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LOAN AND SECURITY DEED OF AGREEMENT AND DISCLOSURE OF TERMS AND GUARANTEE

This deed is made on the day and year shown before the signatures below BETWEEN Pacific Finance Limited (“the lender“ or “we”) AND the borrowers (“you”) described below

BACKGROUND

- A The lender has agreed to lend to you the initial unpaid balance and any subsequent advances shown in the disclosure statement below.
- B The borrowers (and any guarantors) who own the collateral (defined in “Meaning” paragraph 36 of the operative terms) have agreed to grant a security interest in that property to the lender and
- C The borrowers (and any guarantors) who own the land to be mortgaged have agreed to grant a mortgage over that land to the lender.

OBLIGATION

You acknowledge that you owe to the lender the initial unpaid balance set out in the disclosure statement. You promise to pay that amount and make the payments due under this agreement in the manner set out in the disclosure statement and operative terms of this agreement. You also promise to comply with (go along with, keep the rules of) the terms of this agreement.

DISCLOSURE STATEMENT FOR CONSUMER CREDIT CONTRACTS (other than revolving credit contracts)

Statement Date

BADate

Initial disclosure statement under section 17 of the Credit Contracts and Consumer Finance Act 2003 for consumer credit contracts other than revolving credit contracts.

IMPORTANT. This document sets out key information about your consumer credit contract. You should read it thoroughly. If you do not understand anything in this document you should seek independent advice. You should keep this disclosure statement and a copy of your credit contract in a safe place.

The law gives you a limited right to cancel the consumer credit contract. (See below for further details) Note that strict time limits apply.

FULL NAME AND ADDRESS OF LENDER This is the person providing you the credit.

You may send notices to the lender by: <ul style="list-style-type: none"> Writing to the lender at its postal address; or Sending a fax to the number specified (if any); or Sending an email to the address specified (if any). 	Name: Pacific Finance Limited Trading name: Pacific Finance Physical Address: 2018 Great North Rd, Avondale, Auckland 1026 Postal Address: P O Box 19560, Avondale, Auckland 1746 Fax: 09 8205372 Email:loans@pacificfinance.co.nz
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BORROWER, DETAILS

Full name (including middle names) B1Name
Residential Address: B1Address Email Address: B1Email Mobile phone number: B1Mobile
Full name (including middle names) B2Name
Residential Address: B2Address Email Address: B2Email Mobile phone number: B2Mobile

GUARANTOR DETAILS

Full name (including middle names) G1Name
Residential Address: G1Address Email Address: G1Email

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Mobile phone number: G1Mobile

CREDIT DETAILS

Initial Unpaid Balance / Total Advances

OpeningBalance

This is the amount you owe at the date of this statement (including any fees charged by the lender).

made up of:

OpeningTransactions

PAYMENTS You are required to make each payment of the amount specified and by the time specified.

Payments

Total amount of payments: BalancePayable

INTEREST

Annual interest rate

InterestRateAnnual. Your credit contract allows the lender to vary this rate – see paragraph 12 below of the Operative terms.

Total interest charges

This is the total amount of the interest charges payable under the contract:

TotalInterest

if we do not vary the interest rate

Method of charging interest

Interest charges are calculated by multiplying the unpaid balance at the end of the day by a daily interest rate. The daily interest rate is calculated by dividing the annual interest rate by 365. Interest is charged to your account weekly.

CREDIT FEES AND CHARGES

The following credit fee(s) and charge(s) (which are not included in the initial unpaid balance) are, or may become, payable under, or in connection with, the contract. Your credit contract may allow the lender to vary this/these fee(s) and charge(s).

- (i) Account Management fee \$6.73 per month as long as there is an unpaid balance.
 - (ii) Letter fee of \$10.00 is charged to you any time you ask for a statement of your account that we do not have to send you otherwise.
 - (iii) \$128 per hour fee if you wish to alter security or other terms of this agreement or if we have to deal with any third party about your debt or the security provided after the agreement begins or if you ask for a settlement figure for a certain date and you do not pay on that date.
 - (iv) If we use a solicitor to prepare any document for this loan, the fees charged by that solicitor
 - (v) \$450 Mortgage or caveat or discharge fee to provide any document we may register or provide to you to register or whatever we must pay for Land Information NZ and solicitors fees at the time if the payable figure is different from that shown.
 - (vi) \$75.00 Early full repayment administration fee if you prepay the unpaid balance in full. This is a fee for management work if you repay the unpaid balance early.
 - (vii) \$13.23 Fee for varying or discharging registration on the Personal property securities register or whatever is payable by the lender at the time if the payable figure is different from that shown.
 - (viii) The costs, expenses and other liabilities listed in clause 10d of the operative terms which arise when you are not in default.
 - (ix) Contract variation fee \$50.00 (if new contract not required) \$165.00 (if new contract required)
- Administration costs and fees payable on full prepayment are also disclosed under the full prepayment heading.

CONTINUING DISCLOSURE

The lender is required to provide you with regular statements. The statements will give you information about your account. Statements will be provided 6 monthly.

WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS

Security interest

This is secured credit. The lender has an interest in the property listed below to secure performance of your obligations under the contract, or the obligations of a guarantor under a guarantee, or the payment of money payable under the contract or guarantee, or any or all of them. If you fail to meet your commitments under the contract, then to the extent of the security interest the lender may be entitled to repossess and sell this property.

Description of security interest in Personal Property.

The security interest in the collateral is as defined in section 17 of the Personal Property Securities Act 1999 and it secures payment of all the unpaid balance and performance of all the collateral owner's obligations under this contract (or the guarantee as the case may be) to the extent of the value of the collateral.

Property which is or will be subject to a security interest

Personal Property – Collateral

- 1 **Motor Vehicles – complete if serial numbered goods consist of any motor vehicle(s) other than inventory:**
Chattel1A
 owned by B1Name5 and B2Name5
 together with any replacements for such vehicles

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2 Other goods (Describe as accurately as possible, including manufacturer's serial and part numbers if any)

Chattel2A

owned by B1Name6 and B2Name6

together with any replacement for such goods

If we sell collateral after we repossess it, and the net proceeds are not enough to repay what you owe us (the unpaid balance), you and any guarantor will owe us the difference.

Whoever owns the collateral (you or a co-borrower or a guarantor) may not give security over the collateral to any other person or company and, if the owner does so, the owner will be in breach of this agreement and we may repossess and sell the collateral.

Description of security interest in Land

The security interest is an all obligations mortgage of land and it secures payment of all the unpaid balance. It also secures the performance of all the landowner's obligations under this contract (or the guarantee as the case may be) to the extent of the value of the owner's interest in the land.

Property which is or will be subject to a security interest

Real Property - The Land to be Mortgaged

[Land1Details](#)

[Land2Details](#)

If the land is sold and the net proceeds are not enough to repay what you owe us (the unpaid balance) the borrower and any guarantor will owe us the difference and we may recover that amount from the borrower and any guarantor.

The owner of the land may not give security over the land (for example grant another mortgage) to any other person without our written consent and, if the owner does so, the owner will be in breach of this agreement and we may sell the land.

Default interest charges and default fees

In the event of a default in payment and while the default continues you must pay the default interest charges. In the event of a breach of the contract or on the enforcement of the contract, the default fees specified below are payable. Your credit contract may allow the lender to vary these fees and charges.

Default interest.

- 1 Default interest is 10.00% per annum more than the interest rate provided in the INTEREST section above, charged on any overdue instalment or other overdue amount. Default interest is charged from the time that you fall into financial default until you are no longer in financial default. It is calculated by multiplying the overdue instalment or overdue amount by the daily default interest rate. The daily default interest rate is calculated by dividing the annual default interest rate by 365. All default interest is debited to your account weekly.
- 2 If we accelerate payment (call up payment early) of the unpaid balance because you have defaulted, we will charge you default interest on any instalments or other amounts which are overdue for reasons other than the acceleration.
- 3 You must pay default interest after we obtain judgment against you as well as before judgment.

Default fees. You must continue to pay these after we obtain judgment against you.

- 1 Defaulted payment fee of \$17.20 charged when you miss a regular payment or do not pay it on time, putting the account into default. This fee covers time and expenses trying to contact you.
- 2 Payment dishonour fee \$22.00 charged when the bank reverses or dishonours a payment.
- 3 Broken arrangement fee \$20.00 if you break any arrangement you enter into with us when you are already in arrears with your regular payments.
- 4 Reminder Letter Fee of \$15.00 any time we write to you or to anyone representing you about a missed payment(s) or about any other default you commit under this agreement or about ongoing default.
- 5 Default time fee if any staff member of ours spends time on the administration of your account when you are in default. "Administration" in this case includes all work on our recovery of the unpaid balance but which is not charged to you otherwise. The default time fee may be charged at \$128.00 per hour and will include time our staff spend outside our offices. This means if our staff have to spend time, for example, trying to find you or travelling to see you or talking to you or to debt collectors or lawyers we may charge you that hourly rate.
- 6 Mileage fee if a staff member of ours travels to visit you or any guarantor or to attend any meeting or any court or tribunal. Mileage may be charged at the current rate recommended by the Automobile Association for a 2 litre petrol engine motor car.
- 7 Field Visit \$200.00
- 8 Local Telephone Call Fee of \$4.00 any time we have to telephone you about a missed payment(s) or about any other default you commit under this agreement.
- 9 Toll Telephone Call Fee of \$6.00 any time we have to telephone you on a mobile number or any STD code about a missed payment(s) or about any other default you commit under this agreement.
- 10 \$1.00 Text fee if we text you or to anyone representing you about missed payment(s) or about any other default you commit under this agreement or about ongoing default
- 11 \$15.00 – to send a repossession warning notice

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- 12 \$55.00 – to issue a warrant to a repossession agent to seize goods and to issue any other legally required documents
- 13 Repossession costs \$230.00 plus costs of driver, tow truck and other costs to carry out the repossession.
- 14 \$100.00 – to send a post repossession notice
- 15 Storage fees \$11.50 per day
- 16 Redelivery fee \$69.00.
- 17 The costs to us of Court or Disputes Tribunal proceedings and repossession and sale of collateral and the sale of the land to be mortgaged. These include filing fees actual solicitors fees and disbursements (assessed on a solicitor and own client basis) and debt collection agency commissions, fees and disbursements. Additionally you must pay us the costs and disbursements of repossession agents, valuers, auctioneers, process servers and any of our agents in enforcing this agreement. We will also charge you for any dealings (we have while you are in default) with other persons with respect to the debt or any security you (may) provide. In addition we will charge you the cost of doing anything which you have failed to do and which it has done. You will also be charged for the costs expenses and other liabilities listed in clause 10d below of the "Operative terms" arising out of your default.

FULL PREPAYMENT

We do not charge a fee for our loss on full prepayment.

We will charge you administrative Costs/fees of \$75.00 for our staff's work associated with receiving the request for and processing the full prepayment and in discharging or releasing any security. This may change if you ask for a full prepayment figure more than once. (Amounts we have to pay for security release are additional).

RIGHT TO CANCEL

You are entitled to cancel the consumer credit contract by giving notice to the lender.

Time limits for cancellation

*You must give notice that you intend to cancel a contract within 5 working days of the statement date on the front of this document.

Saturdays, Sundays, and national public holidays are not counted as working days.

How to cancel

To cancel you must give the lender written notice that you intend to cancel a contract by –

- * giving notice to the lender or an employee or agent of the lender; or
- * posting the notice to the lender or an agent of the lender; or
- * emailing the notice to the lender's email address (if specified on the front of this disclosure statement); or
- * sending the notice to the lender's fax number (if specified on the front of this disclosure statement).

You must also return to the lender any advance and any other property received by you under the contract.

What you may have to pay if you cancel

If you cancel the contract the lender can charge you

- a. The amount of any reasonable expenses the lender had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc) and
- b. Interest for the period from the day you received the advance until the day you repay the advance.

WHAT TO DO IF YOU SUFFER UNFORESEEN HARDSHIP

If you are unable reasonably to keep up your payments or other obligations because of illness, injury, loss of employment, or the end of a relationship or other reasonable cause you may be able to apply to the creditor for a hardship variation.

To apply for a hardship variation, you need to:

- a. make an application in writing; and
- b. explain your reasons(s) for the application; and
- c. request one of the following:
 - an extension of the term of the contract (which will reduce the amount of each payment due under the contract); or
 - postponement of the dates on which payments are due under the contract (specify the period for which you want this to apply; or
 - both of the above; and
- d. give the application to the lender.

Do this as soon as possible. If you leave it too long, the lender may not have to consider your application. Please note also that you may not make an application if, when you entered the consumer credit contract, the illness, injury, loss of employment, end of relationship or other reasonable cause was reasonably foreseeable to you.

DISPUTE RESOLUTION*

Name of dispute resolution scheme: Financial Services Complaints Ltd

It is free to make a complaint to this independent dispute resolution scheme. The scheme can help you to resolve any disagreements that you have with the lender.

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Contact details of dispute resolution scheme:
 Phone: (04) 472 3725
 Website: www.fscl.org.nz
 Business address: Level 4, 101 Lambton Quay, Wellington

REGISTRATION ON FINANCIAL SERVICE PROVIDER REGISTER

Creditor registration name: Pacific Finance Ltd
 Registration number:16481

I have received a copy of this disclosure statement and the operative terms and if I am the guarantor I have received a copy of the guarantee as well. I agree as set out in the disclosure statement and the operative terms and if I am the guarantor, I agree to the terms of the guarantee as well.

Signature		Signature	
Borrower	B1Name2	Borrower	B2Name2
Signature		Signature	
Guarantor	G1Name3	Guarantor	G2Name3
Date	BADate2	Date	BADate3

In the presence of witness:

In the presence of witness:

Signature		Signature	
Name	ManagerName1	Name	ManagerName2
Occupation	ManagerJobTitle1	Occupation	ManagerJobTitle2
Address	Auckland	Address	Auckland

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Operative terms

You the borrowers acknowledge the debt to the lender of the initial unpaid balance and agree:

1 Words of example or inclusion are not words of limitation or exclusion.

In this agreement we sometimes give an example of how a rule or statement may apply or an example of a possible meaning of a word. Our giving of that example does not mean that the rule or statement or word has to be interpreted or explained in the same manner as is the example. If we say a word includes a meaning, that word may have other meanings as well.

2 You give a security interest in collateral you own

If you own any collateral (see paragraph 36: **Meaning**) then this paragraph 2 applies to you

- a. You grant to the lender a security interest over that collateral. That means your goods (such as a motor car) and other personal property shown as collateral are security for payment of the unpaid balance. You are charging them with the money you owe.
- b. The security interests are to secure payment to the lender of the unpaid balance and also to secure your performance of all other terms of this agreement.
- c. You promise us that nobody else has any security interest in the collateral and nobody else owns it unless you have told the lender in writing before you signed this agreement. We may accelerate payment of the unpaid balance if that is not true.
- d. You must not grant any security interest over the collateral to anybody else and we may accelerate payment of the unpaid balance if you do so.

3 Agreement to mortgage land.

There may be a description of land in the **"WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS"**

Real Property – The land to be mortgaged section of the disclosure statement. If there is a description and you own any of that land this paragraph 3 applies to you

- a. You must sign in our favour and at your cost a registrable mortgage over that land.
- b. **If you default the lender may sell your land.** The mortgage of the land is to secure payment of the unpaid balance to us and also to secure the performance of all other terms of this agreement and of any associated loan agreement. If you do not make any payment when it is due and payable or if you fail to do other things you must do under this agreement, the lender may sell the land to pay the unpaid balance.
- c. The mortgage shall be in an all obligations form published by the Auckland District Law Society Incorporated so as to incorporate memorandum number 2015/4326 or, at the lender's option, any form to the same or similar effect more recently published by the Auckland District Law Society Incorporated. The terms of that memorandum shall be incorporated into this agreement.
- d. The stated priority limit for the purposes of section 92(1) of the Property Law Act 2007 shall be (a) twice the total amount of payments shown in the PAYMENTS section of the disclosure statement plus interest or (b) twice the total advances plus \$50,000 plus interest whichever is the greater. If you grant a mortgage to someone else after we register our mortgage, our mortgage will have priority over that later mortgage up to the larger amount of (a) and (b).
- e. You must not mortgage your land any further without our written consent and if you do we may accelerate payment of the unpaid balance.
- f. You charge your land as set out in this paragraph 3.

4 You give the lender your power of attorney.

You irrevocably appoint the lender and any one manager or director of the lender separately to be your attorney so that:

- a. The attorney may do anything which you agree to do and
- b. The attorney may do anything and to sign any document which the attorney thinks helpful to ensure we are paid the unpaid balance and otherwise to protect our interests under this agreement. For example, the attorney may sign any document on your behalf so as to:
 - (i) grant and register a mortgage under the Land Transfer Act 2017, if you have agreed to mortgage land
- c. This power of attorney shall continue until the unpaid balance has been paid to us in full and continues after judgment. That means the attorney may continue to sign on your behalf until all the unpaid balance is paid even if we have judgment against you.
- d. You ratify anything done by an attorney under this power. In advance you confirm everything the attorney does.
- e. You further indemnify any person acting in reliance upon the power. If somebody makes a claim against an attorney over something the attorney does as your attorney, you must compensate the attorney for the amount of that claim.

5 How the lender gives you documents and tells you anything.

- a. Subject to sections 352 to 359 of the Property Law Act 2007 (which create some rules for telling borrowers information about collateral goods which are not consumer goods or about land subject to a mortgage) if we wish to serve any legal paper on you – if we wish to give anything to you in writing – we may do so in any of the ways set out in section 83ZQ of the Credit Contracts and Consumer Finance Act and that section will apply to such service.
- b. For any disclosure in relation to this agreement we may send it to you by email or provide a link to our website.
- c. In addition, a legal paper will be sufficiently served or given if it is:
 - (i) handed to any person who appears to live at any home address of any borrower or who appears to live at the address of any land to be mortgaged or:
 - (ii) attached to an outside door at either address.
- d. Further, if your address is a flat or apartment or room (your flat) in a building and if we are unable to get into the building or get to your flat because of the security system of the building or for some other reason, then a legal paper will be sufficiently served or given to you if it is posted at an outside letterbox for your flat.
- e. If there is no such letterbox, a legal paper will be sufficiently served or given to you if it is clearly addressed to you and attached to what appears to be the main outside door to the building for your flat or if the legal paper is given to any building manager or receptionist for the building and the manager or receptionist is asked to give it to you.
- f. Further,
 - (i) if you have given an email address or a mobile phone number at any time or
 - (ii) if you have a public address, including an internet social media address or an address at any other internet communication system or talking-place (for example, Facebook or Skype),

that address or number shall be an information system specified by you for the purpose of service and general communication although we cannot give you a repossession warning notice or a post-repossession notice in this manner. That means we may communicate with you in any way that we can on the Internet.

6 You are not released from liability just because somebody else is.

Somebody else may be a borrower under this agreement as well as you or is a guarantor under a guarantee. If that person is found not to be liable for any reason, that reason does not release you from being liable to pay or perform your obligations.

7 Everything you have told the lender must be true.

You promise that all information provided by you or on your behalf to enable us to decide whether or not to lend to you is true and correct and if it is not true and correct we may accelerate payment of the unpaid balance of the loan and you must pay forthwith (straight away) on such demand.

8 New Zealand law applies.

This agreement is governed by New Zealand law and only New Zealand courts tribunals and Dispute Resolution Providers may rule on any disputes.

9 You must make all payments in full when due.

You must pay all amounts shown in the PAYMENTS schedule of the disclosure statement when they are due.

- a. You must make all payments without any deduction or withholding for any purpose whether by way of set-off counter-claim or otherwise and in such manner as we require. That means if you believe we owe you a debt of money or if you have any sort of claim against us, you must not take off any part of that debt or any of the amount you claim we owe you from your payment of any instalment or other amount under this agreement. Also we may tell you how you must pay us.
- b. If we require, you must allow us to directly debit your bank account or you must set up automatic payments. We may also use any direct debit authority to pay ourselves any amount you owe us.
- c. If you make any payment(s) which is not in accordance with the schedule of payments in the "PAYMENTS" section of the disclosure statement we may credit the payment(s) in accordance with the schedule.

10 You must pay the lender all interest (including default interest) and credit fees and default fees.

You must pay to us as soon as we ask or when they are otherwise due and in any event we may charge against your account with us:

- a. the credit fees shown in the **"CREDIT FEES AND CHARGES"** section of the disclosure statement and
- b. any early repayment fee provided for in the **FULL PREPAYMENT** section of the disclosure statement and any part repayment fee charged and

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- c. all of the default fees and default interest shown in the **“WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS - default interest charges and default fees”** section of the disclosure statement and
- d. all of our actual costs which we may be suffer or have to pay in connection with:
 - (i) Any further loan application, credit and security checks and the work we do to consider that application. If you apply for a further loan from us we may charge you the cost of dealing with your application.
 - (ii) Any variation and release of this agreement or any Personal Property Securities Act financing statement or Land Transfer Act registration in relation to this agreement not provided for in the disclosure. For example if you ask us for to agree to your selling a collateral motor car and replacing it with another, we may charge you the cost of our dealing with it.
 - (iii) Any dealing we have with any other person who has (or claims to have) any interest (whether registered or not) in any collateral or in the land to be mortgaged. For example somebody might claim to have a security interest in a motor car you provide as collateral and you would have to pay us the cost of dealing with him.
 - (iv) Any dealing with any of you or with any guarantor about the agreement. That will include any loan settlement or proposed prepayment (repaying all or some of the unpaid balance in advance) that does not proceed and if you are in default, it will also include the cost of any dispute.
 - (v) If you are in default the transfer of the security interest (in the collateral) of any other secured party to us or our security interest to another secured party.
 - (vi) Anything we decide to do in order to enforce this agreement in any way or to protect our rights under it. That may include our going to court or the Dispute Tribunal and our instructing solicitors and debt-collectors.
 - (vii) Our doing anything you should have done but you have not done
 - (viii) If you (or any person on your behalf) make a demand under section 162 of the PPSA without justification, our obtaining of an order under section 167 of that Act or, if the demand is withdrawn, the lender's and its solicitors' work towards obtaining such an order. Section 162 allows you to demand that we change or remove the financing statement that shows we have a registered security interest in collateral. If you wrongly demand that we change or remove the statement, we will charge you the cost of going to court to protect it. and you agree that amounts referred to in this clause 10 will become part of the unpaid balance and that they are contractual damages if they become chargeable to you as a result of your default under this agreement. This means that you agree to pay the costs in this paragraph and you may not argue about them as long as the lender proves the amounts.

11 Our costs referred to in paragraph 10 include expenses and any other liabilities we do not now know about. These include legal expenses on a solicitor and own client and on a full indemnity basis. That last sentence means that we may recover from you the full costs which our own lawyers charge to us if we instruct a lawyer as part of enforcing this agreement against you.

12 The lender may vary interest and fees. We may from time to time change the annual interest rate, default interest rate, credit fees and default fees payable under this agreement so they go up or down. You must pay such changed interest rates and changed fees.

- a. If we are passing on the changed costs of a third party supplier (such as a solicitor or a credit reporter or other outside contractor) to you we will tell you as soon as we wish to pass on those costs to you and we will tell you when you must pay.
- b. If we are passing on our internal costs (such as make up our account management or administration fees or default fees):
 - (i) In each case, we will give you not less than a month's notice of any such change and any increase or decrease in your regular payment and the date when any increased or decreased payments begin.
 - (ii) From that date you must pay the changed amount.
- c. No increase will be backdated.
- d. Any interest rate increase shall be proportional to the increase in our cost of funds or in the costs which we may not recover as credit or default fees. Any credit or default fee increase will be proportional to the cost basis of the fee. For example, if our costs go up 5% we would not increase credit fees by more than 5%.

13 Default Interest and Default fees.

- a. If you are in financial default you must pay us default interest on any overdue instalment or other overdue amount at the rate shown in the disclosure statement. You must pay default interest from the date you fall into financial default until you are no longer in financial default. However we will not charge default interest on any part of the unpaid balance after we have accelerated payment of that part unless payment of that part has fallen due by the time of the charge without the acceleration.
 - b. If you are in any default at all you must pay default fees. You must pay default fees from when you fall into default until you cease that default.
 - c. We may debit all default interest and default fees as set out in the **“Default interest charges and default fees”** section of the disclosure statement and they will become part of the unpaid balance. You must continue to pay default interest and default fees (including the cost of any court action or Disputes Tribunal claim) after judgment against you.
 - d. Your obligation to pay ordinary and default interest and credit and default fees is subject to section 83M of the Credit Contracts and Consumer Finance Act which prevents us from charging costs or interest on any part of the unpaid balance after we have sold consumer goods collateral
- 14** Subject to section 119 and 128 of the Property Law Act 2007 (which in some cases requires a legal document to be sent about collateral goods which are not consumer goods or about the land to be mortgaged) the lender may accelerate repayment of the loan and require you to pay the unpaid balance to the lender straight away (forthwith) if:
- a. Any goods included in the collateral are at risk.
 - b. You breach any of the paragraphs of these Operative terms which provide that we may accelerate payment if you default under that paragraph
 - c. You fail to pay any money for 5 working days after it is due or
 - d. You continue any other default for 9 working days after the posting of any notice of that default to you (or 5 working days if such notice is sent by electronic means).

We may call up that money even although the time for payment has not yet been reached.

15 It is your job to know what you owe the lender from time to time. We must disclose (give) information to you from time to time. In addition to that, it is your responsibility to find out from us the amount of any default interest and default fee or credit fees you may have to pay from time to time and to pay them. For example, if you miss paying a regular instalment or if you do not pay some other money when it is due, default interest or default fees may be debited.

16 If you disappear time will not run on your debt until we locate you again in New Zealand. Pursuant to section 41 of the Limitation Act 2010, if you change your physical address without notifying us and:

- a. you are then in default or subsequently fall into default and
 - (i) we are unable to locate you or
 - (ii) you live (whether permanently or not) in any other country, and
- b. we subsequently locate you in New Zealand the limitation period shall begin on the date we locate you in New Zealand to the effect that that date will be:
- c. the start date (under section 16(1) of the Limitation Act) for any claim we may make against you for interest accrued during the period from the time you change your address or leave New Zealand (whichever is the earlier if both apply) and
- d. deemed to be the date of the act or omission on which the claim is based (under section 11 of the Limitation Act) with respect to default in repaying any principal repayments or parts of the unpaid balance which have fallen due from the time you change your address or leave New Zealand (whichever is the earlier if both apply)

(WHAT DOES PARAGRAPH 16 MEAN? Paragraph 16 of these operative terms is intended to prevent you from taking advantage of a gap in time in order not to pay. The Limitation Act states that generally if we do not sue you for unpaid interest or unpaid principal for 6 years after the interest or the principal amount falls due, then we lose our right to sue you for the debt. Section 41 allows us to agree that the 6 years does not run until another date. In this case, if you disappear and we cannot locate you but we find you again in New Zealand the six years will run from the time we locate you here.)

17 The lender may set-off any debt to you. We may reduce any amount we owe you by any amount that you owe us.

18 This agreement secures future advances. If you borrow money from us after you sign this agreement we will still have a security interest in the collateral and a mortgage of any land to be mortgaged. The collateral and land will remain security for the extra money you borrow even if you have repaid money we lent you earlier. The loan of more money will be on the

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same terms as those of this agreement unless we make changes in writing when we lend you the extra money.

19 You may repay your loan early. You may repay the unpaid balance of your loan in full before it is due. However you must also pay us

- a. the administrative costs of the full prepayment or
- b. a charge equal to our average administrative costs of the full prepayment.

20 You must have a telephone where we may contact you. You must maintain (keep) a landline or mobile telephone connection or subscription as the case may be. If for any reason we cannot speak to you directly at the latest telephone number provided by you (whether landline or cellular), you agree that we may:

- a. advise any person who answers **any** telephone number we have for you
 - (i) who we are and that we are trying to talk to you and
 - (ii) that we wish you to contact us and
- b. leave messages with that person

If you breach this paragraph we may accelerate payment of the unpaid balance.

21 You must always keep us up to date with your name, home and email address and phone numbers. You must not change your name, physical residential (home) address or email address, or your landline or cellular telephone number without first giving us two working days written notice of your intention to do so. You must at the same time provide us with the replacement name, home or email address or landline or cellular telephone number. If you breach this paragraph we may accelerate payment of the unpaid balance.

22 You may not impose any part payment settlement on us and you must not attempt to do so. We are not bound to accept any amount in settlement or partial settlement of an obligation to pay a greater sum unless we have first agreed in writing to do so. We may use the payment to reduce your unpaid balance. That will apply even if you tell us in advance that we may only accept the payment you are making if it is in such settlement. You must not try to compel us to settle for less than you owe in such a way and we may accelerate payment of the unpaid balance if you do.

23 Only written changes to this agreement are binding and this is the complete agreement. This is all of the agreement between you and us. There are no other terms. We are not bound by any change to this agreement unless it is in writing and signed by one of our staff. We may enforce any of your obligations at any time, even if we have previously delayed enforcement, unless we tell you differently in writing. If you believe we have agreed not to enforce in some way, you must show that we have specifically (explicitly, precisely) agreed to that in writing. If we agree once not to enforce an obligation, it does not mean we will agree again or continuously unless we tell you so in writing. If we agree not to enforce one obligation, it does not mean we agree not to enforce another.

Security Interest in Collateral and Mortgage of land.

24 How you must store and care for and use collateral goods and protect the lender's interest in them. We may accelerate payment of the unpaid balance if you breach this paragraph.

- a. You must keep any collateral which is goods you own at your home address above or at the most recent address provided by you under clause 21.
- b. You must obey any laws about owning and using collateral goods and you must not use them in any dangerous or illegal activity nor for any purpose for which they are not intended.
- c. You must make sure that any collateral motor vehicle at all times is registered and not only has a warrant of fitness but is in a condition that will enable a warrant of fitness to be issued for it. You must make sure the vehicle is always able to get a warrant of fitness.
- d. You must not use (or allow to be used) any collateral motor vehicle or motor boat for motor sport activity such as racing, rallying, speed or time trials.
- e. You must not
 - (i) drive any collateral motor vehicle when
 - 1 you do not hold a driver's license or
 - 2 you are disqualified from driving or
 - 3 you have a breath or blood alcohol level beyond any legal limit nor
 - (ii) allow any other person to drive when unlicensed or disqualified or with illegal breath or blood alcohol level
- f. You must not
 - (i) do anything or allow anything which may damage, weaken or challenge our security interest in collateral or any registration of that collateral on the Personal Property Securities Register.

- (ii) make any unjustified application under section 162 of the PPSA. (See paragraph 10d(viii))

- (iii) grant any other security interest over collateral nor allow any workman's lien to be created over it nor dispose of nor allow the disposal of collateral by sale or gift or lease or in any other way nor cause nor allow collateral to be taken out of the possession of the borrower who owns it, nor destroyed, damaged, endangered, disassembled, removed from the place where you are required to keep it nor concealed from the lender. (See meaning of "at risk" in paragraph 36)

- (iv) obtain any personalised registration plate on any collateral motor vehicle nor otherwise change or remove any collateral goods part number or serial number unless we first agree in writing. If you do or allow any of these things you must tell us straight away in writing.

- g. You must also care for and maintain collateral goods in good condition from the time you sign this agreement. If any collateral is a motor vehicle you must repair (fix up) damage to panels, bumpers, lights, windows and other outside and inside surfaces and to paint. This means you must look after any collateral goods properly and if they are a motor vehicle you must fix up any damage to those parts of the motor vehicle inside and out, including painting.

25 The lender may inspect any collateral goods on giving 24 hours written notice. We may come and inspect (look at) collateral goods if we tell you 24 hours in advance. You must show the goods to us at your home or at the other place you have told us you are keeping them. If collateral goods are at risk we do not have to tell you in advance and we may enter any place where we believe the goods may be to look for and inspect them.

If we do that and we cannot find goods, we may break in to look for them and we do not have to pay you compensation.

26 Replacement goods become part of the collateral. Any replacement for collateral goods shall become part of the collateral. You must tell us about any replacement as soon as you obtain it and you must describe it to us and also give us any serial numbers and part numbers on it so that we know about it. If you do not tell us about any replacement, we may accelerate payment of the unpaid balance.

27 You must insure the collateral and any buildings or improvements which are mortgaged. If you breach this paragraph we may accelerate payment of the unpaid balance.

- a. You must insure or arrange the insurance of:
 - (i) the collateral which is goods to their full insurable value and
 - (ii) any buildings or improvements on the land to be mortgaged for full replacement value if possible but otherwise for full insurable value. and keep them insured against fire, accident, theft, flood, earthquake and storm and any other risks as we may require. This means that you must insure against these things and you must insure for as much as the insurance company will allow you to.
- b. The insurance policy must be names of the lender (us) and in the names of the owners for the lender's and the owners' respective interests. That means:
 - (i) you must make sure with the insurer that any insurance of collateral goods shows that we have a security interest in the goods.
 - (ii) Also you must make sure with the insurer that the policy shows that we are a mortgagee of any land over which you have agreed to grant a mortgage.
- c. The insurance policy must say that all payments, in the event of a claim, will be made to us.
- d. Insurance must be with an insurer licensed under the Insurance (Prudential Supervision) Act 2010 or any Act in replacement.
- e. If we ask you to, you must insure with a company that we name but otherwise (subject to (d)) you may insure with whoever you wish.
- f. You must not do or allow anything which may cause the insurer to refuse payment. For example, you must tell the truth when you apply for the insurance and when you make the claim.
- g. You must provide us with receipts for the insurance premiums and an insurance company certificate of the insurance if we ask you for them.
- h. We may use the insurance money to repay of the unpaid balance even though it or part of it has not yet fallen due.

28 Lender may remedy your default at your cost. If you fail to do anything which you must do or if you do anything you must not do, we may do or pay anything to remedy the default. If we do that we may add the cost of doing or paying to the unpaid balance. That includes work that we may carry out on goods we have repossessed so that they are more saleable or to carry out repairs and maintenance which you should have carried out

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29 This agreement may be enforced by an assignee. We may give or assign our rights under this agreement to somebody else ("assignee"). If we do that, this agreement (including the power of attorney) will apply to the assignee as if the assignee were the lender. The assignee may enforce this agreement against you. You have no right to assign rights under this agreement.

30 The Lender may repossess and sell personal property on default. If you default under this agreement:

- a. Subject to any requirement to give you notice, we may repossess your collateral. When we have the right to repossess:
 - (i) We may enter any premises (any land) to look for and repossess collateral. We may break into a building or enclosure (such as a place with a fence or wall or hedge round it) where we may reasonably believe collateral may be even if you are not present.
 - (ii) You must not do anything to prevent or hinder us from repossessing goods. You must keep out of the way when we are repossessing goods.
 - (iii) We may move or use your goods to gain access to or remove collateral;
 - (iv) If your property is damaged when we repossess or try to repossess goods, we do not have to pay you compensation (the cost of the damage).
 - (v) If the property of someone else is damaged when we repossess or try to repossess goods, we do not have to pay you compensation and if we must pay that person, we may recover that compensation from you. For example, if you hide collateral goods in a building and we break down a door to find them and to repossess them you must pay the cost of any repair of the door, even if the door belongs to someone else.
 - (vi) We may sell the collateral by auction or by private sale or otherwise. Subject to any law, we may buy the collateral ourselves, give credit and allow payment over time as if we were the owner and nobody else had any rights.
 - (vii) You must do everything necessary to help with the sale and that includes signing any documents needed or helpful or desirable.
- b. When we sell the collateral:
 - (i) Any buyer of the collateral need show only our receipt to prove he has paid the sale price and
 - (ii) The buyer need not investigate or question the propriety or regularity of the sale to the buyer and the buyer is not to be affected by any notice express or constructive that such sale is improper or irregular. This means that the buyer is not affected and does not need to worry if he learns anything about the sale process (how we sold) or our right to sell and he does not need to ask.

31 You waive your right to a verification statement. You waive your right to receive a verification statement following registration of any financing statement or financing change statement.

32 The lender may pay a seller or another lender or a creditor directly with borrowed money. If you are borrowing money from us in order to buy property, whether or not we are to take a security interest over that property, or to repay a loan or to pay any debt

- a. We may pay the money directly to the seller of that property or to the other lender or to the creditor and
- b. We may impose any conditions on the payment or on the use of the money that we believe are necessary to protect our security interest or to comply with responsible lending requirements.

33 You must pay the lender any money it receives from somebody else which it has to repay. If

- a. somebody other than you pays any amount due under this agreement and
- b. that other person becomes bankrupt or goes into liquidation and
- c. the Official Assignee ("OA") cancels the payment as an insolvent transaction under section 194 of the Insolvency Act 2006 or the liquidator sets aside the payment as an insolvent transaction under section 292 of the Companies Act 1993 or the transaction is otherwise set aside as a voidable preference, then

We may repay that sum to the OA or the liquidator and upon demand you must pay us that sum plus interest from the date we pay the OA or the liquidator. You must pay us even if you believe that we should have tried to avoid paying the money back or disputed payment in some way. This means

that, for example, if you arrange for a friend to make payments to us on your behalf and your friend goes bankrupt, the OA may possibly claim back from us the payments your friend has made going back for up to two years before the bankruptcy. If that happens we will be able to recover the total of those payments from you. We do not have to argue with the OA or a liquidator about whether or not we should repay the money.

34 All your obligations are joint and several. If another borrower signs this agreement, we may recover money due and payable from any of you or from all of you. We may enforce this agreement in other ways against any of you or against all of you.

35 Guarantor is bound. Any person(s) named as guarantor(s) in the disclosure statement guarantee(s) the borrower's compliance with this agreement, agree(s) to be bound by the guarantee and agree(s) to sign the guarantee.

Explanations and Meaning

36 Meaning – General

- a. The expression "Accelerate" means call up or ask for payment of an amount before it would otherwise be due under this agreement. If we accelerate payment you must pay straight away. "At risk" has the meaning set out in sub-paragraph (b) of this paragraph 36. "Borrowers" or "you" means the person(s) and co-borrower(s) if any in the disclosure statement and includes their/your executors, administrators and successors in title. "Collateral" means the goods and any other personal property described in the disclosure statement in the box headed "**WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS Security Interest**" "Personal Property – Collateral" section and includes an interest in such goods or other personal property. "Default" under this agreement means that you do something you have agreed not to do or you fail to do something you have agreed are required to do. "Financial default" means that you have failed to pay an instalment or other amount when due. "Guarantor" means the person shown as guarantor in this agreement and the associated guarantee and includes his or her executors, administrators and successors in title. "Instalment" means a payment you must make regularly, usually on the same day of each week, fortnight or month. "Land to be mortgaged" means the land shown in the disclosure statement in the box headed "**WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS**", "Real Property - The Land to be Mortgaged" section. "Legal paper" means a document or a notice or other written paperwork about this agreement. "Liability" means something you must to or an amount you must pay. If you are liable to do something or pay anything, it means you are responsible for doing or paying – you must do the thing or pay the amount. "Motor Vehicle" has the meaning given in section 57 of the PPSA. "Obligation" means something that you must do or that you must not do. "PPSA" is the Personal Property Securities Act 1999. "Principal" is the initial unpaid balance before interest is charged and it is the unpaid balance on which interest is charged. When we charge interest and fees to your account they become part of principal. "Unpaid balance" means the amount owing under this agreement at a particular time, being the difference between all amounts credited and all amounts debited to you under this agreement at that time. Any expression not described or defined in this agreement shall have the meaning (if any) given to it in the Credit Contracts and Consumer Finance Act 2003 unless the context requires otherwise. Unless the context prevents it, the singular shall include the plural and vice versa and one gender includes others to the effect that, for example, "he" includes "they", "she" and "it".
- b. The expression "at risk" has same meaning as defined in section 83E(2) of the Credit Contracts and Consumer Finance Act 2003. If goods are collateral you must not
 - I. destroy them (break them up),
 - II. damage them (spoil or harm them),
 - III. endanger them (put them in danger),
 - IV. disassemble them (take them to pieces),
 - V. remove them (move them from where you must keep them),
 - VI. conceal them (hide them from us),
 - VII. sell them or give them away to anyone else.

Nor may you allow any of those things to happen. If we reasonably suspect that you have done any of those things or allowed any of them to happen the goods will be at risk.