

*Memorandum Setting Forth Provisions Intended for Inclusion in Instruments*

**MEMORANDUM**

**Land Transfer Act 1952**

Class of instrument in which provisions intended to be included:

**Mortgage - All obligations**

Person executing Memorandum:

**WAIRARAPA BUILDING SOCIETY at Masterton**

The following provisions are intended for inclusion in instruments of the above class:

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**1. CONSIDERATION**

1.1 The Mortgage is given for the consideration expressed in the Mortgage and neither the Mortgagor nor the Guarantor shall raise want of consideration in relation to any obligation in the Mortgage or Loan Agreement or in respect of any covenant or agreement in this Memorandum.

**2. DEFINITIONS**

2.1 “the Mortgagor” except where expressed or where the context requires otherwise shall include all persons and corporations, jointly and severally who execute the Mortgage (whether as Mortgagor or as Guarantor) and shall include their respective successors, personal representatives and assigns. The covenants contained and implied in the Mortgage shall bind all such persons jointly and severally.

2.2 “the Mortgagee” except where the context requires otherwise shall include the Wairarapa Building Society, a Society registered under the Building Societies Act 1965 and having its registered office at Masterton, its successors and assigns and any transferee from the Mortgagee.

2.3 “Mortgage” - in relation to any Mortgage which contains a provision which incorporates into that Mortgage any or all of the provisions set out in this memorandum, means that Mortgage and this memorandum together, as amended, added to or varied by the terms of any annexure schedule attached to that Mortgage.

2.4 “the Land” means the Land or Lands referred to in the Mortgage together with all improvements made to such Land or Lands.

2.5 “Loan Agreement” includes every agreement relating to the loan of or to the repayment or payment of Secured Money and made between the Mortgagee and the Mortgagor irrespective of whether such agreement is made before or after completion of the Mortgage.

2.6 “Upon Demand” means Upon Demand being made by notice in writing signed by the Mortgagee, or any officer, agent or servant of the Mortgagee, served upon the Mortgagor as provided in clause 3 below.

2.7 “Secured Monies” includes all money which the Mortgagor is now or which the Mortgagor at any time becomes liable to pay, or to repay to, or to account to the Mortgagee (whether alone or with any other person or body) and includes all money paid to, or for, or at the request of the Mortgagor together with all loans, advances or accommodations now lent made or provided or which may be lent, made or provided in the future by the Mortgagee to or for or on account of the Mortgagor (together with all loans, advances or accommodations lent or made to or for the Mortgagor) whether the Mortgagor is liable to pay or repay such or any part thereof to the Mortgagee and whether directly or contingently, together with all monies due or owing or unpaid to the Mortgagee by the Mortgagor or any Guarantor on any account and howsoever arising and whether or not as principal debtor or surety, and shall include all monies expressed in the Mortgage as being or forming part of the Secured Monies.

**3. NOTICES**

3.1 Any notice or demand from the Mortgagee may be made in writing signed by any officer, solicitor or agent of the Mortgagee.

3.2 Any demand or notice required to be served on the Mortgagor may be served:

- (i) By delivering it to the Mortgagor personally; or
- (ii) By posting it by registered letter addressed to the Mortgagor at the Mortgagor’s place of residence or abode last known to the Mortgagee; or
- (iii) In the case of a company by serving the notice in accordance with Section 388 of the Companies Act 1993.

3.3 Where a demand or notice is not served in accordance with any of the foregoing methods, it shall nevertheless be sufficiently served if actually received by the Mortgagor.

- 3.4 A demand or notice posted by registered letter pursuant to sub-clause 3.2 of this clause shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered.
- 3.5 Any service effected in accordance with this clause shall be valid and effect shall notwithstanding that at the date of service the Mortgagor, whether to the knowledge of the Mortgagee or not, is dead, mentally incapable, bankrupt, in liquidation or absent from New Zealand or does not receive the demand or notice and notwithstanding any other matter or event whatsoever.
- 3.6 The modes of service provided by this clause do not limit any other sufficient and lawful modes of service, and are subject to any mandatory provisions in any statute.

#### **4. PAYMENT OF SECURED MONIES**

- 4.1 The Mortgagor will pay or repay to the Mortgagee the Secured Monies Upon Demand.
- 4.2 The Mortgagor will observe and perform all the obligations set out in the Mortgage and the Loan Agreement.
- 4.3 Pending demand the Mortgagor will duly and punctually pay the Secured Monies at the times and in the manner provided by any Loan Agreement.
- 4.4 The Mortgagor shall make all payments free of any deduction at any place in New Zealand from time to time nominated by the Mortgagee.
- 4.5 If required by the Mortgagee from time to time the Mortgagor will provide and keep in force with the Mortgagee or a bank or other institution approved by the Mortgagee an Order providing for punctual payment of the Secured Monies in accordance with any Loan Agreement.

#### **5. EVENTS OF DEFAULT**

- 5.1 In the event of the occurrence of any of the events listed in clause 5.2 below occurring then the Mortgagee may determine that the Secured Money shall be immediately due and payable and repayable and thereupon the whole of the Secured Money shall immediately become due and payable and repayable to the Mortgagee without further notice or requirement.
- 5.2
- (a) If there is any breach of or default in the due performance or observance of any obligation of any person (other than the Mortgagee) contained or implied in any security or collateral security held by the Mortgagee in connection with the Mortgage or there is an event or default under any of such securities.
  - (b) If in the opinion of the Mortgagee the Mortgagor is unable to pay or does not pay its debts as they become due.
  - (c) If distress or execution is levied on or issued against any part of the Land.
  - (d) If a judgment of any Court against the Mortgagor shall remain unsatisfied for more than seven days.
  - (e) If a petition shall be presented or a resolution passed or an Order made for the winding up of the Mortgagor or Guarantor either or both being a Company, or if any meeting shall be convened for the purpose of considering any such petition, resolution or Order.
  - (f) If the Mortgagor requests the Mortgagee to appoint a Receiver over any of its Land.
  - (g) If a Receiver is appointed or an encumbrancer takes possession of or exercises its powers of enforcement in respect of any of the Land.
  - (h) If the Mortgagor calls a meeting of creditors or any class of creditors for the purpose of entering into any arrangement or composition with those creditors.

- (i) If, without the prior written consent of the Mortgagee, the Mortgagor shall sell, assign or transfer all or any part or parts of the Land or shall attempt to do so other than in the ordinary course of business.
- (j) If, without the prior written consent of the Mortgagee, the Mortgagor shall create or purport to create or permit or suffer to subsist any Mortgage charge or encumbrance of any type over any part of the Land ranking in priority to or pari passu with the charge created by the Mortgage.
- (k) If the Mortgagor stops or suspends payment to its creditors with or without the Mortgagee's consent in writing ceases or threatens to cease to carry on its business.
- (l) If the Mortgagor, being a company without the consent in writing of the Mortgagee, makes or attempts to make any alterations to its Constitution (or Articles of Association) which might, in the opinion of the Mortgagee, detrimentally affect the security of the Mortgagee under the Mortgage.
- (m) If an inspector or inspectors (no matter how described) are lawfully appointed to investigate the affairs of the Mortgagor.
- (n) If an Order is lawfully made requiring the Mortgagee being a company to pay any debts of another company.
- (o) If in the opinion of the Mortgagee an unsatisfactory feature develops in the Mortgagor's affairs or if the Mortgagor does not continue to conduct its affairs to the Mortgagee's satisfaction.
- (p) If there is any material adverse change in the financial condition of the Mortgagor or any Guarantor which, in the opinion of the Mortgagee, would result in the Mortgagor defaulting under the loan or the Guarantor not being able to meet its obligations Upon Demand.
- (q) If the Mortgagor, being a company, makes any Distribution at a time when any of the Secured Monies are overdue or unpaid to the Mortgagee.
- (r) If the Mortgagor, being a company, ceases to satisfy the solvency test set out in Section 4 Companies Act 1993 (whether or not the Companies Act 1993 then applies to the Mortgagor).
- (s) If the Mortgagor, being a company, without the prior written consent of the Mortgagee enters into a "major transaction" (as defined in Section 129 Companies Act 1993, whether or not that Act applies to the company at that time).
- (t) If the Mortgagor permits any lien or charge to be registered or caveated against the Land.

**6. APPROPRIATION OF MONIES**

- 6.1 The Mortgagee may apply any sum retained or received by it for or on behalf of the Mortgagor or the Guarantor to reduce or to repay any Secured Money as the Mortgagee thinks fit and with power to apply the amount wholly or partly to any account or accounts (whether in credit or debit) with the Mortgagee, and with power to carry a suspense account and to appropriate at the Mortgagee's sole discretion. The Mortgagee may apply money so held or received irrespective of any direction given to the Mortgagee. The rights given to the Mortgagee by this clause are additional to any rights contained in any Rules of the Mortgagee.
- 6.2 Nothing in this clause shall restrict the right or power of the Mortgagee to avail of any other right or power including any right of set-off or combination or lien, whether or not pursuant to any Rules of the Mortgagee.

**7. SET-OFF**

- 7.1 There shall be no set-off between the Mortgagee and the Mortgagor except that the Mortgagor authorises the Mortgagee to retain and apply any credit or deposit balance of the Mortgagor in any account with the Mortgagee in or towards satisfaction of any Secured Money BUT if any amount payable or repayable to the Mortgagee by the Mortgagor is not quantified or not capable of being quantified or if contingently due, then the Mortgagee is entitled to retain and withhold payment of any credit balance or other amount pending the quantum payable by the Mortgagor to the Mortgagee becoming quantified or due.
- 7.2 The powers contained in this clause may be exercised by the Mortgagee even though that may occasion the breaking of any deposit arrangement between the Mortgagor and the Mortgagee and even if the rights of the Mortgagee are only in respect of some of the money in any deposit or credit account.
- 7.3 The Mortgagee's rights and remedies pursuant to this clause are contractual only and only affect the terms (express or implied) upon which any credit balance or deposit is received by the Mortgagee or held. The creation of the rights in this clause do not give rise to the creation of any security interest or other proprietary interest in any deposit or credit balance in the Mortgagee.

**8. MORTGAGE TO BE A CONTINUING SECURITY**

- 8.1 The security afforded to the Mortgagee by the Mortgagor shall operate as a running and continuing security between the Mortgagee, the Mortgagor, and Guarantor (if any), irrespective of any sums which may be paid to the credit of any account or accounts of the Mortgagor with the Mortgagee. Notwithstanding any settlement of account or any other matter or thing whatsoever, such security shall remain in full force and extend to cover any sum of money which may hereafter become owing by the Mortgagor to the Mortgagee until a final release of the Mortgage shall have been executed by the Mortgagee.

**9. PROPERTY LAW ACT PRIORITY**

- 9.1 For the purpose of Section 80A(2) of the Property Law Act 1952 the Secured Monies which shall for the purpose of that section rank in priority to any subsequent Mortgage, charge, lien or other encumbrance given by the Mortgagors or otherwise imposed on the said Land shall be specified to be the sum mentioned in the Mortgage plus a sum not exceeding 24 months interest thereon together with the costs, charges and expenses incurred by the Mortgagee in realising or attempting to realise or enforcing the Mortgage.
- 9.2 This clause is subject to the overriding provisions of any Deed of Priorities executed by the Mortgagee after the date of the Mortgage.
- 9.3 This clause shall not be construed as being an agreement between the Mortgagee and the Mortgagor for the Mortgagee to make loans, advances, credits or accommodation up to the sum mentioned in the Mortgage as the Priority Sum.

**10. COVENANTS CONCERNING THE LAND**

- 10.1 The Mortgagor will punctually pay all rates, taxes and charges as and when the same become due in respect of the Land.
- 10.2 The Mortgagor will well and substantially repair, and keep in good and substantial repair and condition all buildings or other improvements erected and made upon the Land. The Mortgagor will not without the Mortgagee's prior written consent cause or permit any buildings or improvements to be removed dismantled or structurally altered.
- 10.3 The Mortgagor will not without the Mortgagee's prior written consent further mortgage, charge or encumber the Land.
- 10.4 The Mortgagor will obtain and give effect to, exercise and keep current and renew and comply with all resource consents and authorities or authorisations necessary in respect of the Land and any improvements erected thereon.

10.5 The Mortgagor will not surrender, transfer, grant security over, apply for the change or cancellation of any condition of, or deal or dispose in any other way with any consent or authorisation without the prior written consent of the Mortgagee.

The provisions in this clause are to be observed by the Mortgagor in particular, but not exclusively, in relation to the Resource Management Act 1991.

10.6 The Mortgagor will, after receiving notice of or otherwise becoming aware of the same, notify the Mortgagee of the lapse or cancellation of any building consent or the issue of any notice to rectify in relation to the Land and buildings of the Mortgagee pursuant to the Building Act 1991, and will promptly comply with any notice to rectify.

The Mortgagor will forthwith after the same are issued or supplied pursuant to the Building Act 1991, provide to the Mortgagee copies of all Code Compliance Certificates, Compliance Schedules, Annual Building Warrants of Fitness and advices of proposals for change of use or extension of life of the building (beyond its specified intended life) in relation to Land or buildings erected thereon.

10.7 The Mortgagor will not, without the Mortgagee's prior written consent, let, lease or part with possession of the Land or, if it is a residential or farm property, allow it to be occupied by any persons other than members of the Mortgagor's own family household.

10.8 The Mortgagor will insure and keep insured all buildings and erections on the Land and will punctually pay all premiums and sums of money necessary for that purpose. The risks insured against shall be those which are normally covered by a comprehensive policy, including, but not limited to loss or damage by fire, earthquake, flood, and storm, or any others which the Mortgagee may reasonably consider necessary or desirable and shall be for full replacement value or, at the Mortgagee's option, full indemnity value. The insurer shall be approved by the Mortgagee. The insurance shall be in the name of the Mortgagee whose receipt shall be a full discharge to the insurer. The Mortgagee is entitled to custody of all policy documents. Paragraph 6 of the Fourth Schedule to the Property Law Act 1952 (being the paragraph dealing with the application of insurance monies if any buildings or erections are destroyed or damaged) is varied by the deletion of the words "by fire" so that it applies to damage or destruction however caused.

10.9 Where the Land is used for farming, forestry, horticulture or other agricultural purposes, the Mortgagor will farm and manage the Land in proper and husbandlike manner, and will keep in good repair, order and condition all fences, drains and other improvements erected or made on the Land.

10.10 The Mortgagor will punctually observe and comply with all statutory requirements relating to or affecting the Land or its use.

## **11. IMPLIED TERMS**

11.1 The covenants, powers and conditions implied in Mortgages by virtue of the Property Law Act 1952 shall be implied in the Mortgage except to the extent that they are hereby varied or negated.

## **12. COSTS**

12.1 The Mortgagor will pay all costs and expenses of and incidental to the negotiation, arranging, preparation, execution and registration of the Mortgage, and any variation, partial release or discharge hereof or any transfer in lieu of discharge. Further, if and as often as the Mortgagor shall be in default under the Mortgage, the Mortgagor will pay the costs of the Mortgagee (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Mortgage by its rights, remedies and powers under the Mortgage, and including the giving or attempted giving of any notice pursuant to the provisions of the Property Law Act 1952 and including any costs of inspection and valuation of the Land.

### **13. DEFAULT**

- 13.1 This Clause shall apply in the event that default shall be made in the immediate payment of the Secured Monies or any part of them Upon Demand being made by the Mortgagee, or if breach or default shall be made by the Mortgagor in the performance or observance of any covenant or condition or implied in the Mortgage or this memorandum or any Loan Agreement or in any other security for the time being held from the Mortgagor by the Mortgagee. In any or either of such cases it shall be lawful for the Mortgagee at that time or at any time later (but subject and without prejudice to the relevant limitations contained in the Land Act 1948 or any modification or re-enactment thereof) to exercise such power of sale and incidental powers as are vested in Mortgagees by the Property Law Act 1952 and the Land Transfer Act 1952 or any statutory modification or re-enactment of them for the time being in force in as full and ample manner as if the default and notice thereby required had been made and given and the periods of time therein mentioned had only elapsed. The provisions contained in Clause 8 of the Fourth Schedule to the Property Law Act 1952 are hereby modified accordingly PROVIDED ALWAYS that this Clause shall be read subject to the provisions of Section 92 of that Act.

### **14. MORTGAGEE MAY REMEDY**

- 14.1 If the Mortgagor does not observe or perform any of its obligations under the Mortgage or any Loan Agreement then the Mortgagee, in addition to any of its other rights, power or remedies, may in its discretion pay all moneys and do all things which the Mortgagee thinks necessary or appropriate to remedy any default or to protect its charge under the Mortgage.
- 14.2 The Mortgagor will repay to the Mortgagee Upon Demand all money outlaid by the Mortgagee pursuant to clause 14.1 above, together with interest at the highest penalty rate specified in any Loan Agreement from the date upon which the moneys are paid by the Mortgagee until repayment to the Mortgagee (and, until repaid, the moneys outlaid and interest form part of the Secured Money).

### **15. UNIT TITLE**

If this is a Mortgage of a stratum estate:

- 15.1 "the Act" means the Unit Titles Act 1972.
- 15.2 The Mortgagor will duly and punctually pay the Body Corporate all monies payable to it by the Mortgagor, comply with all rules of the Body Corporate and take all reasonable steps to ensure that the Body Corporate observes and performs all of its obligations.
- 15.3 The Mortgagor will ensure that the Body Corporate at all times maintains and keeps in force replacement insurance in terms of Section 15(1)(b) of the Act, the Mortgagee's interest to be noted on the relevant policy.
- 15.4 The Mortgagor's voting rights under Section 41 of the Act (whether exercised at a meeting or by an entry in the Body Corporate minute book or otherwise) may be exercised by the Mortgagee. Where they are not exercised by the Mortgagee, they shall be exercised by the Mortgagor in accordance with any written directions given by the Mortgagee. The Mortgagor will not in any event vote on any resolution requiring a unanimous vote for its passing or any resolution altering the rules of the Body Corporate without the Mortgagee's prior written consent. The Mortgagor will give to the Mortgagee not less than 14 days prior notice of any meeting of the Body Corporate at which it is proposed to move any change to such rules.
- 15.5 The Mortgagor for the Consideration expressed in the Mortgage hereby irrevocably appoints the General Manager, Loan Manager, the Secretary and the Directors of the Mortgagee for the time being and any one or more of them the Mortgagor's attorney(s) on the Mortgagor's behalf and at the Mortgagor's cost to attend vote at or otherwise take part in all meetings of the Body Corporate, to sign proxies for voting thereat and to do any other thing in relation to the affairs of the Body Corporate which the Mortgagee may think fit in as full and ample a manner as if such attorney(s) were the absolute owner(s) of the estate hereby Mortgaged. The Mortgagor indemnifies any person acting in good faith in reliance on this Power of Attorney.

15.6 The Mortgagor shall give to the Mortgagee such information relating to the affairs of the Body Corporate as the Mortgagee shall reasonably require from time to time. Production of the Mortgage by the Mortgagee to the Secretary of the Body Corporate shall be sufficient authority for the Secretary to give the Mortgagee any information which the Mortgagor would be entitled to be given.

15.7 The Mortgagor will effect and maintain a Mortgage redemption policy under Section 39(1)(b) of the Act in an insurance office approved by the Mortgagee and paragraph 2 of the Fourth Schedule to the Property Law Act 1952 as varied by clause 10.8 shall apply to such insurance.

15.8 If the units subject to the Mortgage or any of them shall be destroyed or so damaged as to be uninhabitable the Secured Monies shall become at once due and payable and clause 5.1 shall apply. If the units or any of them shall be damaged but not so as to come uninhabitable the Mortgagee may make demand for payment of the Secured Monies to the extent of an amount equal to the difference between the value of the unit(s) immediately prior to such damage occurring and the value after the occurrence of such damage, such values to be as determined by a registered valuer appointed by the Mortgagee. The Mortgagor will permit the valuer to have access to the property for the purpose of the valuation.

**16. CROSS LEASE**

If this is a Mortgage of a unit held under cross-lease title (i.e. a title which comprises an undivided share as tenant in common in the fee simple estate in the Land on which the unit is erected together with a lease of that unit):

16.1 The Mortgagor will ensure that all covenants conditions and agreements contained or implied in each of the leases registered against the fee simple estate are observed and performed by the respective lessees and the lessors.

16.2 The Mortgagor will forthwith supply to the Mortgagee a copy of any notice given by or to the Mortgagor (whether or not together with other persons) pursuant to any of the leases and will not become a party to any arbitration without obtaining the Mortgagee's prior written approval of the terms of reference of such arbitration.

16.3 The Mortgagor for the Consideration expressed in the Mortgage hereby irrevocably appoints the General Manager, Loan Manager, the Secretary and the Directors for the time being of the Mortgagee and any one or more of them the Mortgagor's attorney(s) on the Mortgagor's behalf and at the Mortgagor's cost to execute any document or do any thing (including the conduct of arbitration) which the Mortgagor may be entitled or be required to execute or do whether as lessee or lessor or one of the lessors under any of the leases or for the better securing to the Mortgagee of the Secured Monies.

**17. LEASEHOLD**

If the Mortgagor holds the Land under a lease (hereinafter called "the Lease"):

17.1 The Mortgagor will pay the rent payable under the Lease and will perform and observe all covenants and conditions expressed or implied in the Lease and to be performed and observed by the lessee and will keep the Mortgagee indemnified against all actions, expenses and claims on account of any breach of this clause.

17.2 The Mortgagor will execute all documents and do all acts and things as shall be necessary or expedient to exercise any right of renewal contained in the Lease and to secure the grant and registration of a renewal or a renewed Lease. The Mortgagor will either deliver to the Mortgagee a valid and registrable Mortgage of any renewed Lease securing the monies hereby secured and being in such form and containing such covenants powers and provisions as the Mortgagee may reasonably require having regard to those contained in the Mortgage or will request the District Land Registrar pursuant to Section 117 of the Land Transfer Act 1952 to state in the Memorial of such new lease that it is in renewal or substitution for the Lease.

17.3 The Mortgagor for the Consideration expressed in the Mortgage hereby irrevocably appoints the General Manager, Loan Manager, the Secretary and the Directors for the time being of the Mortgagee and any one or more of them the Mortgagor's attorney(s) on the Mortgagor's behalf and at the Mortgagor's cost:

- (a) To make any enquiry of the Lessor concerning the payment of the rent the performance and observance of the covenants and conditions contained in and any other matter relating to the Lease.

- (b) To execute and do all documents and things necessary to apply for and obtain relief against forfeiture of the Lease or against any refusal of the Lessor to grant any renewal or renewed lease.
- (c) To execute and do all documents and things necessary to exercise any right of renewal or otherwise obtain a renewal or a renewed lease (whether or not at the same rent or for any similar term or upon the same or any other covenants conditions and provisions as the Lease).
- (d) To demand recover receive and give good receipts for any compensation damages or other monies which shall or may be payable if any person other than the Mortgagor becomes the purchaser at auction of any right to a lease of the Land or otherwise.
- (e) To execute and do any of the documents and things mentioned in clauses 17.1 and 17.2.

**18. ASSIGNMENT OF RENTAL**

- 18.1 The Mortgagee shall be entitled on behalf of the Mortgagor to collect and receive payment of all rental and any other moneys for the time being payable to the Mortgagor in respect of the Land. The Mortgagor will immediately upon being requested by the Mortgagee, execute all such documents and do all such things as the Mortgagee may require to enable the Mortgagee to collect and receive payment of all such rental and other moneys;
- 18.2 The Mortgagee shall have power to demand and recover all such rents and other moneys by action, distress or otherwise and to give effectual discharges for the same in the name of the Mortgagor or otherwise;
- 18.3 Production of the Mortgage by the Mortgagee to any lessee, tenant or other person liable for the payment of rents and other moneys assigned by the Mortgagor shall be sufficient authority for that person to pay such rents and other moneys to the Mortgagee and no such lessee, tenant or other person shall be concerned to enquire whether any event has happened to authorise the Mortgagee to require payment of such money to the Mortgagee;
- 18.4 The Mortgagee shall not be obliged to pay any money received by it in discharge of any outgoings affecting any part of the Land but shall be entitled to apply the same in and towards the payment of any of the Secured Monies;
- 18.5 The demand for receipt of rents and/or other moneys by the Mortgagee under this clause shall not be or be deemed to be an entry into possession of any part of the Land.

**19. COMPLETION OF IMPROVEMENTS**

- 19.1 If the Mortgagor shall at any time build or carry out work on any buildings, erections or other structures and works on the Land ("the Improvements") the following provisions shall apply:
  - (a) The Mortgagor will immediately commence and promptly complete the Improvements to the satisfaction of the Mortgagee, in accordance with plans and specifications approved by the Mortgagee for that purpose and will not make any deviation from the plans and specifications supplied to the Mortgagee without the prior consent of the Mortgagee;
  - (b) The Mortgagee shall not be obliged to advance any portion of the Secured Monies except in its sole discretion;
  - (c) The Mortgagee may call for any certificates, valuations or other documents or reports which the Mortgagee considers necessary or prudent for the purposes of this Clause; any such certificate, valuation, other document or report shall be obtained or arranged at the cost of the Mortgagor;
  - (d) If the Mortgagor shall fail to complete the Improvements, the Mortgagee may enter upon the Land and at the cost of the Mortgagor complete the Improvements. All and any such moneys expended by the Mortgagee shall bear interest at the highest penal rate of interest for the time being chargeable to the Mortgagor on the Secured Monies, pursuant to any Loan Agreement, and shall be deemed to form part of the Secured Monies and shall be payable Upon Demand;

- (e) The Mortgagor shall before commencing work obtain all building permits and/or building consents and any other planning approvals necessary for the carrying out of the work and if called upon by the Mortgagee to do so, produce a survey certificate that the proposed building be constructed entirely within the boundaries of the said Land.

**20. RIGHT OF INSPECTION**

- 20.1 The Mortgagee by its agents and servants shall be entitled at any time to enter onto the Land for the purposes of inspection of same.

**21. RECEIPT OF SECURED MONIES**

21. Pursuant to clause 56 of the Property Law Act 1952 this clause should be deemed to be a receipt by the Mortgagor of the Secured Money, and the Mortgagee shall be entitled, without enquiring further, to pay the Secured Monies to the solicitor for the Mortgagor upon production of the Mortgage by the solicitor to the Mortgagee.

**22. APPOINTMENT OF RECEIVER OF INCOME**

- 22.1 In addition to any other right, power or remedy of the Mortgagee herein expressed or implied, it shall be lawful for the Mortgagee, if any default is made by the Mortgagor or the Guarantor of any of the covenants set forth herein or in any other agreement made between the Mortgagor, the Guarantor, and the Mortgagee to appoint any person (including any employee of the Mortgagee if so permitted by law) to be a Receiver of the income of the Land or any part thereof. This power of appointment is subject always to Section 92 of the Property Law Act 1952 and the rights (if any) of any prior charge holder and to the provisions of any prior Mortgage or encumbrance.

- 22.2 Such Receiver may be appointed notwithstanding that the power of sale conferred hereby may not have become exercisable.

- 22.3 The Receiver shall be deemed to be the agent of the Mortgagor who shall be solely responsible for the Receiver's acts or defaults whether such acts or defaults shall be done or made in relation to the purposes herein mentioned or otherwise. Neither the Mortgagee nor any Receiver shall be liable to account as Mortgagee in possession or for anything other than actual receipts (notwithstanding that the Land or any part of it may have been disposed of pursuant to the provisions of the Mortgage) or be liable for any loss or realisation or for any accidents occurring in the operations carried on or for any negligence, default or omission for which a Mortgagee in possession might be liable.

- 22.4 No person paying money to or otherwise dealing with the Mortgagee or the Receiver shall be concerned to enquire whether any cause has happened to authorise the Mortgagee or the Receiver to act, or to enquire as to the proprietary or regularity of acts purporting or intended to be done in the exercise of the powers, rights, remedies or authorities, of the Mortgagee or the Receiver under the Mortgage or any collateral securities or otherwise.

- 22.5 The Receiver shall have the powers conferred on Receivers by statute or rule of law and all the powers conferred on the Mortgagee under the Mortgage.

- 22.6 The Receiver shall have power to demand and recover all the income of the property of which the Receiver is appointed Receiver by action, distress or otherwise in the name either of the Mortgagor or the Mortgagee to the full extent of the estate or interest which the Mortgagor could dispose of and to give effectual receipts accordingly for the same and to exercise any powers which may have been delegated to the Receiver by the Mortgagee contained or implied in the Mortgage.

- 22.7 The Receiver may be removed and a new Receiver may be appointed from time to time by the Mortgagee with power for the Mortgagee at any time to withdraw the appointment of a Receiver without prejudice to the power to appoint a further Receiver at any time.

- 22.8 Where more than one person is appointed as Receiver, then those persons may be appointed as Receiver jointly or severally and the persons appointed shall have the power of authority to act as Receiver according to the terms of their appointment.

- 22.9 The Receiver, if so directed in writing by the Mortgagee, shall insure and keep insured against loss or damage by fire or other causes as may be directed by the Mortgagee out of the money received by him any buildings, effects or property comprised in or situated on the Land (whether affixed to the Land or not) and shall, if so directed, out of such moneys effect any necessary repairs and maintenance to such buildings, effects or property or to the Land.
- 22.10 The Receiver shall be entitled to retain out of any moneys received by the Receiver actual expenses and such remuneration as may be approved by the Mortgagee.
- 22.11 In relation to the exercise of any of the Receiver's powers the Mortgagee may at the request of the Receiver advance and pay to the Receiver such moneys as it thinks fit and all moneys so advanced shall be deemed moneys advanced on account of the Mortgagor and form part of the Secured Money.
- 22.12 The Receiver shall be empowered to borrow and secure any money which may be required in order to more effectively carry on the business of the Mortgagor or otherwise realise any income accruing from the Land in the Mortgagee's interest.
- 22.13 The Receiver shall apply all money received by him as follows:-

First, in discharge of all taxes, rates and insurance premiums affecting the Land including any buildings, effects or property aforesaid.

Second, in payment of the Receiver's expenses and remuneration.

Third, in payment of the interest accruing due in respect of the moneys hereby secured.

Fourth, in or towards payment to the Mortgagee of the moneys hereby secured if so directed in writing by the Mortgagee.

Fifth, in paying all instalments of principal, interest or other moneys secured by any security in priority to the Mortgage.

Sixth, in payment of any moneys owing to any subsequent Mortgagees.

Seventh, in payment of any surplus or residue to the Mortgagor or any other person who, but for the appointment of the Receiver, would otherwise have been entitled thereto.

## **23. POWER OF ATTORNEY**

- 23.1 The Mortgagor for the Consideration expressed in the Mortgage hereby irrevocably appoints the Mortgagee, every Attorney of the Mortgagee and the General Manager or Loans Manager of the Mortgagee severally to be the Attorney of the Mortgagor to do and execute anything which the Mortgagor covenants or agrees to do or execute under the Mortgage and generally to do all such things as may be in the sole discretion of the Mortgagee or the Attorney appointed under this clause necessary or desirable in order to protect fully the interests of the Mortgagee under the Mortgage.
- 23.2 Nothing contained in this clause 23 shall make it obligatory on the part of the Mortgagee or any Attorney of the Mortgagee to exercise any of the powers hereby given or make the Mortgagee or any Attorney of the Mortgagee responsible for any loss arising from any omission or neglect to do so.

## **24. CHANGE IN SHAREHOLDERS**

- 24.1 Where the Mortgagor and/or Guarantor is a company, if after the date of the Mortgage;
- (a) any shares are issued to any person who is not currently a shareholder, or
  - (b) any of the rights attaching to any of the shares in the capital of the Mortgagor or Guarantor are altered, varied or modified or
  - (c) there occurs any change in the effective management or control of the Mortgagor or any Guarantor or
  - (d) where shares are transferred (whether in one transaction or a number of transactions or otherwise howsoever) so that more than ten per cent of the total shares change hands;
- such transfer or changes shall require the prior written consent of the Mortgagee and the Mortgagee may at the cost of the Mortgagor require the new shareholder or shareholders to enter into a Deed guaranteeing and indemnifying the Mortgagee. If such written consent is not obtained to the transfer or changes as set out above then the Mortgagor shall be deemed to be in default clause 5.1 shall apply (default clause).

**25. PRODUCE BOOKS OF ACCOUNTS**

- 25.1 The Mortgagor will, Upon Demand by the Mortgagee, produce to the Mortgagee or to any person named for that purpose by the Mortgagee, all accounts, financial statements, books of account and such other financial information relating to the affairs of the Mortgagor (or any of them) as the Mortgagee may require.
- 25.2 If the Mortgagor is in business in any capacity as a sole trader, partnership, private or public company or if the Mortgagor is providing security for any advances for such purposes, the Mortgagor or Guarantor will within four months after its usual balance date deliver to the Mortgagee a copy of the profit and loss account and balance sheet of the business and where applicable, a copy of the consolidated profit and loss account and balance sheet of the business and its subsidiaries prepared by an accountant approved by the Mortgagee, together with every document required to be annexed thereto in the case of a company by the Companies Act 1993.
- 25.3 If required by the Mortgagee (if the Mortgagor is a business, company or trading entity) the Mortgagor shall have its accounts and its subsidiary accounts audited at the times required above or at any other time reasonably required by the Mortgagee and references in this clause 25 to the profit and loss account and balance sheet of the company or business and subsidiary shall then be construed as references to audited accounts and balance sheets.
- 25.4 It shall be a default under the Mortgage if the Mortgagor does not provide the above information as requested by the Mortgagee within 10 working days of the date of the request.

**26. COLLATERAL SECURITIES**

- 26.1 Any moneys expressed to be secured by some other security given by the Mortgagor in favour of the Mortgagee, whether dated the same day as the Mortgage or at some other date, shall be deemed to be included in the Secured Monies and shall be deemed secured to the Mortgagee by the Mortgage.
- 26.2 The Mortgage shall be collateral with any other security given by any person to secure the Secured Moneys or any part of the same, and with all documents which evidence the terms of any loans, credits, advances and other banking accommodation, and shall also be collateral with all documents expressed to be collateral with the Mortgage whether in the Mortgage or in those other documents. All such securities shall be read and construed together, so that a default under any one such security shall constitute a default under all. The Mortgagee may at its option exercise its rights, powers and remedies under the Mortgage or under those other documents in the event of any default, either together or separately and in such order as it deems fit.
- 26.3 Any policy of life insurance held by or assigned to the Mortgagee in connection with the loan secured by the Mortgage shall be a security collateral to the Mortgage for all Secured Monies. The Mortgagor will make all payments and do all things required to keep any such policy in full force. All monies received by the Mortgagee under the policy shall be applied in reduction to the Secured Monies.

**27. NO RIGHT TO MARSHAL**

The Mortgagor shall not be entitled to marshal in respect of the Mortgage or any collateral security.

**28. PRIOR MORTGAGES**

The Mortgagor and/or Guarantor shall duly and punctually pay all principal, interest and other moneys secured by, and shall perform and observe all the covenants and agreements contained or implied in any Mortgage having priority to the Mortgage.

**29. CERTIFICATE AS TO AMOUNT OR FACT**

The Certificate of the Mortgagee as to any amount or fact which might reasonably be expected to be within the Mortgagee's knowledge shall be prima facie evidence of that amount or fact.

**30. INDEMNITY**

The Mortgagee shall be indemnified by the Mortgagor against any cost, expense, loss, liability, claim or demand sustained or incurred directly or indirectly in respect of any matter relating to the exercise or purported exercise of rights, powers or remedies relating to the Land or its use, and in any such case including any cost, loss, expense or liability consequent upon any mistake or error of judgment imposed by law.

**31. CONSUMER GUARANTEES ACT**

31.1 No provision of the Mortgage or any Loan Agreement is intended to, or will have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993, except to the extent as is permitted by that Act, and all provisions of the Mortgage and each Loan Agreement shall be modified to the extent necessary to give effect to that intention.

31.2 For the purposes of Section 43 of that Act, if:

- (a) The provision of Secured Monies is deemed to be a supply of goods or services within the meaning of the Act and
- (b) The Mortgagor is acquiring the Secured Monies for business purposes;

then the Consumer Guarantees Act shall not apply.

**32. MISCELLANEOUS PROVISIONS**

32.1 Nothing herein contained shall be held to merge, discharge, abate or prejudice any other security or securities now held or which may hereafter be held or taken by the Mortgagee for payment of any of the Secured Monies nor shall the Mortgage or any such other security affect any claim or demand which the Mortgagee has or may have or be entitled to make against any other person or persons whomsoever as surety or sureties for the Secured Monies or any part hereof or operate as a payment of such moneys until the same shall have been actually paid in cash.

32.2 Delay by the Mortgagee in exercising all or any of its rights, remedies and powers hereunder upon the breach of any covenant, condition or agreement contained or implied herein or in any Loan Agreement hereunder shall not operate as a waiver of any such breach or prevent the Mortgagee from at any time exercising all or any such rights, remedies or powers.

32.3 The Mortgagee need not produce any documents of title to any Land Registry Office or elsewhere without payment of all reasonable charges for so doing or whilst the Mortgagor is in default. This clause is subject to any contrary legislative requirement.

32.4 Upon it appearing to the Mortgagee that all Secured Monies have been paid the Mortgagee will deliver up all securities and security documents (including policies of life insurance) held on account of such monies and a discharge of the Mortgage.

**33. GUARANTEE**

33.1 In addition to any other guarantee given to the Mortgagee by the Guarantor, the Guarantor irrevocably and unconditionally guarantees to the Mortgagee the due and punctual payment by the Mortgagor of the Secured Monies and the due and punctual observance and performance by the Mortgagor of its obligations under the Mortgage and under any other agreement or Loan Agreement. The Guarantor will pay the Secured Monies to the Mortgagee whether or not demand has been made of the Mortgagor. If the Mortgagor defaults in the due and punctual observance or performance of any one or more of its obligations under the Mortgage or under any Loan Agreement the Guarantor will indemnify the Mortgagee in respect of any loss suffered or cost incurred by the Mortgagee directly or indirectly as a result of any default by the Mortgagor and shall pay to the Mortgagee Upon Demand a sum equal to the amount of such loss or cost.

33.2 If for any reason any Secured Monies cannot be recovered or is not recovered by the Mortgagee from the Guarantor then the Guarantor as a separate and additional liability under the Mortgage will fully indemnify the Mortgagee in respect of that Secured Monies and the Guarantor as a principal debtor will pay to the Mortgagee Upon Demand and in the manner specified in the demand a sum equal to the amount of that Secured Monies.

33.3 As between the Mortgagee and the Guarantor, the obligations of Guarantor are as a principal debtor and not merely as a surety, and those obligations are additional to and not in substitution for or collateral with any security or right which the Mortgagee may have in respect of the Secured Monies or any obligation of the Mortgagor to the Mortgagee.



# **MEMORANDUM No. 1996/4036**

Land Transfer Act 1952

## **MORTGAGE**

**All Obligations**

**Registered pursuant to Section 155A  
Land Transfer Act 1952**

**District Land Registrar**

(Abstract number/date

**Land Registry**  
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