

Memorandum of mortgage

Form of registrable memorandum

Section 209, Land Transfer Act 2017

MEMORANDUM NUMBER

2022 / 4363

BARCODE

Class of instrument in which provisions intended to be included:

Mortgage

Person executing memorandum:

The Independent Mortgage Company Limited

The following provisions are intended for inclusion in instruments of the above class

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1. What this document is about

We are lending you money and you are giving us security, which is a mortgage over your property and related rights. This memorandum of mortgage sets out the terms and conditions of the mortgage, which is about protecting that security and our ability to use it to recover the money you owe us, if required.

The mortgage gives us certain rights with respect to your property and security, and gives us the right to require you to do certain things.

It also puts some restrictions on what you can do with your property, and some ongoing obligations on you. If you default on your obligations we can use the security to recover money owed to us, including any costs.

This memorandum of mortgage is one of several loan documents that together comprise your contract. In relation to your loan, your loan terms and conditions set out other things that apply to all of your loan documents (including this mortgage). Your loan agreement prevails over this document if there is any inconsistency.

2. Key terms

In this document, these terms have specific meanings:

In default – You are ‘in default’ when you don’t meet an obligation of the mortgage or your loan, or when certain other events occur as described in more detail in section 11.

Instrument of mortgage – This means the document that includes a description of your property, and the names of the mortgagor (you) and mortgagee (us). Your instrument of mortgage binds you to the terms of this mortgage. You sign or authorise the instrument of mortgage as part of your loan documents.

Loan agreement – The loan document that sets out the specific details of your loan and security, along with any special conditions. The loan agreement is the document you sign.

Loan documents – When we talk about ‘your loan documents’, we are referring collectively to the documents that form your credit contract (including your loan agreement, your loan terms and conditions and this memorandum of mortgage), as described in more detail in your loan terms and conditions.

Loan terms and conditions – The loan terms and conditions document that describes some things that apply to all of your loan documents (including the loan agreement and this memorandum of mortgage), especially those relating to the operation of your loan and associated rights and responsibilities.

Memorandum of mortgage – A ‘memorandum of mortgage’ is a document registered with Land Information New Zealand that provides the general terms and conditions relating to the mortgage and security. ‘This memorandum of mortgage’ means this document.

Money owing – This is the money you owe us at any time (whether now or in the future). It includes the total balance (as defined in your loan terms and conditions) at any time under your loan documents and (without limitation) all of the following:

- Any loan amounts we have lent to you.
- Costs incurred by us or our agents, including for actions we take on your behalf, or incur while attempting to enforce or protect our rights or our security, or because you are in default.
- Amounts we pay on your behalf, such as rates or taxes.
- Amounts awarded to us as judgements.
- Interest charged in accordance with your loan documents.

Mortgage – When we talk about ‘this mortgage’, we mean the security over your property and related rights, created by the instrument of mortgage and this document.

Mortgagee – The mortgagee is the party with the security interest over the property. We are the mortgagee.

Mortgagor – The mortgagor is the person granting the mortgage. You are the mortgagor.

Property – When we talk about ‘your property’, we mean the land and property specified in the instrument of mortgage, including all buildings, structures, and improvements. It includes all rights or interests in the specified land and property.

Security – Security is anything we can sell or use to recover any money owing. You grant us security and this gives us certain rights to use that security. For example, this mortgage is security, giving us rights over your property, including the right to sell it to recover our money if you default on your obligations.

Unit title – If your property is part of a "stratum estate" then it is a unit title. A unit title gives ownership of the structures (units), which are usually residential dwellings or smaller commercial units on a larger

property. Under unit titles the common property is owned by a body corporate and is held in trust for the unit owners.

We – When we talk about ‘we’, ‘us’, and ‘our’ we mean The Independent Mortgage Company Limited. We also mean anyone to whom we have assigned or transferred our rights or obligations under your loan documents.

You – When we talk about ‘you’ and ‘your’ we mean each person who gives us this mortgage. If there are more than one of you it means each of you individually, and jointly in any combination. It also includes your executors, successors and administrators.

When we refer to a law, that reference includes all amendments, re-enactments or replacements of that law, and all regulations and orders in-council made in connection with it.

When we refer to this mortgage or a loan document (or any other document), that reference includes any variation or replacement of that document.

3. You agree to the mortgage and grant us security

You agree to pay and perform

You agree to pay us the money owing and to perform and comply with all other obligations you owe us at any time (whether now or in the future).

You grant us security

To secure payment of the money owing and performance of all other obligations you owe us:

- You mortgage to us all your rights, title and interest (present or future) in your property.
- You assign to us by way of security all your rights, title and interest (present or future) in the contracts of insurance relating to your property and all proceeds and rights in connection with that insurance.
- You assign to us by way of security all your rights, title and interest (present or future) over any agreements, rights, licences, consents, occupation or other uses of your property, including all amounts payable to you in connection with them. This includes any warranties under agreements relating to the purchase, construction, repair or maintenance of your property, and any rent payable to you in connection with your property.

We can enforce our rights under this mortgage

If you do not meet your commitments under your loan documents or are otherwise in default, we can exercise our rights under this mortgage (and your other loan documents) and your property will be liable to enforcement action and/or sale.

We are under no obligation to recover any amount you owe us under your loan documents by exercising our rights under this mortgage, but if we choose to do so and sell your property and the proceeds received from the sale are insufficient to repay the money owing, then you will remain liable for the money owing after the proceeds of sale are applied.

This mortgage is in addition to any other agreements

If there are terms in other agreements that aren't in this document, you are still bound by them. Our rights under this mortgage are in addition to, and enforceable independently of, any other agreement.

This mortgage remains in place until discharged

Until we execute a final discharge of this mortgage in writing, it will remain in place. All our rights and powers will remain in place until this mortgage is discharged.

We do not have to discharge this mortgage unless we are satisfied (acting reasonably) that there is (and will be) no money owing and that all other obligations you owe us have been performed.

You are still obliged to pay us any money owing and perform all other obligations you owe us, even if we do discharge this mortgage.

Our rights stay even if you die. Your obligations are transferred to your estate.

Priority

The security you give us under this mortgage secures further advances up to a stated priority limit.

A priority limit is the maximum amount for which our security over your property can have priority ahead of someone else who also has security over your property. If your instrument of mortgage does not state a priority limit, then our priority limit is \$100,000,000.

This section is included solely to assist our priority. Nothing in this section limits the nature or amount of the money owing that is secured by this mortgage.

The Property Law Act lists other covenants that apply

Part 1 of Schedule 2 to the Property Law Act 2007 lists a number of covenants that by default apply to mortgages, unless they are specifically excluded by the mortgage contract. The covenants in Part 1 of Schedule 2 of the Property Law Act 2007 all apply to this mortgage except where they are inconsistent with the express terms of this mortgage or any of your other loan documents.

4. How we can use our rights

We can do anything we reasonably decide is necessary to protect and enforce our rights

We can take any action we reasonably decide is necessary to protect and enforce our rights under this mortgage. This includes doing things on your behalf if you do not do anything you are required to do under this mortgage (and any costs we incur in doing so will form part of the money owing).

We can exercise our rights without notifying you

We are not required to give you formal notice that we are exercising any of our rights as lender or mortgagee unless we are required by law to do so.

We can assign or transfer our rights and obligations

At any time, we can assign or transfer some or all of our rights or obligations in the mortgage to another person without your further specific consent (and, to the fullest extent permitted by law, without notice). For instance, we may do this in connection with our funding arrangements and for other reasonable commercial purposes. We can share any information about you and your loan with that person. If we assign or transfer rights or obligations then references to us in your loan documents will be read as references to the assignee and/or transferee as if it were named in your loan documents as the lender.

Anyone authorised by us can act on our behalf

Anyone authorised by us can act on our behalf. Any costs incurred by someone authorised by us will be considered costs incurred by us.

We will consider you to have received any notices on the day we email them to you

Subject to applicable law, we will send you notices by email, and we will consider you to have received any notices on the day we email them to you.

Waivers

The only time we or you give up any rights under your loan documents is if the waiving party agrees to do so in writing. If we or you choose not to take any action under your loan documents, the relevant rights can still be used later. We or you can also use rights under your loan documents in different ways at different times.

5. You agree to help protect our rights

You appoint us to act as your attorney

You appoint us as your attorney for matters relating to this mortgage and your property. If you do not do any of the things you have agreed to do under this mortgage, we have the power to do them on your behalf (including signing any document and incurring any costs). You cannot revoke this appointment.

If we act as your attorney, you must confirm in writing that any act that was performed by us is binding on you, if we reasonably request. We do not have to act as your attorney at any time.

You must give us all the documentation we ask for

If we request, you must promptly provide at your cost all transfers, security interests, and any other documentation that we need to protect our security under this mortgage.

You must notify us in writing if our rights are affected

You must immediately notify us in writing if our rights under this mortgage or in respect of your property are affected or may become affected, including if any of the following events occur:

- You take any steps towards making any resource consent applications that could have an impact on your property.

- You do any act, or fail to do any act, that will cause an existing consent to lapse.
- You receive any notification from an authority looking to exercise statutory powers in respect to your property.
- Any claim or dispute arises in connection with your property.
- You are required to carry out any material repair, construction or maintenance work in respect of your property.
- Any loss or damage occurs to your property or anything else occurs that may give rise to a claim under the insurance policy in respect of your property.
- You receive notice that any person or court is taking action impacting on the current use of your property.
- Anything else occurs that may materially reduce the value of your property.
- You are in default under this mortgage or you are aware that you may be in default in the future.

To do anything that affects our security you must get written permission from us

To get an exemption from the obligations under this mortgage that impose prohibitions or requirements in relation to your property, you must get prior written permission from us. We will act reasonably in considering any request for permission to do something in relation to your property.

If you ask our permission to do something then our permission is only valid if given in writing. Verbal permission will not be given and will not be considered valid. If we give our permission subject to certain conditions then you must abide by those conditions.

6. You must not affect our rights over your property

You must maintain sole ownership

You must ensure that you are and remain the sole legal owner(s) of your property at all times. Unless you are a trustee, you must also ensure that you are and remain the sole beneficial owner(s) of your property at all times.

You can't sell, lease or part with possession of your property

You must not sell, transfer, loan, lease or otherwise dispose of or part with possession or occupation of your property.

You can't take out another mortgage over your property

You must not allow there to be another mortgage or other security interest over your property. This means that this mortgage must be a first-ranking and exclusive mortgage over your property.

You must maintain any consents or rights granted under the Resource Management Act

You will not allow any consents or rights granted under the Resource Management Act 1991 in respect of your property to lapse or expire. If those rights require you to perform any activities then you will continue to perform those activities.

7. You must have insurance

You must have an insurance policy that is acceptable to us

At all times you must have insurance for your property with an insurance company which is acceptable to us (acting reasonably). The insurance must cover all the risks covered by a standard comprehensive policy including, but not limited to, losses due to fire, flooding, or earthquake. Our interest as lender/mortgagee must be noted on the policy.

If your property is a unit title, you must make sure the body corporate insures your property in accordance with this mortgage.

Unless we've agreed in writing, your insurance must not include any non-standard restrictions or exclusions.

The insurance policy must be for the full replacement value of your property

The insurance policy must be for the full replacement value of your property. If your policy is for a specific "sum insured" then you must make this sum insured at least as much as the full replacement costs for your property.

You must keep the insurance policy current

You must pay all premiums when due and ensure that the insurance policy stays current and continues to cover the full replacement value of your property, even if the replacement cost increases.

You must satisfy all the conditions of your insurance policy, and must immediately remedy any conflicts.

Insurance money must be paid to us

Your insurer must pay us any insurance money for loss or damage to your property.

If there is an insurance claim on your property we can choose how the money is distributed

You must immediately notify us of any loss or damage to your property or anything else that may give rise to a claim under the insurance policy. You will also, at your expense, provide us with sufficient evidence to allow us to make a claim against the insurance policy, if required.

If insurance money is paid in relation to a claim on your property, you must also notify us. We may decide (acting reasonably) whether the money will be applied to repairs or repayment of money owing.

We can take remedial action and incur costs

If you do not do anything you are required to do under this section, we may (acting reasonably) do it on your behalf, and any costs we reasonably incur in doing so will form part of the money owing.

8. You must look after your property

You must maintain the condition of your property

You must always ensure that your property is well maintained. You must repair any damage or defect as soon as possible. Any repairs or building works must be compliant with relevant building and environmental codes.

You can't modify your property

You must not add, remove, or significantly alter or modify any buildings, structures or other improvements on your property.

You must avoid reducing the value of your property

You must not do, or fail to do, anything that may materially reduce the value of your property. If we think something may materially reduce the value of your property, you must take all reasonable measures we require to ensure that the outcome is avoided and the risks are mitigated.

You will arrange a valuation or other report if required

If we reasonably require it, you will provide us with an up-to-date valuation or other report (including environmental report) for your property from an independent expert (at your cost).

You will allow us access to your property to inspect it

On receiving reasonable notice from us, you will allow us or our agents access (on any business day) to your property to inspect it.

You will meet all obligations with respect to your property

You must adhere to all laws, covenants and other obligations to which your property (and its use) is subject.

You must comply with any obligations under the Resource Management Act 1991 that could have an impact on your property.

You must pay any charges relating to your property

You must pay all fees, levies, rates, taxes, insurance premiums and other charges relating to your property when they are due.

We can take remedial action and incur costs

If you do not do anything you are required to do under this section, we may (acting reasonably) do it on your behalf, and any costs we reasonably incur in doing so will form part of the money owing.

Local government can demand that we pay any unpaid rates, and we may do this even if you believe that they should not be paid.

You must complete any development

If you are undertaking any development on your property, you will work continuously until the development is completed in accordance to approved plans and specifications and is to a high standard of workmanship.

If you are in default, we may, at our discretion, complete any outstanding building works either in line with the existing plans or with variations to them. The costs of this development will be added to the money owing.

Once the development has been attached to your property then it will be considered part of the mortgaged property.

9. If your property is a unit title you have additional obligations

Unit titles have additional obligations

If your property is a unit title with a body corporate, then you have the following additional obligations:

- You must pay all levies issued by the body corporate when due.
- You will abide by all the rules set out by the body corporate.
- You will take reasonable steps to ensure that the rules are upheld by other owners of unit titles.
- You must supply us with all body corporate notices and accounts when requested to do so.
- You must inform us of any notices issued by the body corporate.
- You must allow us to exercise your right to vote on resolutions or vote in accordance with our directions.
- You will not appoint a proxy to vote in your absence without our prior written consent.
- You must not vote on any resolutions requiring a 75% majority without our prior written consent.

10. If you are a trustee you have additional obligations

Trustees have additional obligations

If you are granting us a mortgage as a trustee of a trust then you have the following additional obligations:

- You confirm that you have the authority under the instrument of the trust to enter into a mortgage.
- You confirm that the purpose of the mortgage is proper and for the benefit of the trust which holds the property.
- You confirm that entering into this mortgage does not impair your rights to act for the trust.
- You confirm all trustees of the trust granting the mortgage are signatories to the mortgage.
- You have the right to be fully indemnified out of the trust assets, with respect to the obligations under the mortgage.
- If you stop being a trustee, you remain liable under the mortgage until we have released you in writing.

- Unless you are named a limited liability trustee, you will have unlimited personal liability under the mortgage.
- If you are named as a limited liability trustee then your liability to us is limited to the trust's assets. However, if you have breached any of the terms of the loan documents, or breached any of your obligations to the trust, through dishonesty or wilful breach, then you will be liable to us from your personal assets as well as the assets of the trust. Your limited liability status only applies to your obligations for an agreement you enter into as a limited liability trustee. If you have other agreements with us where you are not a limited liability trustee, then a liability limit does not apply to those agreements.

11. What happens if you are in default

Meaning of 'in default'

If any of the following events occurs, you are 'in default':

- You miss a payment to us, or fail to pay any money owing on its due date.
- You breach any of your other obligations or representations under your loan documents in a material respect.
- Any part of your property is sold, transferred, leased, or otherwise disposed of, or you part possession or occupation of, in any way without our prior written permission.
- Any part of your property is taken from you by a legal action or under any statute.
- Your property suffers a material reduction in value for any reason.
- You become bankrupt or die.
- You go into receivership, administration or liquidation.
- You are unable to pay your debts when due.
- A material adverse change occurs in respect of your financial situation that we believe (acting reasonably) may affect your ability to pay the money owing when due.
- Any legal action is taken against you or any security is enforced against your assets.
- We believe (acting reasonably) that you have been fraudulent or dishonest in your dealings with us.
- Any loan document becomes invalid or unenforceable for any reason.

If you are in default, we can take possession of and sell your property

If you are in default, then (subject to applicable law) the security over your property given under this mortgage will become immediately enforceable. We are then able to do anything you are able to do with your property, including:

- take possession of any or all of your property;
- sell or manage your property;
- lease your property or cancel or vary any existing leases you have;
- make reasonable improvements to your property before we try to sell or lease it; and/or

- demand, recover and issue receipts for income generated by your property (and use any money received to make any payments, repairs, maintenance or improvements required to continue receipt of income in respect of your property).

If you are in default, we can also exercise any other rights given to us by law or under your loan documents.

To sell your property, we may cancel any contracts for sale that are in place without being responsible for any losses or reduction in price.

If we decide to sell your property, we can choose:

- to sell it quickly (in other words, we do not have to wait for a particular time to sell); and
- the way it is sold (for example, by tender or auction) and how it is marketed (including advertising it as a mortgagee sale).

We may exercise any other incidental powers in relation to the sale of your property granted to lenders and mortgagees under the law.

We can also appoint a receiver

If you are in default, we can also appoint a receiver for your property and for any income or other amounts you receive from your property. If we appoint a receiver:

- the receiver will be your agent, not ours, except to the extent that the receiver is required to by notice from us to act as our agent;
- we are not responsible for the receiver's actions;
- we will appoint the receiver in writing on the terms we decide (including in respect of remuneration);
- we can remove or replace the receiver at any time; and
- expenses incurred by a receiver, and the remuneration of a receiver, form part of the money owing.

The receiver has all the same rights we have if you are in default (including the rights to take possession of and sell your property), as well as any any other rights given to the receiver by law.

We will not apply any proceeds to the money owing until received

We will not apply any proceeds to the money owing until such time as they have been received by us or a receiver appointed by us. Subject to your loan documents and applicable law, we may then apply those proceeds in the manner and order determined by us (acting reasonably).

Dated this **27th** day of **April 2022**

Signed by **David Woods**, Director, _____ and **Anand Ranchord**, Director,
for and on behalf of **The Independent Mortgage Company Limited**

Memorandum number: 2022 / 4363

Land Transfer Act 2017

MORTGAGE

Registered pursuant to Section 209

Land Transfer Act 2017

Registrar-General of Land

Land Registry

(Abstract number / date / /)