

# Welcome



**Family  
Finance**

*Finance made easy!*

Keep this contract in a safe place

# GLAD WE COULD HELP!

Thanks for choosing Family Finance (FFL) as your credit provider. We're a proudly Northland owned and operated company, and we've helped many from all over New Zealand get something they really need and want since 1977.



Family Finance is a qualifying Financial Entity under the Financial Advisers Act and a copy of our full written disclosure statement is available on our website [www.familyfinance.co.nz](http://www.familyfinance.co.nz) free of charge. Family Finance is a responsible lender and an application for finance may be declined if a decision to lend would not, in Family Finance's opinion, be in accordance with its responsible lending obligations.

**Please make sure you read the full Operative Terms in this booklet and keep it in a safe place.**

## Need to talk to us?

If you've got any questions about your finance or you would like to update your personal details (like your address or contact numbers) just call our friendly customer service team .  
Phone **0800 28 27 24** or **+64 9 4081900** Or email [apply@familyfinance.co.nz](mailto:apply@familyfinance.co.nz)

## Make an additional Payment

You can make an additional payment at any time by depositing funds into our ASB account: **12-3096-0256708-00** Please include your FFL loan number as a reference on any deposit made, as shown below.

## Contract Number:

<b>ASB</b> ASB BANK LIMITED KAITIAIA	<b>Deposit</b>																								
Depositor's name _____	Date _____																								
Reference <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<table border="1"><thead><tr><th>Notes</th><th>No.</th><th>Amount</th></tr></thead><tbody><tr><td>\$100</td><td></td><td></td></tr><tr><td>\$50</td><td></td><td></td></tr><tr><td>\$20</td><td></td><td></td></tr><tr><td>\$10</td><td></td><td></td></tr><tr><td>\$5</td><td></td><td></td></tr><tr><td>Coins</td><td></td><td></td></tr><tr><td>CHEQUES (if any)</td><td></td><td></td></tr></tbody></table>	Notes	No.	Amount	\$100			\$50			\$20			\$10			\$5			Coins			CHEQUES (if any)		
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# PERSONAL LOANS

You never know when you might need a helping hand to get something you really want such as:



Family celebrations  
and holidays

New or secondhand  
car or boat



Home renovations  
or household goods



Consolidation your bills and credit  
cards into one convenient loan



**Did you know...**

We can help you in other ways too?

**Simply apply online or call 0800 28 27 24**

# BUSINESS FINANCE

With a **lease** or a **term loan**, for your machinery or vehicles, you can get cash flow advantages and the flexibility of structured payment options. You may also benefit from some tax efficiencies. Consult your tax specialist to confirm any tax benefits that apply to your business.

Talk to us about which product is right for your business Call **0800 28 27 24** now, or email **apply@familyfinance.co.nz**



## ABOUT US

In the late 1970s Brian and Rosemary Archibald sold their herd of cows and used the funds to help a Kaitaia businessman purchase a truck for his business. Family Finance was born.

Today, Family Finance helps people just like you with a wide range of personal, quick, hassle free, financial products and services. We're a local company, with friendly Kaitaia and Kerikeri staff, 100% kiwi owned and proud of it.

Family Finance, as a responsible lender, is part of the Fairway Resolution Scheme, ensuring all parties are satisfied. Phone: 0508 337 337 Web: [www.fdr.org.nz](http://www.fdr.org.nz).

# INSURANCE

You have worked hard to get your things so it makes sense to look after them. Family Finance can help with a range of insurances for you, supplied by trusted companies to suit your needs.

- **Provide stability with Payment Protection Insurance**
- **Safeguard your assets against unexpected loss**
- **Protect your motor vehicle or boat against theft or damage**
- **Cover yourself against expensive mechanical repairs**



To find out more, visit [www.familyfinance.co.nz](http://www.familyfinance.co.nz)  
or call our helpful lending team on 0800 28 27 24

# OPERATIVE TERMS

# FAMILY FINANCE LIMITED

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. The Credit Contracts and Consumer Finance Act may not apply. Notwithstanding anything else in this agreement, if this agreement is not a consumer credit contract, the Credit Contracts and Consumer Finance Act does not apply to it save with respect to:
  - a. Collateral which is consumer goods and the law which applies in the event of their repossession and sale by the lender; and
  - b. Part V which relates to oppression.
3. You give a security interest in collateral you own. If you own any collateral (see paragraph 49 below "Meaning") then this paragraph 3 applies to you.
  - a. You grant to us 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 and also any money you owe us under any other agreement, whether you have already signed that other loan agreement or you sign it after you sign this one. You are charging them with the money you owe under this and other agreements.
  - b. The security interests are to secure payment to us of the unpaid balance under this agreement and money you owe under any other agreements and also to secure your performance of all other terms of this agreement and other loan agreements, no matter when you sign or signed those other agreements. For example, if you default in making payments when they are due under this agreement or under another loan agreement, we may seize certain collateral (for example, repossess your goods) and sell it to pay the unpaid balance or another overdue amount. (See paragraph 40 below of these operative terms).
  - c. If you default we 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 us 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. We may accelerate payment of the unpaid balance if you breach this sub paragraph.
  - 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.
4. 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 4 applies to you.
  - a. You must sign in our favour and at your cost a registrable mortgage over that land.
5. If you default the lender may sell your land. The mortgage of the land is to secure payment of the unpaid balance to us and also to secure the performance of all other terms of this agreement and of any associated loan agreement. If you do not make any payment when it is due and payable or if you fail to do other things you must do under this agreement, we may sell the land to pay the unpaid balance.
  - c. The mortgage shall be in all obligations form published by the Auckland District Law Society, Incorporated so as to incorporate memorandum number 2015/4326 or, the Society's replacement Memorandum at 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 us.
  - 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 we register our mortgage, our mortgage will have priority over that later mortgage up to the larger amount of (a) and (b).
  - e. You must not mortgage your land any further without our written consent and if you do we may accelerate payment of the unpaid balance.
  - f. You change your land as set out in this paragraph 4.
  - 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, we may call up the loan (accelerate payment) and we may sell the land and use the money to pay the money you owe. Further, the mortgage of land is also security for any money you owe us under any other loan agreement.
5. 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 we are paid the unpaid balance and otherwise to protect our interests under this agreement. For example, the attorney may sign any document on your behalf so as to:
    - (i). Grant and register a mortgage under the Land Transfer Act 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; or
    - (iii). Operate and draw on any bank account.
  - c. This power of attorney shall continue until the unpaid

balance has been paid to us in full and continues after judgment. That means we may continue to sign on your behalf until all the unpaid balance is paid even if we have judgment against you.

- d. We cannot use the power to appropriate after-acquired consumer goods to the security interest in your name.
  - e. You ratify anything done by an attorney under this power. In advance you confirm everything that the attorney does.
  - f. 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.
- 6. 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 or about land subject to a mortgage) if we wish to serve any legal paper on you – if we wish to give anything to you in writing – 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.
  - 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 6, 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 papers may be served on you at the last address that we have 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 land to be mortgaged; or
    - (ii). attached to an outside door at either 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 legal paper will be sufficiently served or given 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 or given to you if it is clearly addressed to you and attached to what appears to be the main outside door to the building for your flat or if the legal paper is given to any building manager or receptionist for the building and the manager or receptionist is asked to give it to you.
    - i. Further,
      - (i). if you have given 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. That means we may communicate with you in any way that we can on the internet.
- 7. 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.**
- 8. 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.**
- 9. New Zealand law applies. This agreement is governed by New Zealand law and you 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.
- 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 otherwise and in such manner as we require.
  - b. That means if you believe we owe you a debt of money or if you have any sort of claim against us, you must not take off
    - (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 instalment or credit or default fee or default interest. That means you must allow us to take money from your bank account.
  - 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
- 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 suffer or have to pay in connection with:
- 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.
  - 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 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.
  - 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.
  - 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.
  - 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.
  - 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.
  - Our doing anything you should have done but you have not done.
  - 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 paragraph 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 we prove the amounts.
- 12.** Our costs referred to in paragraph 11 include:
- Our own internal administration fees; and
  - 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, default interest rate, credit fees and default fees payable under this agreement so they go up or down. You must pay such changed interest rates and changed fees.
- 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):
- In each case, we will give you not less than a month's notice of any such change and any increase or decrease in your regular payment and the date when any increased or decreased payments begin.
  - 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. If this agreement is a consumer credit agreement any interest rate increase shall be proportional to the increase in our cost of funds or in the costs which we may not recover as credit or default fees. Any credit or default fee increase will be proportional to the cost basis of the fee. For example, if the costs we recover as credit fees go up by 5% we would not increase credit fees by more than 5%. However, those limitations will not apply if this agreement is not a consumer credit contract and the lender may, if it so decides, make a profit on external or internal costs or charge fees that are not based on costs and may increase interest beyond any increase in cost of funds or in unrecoverable costs.
- 14.** Default Interest and Default fees.
- If you are in financial default you must pay us default interest on any overdue instalment or other overdue amount at the rate set out in the "Default interest charges and default fees" section of the disclosure statement. You must pay default interest from the date you fall into financial default until you are no longer in financial default.
  - You must also pay default interest on the unpaid balance at the rate shown in the disclosure statement if we accelerate payment for a reason other than your financial default. For example, if we call up the unpaid balance because you drive a collateral motor car when you have excess blood or breath alcohol or because you do not tell us the truth in your loan application, you must pay us default interest on the full unpaid balance until you pay it. You must also pay default interests on the unpaid balance if you do not repay the loan in full at the end of the agreed term.
  - 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 until you cease that 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 credit fees and default fees (including the cost of any court action or Disputes Tribunal claim) after judgment against you and they will accrue (you will owe them) without our giving you any notice or making demand. That means you must keep paying them after we sue you in court for all or any part of the unpaid balance and obtain a judgment or an order that you must pay.
  - Your obligation to pay ordinary and default interest and credit and default fees is subject to section 83M of the Credit Contracts and Consumer Finance Act which prevents us from charging any costs at all or any interest at all on any part of the unpaid balance after we have sold consumer goods collateral [3e](#) above.
  - Notwithstanding anything else in this agreement but subject to sub-paragraph e, if this agreement is not a consumer credit contract, we may charge default interest on the unpaid balance in the event that you commit any default whether a default in any payment or otherwise.
- 15.** Subject to section 119 and 28 of the Property Law Act 2007 (which in some cases requires a legal document about collateral goods which are not consumer goods or about



mortgaged land to be sent) we may accelerate repayment of the loan and require you to pay the unpaid balance to us straight away (forthwith) if:

- a. Any goods included in the collateral are at risk;
  - b. You breach paragraph 3e, 3f, 4e or 8 above or paragraph 25, 26, 31, 32, 35 or 36 below of these operative terms;
  - c. You breach paragraphs 29a to 29i below of these operative terms or if we cannot find the collateral or if you change your home address without notifying us and we cannot find you;
  - d. You fail to pay any money for 5 working days after it is due; or
  - e. 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.
- 16.** It is your job to know what you owe the lender from time to time. 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 a due payment, we may debit default interest and default fees and you must ask us how much they may be.
- 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 receive commission on any insurance which it arranges for you.
- 20.** 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 apply that money as we wish:
  - a. We will normally appropriate (credit) the money firstly against default interest, then against default fees, then ordinary interest, then credit fees, then the rest of the unpaid balance. However, we may also credit the money in a different order or in other ways.
  - b. We may credit that money against any other debt owed by you whether or not the money so appropriated is due and

payable.

- c. That decision will overrule or cancel any appropriation you claim to have made. However, 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. Nor will it cause you to pay any more interest or credit fees than you would have done if our appropriation had not taken place.

(b) and (c) mean, for example, if you owe us money under two agreements, and you pay us an instalment under one agreement, we may appropriate that money to the other agreement. If you 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.

**21.** This agreement secures future advances. That means that if you borrow money from us or if we give you other value 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 or there is a new agreement when we lend you the extra money.

**22.** 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.

and that figure is shown in the disclosure statement under "FULL PREPAYMENT".

- b. We may also charge you a fee that represents a reasonable estimate of our loss arising from the full repayment. Our method of calculating our loss is set out in the "FULL PREPAYMENT" section of the disclosure statement.

**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 name, home and email address and phone numbers. You must not change your name, physical residential (home) address or email address, or your landline or cellular telephone number without first giving us two working days written notice of your intention to do so. You must at the same time provide us with the replacement name, home or email address or landline or cellular telephone number.

**25.** You must always be able to pay your debts when they fall due. You will breach this agreement and we may accelerate payment of 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 the law says 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 payment of the loan in full.]

**26.** 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; or

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.

**27.** 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.

**28.** If the borrower is a company and there is a change in its control. If the borrower is a company registered under the Companies Act 1993, and

- a. shares in total carrying the right to exercise or control the exercise of 20% or more of the voting power of the company become legally or beneficially held by a person not already a shareholder in the company when this agreement is signed; or
- b. any one person who at the time of signing this agreement has the right to control or exercise control of 40% or more of the voting power of the company ceases in any manner to have that right; or
- c. there is a change in the directorship of the company without our written prior consent the borrower will be in default and we may accelerate payment of the unpaid balance.

Security Interest in Collateral and Mortgage of Land.

**29.** 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 paragraph 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 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 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. You must not

(i). drive any collateral motor vehicle when:

- (1). you do not hold a driver's license; or
- (2). you are disqualified from driving; or
- (3). you have a breath or blood alcohol level beyond any legal limit nor

(ii). allow any other person to drive when unlicensed or disqualified or with illegal breath or blood alcohol level.

g. 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 d(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 3b.49 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.

(v). 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 any collateral goods properly and if they are a motor vehicle you must fix up any damage to those parts of the motor vehicle inside and out, including painting.

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

**31.** 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 as to attach the security interest to them and you must provide us with any descriptions and serial and part numbers as may be necessary to enable or assist registration. If you do not tell us about any after-acquired consumer goods, we may accelerate payment of the unpaid balance.

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 so as to make them part of the collateral. 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. If you do not tell us about any consumer goods you obtain in future we may call up payment of the unpaid balance.

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 as soon as you obtain it and about any accession as soon as you attach it to other collateral and you must describe them to us and also give us any serial numbers and part numbers on them so that we know about them. In the case of accessions that will make them part of the collateral but replacements automatically become part. If you do not tell us about any replacement or accession, we may call up payment of the unpaid balance.

Rules for use and treatment of disabling device. If the disclosure statement shows that there is a disabling device attached to any consumer goods, the person who owns the consumer goods must keep the device attached to the consumer goods and must not do anything to cause or allow it to be removed, deactivated or made ineffective. We may activate the device if and for as long as:

you are in financial default;

the goods are at risk. This means that we believe on reasonable grounds that the goods have been or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold or otherwise disposed of contrary to this agreement. Those actions are forbidden in paragraph 29h(iii) above of these operative terms;

- a. if you are in breach of any of paragraphs 29a to 29i above of these operative terms;
- b. we learn that you or the guarantor has breached paragraph 8 above or paragraph 35 below of these operative terms.

**33.** 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 we may vote in your place at any meeting of the company shareholders and we shall have all your rights and powers under the company's constitution and at law.
- b. The last two sub-paragraphs mean that if the company issues further rights, income or other benefits attached to collateral shares, we will have security also over those rights 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.

**34.** The lender may take possession of the collateral in order to perfect. The lender may take possession of collateral for the purposes of perfecting its security interest under the PPSA.

**35.** 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 its 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. You must keep the insurance premiums paid up to date.
- 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.

**36.** No criminal activity on mortgaged land. You must not do anything against the law on the land to be mortgaged. That includes committing an offence under the Misuse of Drugs Act 1975 or any replacement Act. If you breach this paragraph we may accelerate payment of the unpaid balance.

**37.** 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 the 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. It also includes paying insurance premiums which you must pay under paragraph 35 above.

**38.** 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

so that somebody makes a claim against the collateral or the land or against you and as a result 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.

**39.** 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.

**40.** 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 the security interest has attached to. 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 the receipt to prove he has paid the sale price; and
    - (ii). The buyer need not investigate or question the propriety or regularity of the sale to the buyer and the buyer is not to be affected by any notice express or constructive that such sale is improper or irregular. This means that the buyer is not affected and does not need to worry if he learns anything about the sale process (how we sold) or our right to sell and he does not need to ask.

**41.** 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 generally that you do not have warranties and protections under that Act if you are in business and the loan is used for business purposes.

**42.** 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.

**43.** 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 verification statement that the Personal Property Securities Registry then sends us describing 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.

**44.** 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 or change procedures nor withdraw consents or authorities until (subject to paragraph 46 of these operative terms) the unpaid balance has been paid in full.

**45.** 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:

- a. We may pay the money directly to the seller 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 or to comply with any responsible lending requirements.

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

- a. somebody other than you:
  - (i). pays any amount due under this agreement; or
  - (ii). provides security for the loan over collateral or land; and
- b. that other person becomes bankrupt or goes into liquidation; and
- c. the Official Assignee ("OA") cancels the payment or the creation of the security 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

With respect to payments cancelled or set aside, 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, and

With respect to security cancelled or set aside you must provide alternative security of a nature, quality and value equivalent to that provided by the other person to the satisfaction of the lender in the lender's unfettered discretion.

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. Further, if a guarantor or a friend provides security over collateral or over land and that guarantor or friend becomes bankrupt and the OA cancels the security then you must give us replacement security of the same type and quality.

**47.** 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.

The lender may not act against the law. Our rights and powers are subject to legislation including the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003 and the Consumer Guarantees Act 1993. This means that we may not do anything that

an Act of Parliament forbids and we must do the things it requires. For example, if we had seized and sold consumer goods collateral to pay some of the money you owe under this agreement, we could not afterward charge you interest on the balance of the debt remaining after sale.

Explanations and Meaning.

#### 49. 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 49. "Borrowers" or "you" means the person(s) shown as borrower(s) and co-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 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" 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. "Motor Vehicle" has the meaning given in section 57 of the PPSA. "Obligation" means something that you must do or that you must not do. "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). "PPSA" is the Personal Property Securities Act 1999. "Principal" is the initial unpaid balance before interest is charged and it is the unpaid balance on which interest is charged. When we charge interest and fees to your account they become part of principal. "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); or
- (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.

50. 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 \$2178 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 periodic credit fees (credit fees you pay regularly).

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 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.
  - (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 in a consumer credit contract we may only charge default interest on that instalment. Even if we accelerate payment of the unpaid balance (call up payment of the loan in full) because, for example, you miss paying a lot of instalments, we may charge default interest only on those unpaid instalments. If your instalments were \$100 and the default interest rate were 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 you breach the contract in some way that is not financial default. If we do that, we may charge you default interest on the unpaid balance. For example, if you are convicted of driving with excess blood or breath-alcohol in a collateral motor vehicle you will be in default and we may accelerate payment of the unpaid balance. If we did that, we would be able to charge you default interest on the unpaid balance. If the unpaid balance was \$1000 and the default interest rate on the unpaid balance was 35%, the default interest would be \$350 per year. We may also charge default interest on the unpaid balance if

you do not pay it at the end of the agreed term.

- 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

#### 51. 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.

- 52.** You the person named in or above the disclosure statement as guarantor have asked us Family Finance Limited to lend money to the borrower. The money to be lent is the initial unpaid balance referred to in the disclosure section of the attached loan agreement ("the loan agreement") and any other money we lend to the borrower under the loan agreement. You wish us to lend to the borrower upon the terms contained in the loan agreement. Now in exchange for our lending to the borrower the initial unpaid balance and any subsequent advances you agree with us as set out in the following paragraphs.
- 53.** Meaning. In this guarantee words and expressions have the same meaning as they have in the loan agreement. However, "anyone else" means any borrower under the loan agreement and another guarantor of the borrower's obligations under the loan agreement or one or more of them. "Disclosure statement" means the disclosure statement in the loan agreement. "Default" means that you the guarantor fail to do something you must do or that you do something you must not do. "Guaranteed money" means the unpaid balance under the loan agreement. "Due and payable" means "must be paid now".
- 54.** 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.
- 55.** Guarantee. In exchange for our agreeing to make the loan, you guarantee that the borrower will:
- pay all amounts due under the loan agreement when they are due and payable; and
  - do everything the borrower must do; and
  - refrain from (avoid) doing what the borrower must not do.
- 56.** If the borrower does not pay then you must do so. If the borrower does not pay any amount when it is due and payable we may demand some or all of that amount from you and you must pay it immediately. If you do not pay the amount demanded we may sue you for the money or may enforce any security interest which you have given to us. For example, if you have given a security interest in a motor vehicle we may repossess the motor vehicle and sell it to help to pay the debt. If you have given a mortgage over a house, we may sell the house.
- 57.** You are deemed to be principal debtor. You are also liable under this guarantee as if you are the principal debtor and the rules that operate between us and the borrower as set out in the loan agreement apply to you as if you were the borrower. In addition to your obligations as the guarantor, you agree to do what the borrower must do as if you were the borrower. We may demand the guaranteed money from you when it is due and payable even if we do not demand that money from the borrower. You are not excused from paying any amount or from doing anything even if something happens which otherwise might release you from your obligation as a guarantor or might limit that obligation. For example, your obligation is not changed and you must still pay if:
- we do not enforce, or we delay enforcement of, any right or power against you or anyone else;
  - we release or partly release anyone else from obligations under the loan agreement or a guarantee (including this guarantee) or release or discharge any security interest granted by anyone else;
  - anyone else becomes bankrupt or becomes subject to any arrangement under the Insolvency Act 2006 whereby they do not have to pay some or all of the guaranteed sum;
  - we do not obtain a security interest over property from anyone else or anything happens or does not happen and as a result our security interest from anyone else becomes less effective or ineffective;
  - we vary or change any security interest;
  - we allow anyone else more time to pay or give a waiver or a concession to anyone else;
  - anyone else does not sign the loan agreement or any guarantee or is not liable under either of them for any reason.
- 58.** 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 the borrower 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.
- 59.** Your liability is joint and several with any other guarantor. You must personally:
- pay the guaranteed money to us upon demand; and
  - do everything this guarantee requires; and
  - not do anything that this guarantee forbids
- even if another guarantor signs this guarantee or signs another guarantee of the borrower's obligations. We do not have to claim or demand from anyone else but we may do so. We may claim against you on your own or against all guarantors and borrowers. You are liable on your own and also jointly liable with any other guarantor under this guarantee. We do not have to sell collateral before we require you to pay.
- 60.** Rights of subrogation indemnity and contribution limited. If you pay us any money under this guarantee you must not claim any part of that money:
- from a borrower; or
  - from a borrower's estate if he is dead; or
  - from the Official Assignee if he is bankrupt; or
  - from another guarantor; or
  - from another guarantor's estate if he is dead; or
  - from the Official Assignee if the other guarantor is bankrupt or from the liquidator if the other guarantor is a company in liquidation
- until we have received payment of the guaranteed money in full and all the borrower's obligations under the loan agreement have been performed. We must be paid in full before you may claim back from a borrower or another guarantor any money you have paid to us.
- 61.** This guarantee may be enforced by an assignee. We may give or assign our rights under the loan agreement and this guarantee to somebody else ("assignee"). If we do so, this guarantee (including the power of attorney) will apply to the assignee as if the assignee were the lender. The assignee may enforce this guarantee against you.
- 62.** You must pay the lender without deduction or withholding.
- You must make all payments without any deduction or withholding for any purpose whether by way of set-off counter-claim or otherwise and in such manner as we require.
  - That means if you believe that we owe you or the borrower a debt of money or if you or the borrower has any sort of claim against us, you must not take off:
    - any part of that debt; or
    - any of the amount you claim we owe you or the borrowerfrom your payment of any instalment or other amount under this agreement. This does not stop you from making such a claim but you may not do so until you have paid the guaranteed money to us.
- 63.** You grant security interest in collateral. If you own any collateral (see paragraph 49 of the loan agreement "Meaning") then this paragraph 63 also applies to you.
- You grant to us a security interest over that collateral. That means your goods (such as a motor car) and other property shown as collateral are security for payment of the guaranteed sum.
  - The security interest is to secure payment to us of the guaranteed money and also to secure your performance of all other terms of this guarantee. For example, if you default

- in paying the guaranteed sum when we demand it, we may seize certain collateral (for example, repossess your goods) and sell it to pay the guaranteed sum. See paragraph 65 below of this guarantee.
- c. If you default we may also apply to the Court for an order that any or all of your collateral be repossessed and sold.
  - d. You promise to us that nobody else has the right to repossess and sell the collateral and nobody else owns it unless you have told us.
  - e. In addition to paragraph 57 of this guarantee the provisions of the loan agreement relating to or in connection with security over collateral shall apply to the security interest which you give to us.
- 64.** Agreement to mortgage land. If you own any land described in the "WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS" Real Property section of the disclosure statement this paragraph 64 applies to you
- a. You must sign in favour of us and at the cost of the borrowers a registrable mortgage over that land.
  - b. If you default we may sell your land. The mortgage of the land is to secure payment to us of the guaranteed money and also to secure the performance of all other terms of this agreement and of any associated loan agreement. If you do not pay the guaranteed sum when we demand it or you fail to do other things you must do under this guarantee, we may sell the land to pay the guaranteed sum.
  - c. The mortgage shall be in all obligations form published by the Auckland District Law Society Incorporated so as to incorporate memorandum number 2015/4326 or, at the lender's option, any form to the same or similar effect required by the lender. The terms of that memorandum shall be incorporated into this guarantee. 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 us.
  - 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 we register our mortgage, the lender's mortgage will have priority over that later mortgage up to the larger amount of (a) and (b).
  - e. You charge your land as set out in this paragraph 64.
- 65.** The Lender may repossess personal property on default. If you default under this guarantee:
- a. Subject to any requirement to give you notice, we may repossess your collateral excluding consumer goods which are not identified by item and kind 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 that right:
    - (i). Our employees and contractors may enter any premises to look for and repossess collateral. They may break into a building or enclosure where we may reasonably believe collateral may be even if you are not present.
    - (ii). We may move or use your goods to gain access to or remove collateral.
    - (iii). If your property is damaged when we repossess or try to repossess goods, we do not have to pay you compensation.
    - (iv). 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.
  - (v). We may sell the collateral by auction or by private sale or otherwise. Subject to any law, we may buy in, give credit and allow payment over time as if we were the owner and nobody else had any rights.
  - (vi). You must do everything necessary to help with the sale and that includes signing any documents needed or desirable.
- b. On sale by the lender:
- (i). Any buyer of the collateral need show only our receipt or that of our agent 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 if he learns anything about the sale process or our right to sell.
- 66.** You give the lender your power of attorney. So that we may more effectively obtain the benefits under this guarantee, you irrevocably appoint us and any one manager or director of ours severally to be your attorney so that:
- a. The attorney may do anything which you agree to do; and
  - b. The attorney may do anything and to sign any document which the attorney thinks helpful to ensure we are paid the guaranteed money and otherwise to protect our interests under this guarantee. 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; and
    - (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. This right exists if you have given security over any of the collateral referred to in this sub-sub-paragraph.
    - (iii). operate and draw on any bank account.
  - c. This power of attorney shall continue in effect until the guaranteed money has been paid to us in full and continues after judgment. That last sentence means the attorney may continue to sign on your behalf until all the guaranteed money is paid even if we have judgment against you.
  - d. You ratify anything done by an attorney under this power. In advance you confirm everything that the attorney does.
  - e. You further indemnify any person acting in reliance upon the power. If somebody makes a claim against an attorney over something the attorney does as your attorney, you must compensate the attorney for the amount of that claim.
- 67.** You must pay the lender any money it receives from somebody else which it has to repay. If:
- a. somebody other than you:
    - (i). pays any amount due under this guarantee; or
    - (ii). provides security for the loan over collateral or land; and
  - b. that other person becomes bankrupt or goes into liquidation; and
  - c. the Official Assignee ("OA") cancels the payment or the creation of the security 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
- With respect to payments cancelled or set aside, 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.

With respect to security cancelled or set aside you must provide alternative security of a nature, quality and value equivalent to that provided by the other person to the satisfaction of the lender in the lender's unfettered discretion.

This means that, for example,

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

the other guarantor becomes bankrupt or your friend goes bankrupt, the OA may 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. Further, by way of example, if a guarantor or a friend provides security over collateral or over land and that guarantor or friend becomes bankrupt and the OA cancels the security then you must give us replacement security of the same type and quality.

**68.** 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 verification statement that the Personal Property Securities Registry then sends us describing 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.

**69.** You must pay the lender's costs of enforcement and attempted enforcement. If you default under this guarantee (for example, if you fail to pay the guaranteed sum on demand) you must pay us all our actual costs of trying to recover any money or otherwise enforcing this guarantee. Costs we may recover are listed in the default fees set out in the disclosure statement.

**70.** Powers and rights you give the lender are irrevocable. In this guarantee and in the loan agreement you

- a. give us a number of 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 or change procedures nor withdraw consents and authorities until the guaranteed sum has been paid in full and we have released you from the guarantee in writing.

**71.** How the lender gives you documents and communicates with you. If we wish to serve any document or notice on you – if we wish to give anything to you in writing –

- a. that document or notice will be sufficiently served or given if:

- (i). it is delivered to you; or
  - (ii). it is left at your usual or last known place of residence, business or work or at an address specified for that purpose in this agreement; or
  - (iii). it is posted in a letter addressed to you by name at that place of residence or business or address; or
  - (iv). it is sent by way of 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 guarantee and the loan agreement we send it to you by email or provide a link to our website.
- b. If you are out of New Zealand, the notice or other document may be served on or given to your agent in New Zealand if you appoint one.
  - c. If you are deceased, the notice or other document may be served on or given to your personal representatives – the people in charge of your estate when you die.
  - d. If the notice or other document is sent to you –
    - (i). by post, it is to be treated as having been received on the fourth working day after the day on which the letter is posted (and in proving the delivery it is sufficient to prove that the letter was properly addressed and posted);
    - (ii). by electronic communication, it is to be treated as having been received on the second working day after the day on which the notice or document is sent.
- e. Despite anything in this paragraph 71 the court may in any case make an order directing the manner in which any notice or other document is to be served or given, or make an order dispensing with the service or giving of the notice or document. For the purposes of any court order for substituted service, you agree that notices and documents may be served on you at the last address that we have for you as notified by you.
  - f. In addition, a document or notice will be sufficiently served or given if such document or notice is:
    - (i). handed to any person in apparent occupation of any address of any of you shown in this agreement or of the property shown in this agreement as being the land to be mortgaged; or
    - (ii). attached to an external door at such address.
  - g. Further, if your address is a flat or apartment or room in a building and if we or our agents are unable to obtain access to such flat, apartment or room by virtue of the security system of the building or for some other reason, then a document or notice will be sufficiently served if it is posted at an outside letterbox corresponding to such flat, apartment or room.
  - h. If there is no such letterbox, a document or notice will be sufficiently served if it is clearly addressed to you and affixed to what appears to be the principal external entry to the building for the purposes of obtaining access to the address provided by you or if such document is given to any building manager or receptionist for the building and directed to be given to you.
    - i. Further,
      - (i). if you have provided an email address or a facsimile number or a mobile phone number in any loan application form, or anywhere in this agreement; and
      - (ii). if you are in default and have a public address, including an internet social media address or an address at any other internet communication system (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.
    - (iii). If you are a guarantor, you will be provided with a copy of the loan agreement. All communication with Family Finance will be with both you and the borrower such as any letters or statements will be sent to both parties.



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