

**DEED OF PRIORITY (LAND) – THREE MORTGAGEES
SCHEDULE**

EXTENT OF PRIORITY BETWEEN MORTGAGEES

1. The First Mortgage, and all moneys secured from time to time under it, will, in respect of the Land, have first priority over the Second Mortgage and the Third Mortgage for an amount not exceeding the First Mortgage Priority Amount.
2. The Second Mortgage, and all moneys secured from time to time under it, will, in respect of the Land, have second priority over the Third Mortgage for an amount not exceeding the Second Mortgage Priority Amount.
3. The Third Mortgage, and all moneys secured from time to time under it, will, in respect of the Land, have third priority for an amount not exceeding the Third Mortgage Priority Amount.
4. Subject to clauses 1, 2 and 3;
 - (a) the First Mortgage will, in respect of the Land, have fourth priority over the Second Mortgage and the Third Mortgage for the balance (if any) of the moneys from time to time, secured by, and outstanding under, the First Mortgage; and
 - (b) the Second Mortgage will, in respect of the Land, have fifth priority over the Third Mortgage for the balance (if any) of the moneys from time to time, secured by, and outstanding under, the Second Mortgage.
5. Nothing in the Document prevents a Mortgagee from enforcing any Mortgage in accordance with its terms.

PARAMOUNTCY

6. These priority arrangements will have effect despite anything (including, but not limited to, any application of the rule in *Clayton's Case* (1816) 1 Mer. 529 or the rule in *Hopkinson v Rolt* (1861) 9 H.L. Cas. 514) that might alter or affect the priorities provided by these arrangements.
7. Any provision in any Mortgage, or any other agreement or arrangement entered into before the date of the Document, which is inconsistent with these priority arrangements, will be superseded or varied to the extent necessary to give full effect to these arrangements.

PRIORITY INSTRUMENT

8. If a Mortgagee and/or the Mortgagor is required by a Mortgagee whose Mortgage over the Land has priority, it will immediately sign, and consent to the registration in the relevant land register of, a priority instrument under which the Mortgagee whose Mortgage has priority is granted priority.

LOWER PRIORITY OVER THIRD PARTY

9. If, in respect of any one or more of a Mortgagees' Mortgage over any Land, the amount by which that Mortgagee is entitled under any law to be paid in priority to any third party in respect of that Land (or any part of it) ("**Other Party Priority Amount**") is less than that Mortgagee's (a "**Relevant Mortgagee**") Priority Amount, then notwithstanding any other provision of the Document the priority of the Relevant Mortgagee over any other Mortgagee whose Mortgage ranks behind the Relevant Mortgagee's Mortgage in respect of the relevant Land shall be limited to the Other Party Priority Amount.

DISCHARGE OF MORTGAGES

10. If, at any time, a Mortgagee (in this clause 10, a "**Selling Mortgagee**") (or a receiver appointed by the Selling Mortgagee) disposes of any Land under the power of sale contained in its Mortgage or by law, each other Mortgagee whose Mortgage has priority over the Selling Mortgagee's Mortgage (each a "**Prior Mortgagee**") will provide the Selling Mortgagee (or receiver) with a registrable discharge of its Mortgage in respect of any such Land which is being disposed of (but not any other Land) upon payment by the Selling Mortgagee (or receiver) to it of the lesser of:
- (a) the total amount outstanding under the relevant Prior Mortgagee's Mortgage at the date on which that payment is to be made; and
 - (b) the relevant Prior Mortgagee's Priority Amount.
11. If, at any time, a receiver appointed by a Mortgagee (in this clause 11, a "**Selling Mortgagee**") whose Mortgage has priority over the Mortgage of another Mortgagee (each a "**Subsequent Mortgagee**") disposes of any Land under the power of sale contained in the Selling Mortgagee's Mortgage or by law, each Subsequent Mortgagee will provide the Selling Mortgagee (or receiver) with a registrable discharge of its Mortgage in respect of that Land (but not any other Land).
12. No Mortgagee shall be obliged by the Document to provide a registrable discharge of its Mortgage other than as expressly required under clause 10 or clause 11.

DIRECTION TO PAY

13. In the event that:
- (a) a liquidator, official assignee, administrator, receiver, or similar person appointed or acting in respect of the Mortgagor (in each case, acting with the prior consent of the Mortgagees if such consent is required); or
 - (b) a person with a power of sale in respect of any Land whose securities have priority to the Mortgagees' Mortgages in respect of the relevant Land,
- sells any Land, each Mortgagee agrees for the benefit of the other that it shall irrevocably and unconditionally authorise and direct that person to pay the proceeds of the realisation of the relevant Land in accordance with the provisions of the Document.
14. The proceeds of realisation of any Land by a Mortgagee or by any of the persons referred to in clause 13 will be applied, subject to any claims having priority at law, in payment of:
- (a) First - money secured by the First Mortgage up to the First Mortgagee Priority Amount;
 - (b) Second - money secured by the Second Mortgage up to the Second Mortgagee Priority Amount;
 - (c) Third – money secured by the Third Mortgage up to the Third Mortgage Priority Amount;
 - (d) Fourth - all other money (including interest) secured by the First Mortgage;
 - (e) Fifth - all other money (including interest) secured by the Second Mortgage;
 - (f) Sixth - all other money (including interest) secured by the Third Mortgage;
- and then in payment to those entitled to any surplus.
15. If:
- (a) a Mortgagee (a "**Recovering Mortgagee**") receives any amount representing all or part of the proceeds of realisation of any Land by any of the persons referred to in clause 13; and
 - (b) the amount received by the Recovering Mortgagee exceeds the amount that it would have been entitled to had the relevant amount been distributed in accordance with clause 14 (the amount of such excess being the "**Excess Amount**"),

then the Recovering Mortgagee shall, subject to any claims having priority at law, hold the Excess Amount on trust for the Mortgagee(s) who would have been entitled to it had the relevant amount been distributed in accordance with clause 14 and shall promptly pay it to such Mortgagee(s).

16. For the avoidance of doubt, where the proceeds of realisation of any sale are distributed in accordance with clause 14 and applied in accordance with clause 17, such proceeds shall be distributed and applied as though any Mortgages which were required to be discharged had not been discharged.

REDUCTION IN PRIORITY AMOUNT

17. On receipt of an amount by a Mortgagee pursuant to clause 14 or clause 15, that Mortgagee will apply the amount received in accordance with the terms of the relevant facility and/or Mortgage, or otherwise:
- (a) First – in payment of any Relevant Costs secured by the relevant Mortgage;
 - (b) Second – in payment of any other outstanding amounts that are secured by the relevant Mortgage and form part of its Priority Amount.
18. Upon an amount being applied in accordance with clause 17 (other than an amount which is applied against Relevant Costs), the First Mortgagee Primary Amount, the Second Mortgagee Primary Amount or the Third Mortgagee Primary Amount (as applicable) shall, with effect from the date of the relevant payment, be reduced by an amount equal to that amount (subject always to such amount not being avoided under any law of insolvency).

COUNTERPARTS

19. The Document may be executed in any number of counterparts each of which will be deemed an original and together will constitute a single document. Any party may enter into the Document by signing any counterpart and may rely on a facsimile copy of a counterpart signed by any other party. No party will be bound by the Document until all parties have duly executed and delivered the Document.

TRANSFER OR ASSIGNMENT

20. Neither Mortgagee will transfer or assign any interest or right in or to its Mortgage to any person unless that person has agreed to be bound by the Document.

GOVERNING LAW AND JURISDICTION

21. New Zealand law governs the Document, and the Mortgagees submit to the non-exclusive jurisdiction of the courts of New Zealand.

DELIVERY

22. For the purposes of Section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, the Document will be delivered by each of the parties hereto (each a "**Delivering Party**") immediately on the earlier of:
- (a) physical delivery of an original of the Document executed by the relevant Delivering Party into the custody of the other party or other party's solicitors; or
 - (b) transmission by the relevant Delivering Party or its solicitors (or any other persons authorised in writing by the relevant Delivering Party) of a facsimile, photocopied or scanned copy of an original of the Document, executed by the relevant Delivering Party, to the other party or other party's solicitors.

INTERPRETATION

23. In addition to the definitions set out in the document ("**Document**") which incorporates this schedule of terms:

First Distribution Date	The first date on which the proceeds of realisation of any Land are distributed in accordance with the terms of the Document.
First Mortgagee Primary Amount	<p>At any time, the aggregate of:</p> <p>(a) the First Mortgagee Amount; and</p> <p>(b) an amount equivalent to the notional amount of interest, calculated at the highest rate payable by the Mortgagor to the First Mortgagee immediately before the First Distribution Date, which would accrue over a period equal to the Interest Period on the lesser of:</p> <p>(i) the First Mortgagee Amount; and</p> <p>(ii) the highest balance secured by, and outstanding under, the First Mortgagee's Mortgage at any time over the Interest Period ending on the First Distribution Date,</p> <p>as such amount has been reduced in accordance with clause 18.</p>
First Mortgagee Priority Amount	<p>On any date ("Relevant Date"), but subject to clause 9, the aggregate of:</p> <p>(a) the First Mortgagee Primary Amount as at that date;</p> <p>(b) the amount of all fees, bank charges, taxes and reasonable expenses (including legal expenses, remuneration of a receiver, and goods and services and similar taxes on that amount) incurred by the First Mortgagee, or by a receiver appointed by the First Mortgagee, in protecting the security under the First Mortgage or exercising any powers or rights under the First Mortgage, and any amounts paid or advanced by the First Mortgagee for a purpose specified in section 87(1) of the Property Law Act 2007, but in each case only to the extent that they relate to Land; and</p> <p>(c) the amount of interest, calculated on a daily basis at the highest rate payable by the Mortgagor to the First Mortgagee on any amount secured by, and outstanding under, the First Mortgage immediately before the Relevant Date, on each amount in paragraph (b) above from the date of payment of the relevant amount until the date of reimbursement of that amount to the First Mortgagee.</p>
Mortgagees	The First Mortgagee, the Second Mortgagee and the Third Mortgage, and " Mortgagee " means any of them.
Mortgages	The First Mortgage, the Second Mortgage and the Third Mortgage, and " Mortgage " means any of them.

Priority Amount	<p>In relation to:</p> <ul style="list-style-type: none"> (a) the First Mortgagee, means the First Mortgagee Priority Amount; (b) the Second Mortgagee, means the Second Mortgagee Priority Amount; and (c) the Third Mortgagee, means the Third Mortgagee Priority Amount.
Relevant Costs	<p>In relation to:</p> <ul style="list-style-type: none"> (a) the First Mortgagee, means the amounts referred to in paragraphs (b) and (c) of the definition of First Mortgagee Priority Amount; (b) the Second Mortgagee, means the amounts referred to in paragraphs (b) and (c) of the definition of Second Mortgagee Priority Amount; and (c) the Third Mortgagee, means the amounts referred to in paragraphs (b) and (c) of the definition of Third Mortgagee Priority Amount.
Second Mortgagee Primary Amount	<p>At any time, the aggregate of:</p> <ul style="list-style-type: none"> (a) the Second Mortgagee Amount; and (b) an amount equivalent to the notional amount of interest, calculated at the highest rate payable by the Mortgagor to the Second Mortgagee immediately before the First Distribution Date, which would accrue over a period equal to the Interest Period on the lesser of: <ul style="list-style-type: none"> (i) the Second Mortgagee Amount; and (ii) the highest balance secured by, and outstanding under, the Second Mortgagee's Mortgage at any time over the Interest Period ending on the First Distribution Date, <p>as such amount has been reduced in accordance with clause 18.</p>

<p>Second Mortgagee Priority Amount</p>	<p>On any date ("Relevant Date"), but subject to clause 9, the aggregate of:</p> <ul style="list-style-type: none"> (a) the Second Mortgagee Primary Amount as at that date; (b) the amount of all fees, bank charges, taxes and reasonable expenses (including legal expenses, remuneration of a receiver, and goods and services and similar taxes on that amount) incurred by the Second Mortgagee, or by a receiver appointed by the Second Mortgagee, in protecting the security under the Second Mortgage or exercising any powers or rights under the Second Mortgage, and any amounts paid or advanced by the Second Mortgagee for a purpose specified in section 87(1) of the Property Law Act 2007, but in each case only to the extent that they relate to Land; and (c) the amount of interest, calculated on a daily basis at the highest rate payable by the Mortgagor to the Second Mortgagee on any amount secured by, and outstanding under, the Second Mortgage immediately before the Relevant Date, on each amount in paragraph (b) above from the date of payment of the relevant amount until the date of reimbursement of that amount to the Second Mortgagee.
<p>Third Mortgagee Primary Amount</p>	<p>At any time, the aggregate of:</p> <ul style="list-style-type: none"> (a) the Third Mortgagee Amount; and (b) an amount equivalent to the notional amount of interest, calculated at the highest rate payable by the Mortgagor to the Third Mortgagee immediately before the First Distribution Date, which would accrue over a period equal to the Interest Period on the lesser of: <ul style="list-style-type: none"> (i) the Third Mortgagee Amount; and (ii) the highest balance secured by, and outstanding under, the Third Mortgagee's Mortgage at any time over the Interest Period ending on the First Distribution Date, <p>as such amount has been reduced in accordance with clause 18.</p>

<p>Third Mortgagee Priority Amount</p>	<p>On any date ("Relevant Date"), but subject to clause 9, the aggregate of:</p> <p>(a) the Third Mortgagee Primary Amount as at that date;</p> <p>(b) the amount of all fees, bank charges, taxes and reasonable expenses (including legal expenses, remuneration of a receiver, and goods and services and similar taxes on that amount) incurred by the Third Mortgagee, or by a receiver appointed by the Third Mortgagee, in protecting the security under the Third Mortgage or exercising any powers or rights under the Third Mortgage, and any amounts paid or advanced by the Third Mortgagee for a purpose specified in section 87(1) of the Property Law Act 2007, but in each case only to the extent that they relate to Land; and</p> <p>(c) the amount of interest, calculated on a daily basis at the highest rate payable by the Mortgagor to the Third Mortgagee on any amount secured by, and outstanding under, the Third Mortgage immediately before the Relevant Date, on each amount in paragraph (b) above from the date of payment of the relevant amount until the date of reimbursement of that amount to the Third Mortgagee.</p>
<p>person</p>	<p>Includes that person's successors, permitted assigns, executors and administrators (as applicable).</p>