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| **AGREEMENT TO GRANT AN ENCUMBRANCE TO NORTHPOWER LIMITED**  **THIS AGREEMENT IS DATED**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **PARTIES:**  **BETWEEN** NORTHPOWER LIMITED (''Northpower'')  **AND** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the registered owner(s) of the land described in Appendix 1 which will be subject to the encumbrance (“the Owner”).   1. The Owner is the registered owner of the land described in **Appendix 1** (“the Land”). |  |

1. The Owner has requested a subdivision consent from the Council in respect of a planned subdivision of the Land and, in particular, the Council’s consent to the lodgement of a plan for that subdivision with Land Information New Zealand. The Council agreed to consent to the subdivision on the condition that, amongst other things, Northpower’s requirements were met.
2. Northpower requires the Owner, to meet the full costs of providing an electricity supply to the Land and to grant an encumbrance to better secure the payment of those costs to Northpower.
3. As a condition of Northpower providing an Electricity Supply to the Land, the Owner agrees to:
   1. grant Northpower an encumbrance in the form attached to this Agreement at **Appendix 2** against the title to the Land; and
   2. arrange for a solicitor to prepare, execute, register the Encumbrance and meet all costs of an incidental to all work undertaken in relation to the entering into and registration of the Encumbrance.
4. The Owner will:
   1. provide relevant details including identification in order to complete and sign any documentation required to enable the Encumbrance to be registered and maintained. This includes authority and instruction forms. It also includes arranging for proper witnessing of the documents;
   2. obtain the consent of any caveator or other person having a prior registered interest in respect of the Land to the Encumbrance. Alternatively, you authorise Northpower to obtain such consent on your behalf; and
   3. do all other acts and things required to enable the finalised Encumbrance to be registered.

1. Northpower may at any time, without prior notice to you, register a caveat against the title to the Land to protect its interests under this Agreement. Any such caveat shall be withdrawn upon registration of the Encumbrance.
2. Northpower shall be under no obligation to exercise the rights granted under this Agreement at any particular time or in any particular way unless otherwise agreed in writing with you.
3. Capitalised Terms in this Agreement have the meanings ascribed to them in the Encumbrance unless the context otherwise dictates.

**Signed on behalf of Northpower Limited**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:   
Occupation:  
Address:

**[I/We], the Owner(s):**

Agree to the provisions of the above Agreement including the registration of the Encumbrance against the title to the Land, and to do all things and sign all documents necessary to enable registration to take place (including signing an authority and instruction form).

**Signed by the Owner(s)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Name: Name:

in the presence of (witness):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:   
Occupation:   
Address:

**Appendix 1 - The Land**

|  |  |  |  |  |
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| **Description of the Land:** | **Lot** | **DP** | **Record of Title(s)** | **Registered Owner(s):**  **(the Owner)** |
|  |  |  |  |  |
| **Address:** |  | | | |

**Appendix 2 – Form of Encumbrance Instrument**

**Annexure Schedule**

*Insert instrument type*

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| --- |
| **Encumbrance** |

*Continue in additional Annexure Schedule, if required*

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| **BACKGROUND**  **A.** The Encumbrancer is registered as owner of an estate in fee simple in the Land, which is situated in the Council's district.   1. The Encumbrancer requested the Council to consent to a plan of subdivision in terms of a plan lodged for deposit at Land Information New Zealand. 2. The Council agreed to consent to that subdivision on the condition, amongst other things, that the Encumbrancee’s requirements relating to electricity were met. 3. The Encumbranceehasrequired the Encumbrancer to meet the full costs of providing an Electricity Supply to the Land within 30 days of the date of settlement of transfer of the Land, and required the Encumbrancer to enter into this Encumbrance to better secure to the Encumbrancee, that payment and the compliance by the Encumbrancer (including all successors in title) with the obligations set out in this Encumbrance.   **OPERATIVE PROVISIONS** INTERPRETATIONDefinitions In this Encumbrance unless the context indicates otherwise:  "**Council**" means the territorial local authority for the area in which the Land is situated;  **“Electricity Supply”** means an electricity supply that is provided to the boundary of the Land and meets the written approval of the Encumbrancee;  **“Encumbrance”** means this Encumbrance Instrument;  "**Encumbrancee**" means Northpower Limited and includes its successors and its officers and agents;  "**Encumbrancer**" means the person named as the Encumbrancer in this Encumbrance and includes any successors in title to the Land from time to time;  "**Land**" means the Encumbrancer's land described on the front page of this Encumbrance;  **“Secured Sum”** means the sum of money specified on the front page of this Encumbrance or such other sum of money as is substituted for that sum in accordance with clause 2.2 of this Annexure Schedule; Defined Expressions: expressions defined in the main body of this Encumbrance have the defined meaning in the whole of this Encumbrance including the background.Joint and Several Liability: an obligation by two or more persons binds those persons jointly and severally.Plural and Singular: words importing the singular number include the plural and vice versa. |

# ENCUMBRANCE

# The Encumbrancer encumbers the Land for the benefit of the Encumbrancee for a term of 999 years, commencing from the date of registration of this Encumbrance with the Secured Sum.

# The amount specified as the Secured Sum on the front page of this Encumbrance is acknowledged by both parties to be the estimated total cost of providing the Electricity Supply as at the date of this Encumbrance (“Estimated Cost”). Both parties acknowledge that due to the delay which may occur between the date of registration of this Encumbrance and the date the Electricity Supply is provided to the Land the actual cost of providing the Electricity Supply (“Actual Cost”) may be higher than the Estimated Cost. If the Actual Cost is higher than the Estimated Cost, then the Actual Cost will be deemed to be the Secured Sum in substitution for the Estimated Cost.

# The Encumbrancer must pay the Secured Sum to the Encumbrancee within 14 days of written demand from the Encumbrancee to the Encumbrancer if the Encumbrancee provides the Electricity Supply.

# COVENANTS

The Encumbrancer for itself and its successors in title covenants with the Encumbrancee:

* 1. to ensure that an Electricity Supply is provided to the Land and to meet the full costs of providing such Electricity Supply within 30 days of the date of settlement of a transfer of the Land;
  2. prior to disposing of the Land, to advise the person purchasing or acquiring the Land of that obligation.

# DISCHARGE

## The Encumbrancee will discharge this Encumbrance if the obligations in clause 3 become obsolete.

# COSTS

The Encumbrancer will pay all legal costs attributable to the preparation, registration, enforcement and discharge of this Encumbrance, and in respect of any consents sought by the Encumbrancer from the Encumbrancee to the registration of any instrument, and will indemnify the Encumbrancee against all claims and proceedings arising out of any breach by the Encumbrancer of any of its obligations under this Encumbrance.