

new zealand HOME LOANS 

managed loans

MORTGAGE

TERMS AND CONDITIONS

RELATIONSHIP BETWEEN NEW ZEALAND HOME LENDING LIMITED, NEW ZEALAND HOME LOANS AND KIWIBANK LIMITED

New Zealand Home Lending Limited is a home loan provider. New Zealand Home Loans distributes home loans on New Zealand Home Lending Limited's behalf through the New Zealand Home Loans branch network.

These mortgage terms and conditions govern the mortgage you have given New Zealand Home Lending Limited.

New Zealand Home Lending Limited is an agent of Kiwibank Limited. A copy of Kiwibank Limited's Disclosure Statement is available from any Kiwibank branch or at www.kiwibank.co.nz.

New Zealand Home Lending Limited and New Zealand Home Loans are not registered banks.

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PLEASE READ THIS PAGE FIRST

The terms and conditions that apply to **the mortgage** given to New Zealand Home Lending over the customer's **property** are set out in **this memorandum**.

If the customer is in any doubt as to the nature or effect of **this mortgage**, New Zealand Home Lending recommends that the customer obtains legal advice before the customer authorises and instructs a **practitioner** to register **this mortgage** over the customer's **property**.

BECOMING BOUND BY THIS MORTGAGE

The customer agrees to be bound by **this mortgage** and any other terms that apply to **this mortgage** as soon as the customer has given an **authority and instruction** to a **practitioner** to register **this mortgage** as an **electronic instrument**.

The customer should familiarise themselves with **this memorandum** and keep it in a safe place for future reference.

WHAT THIS MORTGAGE SECURES

Throughout **this memorandum** are words in bold. These are words with a specific meaning. The meaning of these words is set out at the back of **this memorandum**. In addition:

- "customer" means each **person** who gives **the mortgage** as set out in the **authority and instruction**. If there is more than one customer, it means each customer jointly and severally, unless the context requires otherwise.
- "New Zealand Home Lending" means New Zealand Home Lending Limited and its successors and assignees.

1. AMOUNTS OWING

This mortgage is **security** for the **amounts owing** which the customer has agreed, or may agree, to pay to New Zealand Home Lending from time to time. That means this is an "all obligations" mortgage.

In **this mortgage** the term "**amounts owing**" means all money that is owed to New Zealand Home Lending by the customer now or in the future or that is contingently owed to New Zealand Home Lending by the customer (i.e. it is not yet a definite obligation, but may become one in the future), including principal, interest, fees and **costs**. Without limiting the types of things included in the term "**amounts owing**", that term includes:

- any money lent by New Zealand Home Lending to the customer alone or with someone else;

- all debit balances (whether authorised or not) on the customer's accounts with New Zealand Home Lending and any charges incurred on the customer's accounts with New Zealand Home Lending;
- all interest accrued on any amounts owing or the customer's accounts with New Zealand Home Lending until that interest is paid;
- negotiable instruments drawn, accepted, endorsed, discounted, paid or held by New Zealand Home Lending at the customer's request;
- any amount paid by New Zealand Home Lending, on the customer's behalf or at the customer's request, under a letter of credit, guarantee or indemnity, bond or other obligation;
- any amount obtained under a judgment in New Zealand Home Lending's favour against the customer;
- any moneys which New Zealand Home Lending becomes liable to pay to a third party by reason of the operation of, or any transaction in, any of the customer's accounts with New Zealand Home Lending;
- any **costs**; and
- any amounts owing to New Zealand Home Lending by the customer, or as a result of a request made by the customer to New Zealand Home Lending, or by any other means (including under any guarantee the customer gives to New Zealand Home Lending and any other contingent liabilities).

In the absence of obvious error, the amount that New Zealand Home Lending certifies as being the **amounts owing** shall be the **amounts owing** at that time.

Each person referred to as "the customer" in **this mortgage** is responsible for paying all **amounts owing** under **this mortgage**. In other words, each person is jointly and severally liable for the obligations under **this mortgage**.

2. SECURITY

This mortgage shall remain in full force and be a continuing **security** for the **amounts owing** until New Zealand Home Lending releases it, even if any account the customer has with New Zealand Home Lending is in credit at any time.

New Zealand Home Lending is not obliged to release **this mortgage** until New Zealand Home Lending is satisfied that:

- all **amounts owing** have been paid and all the customer's obligations have been complied with;
- New Zealand Home Lending is not under any obligation to make finance available to or at the customer's request; and
- there is no possibility that any **amounts owing** received or recovered by New Zealand Home Lending from the customer or any other person may have to be refunded or repaid under any law.

New Zealand Home Lending holds **this mortgage** in addition to any other **security** and New Zealand Home Lending can:

- exercise its rights under this or any other **security** in any order it wishes, either together or individually;
- exercise some or all of the rights under **this mortgage** or any other **security** at its discretion; and
- decide not to exercise any of its rights under **this mortgage** or any other **security**.

The customer:

- mortgages to New Zealand Home Lending all the customer's right, title and interest (present, future, legal and equitable) in the **property**;
- assigns to New Zealand Home Lending absolutely all the customer's right, title and interest (present, future, legal and equitable) in:
 - (i) all moneys payable to the customer during the term of **this mortgage** arising:
 - (a) from the cultivating, harvesting, selling or otherwise utilising of all trees, timber, logs or crops grown or growing on the **property** now or in the future, including pursuant to any forestry right or profit a prendre; or
 - (b) out of the ownership, use or occupation of the **property** or any agreement relating to its ownership, use or occupation, including sale proceeds, rents, any damages and the proceeds of any insurance (including in respect of loss of earnings or income); and
 - (ii) any resource consent issued in respect of the **property** pursuant to the Resource Management Act 1991.

3. PRIORITY

If a "priority amount" is inserted in **the mortgage**, then for the purpose of section 92 of the Property Law Act 2007 this amount plus interest is the most that New Zealand Home Lending can recover against the **property** before any subsequent mortgagees can receive any payment.

The fact that there is a priority amount does not limit the amount of the **amounts owing** nor the total amount of money that is secured by **this mortgage**.

CUSTOMER'S OBLIGATIONS

4. THE CUSTOMER MUST DO THE FOLLOWING

The customer must pay to New Zealand Home Lending the **amounts owing**:

- in accordance with the terms of **this mortgage** and any other relevant **agreement**; or
- otherwise upon New Zealand Home Lending's written demand.

The customer must, in relation to the **property**:

- pay in full and when due, all rates, taxes, body corporate levies and other charges that the customer is required to pay relating to the **property**;
- keep the **property** in good condition, including:
 - (i) properly painting, maintaining and protecting the interior and exterior of the **buildings**;
 - (ii) keeping the **buildings** weatherproof; and
 - (iii) keeping the **land** and garden in a presentable fashion;
- repair any damage to the **property**;
- obtain, comply with and keep current all resource consents and building consents that are necessary to maintain the current use of the **property**;
- comply with all statutes, regulations, court or authority decisions, notices and by-laws relating to the **property**;
- ensure that each and any business carried on at or from the **property** is conducted on a proper commercial basis and in compliance at all times with all statutes, regulations, court or authority decisions, notices and by-laws relating to such business; and
- at New Zealand Home Lending's request and at the cost of the customer, arrange for valuations (by a registered valuer approved by New Zealand Home Lending) of the **property**, and provide a copy of the valuer's report to New Zealand Home Lending on completion.

The customer must, in relation to **this mortgage**:

- only use the money New Zealand Home Lending gives the customer for the purposes that New Zealand Home Lending has given it to the customer;
- pay all revenue from the **property**, without deduction or set-off, into an account with New Zealand Home Lending;
- provide New Zealand Home Lending with any information in the customer's possession or control which New Zealand Home Lending asks for within a reasonable time, including financial statements and accounts and, if the **property** consists of a stratum estate under the Unit Titles Act 1972 or the Unit Titles Act 2010, body corporate information;

- not hinder New Zealand Home Lending in doing anything under **this mortgage**;
- comply with all conditions and requirements of **this mortgage** and each other **agreement** with New Zealand Home Lending; and
- comply with the covenants and conditions of each mortgage or other encumbrance that ranks ahead of **this mortgage**.

The customer must inform New Zealand Home Lending, with details, of any:

- change in the customer's details (including the customer's name or address);
- environmental or building liabilities in relation to the **property** that have occurred or could occur; or
- legal action or dispute claimed against the customer in relation to the **property**.

5. TRUSTEE LIABILITY

This section 5 will apply to each customer who is or includes a trustee of a trust.

The liability of any trustee who is not a **limited liability trustee** is unlimited, except as expressly agreed otherwise in writing by New Zealand Home Lending.

If a customer is or includes a **limited liability trustee** of a trust, then that **limited liability trustee's** liability to New Zealand Home Lending under **this mortgage** is limited to the extent set out in the **agreement** setting out the terms relating to the **amounts owing** by that customer.

If no limitation for **limited liability trustees** is set out in the relevant **agreement** or if there is no written **agreement**, the **limited liability trustee's** liability to New Zealand Home Lending under **this mortgage** is limited to the extent set out in this section 5.

At all times that there are **amounts owing**, each customer warrants that:

- the person(s) named as the customer in **this mortgage** and each **agreement** to which the customer is a party is the sole trustee/are all the trustees of the relevant trust, and that each trustee (so far as it is aware in respect of any trustees other than itself) has been validly appointed and has the power and authority to hold on trust the assets of that trust and to carry on the business of that trust;
- the customer has the power under the relevant trust deed, and is authorised, to enter into **this mortgage** and each **agreement** to which the customer is a party and transactions under them;

- the customer has the right to be fully indemnified out of the trust assets in priority to the interests of the beneficiaries in respect of all obligations incurred by the customer under **this mortgage** and each **agreement** to which the customer is a party and New Zealand Home Lending is entitled to be subrogated to that right (in each case without restriction, limitation, set-off or counterclaim) in respect of the customer's obligations under **this mortgage** and each **agreement** to which the customer is a party;
- at the date the obligations are incurred, the trust assets are sufficient to fully satisfy all obligations in respect of which the customer has a right of indemnity (including the customer's obligations under **this mortgage** and each **agreement** to which the customer is a party);
- no distributions or event for vesting of trust assets have been made or occurred without New Zealand Home Lending's prior written approval;
- no action has been taken or proposed to terminate, wind-up or liquidate the trust, that the customer has not notified to New Zealand Home Lending immediately upon becoming aware of it;
- the customer is not in default under or in breach of the trust deed; and
- so far as the customer is aware, none of the trust assets have been mixed with other property.

New Zealand Home Lending is relying on these warranties being true.

The customer must, without limiting any of New Zealand Home Lending's other rights under **this mortgage** and each **agreement** to which the customer is a party or at law generally, at New Zealand Home Lending's request exercise the customer's right of indemnity against the trust assets or any beneficiary of the trust for New Zealand Home Lending's benefit.

The customer must not, without New Zealand Home Lending's prior written consent:

- permit any restriction, limitation, set-off, counterclaim or other defence to or against:
 - the customer's rights of indemnity out of the trust assets; or
 - any right of indemnity that may arise in the customer's favour from a beneficiary of the trust; or
 - New Zealand Home Lending's right of subrogation to either indemnity; or
- repay any debt owing to any settlor or beneficiary of the trust.

In respect of **this mortgage** and each **agreement** to which the customer is party, the liability to New Zealand Home Lending of each customer that is a **limited liability trustee** is limited only to the assets of the relevant trust unless New Zealand Home Lending is not able to recover all **amounts owing** from those trust assets because of any:

- trustee warranty set out above in this section 5 being incorrect; or
- breach of any trustee undertaking set out above in this section 5; or
- dishonesty, or wilful default or misconduct by that **limited liability trustee** in respect of the customer's obligations under **this mortgage** or any **agreement** to which the customer is a party.

In any such case (“**Exceptional Circumstances**”), this limitation of liability will not apply to that **limited liability trustee** and that **limited liability trustee** will be liable to New Zealand Home Lending from that **limited liability trustee's** personal assets for the amount that New Zealand Home Lending would have been able to recover from the trust assets if such Exceptional Circumstances were not applicable.

The customer will remain liable under **this mortgage** and each **agreement** to which the customer is a party after the customer ceases to be a trustee until released in writing by New Zealand Home Lending. New Zealand Home Lending will release the customer from the customer's liabilities under **this mortgage** and each **agreement** to which the customer is a party when New Zealand Home Lending is satisfied that section 45(2) of the Trustee Act 1956 has been complied with and that all new and remaining trustees are liable under **this mortgage** and each relevant **agreement**.

6. THE CUSTOMER MUST NOT DO THE FOLLOWING

The customer must not, in relation to the **property**:

- mortgage, grant, or allow to be granted any other **security** over the **property**;
- sell, transfer, exchange, rent, **lease**, subdivide or do anything similar to the **property**;
- consent to any resource application in relation to the **property**;
- allow any **security** or any new easement or encumbrance to exist over the **property**; or
- do anything with the **property** that might affect the value of the **property** in a negative way,

without getting New Zealand Home Lending's prior written consent.

7. INSURANCE

The customer must keep the **buildings** insured by having an insurance policy which:

- provides insurance cover for the full replacement value of the **buildings** (or such other value as New Zealand Home Lending agrees in writing), against every risk normally covered in a comprehensive policy, such risks to include loss or damage by fire, theft, flood, natural disaster (as defined in the Earthquake Commission Act 1993), and any other risk New Zealand Home Lending requires;
- has New Zealand Home Lending's interest as mortgagee noted on that policy; and
- is with an insurance company acceptable to New Zealand Home Lending.

The customer must:

- hold any money the customer receives from a payment to the customer under the insurance policy on trust for New Zealand Home Lending in a separate bank account;
- on making a claim under the insurance policy, advise New Zealand Home Lending that the customer has made the claim and give New Zealand Home Lending details about the claim;
- give New Zealand Home Lending a copy of the certificate of insurance and the insurance policy and, if New Zealand Home Lending requests, the customer must give New Zealand Home Lending the original insurance policy to hold. If the insurance company sends the customer a notice that amends the insurance policy, the customer must also give New Zealand Home Lending a copy of that notice;
- pay in full and when due, all premiums under the insurance policy together with any other costs of obtaining or keeping the insurance (including valuation fees). If New Zealand Home Lending requests, the customer must give New Zealand Home Lending copies of the receipts of the customer's insurance payments made or obtain confirmation of payment from the insurance company and send this to New Zealand Home Lending;
- not cancel or amend the insurance policy, or do anything that could cause the insurance company not to pay out under it; and
- comply with any other requirements relating to insurance as notified to the **debtor** by New Zealand Home Lending from time to time.

If the **buildings** are damaged or destroyed, New Zealand Home Lending may decide how the insurance money is used and may require that it is used to repay the **amounts owing** and not to repair or replace the damaged or destroyed **buildings**.

If the customer has a stratum estate under the Unit Titles Act 1972 or the Unit Titles Act 2010, and New Zealand Home Lending requests, the customer must hold mortgage redemption insurance in a form and to a value satisfactory to New Zealand Home Lending, with New Zealand Home Lending's interest as mortgagee noted on the insurance policy.

If the customer fails to obtain or keep the **buildings** insured to New Zealand Home Lending's satisfaction, New Zealand Home Lending may, at the customer's cost, obtain and keep insurance for the **buildings**.

New Zealand Home Lending may make, enforce, settle or compromise any claim with an insurance company in relation to the **buildings** on the customer's behalf and on any terms New Zealand Home Lending wishes.

8. COSTS

The customer agrees to pay all **costs** on a full indemnity basis. New Zealand Home Lending may deduct these **costs** from any of the customer's accounts with New Zealand Home Lending and charge interest on such **costs** at the appropriate rate, as determined by New Zealand Home Lending, for the relevant account.

IF DEFAULT OCCURS

9. ENFORCEMENT

If there is:

- any **default**;
- any failure to pay any **amounts owing**;
- or may be, in New Zealand Home Lending's opinion a **material adverse change**;
- or may be, any event or circumstance which in New Zealand Home Lending's opinion has a **material adverse effect**; or
- or may be, in New Zealand Home Lending's opinion a **material adverse change** in relation to the **property**, or the **property** is otherwise **materially adversely affected**,

New Zealand Home Lending can (whether or not New Zealand Home Lending has taken possession of the **property**), subject to the provisions of section 119 of the Property Law Act 2007:

- demand that the **amounts owing** are payable immediately;
- sell, purchase, divide, dispose of, manage or otherwise deal with the **property**;

- appoint a receiver over the **property** and/or income from the **property**;
- do anything with the **property** that the customer is able to do, including making any payments;
- make any arrangements regarding tenancies relating to the **property**; or
- do anything else a mortgagee is permitted by law to do.

10. RECEIVER

If New Zealand Home Lending appoints a receiver in respect of the **property** and/or in respect of income from the **property**, then:

- the appointment is in addition to any other rights New Zealand Home Lending has;
- the receiver shall be considered the customer's agent in all actions that the receiver undertakes. The customer will be responsible for everything that the receiver does or does not do, even if he or she acts negligently;
- the appointment will be in writing and on the terms that New Zealand Home Lending decides and notifies to the customer;
- the appointment shall not be considered as either New Zealand Home Lending, or the receiver, entering into possession of the **property**;
- the receiver may employ advisers to assist in the management of the **property**; and
- the receiver can do anything New Zealand Home Lending can do under **this mortgage** as well as anything permitted by law.

REQUIREMENTS FOR SPECIFIC TYPES OF PROPERTY AND PROPERTY USE

11. UNIT TITLES

If the customer's **property** consists of a stratum estate under the Unit Titles Act 1972 or the Unit Titles Act 2010, the customer must also:

- comply with all the requirements of the body corporate and the Unit Titles Act 1972 or Unit Titles Act 2010 (as applicable);
- pay all body corporate levies in full and on time;
- seek directions from New Zealand Home Lending and follow any directions given by New Zealand Home Lending for any vote on any resolution that requires at least 75% consent from eligible voters or a resolution that seeks to alter the rules of the body corporate;

- ensure that the body corporate keeps everything on the body corporate's property insured for its full insurable value (or such other value as New Zealand Home Lending agrees in writing); and
- ensure that New Zealand Home Lending's interest as mortgagee is noted by the body corporate and by each insurer.

12. LEASE

If the customer's **property** is or includes a **lease**, and the customer is a lessee, the customer must:

- comply with the covenants and conditions of the **lease** and take all reasonable steps to ensure that the other party(s) comply with the covenants and conditions of the **lease**;
- pay all rent in full and on time;
- not amend or agree to amend the **lease**; and
- do everything to ensure that the **lease** is renewed or extended, and inform New Zealand Home Lending immediately if the **lease** is terminated or expires.

If the customer's **property** is or includes a **lease**, and the customer is a lessor, the customer must:

- enforce the lessee's obligations and the customer's rights under the **lease** on time;
- give New Zealand Home Lending a copy of the **lease** and all notices the customer receives under the Property Law Act 2007, or for any arbitration proceedings, or expert determinations relating to the **lease**. The customer will comply with New Zealand Home Lending's written directions as to the conduct of any such arbitration proceedings or expert determinations;
- if the **lease** is registrable but not registered, promptly register the **lease** under the Land Transfer Act 1952; and
- in the case of a registered **lease**, ensure that any re-registration of the **lease** is noted as being in renewal or substitution of the previous **lease** and that New Zealand Home Lending's interest as mortgagee is retained in accordance with the Land Transfer Act 1952.

If the customer acquires a freehold interest in the **property**, the customer must ensure that it gives New Zealand Home Lending a valid first ranking registrable mortgage of the freehold interest as well.

13. LICENSED PREMISES

If the customer's **property** includes any licensed premises (as defined in the Sale of Liquor Act 1989), the customer must ensure that at all times:

- the provisions of the Sale of Liquor Act 1989 are complied with in connection with the **property**;
- each licence necessary for the conduct of the business carried on at the licensed premises is complied with, maintained and renewed, and each additional, temporary or replacement licence is obtained when required; and
- the business carried on at the licensed premises is conducted in a proper, lawful and orderly manner.

14. FARM LAND

If the **property** is, or could be, used for farming, horticulture, agricultural, forestry or a similar use, the customer must manage the **property** in accordance with best farm, horticulture, agricultural and/or forestry management practice.

The customer must not make any material change in the type of activity carried out on the **property** without New Zealand Home Lending's prior written consent. Without limitation, the customer must not enter the **property** into the New Zealand Emissions Trading Scheme (established under the Climate Change Response Act 2002), the Permanent Forest Sink Initiative (under Part 3B of the Forests Act 1949), or do anything that may result in the customer accruing any rights or liabilities under any environmental credit scheme (such as, for example, a scheme involving carbon sequestration, biodiversity enhancement, or nitrogen trading) without New Zealand Home Lending's prior written consent. Where New Zealand Home Lending gives any such consent, it may do so on any further terms and conditions it thinks fit in its sole discretion.

MISCELLANEOUS

15. ATTORNEY

The customer irrevocably appoints New Zealand Home Lending, each receiver and officer of New Zealand Home Lending, severally as the customer's attorney, to do all things the attorney considers necessary to secure payment of the **amounts owing** and for the purpose of effecting, completing, or facilitating the exercise or purported exercise of any rights, powers and discretions conferred on New Zealand Home Lending or any officer of New Zealand Home Lending under any **agreement**. The customer ratifies and confirms to any person anything the attorney does in the exercise of this power of attorney.

16. GIVING THE CUSTOMER NOTICES

All notices (whether demands or not) that New Zealand Home Lending gives the customer will be in writing. New Zealand Home Lending will send notices to the customer or any agent appointed by the customer by personal delivery, post, fax or email. Each notice will be deemed to have been received:

- if sent by post, on the third business day after sending the notice;
- if by personal delivery, at the time of delivery;
- if sent by fax, on production of a transmission report by New Zealand Home Lending's fax machine of transmission in full to the customer's fax machine;
- if emailed by New Zealand Home Lending, at the time New Zealand Home Lending receives an acknowledgement of receipt of delivery from the customer's email address or (if earlier) at the end of two business days after the email was sent unless a notice of non-delivery is received by New Zealand Home Lending; and
- otherwise, when actually received by the customer or the customer's appointed agent.

If the customer is a company New Zealand Home Lending may also send notices by any method set out in the Companies Act 1993.

The methods in this section are in addition to the methods of service prescribed by law.

17. NOTICES ARE ACCURATE

All notices that New Zealand Home Lending gives the customer are, in the absence of obvious error, to be considered correct.

18. ANY CONFLICT WITH STATUTE

Some covenants are implied into **this mortgage** under the Property Law Act 2007. The customer and New Zealand Home Lending agree that the covenants in the Second Schedule of the Property Law Act 2007 shall apply, except that if those covenants are different to and conflict with those contained in **this mortgage**, then, to the extent that the law enables, the provisions of those covenants in the Second Schedule are modified or negated to the extent that they conflict with **this mortgage**.

Reference to any law is a reference to New Zealand law and includes any amendment or re-enactment.

19. CONSUMER GUARANTEES ACT 1993

If the customer has entered into **this mortgage** for a business purpose, nothing in the Consumer Guarantees Act 1993 will apply.

20. GOODS AND SERVICES TAX

If the customer registers, or become liable to register, for goods and services tax, then the customer must advise New Zealand Home Lending immediately and provide New Zealand Home Lending with the customer's goods and services tax registration number.

21. INVALIDITY

If at any time part of **this mortgage** is found to be illegal, or otherwise unenforceable, then this will not affect the legality or enforceability of the rest of **this mortgage**.

22. AMENDMENTS/WAIVERS

This mortgage may be amended by written agreement between the customer and New Zealand Home Lending. New Zealand Home Lending may waive any rights under **this mortgage** on any conditions New Zealand Home Lending thinks fit, but the customer shall not consider the waiver to apply to any future event. Waivers are only effective when given by New Zealand Home Lending to the customer in writing. Nothing New Zealand Home Lending does or does not do shall be considered as a waiver of its powers under **this mortgage** or any other **agreement** unless expressly agreed by New Zealand Home Lending in writing.

23. ASSIGNMENT

New Zealand Home Lending may at any time assign or transfer its rights and obligations under **this mortgage** to any person, free of any equity, set-off or counterclaim and without obtaining the customer's consent. If New Zealand Home Lending does this, references to New Zealand Home Lending in **this mortgage** will be read as references to the person to whom New Zealand Home Lending has assigned or transferred its rights and obligations.

Where New Zealand Home Lending has assigned or transferred only some of its rights and obligations, references to New Zealand Home Lending in parts of **this mortgage** that contain rights and obligations that New Zealand Home Lending has not assigned or transferred will still be read as references to New Zealand Home Lending Limited.

WHAT DO THE WORDS IN BOLD MEAN?

24. WHAT DO THE WORDS IN BOLD MEAN?

agreement: includes any other **security**, agreement, contract, guarantee or indemnity:

- (a) between New Zealand Home Lending and the customer; and/or
- (b) between New Zealand Home Lending and any third party which has given a guarantee or security for the **amounts owing** (as changed, updated or replaced).

amounts owing: has the meaning set out in the second paragraph of section 1 of **this memorandum**.

authority and instruction: means a client authority and instruction document given by the customer to a **practitioner** (in the form approved by New Zealand Home Lending) that authorises and instructs the **practitioner** to register **this mortgage** as an **electronic instrument** and includes all documents and pages that are attached to the authority and instruction.

buildings: means anything attached or erected on the **land**.

costs: includes all costs, losses (including indirect, economic and consequential losses), fees, expenses, claims and actions, suits, judgments, damages, interest, penalties, obligations or liabilities incurred in connection with the protection, enforcement or clarification of New Zealand Home Lending's rights in connection with **this mortgage**, including legal costs on a full indemnity basis and any receiver's costs and expenses. This includes, without limitation, costs New Zealand Home Lending, or the customer, have incurred:

- (a) for the preparation, registration, discharge, amendment, variation and execution of **this mortgage** or any **agreement**;
- (b) if the customer **defaults** under **this mortgage** or New Zealand Home Lending exercises, enforces or preserves or considers or attempts to exercise, enforce or preserve any of its rights or remedies under **this mortgage**;
- (c) otherwise in relation to **this mortgage** or the **amounts owing**; and/or
- (d) relating to the **property** that the customer is liable to pay (for whatever reason), but omits to do so, or that New Zealand Home Lending pays on the customer's behalf (including body corporate fees), or that New Zealand Home Lending pays in order to protect or preserve the **property**.

default: means a breach of or failure to perform any obligation or condition of **this mortgage** or any **agreement**.

electronic instrument: has the meaning given to it in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

land: includes all the land described in **this mortgage**, and includes any part thereof.

lease: includes any lease, sub-lease, cross-lease or licence to occupy.

limited liability trustee: a trustee of a trust who does not have any interest in or right to the assets of the trust (including as a beneficiary) other than as a trustee of the trust.

something having a **material adverse effect** is a reference to it having a material adverse effect on the customer or any person who has guaranteed the **amounts owing**, its business, assets or financial condition, or its ability to comply with its obligations under an **agreement** or New Zealand Home Lending's ability to recover any amount payable under an **agreement** or to enforce any obligations under an **agreement**, and **material adverse change** shall be construed accordingly.

person: includes any individual, corporation or other legal entity.

practitioner: has the meaning given to it in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.


property: means the **land** and **buildings** secured by **this mortgage** and/or, if appropriate, the customer's interest as lessee or licensee of the **land** and **buildings**, including the customer's right to receive rent and other monies under the relevant **lease** or licence.

security: includes each interest created or provided for by a mortgage, pledge, lien, security interest, charge, encumbrance, or guarantee that in substance secures payment or performance of an obligation.

the mortgage: means the mortgage the customer gives by an **electronic instrument** as mortgagor in favour of New Zealand Home Lending as mortgagee over the customer's right, title and interest in the **property** and includes any **authority and instruction**.

this memorandum: means this document (as changed, updated or replaced).

this mortgage: means **the mortgage** and **this memorandum**.

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New Zealand Home Loans
PO Box 2082
Wellington 6140

Client Care 0800 333 238

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