

## 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 certain 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 (repossessed) seized and sold
  - d. The collateral may be all your present and after acquired personal property (excluding a limited number of consumer goods).
  - 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.
- 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 2011/4301 or, at our the lender’s option, any form to the same or similar effect required by the lender. 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). However, you must not do that without our written consent.

- e. You charge your land as set out in this paragraph 3
- f. 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. There are other terms as well.

**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 judgment. 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. 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.

Borrowers initials .....

- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. 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.
- h. 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.
- i. 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),

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 . 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.

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.

Borrowers initials .....

- 9 **The unpaid balance is at call.** The lender may call up the loan at any time and when it does so you must pay the unpaid balance forthwith (straight away).
- 10 **You must make all payments in full when due.** Until the lender calls up the loan 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.
  - 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 you
 from 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 penalty 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 but, if we accept it, we may charge you administrative costs of with the part prepayment.
- 11 **You must pay the lender all interest and credit fees (including default interest 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 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.

Borrowers initials .....

- (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 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. In each case will give you at least a month's notice of any such change and any increase or decrease in your periodic payment and the date when any increased or decreased payments begin.
- b. 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 or fee increase shall be proportional to the increase in our cost of funds or 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.** If you are in financial default and we have not accelerated payment of the unpaid balance (called it up early) you must pay to us default interest on any overdue instalment or other overdue amount and if you are in any default at all you must pay default fees. If we accelerate payment of the unpaid balance and you do not pay immediately, we may charge you default interest on the unpaid balance. You must pay default interest from the date you fall into financial default until you are no longer in financial default. You must pay default fees from when you fall into any default and until you are no longer in default. 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 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 that you must pay.

15 **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.

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
- c. the limitation period shall begin on the date that we locate you in New Zealand to the effect that that date will be:
  - i. the start date (under section 16(1) 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
  - ii. deemed to be the date of the act or omission on which the claim is based (under section 11) 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.** If you have a claim against us or if we owe you money, we may set-off that claim or debt against any claim we have against you or any debt you may owe to us. This means we may reduce any amount we owe you by any amount that you owe us.

18 **The lender may receive commission on any insurance** it arranges for you.

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

- a. we may appropriate (credit) that money against any debt owed by you.
- b. we may do this whether or not the money so appropriated is due and payable and may appropriate the money in any manner and at any time that we may decide.
- c. that decision will overrule or cancel any appropriation you claim to have made but if we appropriate a sum intended by you for a debt under one agreement to a debt under another agreement, that appropriation on its own will not be the cause of your being in financial default under one of the agreements.
- d. Our appropriation on its own will not cause you to pay any more interest or credit fees than you would have done if our appropriation had not taken place.

What does all this mean? If you owe us money under two agreements, and you pay us an instalment under one agreement, we may apply (credit) that money to the other agreement. For example if you

Borrowers initials .....

owe us \$500 on agreement A and \$1000 on agreement B you may want to pay us \$100 for Agreement A so it reduces to \$400. However, if we wish we can credit it to Agreement B. If we do that, Agreement A will stay at \$500 and agreement B will reduce to \$900. If we do this, it will not put you in default under Agreement A. If the interest rates for the agreements are different, we will credit the \$100 at the higher rate so you are not disadvantaged by the different interest rates.

- 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. The collateral 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:
  - a. you must also pay us
    - (i) the administrative costs of the full prepayment or
    - (ii) a charge equal to our average administrative costs of the full prepayment.
  - b. We may also charge you a fee that represents a reasonable estimate of our loss arising from the full prepayment. Our method of calculating our loss is set out in the FULL PREPAYMENT section of the disclosure statement.
- 22 **You may repay your loan early.** You may repay the unpaid balance of your loan in full before it is due . XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
  - a. the administrative costs of the full prepayment or
  - b. a charge equal to our average administrative costs of the full prepayment.
- 23 **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.
- 24 **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 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. We may write to you at the address last notified to it.
- 25 **You may not impose any part payment settlement on us.** 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.

Borrowers initials .....

- 26 **Only written changes to this agreement are binding.** 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 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 24.
  - 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 our 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.
  - 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 11d(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. In any event, if any of these acts or omissions

Borrowers initials .....

occur, you must immediately advise the lender in writing. If any of these things happen you must tell us straight away.

- 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 when such damage occurs. 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.

**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 goods, we may break in to look for them and we do not have to pay you compensation.

- 28 **You must appropriate after-acquired consumer goods to the security interest.** If you have granted security over after-acquired personal property and if you obtain consumer goods (other than beds and bedding, cooking equipment including cooking stoves, medical equipment, portable heaters, washing machines and refrigerators) after this agreement comes into effect you must advise us that you have obtained the consumer goods so we may attach them to the security interest and you must provide us with any descriptions and serial and part numbers as may be necessary to enable or assist registration.

What does this mean? If in this agreement you have given security over goods which you obtain (become the owner of) in future you must tell us if you become the owner of any consumer goods. If you do not tell us, our security interest will not include those consumer goods and you will be in breach of this agreement. As well as telling us about the goods, you must describe them to us and also give us any serial numbers and part numbers on the goods. We need the descriptions and the numbers so we may register our security interest against those consumer goods. However, you do not have to tell us about consumer goods you obtain if we are giving you a loan to buy them.

- 29 **Accessions and replacement goods become part of the collateral.** Any accessions (including replacements and accessories) which are attached to collateral goods and any replacement for collateral goods shall become part of the collateral. This includes your interest in any personalised motor vehicle registration plates. You must tell us about any replacement or accession as soon as you attach it and, you must describe them to us and also give us any serial numbers and part numbers on them.

- 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 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 the unpaid balance even though it or part of it has not yet fallen due. However, we will re-lend the money provided that you have not been in financial default more than once or for longer than 2 weeks nor been in default in any other respect and in particular have not breached paragraph 7 above of these operative terms and if you are not in breach of paragraphs 27a to 27h above and in other respects you still comply with the lender's lending criteria.

**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.

**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

as a result of (a) or (b) 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.

Borrowers initials .....

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 in the disclosure statement unless those consumer goods are replacements for specifically identified consumer goods, or are accessions (to specifically identified consumer goods) which you have attached to the security interest. 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.
  - (iii) Subject to section 83ZI of the CCCFA we are not obliged to account for the proceeds of sale of the collateral and until we have received the proceeds. That means we do not have to account to you about the sale until we have the cash but we do need to tell you what happened with the sale within seven days.

37 **Use of purchased property for business purposes.** The Consumer Guarantees Act 1993 shall not apply if the unpaid balance is applied in the purchase of property for business purposes. This means that you do not have warranties and protections under that Act if your loan is not primarily for your household domestic or personal 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

Borrowers initials .....

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 sum has been paid in full.

- 41 **The lender may pay a vendor directly with borrowed money.** If you are borrowing money from us in order to buy property over which we are to take a security interest
- a. We may pay the money directly to the supplier of that property 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.

42 **You must pay the lender any money it receives from another party 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,

- d. if a friend pays us or

if you arrange for a friend to make payments to us on your behalf and your friend goes bankrupt, the OA may 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 about whether or not we should repay the money.

Borrowers initials .....

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 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) 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 defined 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 or demanded as the case may be. “Initial Unpaid Balance” is the amount you owe at the date of this statement 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” or “we” or any similar pronoun 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. “Obligation” means something that you must do or that must not do. “Person” and pronouns such as “anyone” or “somebody” include a body corporate (such as a company) and an unincorporated body (such as a partnership or trust). “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

Borrowers initials .....

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 consumer goods are collateral 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 the 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. Your interest after the first week would be \$4.79 plus some principal. 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.

- 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.

- (iv) We may not repossess 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 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 we were to seize and sell the car **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.
- (i) 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.
  - (ii) We said above that if we repossess and sell consumer goods, we may not charge you interest and costs after the sale. However if we sell land under a mortgage, we may continue to charge you interest and costs after the sale if the net proceeds of sale are not enough to pay the debt.
- 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 may only charge default interest on that instalment. 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 we do that and you do not pay, we may charge you default interest on the unpaid balance whether or not you are in default.
- e. Under the heading **WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS – Default interest charges and default fees 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) We may enforce by (for example):
  - (1) Going to court for a judgment against you or
  - (2) Applying to a Disputes Tribunal for an order against you or
  - (3) Repossessing collateral from you or from another borrower and selling it.