- (b) **(Money Owning)** demand, collect, recover, compromise and

- give a good discharge for any and all money and claims for money under, or arising out of, or in connection with the Mortgaged Property;
- (c) **(Complete Actions)** do any thing which the Mortgagor may be obliged to do or ought to do under this document and which the Mortgagor fails to do;
- (d) **(Carry on Business)** carry on or manage or concur in the carrying on or management of any business of the Mortgagor;
- (e) **(Dealing with Mortgaged Property)** insure, repair, improve, replace and develop the Mortgaged Property;
- (f) **(Appoint Agents)** appoint, employ and discharge managers, officers, employees, advisers, contractors or agents for any purpose and on such terms (including as to remuneration) as may be considered necessary or expedient;
- (g) **(Disposals)** sell, dispose of or concur in the sale or disposal of all or any of the Mortgaged Property or any interest therein in such manner and generally on such terms and conditions (including as to price, any security and method of payment) as the Lender shall think fit;
- (h) **(Receipts for Rents and Profits)** receive and give receipts for the rents and profits for such Mortgaged Property until it is sold under power of sale conferred by this clause or the Lender gives written notice that the Secured Indebtedness has been fully paid;
- (i) **(Severance of Fixtures)** sever any fixtures and sell the same separately;
- (j) **(Acquisition of Property)** acquire any property for inclusion in the Mortgaged Property on such terms and conditions as may be considered necessary or expedient;
- (k) **(Leases)** lease, let or bail (whether or not in possession) all or any of the Mortgaged Property on such terms and conditions (including as to term and rent, and with or without a compulsory or optional purchasing clause) as the Lender shall think fit;
- (l) **(Actions)** bring, take, defend, compromise, arrange, submit to arbitration, mediation or conciliation and discontinue or settle any accounts, claims, proceedings, questions or disputes which may arise in connection with the Mortgaged Property, the business of the Mortgagor or its premises or in any way relating to this document or the Secured Obligations or Secured Indebtedness and for any such purpose, use the name of the Mortgagor;
- (m) **(Receipt)** give a receipt for money paid to or for any property received by the Lender;
- (n) **(Lending/Borrowing of Money)** advance money to, or raise money from, any person with or without security over or affecting the Mortgaged Property;
- (o) **(Execute Agreements)** execute (or cause or authorise to be executed) in the name of the Mortgagor or otherwise all agreements (including, for the avoidance of doubt, any assignments, transfers, registrations, conveyances, notices, security interests and guarantees) in relation to all or

- any of the Lender's rights under this document or at law which the Lender may consider necessary or expedient;
- (p) **(Cancellation of Contracts)** (with full power to buy in) cancel, rescind or vary any agreement, right or obligation;
 - (q) **(Call Up Capital)** subject to the provisions of any issue documentation, call up all or any portion of the unpaid capital of the Mortgagor (if any) or enforce the payment or any calls previously made and unpaid;
 - (r) **(Notice)** give notice of the existence of this document to any third party;
 - (s) **(Subdivide, Consolidate, Convert)** subdivide, consolidate, convert or change the nature of the title or tenure of the Mortgaged Property;
 - (t) **(Grant Easements)** grant, create, release or vary easements, profits a prendre covenants and restrictions over the Mortgaged Property;
 - (u) **(Building and Planning Approvals)** apply for building and planning permits or approvals or any other statutory approvals, permits or registrations as the Lender considers necessary in relation to the Mortgaged Property;
 - (v) **(Amend or Rectify Title)** apply to the relevant authority to amend or rectify a Title Document and do everything necessary to effect the amendment or rectification;
 - (w) **(Authorisations)** apply for any Authorisation which is necessary or desirable in connection with the exercise of a Power;

- (x) **(Take All Steps)** take such steps and do such things as may be necessary to protect and preserve the interests of the Mortgagor under the Mortgaged Property and the interests of the Lender;
- (y) **(Incidental)** do or omit to do any thing incidental to its rights under this document or at law; and
- (z) **(Delegate)** delegate all or any of its rights under this document or at law.

7.2 Powers generally

In exercising any of the rights conferred upon the Lender under clause 7.1, the Lender may generally do or cause to be done such acts and things in relation to the business and property of the Mortgagor or the Mortgaged Property as the Lender might do or cause to be done if the Lender had absolute ownership thereof and carried on the business for the Lender's own benefit without being answerable for any loss or damage which may happen thereby.

7.3 Discharge or acquire prior Security Interest

While an Event of Default subsists, the Lender may do any one or more of the following:

- (a) purchase a debt or liability secured by a prior Security Interest in respect of any Mortgaged Property (including a debt secured by a Permitted Security Interest);
- (b) pay the amount required to discharge or satisfy that debt or liability; and
- (c) take a transfer or assignment of that Security Interest and any Collateral Security, document or right ancillary or collateral to it,

and, where the Lender exercises its rights in this clause 7:

- (d) the Mortgagor is indebted to the Lender for the same amount paid by the Lender or the amount of the debt or liability acquired (whichever is higher) and that amount is immediately payable to the Lender and forms part of the Secured Indebtedness;
- (e) the Lender may rely on a written notice from the holder of a prior Security Interest (**Prior Mortgagee**), or on an ancillary or collateral document, as to the amount and property secured by that prior Security Interest;
- (f) the Prior Mortgagee need not enquire whether any amount is owing under a Finance Document; and
- (g) the Mortgagor irrevocably directs any such Prior Mortgagee to give the Lender any information it requires in connection with the prior Security Interest.

7.4 Mortgagor's chattels

While an Event of Default subsists, the Lender may do any one or more of the following:

- (a) remove from the Mortgaged Property all chattels not encumbered by the Mortgage and store those chattels in the name and at the cost of the Mortgagor with any person (including the Lender) for any period. The Lender must notify the Mortgagor of the name and address of the place where the chattels are stored;
- (b) unless the Mortgagor collects the chattels and pays for their storage within 10 Business Days of being notified of their removal (in which case the Lender will

treat them as having been abandoned), sell the chattels for such price and on such terms as the Lender thinks fit or otherwise dispose of them in any way it decides;

- (c) set off the proceeds of any sale of the chattels under this clause against the Secured Indebtedness;
- (d) use or permit the use of the chattels on such terms as it thinks fit in conjunction with the exercise of any Power and replace or repair any of the chattels which are destroyed, lost, stolen or unfit for use; and
- (e) pay any amounts due under any leasing or hire purchase agreements to which the chattels are subject from the income received from the Mortgaged Property or any business conducted on the Mortgaged Property.

The Mortgagor agrees that the Lender will not be liable for conversion of, or for any loss or damage to, any chattel disposed of under this clause.

7.5 Co-operation in exercise of power of sale

If the Lender or a Receiver or any Attorney wishes to exercise a right to sell any Mortgaged Property, the Mortgagor must do or cause to be done all things necessary to enable an expeditious sale and transfer to the purchaser for the value as estimated by the Lender, in the manner and on terms the Lender thinks fit.

8. Receiver

8.1 Appointment of Receiver

After the occurrence of an Event of Default which has not been remedied to the satisfaction of or waived by the Lender, or in the opinion of the Lender

any of the Mortgaged Property is at risk of seizure or removal under process of law or otherwise, the Lender may in writing appoint any person or persons (whether jointly, severally or jointly and severally) to be a Receiver of all or any part of the Mortgaged Property. The Lender may do this whether or not it has exercised any other right and even if dissolution of the Mortgagor has already commenced.

8.2 Additional rights

At any time on or following the appointment of any Receiver, the Lender may:

- (a) **(Determine or Vary Terms)** determine, or vary, the terms of appointment of the Receiver;
- (b) **(Require Security)** require any Receiver to give it a Security Interest or an indemnity for the due performance of the Receiver's duties;
- (c) **(Remove Receiver)** remove any Receiver; or
- (d) **(Appoint Another Receiver)** appoint another Receiver in addition to, or in place of, any Receiver.

8.3 Remuneration

The Lender may, subject to the Receiverships Act, determine or vary the remuneration of any Receiver. Such remuneration:

- (a) may be (or may include) a commission;
- (b) is payable by the Mortgagor on demand;
- (c) will form part of the Secured Indebtedness; and
- (d) will be secured by the Security Interest created under the Mortgage.

8.4 Receiver agent of Mortgagor

Every Receiver is the agent of the Mortgagor except where (but only to the extent that) the Receiver is required by notice from the Lender to act as agent of the Lender. The Lender is not responsible for a Receiver's actions, including the misconduct, negligence or default of a Receiver.

8.5 Receiver's rights

In addition to, and without limiting or affecting any other rights granted or conferred on a Receiver (whether under the Receiverships Act, at law or otherwise), and subject to the specific terms of appointment of the Receiver, the Receiver has the right in respect of the Mortgaged Property and the Mortgagor's business to do anything (whether alone or with any other person) the Mortgagor could do as if the Receiver had full legal and beneficial ownership of the Mortgaged Property and carried on the Mortgagor's business for the Receiver's own benefit, including all rights and powers mentioned in clause 7 as if references to the Lender were to the Receiver (and whether or not any such powers are yet enforceable or have been enforced by the Lender).

8.6 Withdrawal

The Lender or a Receiver may at any time give up possession of the Mortgaged Property or discontinue any receivership.

9. Protections

9.1 Notice, demand or lapse of time required by law

If a notice, demand or lapse of time is required by law before the Lender can exercise a right, power, discretion or remedy under a Finance Document or applicable law, then for the purposes of this document:

- (a) that notice, demand or lapse of time is dispensed with to the extent allowed by that law; or
- (b) if not allowed to be dispensed with, but the period of notice, demand or lapse of time is allowed by that law to be shortened or fixed, it is shortened and fixed to one day (or, if a longer minimum period is required by law, to that period).

9.2 Lender, Receiver not restricted

The Lender or a Receiver need not:

- (a) exercise a Power, give a consent or make a decision under this document unless a Finance Document expressly provides otherwise; or
- (b) resort to a Collateral Security or Power before resorting to any other of them.

9.3 Lender, Receiver not mortgagee in possession or liable

To the extent permitted by law, none of the Lender, a Receiver nor any attorney will:

- (a) be, nor account or be liable as, mortgagee in possession due to exercise of a Power; or
- (b) be liable to anyone for any Loss in relation to an exercise or attempted exercise of a Power, or a failure or delay in exercising a Power.

9.4 No Obligation

Except to the extent otherwise provided by any rule of law (and then only if such rule of law is incapable of being excluded by contractual agreement), the Lender, a Receiver or any Attorney shall not be:

- (a) accountable for any proceeds of enforcement other than those proceeds actually received by it;
- (b) obliged to enforce payment of the Secured Indebtedness or

compliance with the Secured Obligations;

- (c) liable in respect of any conduct or delay in the exercise, manner of exercise, attempted exercise, or non-exercise of any right by the Lender or a Receiver;
- (d) liable to account as mortgagee in possession in respect of the Secured Property; or
- (e) liable for any Loss resulting from, or consequential on, any of the matters set out in paragraphs (a) to (d) above

9.5 Recovery

In applying the proceeds of any sale or realisation of the whole or any part of the Mortgaged Property, the Lender and any Receiver are obliged to account to the Mortgagor only in respect of so much of those proceeds as shall have been actually received in cleared funds as at the date of actual receipt of the same.

9.6 Performance of Mortgagor's obligations by the Lender

The Lender incurs no liability and undertakes no obligation of the Mortgagor in respect of the Mortgaged Property by virtue of this mortgage or any security interest created under this mortgage. However, in default of the Mortgagor doing so, the Lender may (but need not) pay or discharge any liability, or perform or comply with any obligation, of the Mortgagor in respect of any Mortgaged Property. Each amount spent for that purpose (including costs and expenses (including legal fees on a solicitor and own client basis) must be reimbursed by the Mortgagor on demand by the Lender.

9.7 Indemnity

The Mortgagor will on demand indemnify and hold the Lender and each Receiver, and each Attorney harmless against each cost, loss (including loss of

profit), expense, liability sustained or incurred by it as a result of:

- (a) the occurrence or continuance of an Event of Default; or
- (b) a defect in the Mortgagor's title to any property which is, or appears to be, Mortgaged Property.

9.8 Reinstating avoided transaction

The Mortgagor agrees that if a payment or other transaction relating to the Secured Indebtedness or the Secured Obligations is void, voidable, unenforceable or defective for any reason or a related claim is upheld, conceded or settled (each an "Avoidance"), then even though the Lender knew or should have known of the Avoidance:

- (a) each Power and your liability under each Finance Document will be what it would have been, and will continue, as if the payment or transaction that is subject to the Avoidance had not occurred; and
- (b) the Mortgagor will immediately execute and do anything required by us to restore us to our position immediately before the Avoidance (including reinstating any Finance Document).

This clause survives any termination or full or partial discharge or release of any Finance Document.

9.9 Exclusion of legislation

All legislation which, directly or indirectly, lessens or varies or otherwise affects an obligation under the Finance Documents in favour of the Mortgagor or delays or otherwise prevents or prejudicially affects the exercise of any rights by the Lender, any Receiver or any Attorney is, to the fullest extent permitted by law, deemed to be negated and excluded in its application to this document or a Finance Document.

Without prejudice to the generality of the foregoing:

- (a) **(Mortgages of Land)** the covenants, conditions and powers implied in mortgages of land by section 95 of the PLA do not apply to this document and are negated, other than clauses 4, 7, 8(1), 9, 10, 14, 15, 16(1) and 17 of Part 1 of Schedule 2 to the PLA (which will continue to apply); and
- (b) **(Mortgages of Goods)** the covenants, conditions and powers implied in mortgages of goods by section 96 of the PLA do not apply to this document and are negated, other than clauses 6(1) and 7 of Part 2 of Schedule 2 to the PLA (which will continue to apply).

In the event of conflict between any provision of any Finance Document and any provision of the PLA which has not been negated and will therefore continue to apply in accordance with this clause 9.6, the Lender shall (in its sole and absolute discretion) determine which, in each case, and from time to time, shall prevail.

9.10 No Merger or Marshalling

The Lender is not required to marshal, enforce or apply under, or appropriate, recover or exercise, any guarantee, Security Interest (including any Collateral Security) or other entitlement held by it or any property which it holds or is entitled to receive. The Lender's right to payment of any Secured Indebtedness (including under any negotiable instrument or other agreement) will not merge in the Mortgagor's obligation to pay that Secured Indebtedness under any Finance Document.

10. Protection of third parties

10.1 General

No person dealing with or entering into a transaction with the Lender or any Receiver or any person acting on behalf of the Lender or any Receiver shall be concerned to enquire:

- (a) whether any Event of Default has occurred or is subsisting or any Finance Document or the Security Interest created under it has become enforceable;
- (b) whether any Receiver, Attorney or agent has been properly appointed;
- (c) as to the amount of the Secured Indebtedness or whether the Secured Indebtedness remain is due and payable
- (d) whether any rights was exercised or is exercisable;
- (e) as to the propriety or regularity of any transaction or dealing; or
- (f) as to the application of any amount paid to the Lender or any Receiver, or to any agent or Attorney of the Lender or any Receiver.

10.2 Impropriety or irregularity

Any impropriety or irregularity in any such transaction or dealing is deemed to be within the rights of the Lender or any Receiver and any agent or attorney purporting to act on behalf of either or both of them, and to be valid whether or not that party or person has been notified to the contrary.

11. Power of Attorney

11.1 Appointment

The Mortgagor irrevocably appoints the Lender, every officer of the Lender and every Receiver, separately, for valuable consideration to be your Attorney to:

- (a) at the Mortgagor's expense, do anything the Mortgagor is obliged to do under any Finance Document and have failed to do;
- (b) at the Mortgagor's expense, do anything the Attorney thinks desirable to:
 - (i) protect or secure payment or delivery of the Secured Indebtedness or compliance with the Secured Obligations; and
 - (ii) give effect to the rights conferred on the Lender or any Receiver by this document, any other Finance Document, or by law or otherwise;even if the Attorney has a conflict of interest in doing so;
- (c) delegate its rights (including this right of delegation) to any person for any period (and to revoke any such delegation); and
- (d) appoint any person its agent for any period (and to revoke any such appointment).

11.2 Ratification

The Mortgagor agrees to ratify everything done by an Attorney, or by any delegate or agent of any Attorney, in accordance with this clause 11.

12. General security provisions

12.1 Security continuing and independent

Each of this document and the Security Interest created under the Mortgage:

- (a) is in addition to and enforceable independently of any other Security Interest (including any Collateral Security) or guarantee; and
- (b) shall remain in full force and effect (whether or not at any given time the Mortgagor is

indebted to the Lender) until the execution by the Lender and delivery to the Mortgagor of an unconditional release of this document and each Collateral Security.

Nothing in this document shall discharge, abate or prejudice any other Security Interest (including any Collateral Security) at any time held by the Lender.

12.2 Collateral Securities

This document is collateral to each other Collateral Security. This document and each other Collateral Security will be read and construed together so that:

- (a) a default under one of them will be deemed to be a default under each of them; and
- (b) the Lender may exercise any of its rights under any one or more of them separately or concurrently or not at all, and in such order as it chooses.

12.3 Release

- (a) Upon the request of the Mortgagor, the Lender shall execute a release of this document or the Security Interest created under the Mortgage, or to release any Mortgaged Property from that Security Interest, if the Lender is satisfied that:
 - (i) all Secured Indebtedness has been irrevocably paid in full and all commitments which might give rise to Secured Indebtedness have terminated;
 - (ii) no further indebtedness which is Secured Indebtedness might in future become payable to the Lender under or pursuant to this

document or any other agreement entered into, or as a result of any matter or circumstance occurring; and

- (iii) all Secured Obligations have been satisfied and there are no liabilities or obligations which will subsequently fall within the description of Secured Obligations.

- (b) The Mortgagor may require the Lender to execute a release of a Security Interest in favour of the Lender in connection with a disposal expressly permitted by, and made in accordance with, the terms of a relevant Finance Document.

13. Receipt of money and application

13.1 Order of application

Subject to any statute that overrides this clause 13, the net profits (if any) of carrying on the business of the Mortgagor and the net proceeds of any sale or realisation of the Mortgaged Property on enforcement received by any Receiver or the Lender will be applied in the manner and order determined by the Lender or any Receiver. In the absence of any determination, those amounts will be applied in the manner described in clause 13.2. This clause is subject to:

- (a) any claims ranking in priority to the Mortgage created under this document; and
- (b) any mandatory provisions of law.

13.2 Order of application where no determination

Subject to clause 13.1, amounts received or recovered by the Lender or any Receiver from the Mortgage created under this document will be applied in payment:

- (a) first, of all expenses incurred by the Lender, the Receiver and any agent or Attorney in the exercise, or attempted exercise, of rights under, or otherwise in connection with, any Finance Document;
- (b) secondly, of the Receiver's remuneration;
- (c) thirdly, of all other Secured Indebtedness;
- (d) fourthly, to each holder of a Security Interest of which the Lender is aware and which ranks after the Security Interest created under the Mortgage in relation to the relevant Mortgaged Property, to the extent, and in the order, of such priority; and
- (e) fifthly, of any surplus to the Mortgagor (including for receipt on behalf of any other persons who may be entitled to the same).

13.3 Amounts contingently owing

If, at the time of application of any amounts under clauses 13.1 or 13.2, any part of the Secured Indebtedness is contingently owing, or not yet due and payable, to the Lender or any Receiver:

- (a) **(retention)** may retain an amount equal to all or part of the amount of such Secured Indebtedness;
- (b) **(deposit)** will place that retained amount in an interest bearing deposit account until such Secured Indebtedness becomes actually due and payable or ceases to be contingently owing;
- (c) **(payment)** will pay to the Lender from the amount retained, all amounts which become actually due and payable after that time; and
- (d) **(application)** will apply the balance of the amount retained, together with interest earned

whilst on deposit, in accordance with clauses 13.1 or 13.2.

14. Assignment

14.1 Assignment by parties

Subject to any express provision of the Loan Agreement:

- (a) **(Mortgagor May Not Assign)** the Mortgagor the Mortgagor and the Lender may not assign or transfer or otherwise deal with its rights, interests or obligations under this document without the Lender's other party's prior written consent; and
- (b) **(Lender May Assign)**
 - (i) **(Assignment)** The Lender may assign, transfer, novate or otherwise deal with its rights, interests and obligations under this document without the consent of, or notice to, the Mortgagor.
 - (ii) **(Rights of Assignee)** In the event of any such assignment or transfer (and to the extent the same is assigned or transferred) the assignee or transferee shall have the same rights against the Mortgagor as it would have had if it had been a party to this document.

14.2 Further Assurance

The Mortgagor irrevocably undertakes to the Lender to do all such acts and to execute all such agreements as the Lender may require to effect or perfect any such assignment, transfer, sub-participation, securitisation or other arrangement and irrevocably authorises the Lender (if the Mortgagor fails to do so) to do all such acts and to execute all

such agreements on the Mortgagor's behalf and/or in its name.

14.3 Assignee or Transferee

Any reference in this document to "the Lender" shall be construed as a reference to the Lender and/or the assignees or transferees (if any) of all or any of the Lender's rights, benefits and obligations under this document.

15. General

15.1 Amendments, Waivers and Consents

Subject to the Loan Agreement, any provision of this document may be amended or supplemented only by agreement in writing between the Mortgagor and the Lender. Any waiver may be given at any time but only if the Lender agrees in writing. Any consent under any provision of this document must also be in writing. Any such waiver or consent may be given subject to any conditions thought fit by the person giving it and shall only be effective in the instance and for the purpose for which it was given. Unless this document provides otherwise, the Lender may give or withhold a waiver or consent in its absolute discretion. No waiver or consent by the Lender will take effect if the Lender determines that the person seeking it has failed to disclose to the Lender every material fact or circumstance which (so far as the person seeking the waiver or consent is aware) has a bearing on its subject matter.

15.2 Remedies cumulative

The rights, powers and remedies provided in this Mortgage are cumulative and not exclusive of any rights, powers or remedies provided by law.

15.3 Partial invalidity

If any provision of this Mortgage is or becomes invalid or unenforceable, all the other provisions of this Mortgage shall

remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

15.4 Mortgagor Trustee Provisions

If the Mortgagor is entering into this Mortgage as the trustee of a trust then the Mortgagor represents and warrants to the Lender that:

- (a) the Mortgagor has the power under the instrument under which it holds the property on trust to enter into this Mortgage;
- (b) the entry into this Mortgage is for a proper purpose and for the benefit of the trust under which the Mortgagor holds the Mortgaged Property;
- (c) the Mortgagor has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any of the Mortgagor's actions including the entry into this Mortgage; and
- (d) all of the persons who are trustees of the relevant trust have approved and have signed or assented to this Mortgage.

15.5 Survival of Covenants

The payment and indemnity obligations of the Mortgagor will survive the termination of this document or any Finance Document and the payment or delivery of all Secured Indebtedness or compliance with all Secured Obligations.

15.6 Contract Privity

For the purposes of Part 2, Subpart 1 of the *Contract and Commercial Law Act 2017*, each Receiver and each Attorney is entitled to enforce against the Mortgagor each provision of this document which confers a benefit on a Receiver or an Attorney (as the case may be). However, none of them need

consent to any amendment made to this document.

16. Governing law

The Loan Agreement shall be governed by and construed in accordance with the laws of New Zealand.