

Secure Home Mortgagee Deed

between

[QLCHT]

and

[bank]

and

[full name]

Secure Home Mortgagee Deed

Date:

Parties

1. xxx ("QLCHT")
2. [bank] ("Mortgagee")
3. [full name] ("Secure Home Occupants")

Background

- A. QLCHT and the Secure Home Occupants have entered into a Secure Home Agreement dated [on or about the date of this deed]/[insert] (the "**Agreement**") in relation to a property at xxx, certificate of title xxx (the "**Property**").
- B. The Secure Home Occupants have sought, and the Mortgagee has agreed to provide, a loan ("**Loan**") to the Secure Home Occupants to pay the Upfront Payment under the Agreement. Such Loan is to be secured by a mortgage over the Secure Home Occupant's interest in the Agreement (the "**Mortgage**").
- C. The Parties have agreed to be bound by the provisions in this deed which describes their respective rights and obligations in respect of the Property and the Mortgage.

Agreement

1. Capitalised terms used in this deed but not defined shall, unless the context requires otherwise, have the meaning given to them in the Agreement.
2. The Parties acknowledge and agree that:
 - a. QLCHT has, in accordance with the Agreement, consented to the grant of the Mortgage by the Secure Home Occupants in favour of the Mortgagee over the Secure Home Occupants interest in the Agreement;
 - b. The Mortgage secures the Mortgagee's loan to the Secure Home Occupants for the payment of the Upfront Payment under the Agreement and any other amounts owed by the Secure Home Occupants to the Mortgagee;
 - c. The Mortgage granted to the Mortgagee does not secure any liability owed to QLCHT by the Secure Home Occupants;
 - d. QLCHT provides no security, and accepts no liability for the liabilities owed, to the Mortgagee by the Secure Home Occupants; and
 - e. The consent of QLCHT to the Mortgage is for the benefit of the Mortgagee and to assist the Mortgagee in utilising the Property as security for its lending to the Secure Home Occupants.
3. QLCHT agrees with the Mortgagee to notify the Mortgagee in writing ("**QLCHT Default Notice**"), of any circumstances that might give rise to QLCHT being able to exercise its rights under clause 9.1 of the Agreement and give the Mortgagee at least 20 Working Days from the date of receipt of the

QLCHT Default Notice by the Mortgagee to remedy the issue (if it is able to be remedied) before QLCHT exercises its rights.

4. QLCHT further agrees that it will not grant a mortgage or other charge or security interest over **certificate of title xxx** (being the freehold interest in respect of the Property) unless such proposed mortgagee or chargeholder enters into a deed acknowledging and covenanting to be bound by this Deed as if it was QLCHT.
5. The Mortgagee agrees with QLCHT:
 - a. To notify QLCHT of any material breach or default by the Secure Home Occupants under the Loan or Mortgage;
 - b. To provide QLCHT with a copy of any notice served on the Secure Home Occupants under section 119 of the Property Law Act 2007 ("PLA Notice");
 - c. To allow QLCHT 15 Working Days, from the date of the relevant PLA Notice, to remedy any default by the Secure Home Occupants to avoid a mortgagee sale of the Secure Home Occupants interest under the Agreement (for the avoidance of doubt, this 15 Working Day period runs contemporaneously with any notice period required to be provided by the Mortgagee to the Secure Home Occupants and/or QLCHT under the Property Law Act 2007);
 - d. That in the event that a default is not remedied then, subject to clause 9 below, the Mortgagee's only remedy is to issue a put option notice on behalf of the Secure Home Occupants in accordance with clause 9.2 of the Agreement and provisions of clause 9.3 and 9.4 of the Agreement shall then apply;
 - e. That in the event that a call or put option notice is issued in accordance with clause 9 of the Agreement, the Mortgagee agrees to take all necessary steps to discharge its Mortgage upon payment of the Reversion Price to the Mortgagee and settlement of the transfer of the Agreement back to QLCHT.
6. The Secure Home Occupants and QLCHT each agree:
 - a. to promptly provide the Mortgagee with a copy of any notice received or issued under clause 9.1 or 9.2 of the Agreement; and
 - b. that, notwithstanding any provision in the Agreement, the Reversion Price must be paid by QLCHT directly to the Mortgagee, and not to the Secure Home Occupants, for so long as the Mortgage is registered over the record of title in respect of the lease under the Agreement.
7. The Secure Home Occupants agree, and QLCHT acknowledges, that at any time following the expiry of a PLA Notice issued by the Mortgagee to the Secure Home Occupants, where any default under that PLA Notice has not been remedied within the required timeframe, the Mortgagee can issue a notice to QLCHT under clause 9.2 of the Agreement requiring QLCHT to acquire the Secure Home Occupants rights in the Agreement.
8. The Secure Home Occupants agree and acknowledge that if the Secure Home Occupants are in breach of any obligation under the Agreement and/or the Mortgagee has received a notice from QLCHT under clause 3 of this deed, the Mortgagee may (but is not required to do so), without affecting any of its other rights and remedies under the Mortgage, Loan or at law, do anything and/or pay any amount to make good, or to attempt to make good or remedy, such breach to the Mortgagee's satisfaction. All amounts paid by the Mortgagee, and any costs incurred by the

Mortgagee, in exercise of its rights under this clause are payable on demand or request by the Mortgagee and will (until such amounts are paid) be secured by the Mortgage.

9. If, following the issue of a notice under clause 9.2 of the Agreement by the Mortgagee, QLCHT fails to pay the Reversion Price to the Mortgagee within the timeframe specified in clause 9.6 of the Agreement, the Mortgagee shall be free to exercise any and all of its rights under the Mortgage, Loan and/or at law including, for the avoidance of doubt, a mortgage sale of the Secure Home Occupants rights under the Agreement, and the restrictions in clause 5.d above will not apply.
10. QLCHT and the Secure Home Owners agree and acknowledge that, notwithstanding the terms of the Agreement, the Secure Home Owners:
 - a. must advise the Mortgagee in writing of any claim they make or have made under any insurance policy relating to the Property;
 - b. must not settle any claim under any insurance policy without the Mortgagee's prior written consent;
 - c. will hold any money they receive from any insurance payment on trust for the Mortgagee and pay it to the Mortgagee on request.

The Mortgagee will apply all the proceeds of any insurance policy (in its discretion) either:

- d. in or towards repairing any damage to the buildings or other improvements on the Property; or
 - e. towards repayment of the amounts secured by the Mortgage, even though those amounts may not be due for payment.
11. To the extent that any provision of this deed is inconsistent with, or conflicts with, the Agreement, this deed will prevail to the extent of the inconsistency or conflict.
 12. This deed will automatically terminate immediately following the full discharge of the Mortgage by the Mortgagee.
 13. General:
 - a. Each notice under this deed shall be in writing and delivered personally or sent by post or email to the address of the relevant party set below that party's execution block below or to any other address from time to time designated for that purpose by at least 5 Business Days' prior notice to the other parties. A notice is deemed to be received: (a) if delivered personally, when delivered; (b) if posted, three Business Days after posting; or (c) if sent by email, one hour after the time it actually comes to the recipient's attention in readable form, provided that any notice deemed received after 5pm or on a non-Business Day shall be deemed to have been received on the next Business Day.
 - b. If any provision of this agreement is illegal, invalid or unenforceable, that provision shall be read down to the extent necessary to make it legal, valid and enforceable.
 - c. No amendment to this deed will be effective unless it is in writing and signed by the parties.
 - d. The Secure Home Occupants cannot assign or transfer any of part of this deed without the written consent of the Mortgagee and QLCHT. The Mortgagee and QLCHT cannot assign or transfer any part of this deed without the written consent of the other party, such consent

not to be unreasonably withheld (but the consent of the Secure Home Occupants shall not be required to any such assignment or transfer).

- e. Each party shall, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this deed.
- f. A person who is not a party shall not have any rights under or in connection with this deed by virtue of Part 2 of the Contract and Commercial Law Act 2017.
- g. A waiver of a right under this deed is ineffective unless it is in writing
- h. This deed is governed by New Zealand law and the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts.
- i. For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this deed will be delivered by:
 - i. QLCHT and the Secure Home Occupants immediately on the earlier of:
 - (1) physical delivery of an original of this deed, executed by that person, into the custody of the Mortgagee or the Mortgagee's solicitors; or
 - (2) transmission by that person or its solicitors (or any other person authorised in writing by that person) of a facsimile, photocopied or scanned copy of an original of this document, executed by that person, to the Mortgagee or the Mortgagee's solicitors; and
 - ii. the Mortgagee immediately on the earlier of:
 - (1) physical delivery of an original of this deed, executed by the Mortgagee, into the custody of QLCHT or QLCHT's solicitors; or
 - (2) transmission by the Mortgagee or its solicitors (or any other person authorised in writing by the Mortgagee) of a facsimile, photocopied or scanned copy of an original of this document, executed by the Mortgagee, to QLCHT or QLCHT's solicitors.

EXECUTED AS A DEED:

Signed by **QLCHT** by its Authorised Signatory:

Authorised Signatory

Authorised Signatory

Authorised Signatory's full name

Authorised Signatory's full name

Signed by [bank] by its Authorised Signatory
in the presence of:

Authorised Signatory

Signature of witness

Name of witness

Occupation

Address

Signed by [occupants] in the presence of:

Secure Home Occupants

Signature of witness

Name of witness

Occupation

Address