



View Instrument Details

Instrument No 12049886.2
Status Registered
Date & Time Lodged 09 April 2021 16:22
Lodged By Mulligan, Waiana Te Ahi Wilson
Instrument Type Mortgage



Affected Records of Title	Land District
957368	Otago

Mortgagors
FCL CL Limited

Mortgagees	Share
Quaestor Advisors, LLC	

Mortgage Details

Memorandum Number 2011/4300
Priority Amount \$ 78,600,000.00 plus interest
This Mortgage incorporates the provisions of the above memorandum registered pursuant to Section 209 of the Land Transfer Act 2017

Annexure Schedule: Contains 3 Pages.

Mortgagor Certifications

I certify that I have the authority to act for the Mortgagor and that the party has the legal capacity to authorise me to lodge this instrument ☒

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☒

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☒

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☒

Signature

Signed by Simon John Oldbury Jones as Mortgagor Representative on 30/03/2021 09:57 AM

Mortgagee Certifications

I certify that I have the authority to act for the Mortgagee and that the party has the legal capacity to authorise me to lodge this instrument ☒

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☒

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☒

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☒

Signature

Signed by Zelda Emily Gower as Mortgagee Representative on 09/04/2021 09:41 AM

*** End of Report ***

SCHEDULE 1

Memorandum number: 2011/4300 is amended as follows:

1. By the insertion of the following definitions into clause 1(c):

 "finance document" has the meaning given to this term in the security trust deed;

 "secured parties" means the mortgagee and any person that is a "Beneficiary" under the security trust deed and **secured party** means each of them;

 "security trust deed" means the security trust deed entered into between (amongst others) the mortgagee (as security trustee) and the mortgagor; and

 "security trust" has the meaning given to this term in the security trust deed.
2. By the deletion of the words "the mortgagee" where they appear in the definition of "secured agreement" in clause 1(c) and in clauses 2(a)(i), 2(a)(v), 2(a)(vi), 2(a)(vii), 2(a)(ix), 2(a)(x), 2(a)(xi), 2(a)(xii), 2(a)(xiii), 3(a)(ii)(B), 5(c)(i), 5(c)(ii), 5(d), the second line of clause 15(b)(ii), 16(g), 24(b), 24(d) 25(c) and 25(d), and the substitution therefor of the words "a secured party".
3. By the inclusion of the words "Following a default" at the beginning of clause 11(c).
4. By the insertion of the words "(where applicable)" after "mortgagee" in the third line of clause 14(a).
5. By the insertion of the words "where required under any documents entered into between the mortgagor and the secured parties" at the end of clause 15(d)(i).
6. By the deletion of the word "mortgagee" where it appears in clause 5(b)(ii), the third line of clause 16(e) and the third line of clause 24(d) and the substitution therefor of the words "secured parties".
7. By the deletion of the words "the mortgagee's" where they appear in clause 23(a) and the substitution therefor of the words "the secured party's".
8. By the insertion of the following new clause 1(g):

 1(g) Mortgagee's role:

 (i) The mortgagee enters into and performs the finance documents and the transactions they contemplate only as the trustee of the security trust, except where expressly stated otherwise. This applies also in respect of any past and future conduct (including omissions) relating to any finance document or those transactions.

- (ii) Under and in connection with the finance documents and those transactions and conduct:
 - (A) the mortgagee's liability (including for negligence) to parties is limited to the extent it can be satisfied out of the assets of the security trust. The mortgagee need not pay any such liability out of other assets;
 - (B) another party may only do the following with respect to the mortgagee (but any resulting liability remains subject to the limitations in this clause):
 - 1.1. prove and participate in, and otherwise benefit from, any form of insolvency administration of the mortgagee but only with respect to security trust assets;
 - 1.2. exercise rights and remedies with respect to mortgagee assets, including set-off;
 - 1.3. enforce its security (if any) and exercise contractual rights; and
 - 1.4. bring any proceedings against the mortgagee seeking relief or orders that are not inconsistent with the limitations in this clause,
- and may not:
 - 1.5. bring other proceedings against the mortgagee;
 - 1.6. take any steps to have the mortgagee placed in any form of insolvency administration or to have a Receiver (as that term is defined in the security trust deed) appointed; or
 - 1.7. seek by any means (including set-off) to have a liability of the mortgagee to that party (including for negligence) satisfied out of any assets of the mortgagee other than security trust assets.
- (iii) Clauses 1(g)(i) and (ii) apply despite any other provision in any finance document but do not apply with respect to any liability of the mortgagee to another party (including for negligence) to the extent that the mortgagee has no right or power to have security trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in either case because the mortgagee's behaviour was beyond power or improper in relation to the security trust.
- (iv) The limitation in clause 1(g)(ii)(A) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in

clause 1.6(g)(ii)(B), and interpreting the finance documents and any security for it, including determining the following:

- (A) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as payable if they would have been owed had a suit or action barred under clause 1.6(g)(ii)(B) been brought);
- (B) the calculation of amounts owing; or
- (C) whether a breach or default has occurred,

but any resulting liability will be subject to the limitations in this clause.

- (v) The mortgagee shall not be responsible for the obligations of any secured party (except for its own obligations, if any, as a secured party), nor shall any secured party be responsible for the obligations of any other secured party.