



Loan Contract Number

Please read this paragraph. This deed of agreement is intended to be written in plain language. To help with that, there are explanations and a list of meanings right at the end beginning with paragraph **44 below** of the operative terms. Firstly we have a list of meanings of words which we use in this agreement. That is paragraph **44 below**. Then in paragraph **45 below** we explain and give examples of some things referred to in the disclosure statement. Finally, in paragraph **46 below** of the operative terms we have a description of how we use words like “charge”, “credit”, “debit” and “enforce”. These are all intended to help you understand what the agreement is all about.

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 Basecorp 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 You (and any guarantors) who own the collateral (defined in “Meaning” paragraph **44 below** of the operative terms) have agreed to grant a security interest in that property to the lender and
- C You (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.

FULL NAME AND ADDRESS OF BORROWERS

Name:

Address:

Email Address:

Home Phone Number:

Mobile Phone Number

Preferred Contact

☐
☐
☐

FULL NAME AND ADDRESS OF GUARANTORS

Name:

Address:

Email Address:

Home Phone Number:

Mobile Phone Number

Preferred Contact

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☐
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DISCLOSURE STATEMENT FOR CONSUMER CREDIT CONTRACTS

(other than revolving credit contracts)

STATEMENT DATE:

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 ; or• Sending an email to the address specified	<table><tr><td>Name:</td><td>Basecorp Finance Limited</td></tr><tr><td>Physical Address:</td><td>450 Anglesea Street, Hamilton</td></tr><tr><td>Telephone:</td><td>07 839 2999</td></tr><tr><td>Facsimile:</td><td>07 839 2992</td></tr><tr><td>Email:</td><td>info@basecorp.co.nz</td></tr><tr><td>Postal Address:</td><td>P.O Box 5588, Hamilton</td></tr></table>	Name:	Basecorp Finance Limited	Physical Address:	450 Anglesea Street, Hamilton	Telephone:	07 839 2999	Facsimile:	07 839 2992	Email:	info@basecorp.co.nz	Postal Address:	P.O Box 5588, Hamilton
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CREDIT DETAILS

Initial unpaid balance

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

made up of:	Borrower	\$
		\$
	Legal Security documentation and registration per your written instructions	\$
	Loan Establishment fee	\$ _____

Total Advances

This is the total amount of all advances made
Or to be made to you

\$

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

(Payment dates are based on the assumption that the loan is drawn on the date of contract. The dates of payment are to be linked to the actual date of advance and will be adjusted to correspond with this date if it differs from the date of contract.)

Further this assumes that the lender does not vary the credit fees or interest pursuant to paragraph 13 below of the operative terms. If this agreement does not require payment of principal until the date shown for the final payment, (that is, it provides for payments of only interest and any fees until the final payment), the unpaid balance is at call and the information in the following boxes assumes that the unpaid balance has not been called up.

Timing of payments	Number of payments:	payments of \$	Total amount of payments:
Frequency: Monthly			\$
First payment:		1 final payment of \$	
Last payment:			

Until the date of the final payment if you are not paying principal as well as interest and any fees the unpaid balance is at call

INTEREST This assumes the lender does not increase the interest rate pursuant to paragraph 13 of the operative terms.

Annual interest rate	Total interest charges
% fixed for the term of the loan subject to paragraph 13.	This is the total amount of the interest charges payable under the contract
	\$

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 to provide a daily interest figure of %.

Interest is charged to your account monthly.

COMPLAINTS

If you are not satisfied with the service you have received from us you should contact us. We have an internal complaints process and undertake to investigate your concerns promptly and fairly. You may contact us to make a complaint by telephone, by email or in writing.

We have 40 days to respond to your complaint. If you are not satisfied by our response, please see Dispute Resolution Section below

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 allows the lender to vary this/these fee(s) and charge(s).

- (i) Administration Fee of \$3.25 per week/\$6.50 per fortnight/ \$13.00 per month as long as there is money still owing
- (ii) Personal property security preparation and registration fee of \$12.00 including \$8.00 registration, \$0.16 Motor check, \$2.00 per PPSR search and Administration Fee of \$1.84.
- (iii) Readvancing fee of \$3.95 for existing PPSR security. If for example, if we give you a top up based on the same security
- (iv) Mortgage preparation and registration fee of \$430.00 (per each separate registered owner and/or land registration district) including title search fees of \$10.00, LINZ registration fee of \$80.00, agency fee of \$20.00, post registration search fees of \$10.00 and Solicitors fees of \$280.00 and Administration Fee of \$30.00. Subsequent titles incur an extra \$5.00 per title search.
- (v) Caveat preparation and registration fee of \$409.00 (per each separate registered owner and/or land registration district) including title search fees of \$5.00, LINZ registration fee of \$85.00, agency fee of \$20.00, post registration fees of \$10.00 and Solicitors fees of \$250.00 and Administration Fee of \$44.00. Subsequent titles incur an extra \$5.00 per title search. We may choose not to register a mortgage but may choose to register a caveat.
- (vi) Readvancing fee of \$30.00 for existing caveat or mortgage security, subsequent titles incur an extra \$5.00 per title search.
- (vii) An Administration cost of \$35.00 is payable for a Mortgage discharge and/or Caveat Withdrawal. This is the cost of preparing a discharge of any mortgage/withdrawal of any caveat taken by the lender as security for the loan. We will, if you ask us, provide the discharge to you when the account balance is paid in full but we will not be responsible for registering the discharge (a) unless you ask us to and you further agree to pay the costs of such a registration, or (b) unless we require its removal for whatever reason. In that event we may charge the sum of \$235.00 including the \$80.00 charged by LINZ, agency fee of \$20.00, Solicitors fees of \$100.00 and Administration Fee of \$35.00.
- (viii) Letter fee of \$15.00 is charged to your account any time you request a statement of your account that we are not required to send you.
- (ix) The costs expenses and other liabilities listed in clause 11d below of the operative terms which arise when you are not in default.

Administration costs and fees payable on full prepayment are 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.

DISPUTE RESOLUTION

Name of dispute resolution scheme: Financial Services Complaints Limited

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.

Contact details of dispute resolution scheme:*

Phone: 0800 347257
Website: www.fscl.org.nz
Business address: PO Box 5867, Lambton Quay, Wellington
Business Email address: info@fscl.org.nz

REGISTRATION ON FINANCIAL SERVICE PROVIDER REGISTER

Lender registration name: Basecorp Finance Limited

Registration number: FSP4701

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**WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS -
Security Interests**

This is secured credit. If you fail to meet your commitments under the contract, then to the extent of the security interest the lender may be entitled to sell or repossess and sell this property.

Property which is or will be subject to a security interest

Personal Property – Collateral

All present and after-acquired personal property owned by _____ and by _____ excluding consumer goods which are not specifically identified by item and kind unless they are replacements for such consumer goods. The collateral INCLUDES the following

Motor Vehicle(s)–

Year: _____ Make: _____ Model: _____ Registration: _____
Chassis/Vin No: _____
Colour: _____ Located At: _____
Owned By: _____ together with any replacements for such vehicles

Goods other than motor vehicles or trailers

.....
.....
owned by and
together with any replacements for such goods

Any other personal property as detailed in the attached Security Schedule A (if used).

Description of security interest.

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.

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. We may recover that amount from you and any guarantor.

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.

Real Property - The Land to be Mortgaged

Address: _____
Legal Description: Lot _____, DP _____ on C/T _____
Owned by: _____ and _____

The security interest is an all obligations 1st mortgage (which may be registered) or may be supported by a registered caveat 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.

If the land is sold following the owner's default 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 or company without our written consent and, if the owner does so, the owner will be in breach of this agreement and the land may be sold by the lender.

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. Default interest is 10% per annum more than the interest rate provided for in the INTEREST section above when charged on any overdue instalment or any overdue credit fee which is not part of an instalment or any default fee or default interest. 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. Default interest is debited to your account monthly.

If we have accelerated payment because of your default, we will not charge you default interest on the unpaid balance unless the unpaid balance is at call (If you are not required to pay loan principal before the expiry of the term the unpaid balance is at call).

If the unpaid balance is not at call and some parts of it are overdue other than as a result of our accelerating payment of the unpaid balance, we will charge default interest only on those parts.

If the loan is at call and we accelerate payment for any reason, we will charge default interest on the unpaid balance if you do not pay.

If we charge you default interest on the unpaid balance the default interest rate will be **10.00%** per annum more than the interest rate provided for in the INTEREST section above charged on the unpaid balance from when we accelerate payment or the unpaid balance otherwise falls due until you repay it in full and we will charge it to your account monthly.

Default fees.

Defaulted payment fee of \$15.00 debited if any regular payment to the lender is made late after the date due, or is reversed or dishonoured or is otherwise not made

- (i) 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 any ongoing default.
- (ii) 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 in any way associated with our recovery of the unpaid balance but which is not charged to you otherwise. The default time fee may be charged at \$117.00 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 debt collectors or lawyers we may charge you that hourly rate.
- (iii) Mileage fee if a staff member of ours finds it necessary to travel to visit you or any guarantor or otherwise 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 engined motor car.
- (iv) Local telephone call fee of \$5.00 any time we have to telephone or fax you with regard to a missed payment(s) or in relation to any other default you commit under this agreement.
- (v) Toll telephone call fee of \$8.00 any time we have to telephone or fax you on a mobile number or any STD code with regard to a missed payment(s) or in relation to any other default you commit under this agreement.
- (vi) \$15.00 to send a Repossession Warning Notice
- (vii) \$100.00 to issue a Warrant to a Repossession Agent to seize goods and to issue any other legally required documents
- (viii) \$15.00 to send a Post Possession Notice
- (ix) \$15.00 to send a Post Sale Notice
- (x) 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 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 payment plus any disbursements as we learn about them. 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 we have done. We will charge you for the costs expenses and other liabilities listed in clause 2d below of the operative terms arising out of your default.

FULL PREPAYMENT

Administrative Costs/fees \$65 for our staff's work associated in 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 and these are listed under CREDIT FEES AND CHARGES)

In the following Statement of Right to Cancel, the lender is referred to as "the lender".

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 on the front of this document, date or the disclosure date (whichever is the latter).

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, within the same time, 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 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).

*If you cancel the contract, the lender can also charge you –

- Interest for the period from the day you received the advance until the day you repay the advance and
- If any returned property has been damaged while in your possession, the costs of repairing the damage.

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 lender 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. For example if you signed this agreement after your employer told you that you were likely to be made redundant, it would be reasonably foreseeable that you might lose your job.

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.

Signed thisday of2018

Signed by the Borrower:

Signed by the Witness:

Witness Name:
Address:
Occupation:

Signed by the Guarantor:

Signed by the Witness:

Witness Name:
Address:
Occupation:

Signed by the Guarantor:

Signed by the Witness:

Witness Name:
Address:
Occupation:

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 44 below- **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. For example, if you default in making payments when they are due, the lender may seize collateral (for example repossess your goods) and sell it to pay the unpaid balance or overdue amount. (See paragraph 36 below of these operative terms.)
 - c. If you default the lender may also apply to the Court for an order that any or all of your collateral be seized and sold
 - d. The collateral may be all your present and after acquired personal property (excluding consumer goods which are not specifically identified by item and kind).
 - e. You promise to the lender that nobody else has the right to repossess and sell the collateral and nobody else owns it unless you have told the lender in writing before you signed this agreement.
 - f. 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 favour of the lender and at the cost of the borrowers 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 to the lender of the unpaid balance 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 our 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. That means that the mortgage we use is one which is commonly used by lawyers in New Zealand and the obligations are standard so that it is a security for all of your obligations to the lender.
 - d. The priority figure 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 the lender registers its mortgage, the lender’s 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
 - g. What does that mean? If you have agreed to give a mortgage of your land we may sign it on your behalf under the power of attorney. Once we have a mortgage we may register it against the title to your land. If you do not pay the money you owe under this agreement when it is due we may sell the land and use the money to pay the money you owe. You may not mortgage your land to anyone else without our consent
- 4 **You give the lender your power of attorney.** You 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 the lender is paid the unpaid balance and otherwise to protect the interests of the lender 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 1952, if you have agreed to mortgage land or
- ii. transfer ownership of or take or transfer possession of negotiable instruments, of chattel paper, of negotiable documents of title and of investment securities and the attorney may request and obtain from any share registry, custodial service, securities depository or clearing house any shareholder number (including a common shareholder number) Faster Identification Number or other number allocated to you and necessary for dealing with company shares and (by way of example) may sign any request to cancel FIN numbers as security for a loan.
- c. The attorney may operate and draw on any bank account.
- d. This power of attorney shall continue until the unpaid balance has been paid to the lender in full and continues after judgement. That means the lender may continue to sign on your behalf until all the unpaid balance is paid even if the lender has judgment against you.
- e. We cannot use the power to appropriate after-acquired consumer goods to the security interest in your name
- f. You ratify anything done by an attorney under this power. In advance you confirm everything that the attorney does.
- g. 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 creates some rules for telling borrowers information about collateral goods which are not consumer goods) if we wish to serve any legal paper on you – if we wish to give anything to you in writing – that legal paper will be sufficiently served or given if
 - (i) We deliver it to you or
 - (ii) We leave it at your usual or last known home address, place of business or of work or at a service address you give us in this agreement so we can give legal paper to you; or
 - (iii) We post it to you in a letter addressed to you by name at your home, place of business or of work, or service address; or
 - (iv) We send it to you by an electronic communication (such as email, fax, Facebook, Skype) although we cannot give you a repossession warning notice or a post-repossession notice in this manner.
 - (v) For any disclosure in relation to this agreement we send it to you by email or provide a link to our website.
- b. We may also send you SMS or mobile phone text messages when you are in arrears or we need to talk to you quickly.
- c. If you are out of New Zealand, the legal paper may be served on or given to your agent in New Zealand if you appoint one.
- d. If you are dead, the legal paper may be served on or given to your personal representatives – the people in charge of your estate when you die.
- e. If the legal paper is sent to you —
 - (i) by post, it is to be treated as if you received it (got it) on the fourth working day after the day on which the letter is posted (and to prove delivery all we need to do is prove that the letter was properly addressed and posted):
 - (ii) by electronic communication, it is to be treated as if you received it (got it) on the second working day after the day on which the legal paper is sent.
- f. Despite anything in this paragraph 5, the court may in any case make an order saying how any legal paper is to be served on or given to you. The court may also order that we do not need to give you the legal paper. If we go to court for an order about how you are to be given legal papers or how we are to tell you about them, you agree that legal paper may be served on you at the last address that the lender has for you as notified by you.
- g. 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 property shown in this agreement as being the land to be mortgaged or
 - (ii) attached to an outside door at such address.
- h. 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 document or notice will be sufficiently served or give to you if it is posted at an outside letterbox for your flat.
- i. If there is no such letterbox, a legal paper will be sufficiently served 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 the 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.
- j. Further,
 - (i) if you have provided an email address or a facsimile number 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

- 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. That means that even if we cannot enforce this agreement against somebody else, we may still enforce it against you.
- 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 demand 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 you and we agree that the New Zealand courts may rule on any disputes. If you want to dispute or argue with us in relation to or in connection with this agreement, you may do so only before a New Zealand court or Disputes Tribunal or before our dispute resolution provider in New Zealand. However, we may enforce:
- a. this agreement against you or
 - b. any judgment against you or against your real and personal property
- in any country where you or that property may be.
- 9 **The unpaid balance is at call if your regular payments do not include principal** - that is, if the loan is an “interest only” loan where you only pay interest or fees and interest in your regular payments. In that event we may call up the loan at any time and when we do so you must pay the unpaid balance forthwith (straight away).
- 10 **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 and in such manner as we require.
 - b. That means that 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
 - (i) any part of that debt or
 - (ii) any of the amount you claim we owe youfrom your payment of any instalment or other amount under this agreement. Also we may tell you how you must pay us.
 - c. 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 credit or default fee or default interest. That means you must allow us to take money from your bank account if we ask
 - d. 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. That means that if you are paying instalments and you pay more than you have to we may continue to charge you interest on any amount you overpay and we may do that until it is time for you to pay the next instalment. We may also decline to accept any part prepayment
- 11 **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
 - c. 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 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 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. 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 11 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.

12 **Our costs referred to in paragraph 11 include:**

- a. Our own internal administration fees and
- b. 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.

13 **The lender may vary interest and fees.** We may from time to time change the annual interest rate and default interest rate and credit fees and default fees payable under this agreement so they go up or down. You must pay any 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 defaulted payment fees or letter, email or text fees, default time fee or mileage fees):
 - (i) In each case will give you at least 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 and if you are in financial default or default generally, you must also pay any changed default interest or default fees.
- c. No increase will be backdated.
- d. Any interest rate 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 by 5% we would not increase credit fees by more than 5%.

14 **Default Interest and Default fees.**

- a. Whether or not the unpaid balance is at call you must pay us default interest on any overdue instalment or any other overdue amount at the rate shown in the disclosure statement (under **Default interest charges and default fees**) from the due date until you pay the instalment or amount.
- b. If the unpaid balance is not at call you do not pay default interest on the unpaid balance if payment is accelerated as a result of your default save for those amounts that fall due other than as a result of the acceleration.
- c. If the unpaid balance is at call and we accelerate payment and you do not pay you must pay default interest on the unpaid balance at the rate shown for default interest on the unpaid balance under **Default interest charges and default fees**
- d. If sub-paragraph (c) applies or if you do not repay the unpaid balance at the end of the term, you must pay default interest on the unpaid balance from when the unpaid balance falls due until you pay it in full
- e. If you are in any default at all you must pay default fees. You must pay default fees from when you fall into any default and until you are no longer in default.
- f. 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 (if so set out) and they will become part of the unpaid balance.
- g. You must continue to pay default interest and default fees after judgment against you. That means you must keep paying them after we sue you in court for the unpaid balance and obtain an order or judgment that you must pay.

15 If the loan is not at call but 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 paragraph 2f, 3e or 7 above or paragraph 24, 25, 29 or 31 below of these operative terms
- c. You breach paragraphs 27a to 27i of these operative terms

d. You fail to pay any money for 5 working days after it is due or if 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. We have this right in addition to any other power to call up which we may have.

16 **It is your job to know what you owe the lender from time to time.** We must disclose (give) information to you at least every 6 months. In spite of 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. It is your job to find out what the default interest and fees are and to pay them.

17 **If you disappear time will not run on your debt until we locate you again in New Zealand or in Australia.** 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 or in Australia the limitation period shall begin on the date that we locate you in New Zealand or in Australia 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 17 MEAN? Paragraph 17 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 or in Australia the six years will run from the time we locate you here or in Australia.)

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

19 **The lender may appropriate payments as it sees fit.** If we receive any money from you or as proceeds of the sale of collateral or the land to be mortgaged we may appropriate (credit) that money against the unpaid balance in any way we wish and you may not require us to apply any payment toward any particular part of the unpaid balance such as principal, annual interest or default interest or a credit fee or a default fee.

20 **This agreement secures future advances.** That means that 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 same terms as those of this agreement unless we make changes in writing when we lend you the extra money.

21 **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.

22 **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.

23 **You must always keep us up to date with your 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 lender 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. The lender may write to you at the address last notified to it.

24 **You must always be able to pay your debts when they fall due.** You will breach this agreement and the lender may call up the unpaid balance if you commit any act of bankruptcy, enter into the No Asset Procedure or without the lender's consent become subject to a summary instalment order. "Bankruptcy" and "no asset procedure" and "summary instalment

order” are all ways in which you might not have to pay us in the way that this agreement says you must. If any of them apply to you we will be able to call up the loan. This is in addition to any other right we have to call up the loan.

25 **You may not impose any part payment settlement on us and you must not attempt to do so.** If you

- a. send us a cheque or
- b. in any way pay us money

that is less than the unpaid balance and you claim or wish to claim that our

- c. banking the cheque or
- d. accepting the money

settles payment of the unpaid balance in full, we will not be bound by your claim unless we have agreed to that settlement in writing before you sent the cheque or paid the money. This means that (unless we agree in writing in advance) you cannot pay us less than you owe us and claim that that payment means you do not have to pay any more. That will apply even if you tell us in advance that we can only accept the payment you are going to make if it clears your debt. 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 so.

26 **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.

27 **How you must store and care for and use collateral goods and protect the lender’s interest in them.**

- a. Subject to b below 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 23.
- b. However, you may keep collateral goods other than where you live, if you tell us in writing in advance what the other address is but you must not allow any collateral to be taken out of New Zealand.
- c. However, you must not change where you keep any collateral goods while you are in default without the lender’s prior written consent to the new address.
- d. 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.
- e. 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 motor vehicle is always able to get a warrant of fitness.
- f. You must not use any collateral motor vehicle or motor boat for motor sport activity such as racing, rallying, speed or time trials or (and in particular) so that any driver or owner of a collateral motor vehicle receives a written caution under section 129B of the Sentencing Act 2002 or any equivalent legislation.
- g. You must not
 - (i) drive any collateral motor vehicle when
 - (1) You do not hold a driver’s license or
 - (2) are disqualified from driving or
 - (3) you have a breath or blood alcohol level beyond any legal limit or
 - (ii) allow any other person to drive when unlicensed or disqualified or with illegal breath or blood alcohol level
- h. 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 2d(viii) above)
 - (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 44 below)
 - (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.
- i. 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 work. This means you must look after your motor vehicle and fix up any damage to any of these parts of the motor vehicle inside and out, including painting.

28 **The lender may inspect any collateral 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 the goods, we may break in to look for them and we do not have to pay you compensation.

29 **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 and, you must describe it to us and also give us any serial numbers and part numbers on it.–If you do not tell us about any replacement, we may call up the loan.

30 **Lender's rights if collateral includes company shares.** If any collateral is shares in a company registered under the Companies Act 1993 or any Act replacing or changing it

a. Our security interest includes

(i) all issues of bonus shares, rights and newly created shares and

(ii) all share conversions and dividends and any other issue made in relation to the shares the subject of the security interest, and

b. we may vote in place of the borrower at any meeting of the company shareholders and we shall have all the rights and powers of the borrower under the company's constitution and at law.

The last two sub-paragraphs mean generally that if the company issues further rights, income or other benefits attached to collateral shares, we will have security also over those rights, income and benefits. Further, we have all the rights of the owner of the shares at any company meeting or in any dealing with the company including the power to vote the collateral shares.

31 **You must insure the collateral and any buildings or improvements which are mortgaged.**

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 has 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.

32 **No criminal activity on mortgaged land or using collateral goods.** You must not do anything against the law on the land to be mortgaged nor or use the collateral goods for anything against the law. That includes committing an offence under the Misuse of Drugs Act 1975 or any replacement Act.

33 **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 (to make it right). If we do that we may add that cost of doing or paying to the unpaid balance. That includes work that we may carry out on goods we have repossessed in order to make them more saleable or to carry out maintenance which you should have carried out.

34 **You must compensate the lender if anyone makes a claim against the collateral or land to be mortgaged.** If in relation to the collateral or the land to be mortgaged you

a. do anything or allow anything or

b. neglect or fail to do anything and

someone claims against the collateral or the land or you as a result and we lose any money or have to spend money, then you must pay the amount of that money to us and we may add it to the unpaid balance.

- 35 **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.
- 36 **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. We may not repossess consumer goods which are not identified by item and kind unless those consumer goods are replacements for such specifically identified consumer goods— 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) and he does not need to ask.
- 37 **Use of purchased property for business purposes.** The Consumer Guarantees Act 1993 shall not apply if the initial unpaid balance is applied in trade and the borrower is in trade.—This means that you do not have warranties and protections under that Act if you are in business and the loan money is used for business purposes.
- 38 **The lender shall not be obliged to marshal in your favour or in favour of any other person.** If we have security over more than one item of real or personal property, we do not have to sell one item of property before another.
- 39 **Some parts of the PPSA do not apply and you waive your right to a verification statement.** You waive your right to receive a verification statement following registration of any security interest. Further, if any of the collateral is not consumer goods, none of sections 133 or 134 of the PPSA will apply to any dealings with that collateral and you waive any rights with respect to that collateral under sections 116, 120(2), 121, 125 127, 129 and 131 of the PPSA. This means that:
- a. when we register our security interest against collateral, we do not need to provide you with a copy of the statement that the Personal Property Securities Registry then sends us about the registration.
 - b. Also for any collateral that is not consumer goods
 - (i) we do not need to account to you after sale
 - (ii) we need not give you notice if we propose to retain collateral in settlement of the your obligations
 - (iii) you may not object to our retaining collateral in any event
 - (iv) you have no rights to compensation if we damage goods while removing an accession
 - (v) we do not have to give you notice of our intention to remove an accession
 - (vi) you may not apply to a court to postpone the removal of an accession or to determine any amount payable to us
 - (vii) you may not reinstate the security agreement before we sell the collateral.
- 40 **Powers and rights you give the lender are irrevocable.** In this loan agreement you
- a. give us powers and rights and
 - b. undertake obligations and
 - c. agree to certain rules of procedure and
 - d. give consents and authorities.

You may not change your mind and withdraw or cancel our rights and powers nor cancel any obligation, nor change procedures nor withdraw consents or authorities until (subject to paragraph 42 below of these operative terms) the unpaid balance has been paid in full.

- 41 **The lender may pay a vendor or another lender directly with borrowed money.** If you are borrowing money from us in order to buy property, whether or not we take a security interest over that property, or to repay a loan
- a. We may pay the money directly to the supplier of that property or to the other lender 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.

- 42 **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,

- a. if a guarantor pays us or
- b. if you arrange for a friend to make payments to us on your behalf and

the guarantor becomes bankrupt or your friend goes bankrupt, the OA may possibly claim back from us the payments the other guarantor or 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 about whether or not we should repay the money. Similar rules will apply if a company pays on your behalf and the company then goes into liquidation.

- 43 **All your obligations are joint and several.** That means 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.

Explanations and Meaning.

44 Meaning – General

- a. The expression “Accelerate” means call up or ask for immediate payment of any amount before it would otherwise be due under this agreement. If we accelerate payment you must pay straight away. “Accession” means goods that are affixed (attached) to other goods. “At risk” has the meaning set out in sub-paragraph (b) of this paragraph 44. “Borrowers” or “you” means the person(s) shown as borrower(s) and co-borrower(s) if any in the disclosure statement and includes their/your executors, administrators and successors in title – the people who may take over your rights and obligations if you die or if you cannot pay your debts. “Calculate” means to work out or to decide an amount following certain rules. “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. “Consumer goods” means goods that are used or acquired for use primarily for personal, domestic, or household purposes – goods that are not mostly used in business or investment. “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. “Default Fees” and “Default interest” are as listed and described under “Default interest charges and default fees” in the disclosure statement. “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. “Initial Unpaid Balance” is the amount you owe at the date of this agreement and it is further detailed in the CREDIT DETAILS of the disclosure statement. “Instalment” means a payment you must make regularly, usually on the same day of each week, fortnight or month. “Land” includes an interest in land. “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. “Lender” is the person lending the money and the expression includes its employees and agents and any person to whom the lender assigns its rights under this agreement or who otherwise takes over the lender’s rights. “Liability” means something you must do 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 must not do. “Person” and pronouns such as “anyone” or “somebody” include a company or other organisation as defined in the PPSA. “PPSA” means 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. “Repossess” includes the meaning “seize on your default whether or not for the first time”. “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. “Workman’s lien” means the type of charge that a workman has on somebody else’s goods when he does work on the goods. The workman may keep the goods until he is paid for the work and if he is not paid he may sell them. A mechanic will have a workman’s lien on your car if he does work on it at his garage. Any expression not described or defined in this agreement shall have the meaning 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.

45 **Additional explanation for disclosure statement.** In this part we tell you about the disclosure statement because some things may need to be explained better.

- a. Under the heading **INTEREST Method of charging interest** – here is an example of what we are talking about:

You perhaps take a loan of \$1,000 for a year and you do not pay off any of it. It is interest only so you only pay interest for that year on principal of \$1,000. If the annual interest rate is 25%, the interest for that year is \$250. If the lender charges interest to your account weekly it means the lender divides \$250 by 365 days and multiplies it by 7 so the weekly interest would be a little more than \$4.79. At the end of the year, the principal is still \$1,000.

However, if you repay that loan by regular weekly payments during the year, you will also pay some of the principal of the loan each time you pay an instalment. To pay off the loan over that year with equal payments, you would pay about \$21.78 per week. Your payment for the first week would be \$4.79 interest plus principal of \$16.99. The interest for the second week would be \$4.71 and the principal would be \$17.07. By that time the **unpaid balance** would be \$965.94. That is usually how the unpaid balance reduces when you are paying off a loan by instalments.

This example is almost certainly not your loan. It is only to explain to you how interest is charged to you. This example does not take into account any regular credit fees.

- b. Under the heading **WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS - Security interest** we talk about having a security interest in collateral as defined in section 17 of the Personal Property Securities Act 1999.
- (i) That means that we have a security interest in the personal property described above (the collateral). Collateral is something you own that you promise to hand over to us if you do not pay your debt. For example, your motor car may be collateral for a loan. When that happens a lender has a “security interest” in your car. Sometimes people say that the collateral is “security” or the car is “the security” for the loan.
 - (ii) That means that if you do not pay us money when you should, we may sell that collateral. If the collateral is your motor car, we may repossess it and sell it. We may instead apply to the court for an order for the car to be seized and sold. We may use the money from the sale to pay the money you owe us. The collateral is also security for other things which you have agreed to do as well as pay.
 - (iii) Sometimes collateral is consumer goods. If they belong to you then they would be goods that you use or buy or are given for use for personal, domestic or household purposes. A car you drive to and from work and which you do not use for work will usually be consumer goods. If you only use your lawnmower for mowing lawns at home it will be consumer goods. The television in your lounge is likely to be consumer goods. There are special rules for collateral that is consumer goods and we may not repossess them ourselves unless they are specifically identified in the agreement although there are some exceptions for replacements. These rules override everything else.
 - (iv) We may not take a security interest in some consumer goods unless we provided the money for you to buy them or took over hire purchase contract from a seller you bought them from. Those goods are “beds and bedding, cooking equipment including cooking stoves, medical equipment, portable heaters, washing machines and refrigerators”.
 - (v) We say that if we repossess and sell collateral you and any guarantor will owe us the difference between the net proceeds and what you owe us of the proceeds are less. For example if we repossess and sell a car for \$3,500 and the costs of sale are \$500, there will be \$3,000 left. If you owe us \$4,000 and we take off the \$3,000 you will owe us \$1,000. You will still have to pay us that. If the collateral is consumer goods we may not charge interest and costs after sale.
 - (vi) However, if the bailiff-were to seize and sell collateral consumer goods under a court order you would also have to pay interest and costs for the period after sale. In the example, that would be in addition to the \$1,000.
- c. Under the heading **WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS - Real Property - The Land to be Mortgaged** we say: 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. That means that we have a right to a mortgage over the land described above (the land to be mortgaged). We may register the mortgage against the land and if you do not pay us money when you should we may sell the land. We may use the money from the sale to pay the money you owe us. A mortgage is a form of security interest but we usually talk about a mortgage of land.
- d. Under the heading **WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS – Default interest charges and default fees – Default interest** we talk about charging you interest on amounts which you do not pay in time such as instalments when they are due.
- (i) What does this mean? If you do not pay an instalment on time it means you are in financial default and we will-only charge default interest on that instalment or other amounts overdue. Even if we accelerate payment of the unpaid balance (call up the whole loan) because, for example, you miss paying a lot of instalments or otherwise default, we will charge default interest only on those unpaid instalments if your loan is not at call.

If your instalments were \$100 and the default interest rate was 35%, the default interest on each overdue instalment would be \$35 per year. This is only an example and 35% may not be the default rate under this agreement.

- (ii) However then we talk about accelerating payment of the unpaid balance. If your loan is at call and we accelerate payment and you do not pay, we may charge you default interest on the unpaid balance whether or not you are in default. . However, if the loan is not at call we may only charge you default interest on the parts of the unpaid balance that are overdue for a reason other than our having accelerated payment.
- e. Under the heading **WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS – Default interest charges and default fees** we have a list of fees which you may have to pay on default. The last of them is a long paragraph which begins “In the case of enforcement, including Court or Disputes Tribunal proceedings.....” That means that you must pay us all the costs of our enforcing this agreement against you and we may claim from you whatever we spend in trying to get paid when you are in default

46 **Charge, Credit, Debit and enforcement**

- a. “Charge”
 - (i) “Charge” means a debit or an amount somebody must pay. If we charge you money or charge money to your account, that money is then added to the unpaid balance and the unpaid balance becomes larger. In this case “charge” and “debit” have similar meanings.
 - (ii) “Charge” has a second meaning used in this agreement. You may charge collateral or charge land and when you do that, they become security for you to pay the unpaid balance. If you give a security interest in a car, you charge the car.
- b. “Credit” has several meanings
 - (i) It is any money we lend you. This agreement is a contract about credit.
 - (ii) A credit fee is a fee we charge as part of giving you credit.
 - (iii) If you pay an instalment or make any payment to us we will credit your account with that instalment or payment and the unpaid balance will become smaller. In this meaning it is the opposite of “debit”.
 - (iv) A credit sale is a sale where you buy something but you do not need to pay for it until later.
 - (v) A credit report is a study or a story about you and it is prepared or made to decide whether we give you credit or not.
 - (vi) When we give you credit, it becomes a debit for you. When we lend you money, you must pay it back to us.
- c. “Debit” means a charge or an amount of money somebody must pay. If we debit money to you or debit money to your account, that money is then added to the unpaid balance and the unpaid balance becomes larger. In this case “charge” and “debit” have similar meanings.
- d. Enforce” or “enforcement” means:
 - (i) If we enforce against you:
 - (1) We do something to make you do what you agreed to do
 - (2) We do something so that we are paid when you do not pay
 - (ii) If we enforce against another borrower:
 - (1) We do something to make that borrower do what he agreed to do
 - (2) We do something so that we are paid when that borrower does not pay
 - (iii) If we enforce against a guarantor
 - (1) We do something to make a guarantor do what he agreed to do.
 - (2) We do something so that we are paid when the guarantor does not pay
 - (iv) We may enforce by (for example):
 - (1) Going to court for a judgment against you or against a guarantor or
 - (2) Applying to a Disputes Tribunal for an order against you or against a guarantor or
 - (3) Repossessing collateral from you or from another borrower or from a guarantor and selling it.