

Memorandum 2013/4311



FORM OF REGISTRABLE MEMORANDUM

Section 155A, Land Transfer Act 1952

Class of instrument in which provisions intended to be included:

**MORTGAGE – ALL OBLIGATIONS**

Person executing Memorandum:

**HEARTLAND BANK LIMITED**

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

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## SCHEDULE

### 1. SUMS SECURED BY THIS MORTGAGE

- 1.1 The money secured by this Mortgage which the Mortgagor covenants to duly and punctually pay to the Mortgagee is set out in paragraph 1.2 below and is called "the Mortgage Debt".
- 1.2 All money which is now or at any time in the future owing or remaining unpaid to the Mortgagee by the Mortgagor (either solely or if more than one person is named as Mortgagor then severally by each person so named) including but without limiting these words:
- (a) all advances advanced by the Mortgagee to the Mortgagor;
  - (b) all loans, credits, advances or other financial services given to or for the accommodation of or at the request of the Mortgagor;
  - (c) any bill of exchange, promissory note, draft, order, letter of credit or other negotiable instrument drawn, accepted, endorsed, paid, discounted or held by the Mortgagee at the request of the Mortgagor (whether or not such obligation shall have matured);
  - (d) goods or services supplied by the Mortgagee to or at the request of the Mortgagor;
  - (e) all interest, commissions, costs and charges payable by the Mortgagor to the Mortgagee or incurred by the Mortgagee in relation to this Mortgage including all those incurred by the Mortgagee in the exercise or attempted exercise of the Mortgagee's rights and remedies under this Mortgage and any other amounts contemplated by section 87 of the Property Law Act 2007;
  - (f) any indebtedness or obligation in respect of any guarantee, indemnity or other obligation or performance of any other financial service undertaken by the Mortgagee at the request of or on behalf of the Mortgagor;
  - (g) any indebtedness owing to the Mortgagee in relation to any of the above described categories being indebtedness to the Mortgagee of any other person arising at the request of the Mortgagor; and
  - (h) any other indebtedness of any kind of the Mortgagor to the Mortgagee.

### 2. PAYMENT OF SUMS SECURED UNDER THE MORTGAGE

- 2.1 The Mortgagor will punctually pay the Mortgage Debt to the Mortgagee upon demand served by the Mortgagee in the manner provided in Clause 27.

### 3. MAXIMUM AMOUNT OF PRIORITY OVER SUBSEQUENT MORTGAGES

- 3.1 For the purposes of section 92 of the Property Law Act 2007 the maximum amount of priority which shall be afforded to this Mortgage over any subsequent mortgage, charge, lien or encumbrance shall be the sum described as "Priority Amount" in the Mortgage Instrument together with all interest expenses and costs of realisation of this Mortgage. However, this paragraph shall not be construed as either a waiver of priority in respect of any of the Mortgage Debt that may exceed that amount or as a representation of the total amount capable of being secured by this Mortgage.

#### **4. PAYMENT OF INTEREST**

- 4.1 The Mortgagor will pay interest on the Mortgage Debt to the Mortgagee at the rate agreed with the Mortgagee, or at the rate from time to time nominated by the Mortgagee. Such interest shall be paid whether demand for payment is made or not.
- 4.2 The Mortgagor and the Mortgagee agree that in the absence of any agreement to the contrary interest shall be computed on the following basis:
- (a) interest shall accrue on a daily basis and shall be payable on the last day of such period as may have been agreed upon, or if no such period has been agreed, on the last day of such period as the Mortgagee may from time to time nominate (this period being called in this clause "the interest rest period");
  - (b) if interest is not paid on the due date specified in (a) above, the interest due in respect of each interest rest period (called "arrears of interest") shall itself incur interest from the due date and shall be compounded with rests of such periods and on such days as the Mortgagee shall fix. The interest rate applicable for arrears of interest shall be the same rate or rates referred to above unless the Mortgagee shall have nominated a penalty rate;
  - (c) the Mortgagee may at any time capitalise and add to the principal any arrears of interest by express entry to that effect in its books and shall not be required to give notice to the Mortgagor prior to such capitalisation of arrears of interest;
  - (d) any accumulation of compound interest or addition to the principal may continue to be made until all of the Mortgage Debt has been paid and notwithstanding the death, bankruptcy, receivership, voluntary administration or liquidation of the Mortgagor; and
  - (e) where interest is charged on arrears of interest, the arrears of interest shall not be deemed thereby or by the inclusion of any interest carried forward or account stated, to have become a fresh advance by the Mortgagee to the Mortgagor. This proviso shall not, however, apply where the Mortgagee by express entry in its books shall have debited such interest to the Mortgagor's account with an express indication that it constitutes a fresh advance.

#### **5. MORTGAGE A CONTINUING SECURITY**

- 5.1 This Mortgage shall remain in full force and shall be a running and continuing security for the payment of the Mortgage Debt and the observance and performance of all the terms and conditions contained or implied in this Mortgage or any collateral instrument irrespective of any sums which may be paid to the credit of any account or accounts of the Mortgagor with the Mortgagee. Notwithstanding any such account may at any time be in credit and notwithstanding any settlement of account or any other matter whatever, this security shall remain in full force and extend to cover any sum of money which may hereafter become owing by the Mortgagor to the Mortgagee until the final release of this Mortgage shall have been executed by the Mortgagee.

#### **6. NEGATIVE PLEDGE AND SALE OR LETTING**

- 6.1 The Mortgagor will not further mortgage, charge or in any way encumber the Land or any part thereof without the prior written consent of the Mortgagee.

6.2 The Mortgagor will not sell, dispose of, let, lease or subdivide the Land or any part of it without the prior written consent of the Mortgagee.

6.3 The Mortgagor hereby authorises any prior mortgagee to furnish to the Mortgagee from time to time any information relating to the state of accounts under any prior mortgage.

#### **7. SET OFF**

7.1 At all times (and whether or not the Mortgagor is bankrupt or in receivership, voluntary administration or liquidation) the Mortgagee shall be entitled to set off any moneys owed to the Mortgagor by the Mortgagee or property claimed by the Mortgagor from the Mortgagee against any moneys owing to the Mortgagee or property claimed by the Mortgagee from the Mortgagor and included in the Mortgage Debt.

#### **8. COLLATERAL SECURITIES**

8.1 Any moneys expressed to be secured by some other security given by the Mortgagor in favour of the Mortgagee, whether dated the same day as this Mortgage or at some other date, shall be deemed to be included in the Mortgage Debt and to be secured to the Mortgagee by this Mortgage.

8.2 This Mortgage shall be collateral with any other security given by any person to secure the Mortgage Debt or any part of it and with all documents which evidence the terms of any loans, credits, advances and other financial services or accommodation made available by the Mortgagee to the Mortgagor, and shall also be collateral with all documents expressed in this Mortgage or in any other document to be collateral with this Mortgage. All such securities shall be read and construed together, so that a default under any one security shall constitute a default under all. The Mortgagee may at its option exercise its rights, powers and remedies under this Mortgage or under any of those other documents in the event of any default, either together or separately and in such order as the Mortgagee deems fit.

#### **9. NO RIGHT TO MARSHAL**

9.1 The Mortgagor shall not be entitled to marshal in respect of this Mortgage or any collateral security.

#### **10. NON MERGER OF SECURITIES**

10.1 Nothing contained in this Mortgage shall be held to merge, discharge or prejudice any other security or securities now held or which may hereafter be held or taken by the Mortgagee for payment of any part of the Mortgage Debt. Neither this Mortgage or any such other security shall affect any claim or demand which the Mortgagee may now or hereafter have or be entitled to make against any other person or persons as surety or sureties or on any bill of exchange or promissory note for any part of the Mortgage Debt or operate as a payment of such moneys until the same shall have been actually paid in cash.

#### **11. MORTGAGEE'S POWER TO APPROPRIATE MONEYS**

11.1 Any officer of the Mortgagee shall without giving notice to the Mortgagor have the right to appropriate any moneys paid into or standing to the credit of any account of the Mortgagor with the Mortgagee or otherwise coming into the hands of the Mortgagee for repaying any part of the Mortgage Debt as the Mortgagee shall think fit. Such appropriation may be made irrespective of any direction to the contrary by the Mortgagor and may be made at the time of payment of those moneys or at any later time.

## **12. TIME FOR PAYMENT**

12.1 Any moneys payable under this Mortgage shall be paid to the Mortgagee on the day on which banks in New Zealand are open for business and in sufficient time to allow the Mortgagee to lodge the moneys received in a bank account so that the bank will credit such moneys to the account of the Mortgagee on that date. Unless otherwise agreed by the Mortgagee, compliance with the requirements of this clause shall require the Mortgagor to hand such moneys to the Mortgagee no later than 3.30 p.m. on the date for payment, or where the date for payment is not a day on which banks are open for business, on the immediately preceding date on which banks are open for business. Where the Mortgagor fails to make payment by the requisite time it shall be deemed to have made payment on the next following day on which banks are open for business.

## **13. PAYMENT OF OUTGOINGS**

13.1 The Mortgagor will pay and discharge all rates, taxes, charges and any other assessments or outgoings charged, assessed or imposed upon or payable by the Mortgagor in respect of the Land or any part of the Land as and when the same become due and payable until the Mortgagee shall have executed the release of this Mortgage.

## **14. PAYMENT OF COSTS AND EXPENSES**

14.1 The Mortgagor will pay the costs and expenses of the Mortgagee (including the Mortgagee's internal staff costs, the Mortgagee's legal costs (on a solicitor/client basis) and the costs of all agents and other professional advisors of the Mortgagee) relating to:

- (a) the arranging, preparation and registration of this Mortgage and any variation or discharge of this Mortgage or any transfer in lieu of discharge;
- (b) the Mortgagee undertaking, in good faith, reasonable investigations to satisfy itself as to the ongoing ability of the Mortgagor and any guarantor of the Mortgagor's obligations under this Mortgage to meet their obligations to the Mortgagee;
- (c) the enforcement or attempted enforcement by the Mortgagee of its rights, remedies and powers under this Mortgage and including the giving or attempted giving of any notice under the Property Law Act 2007.

## **15. INSURANCE**

15.1 The Mortgagor shall take out a comprehensive policy of insurance in accordance with the covenant implied by the Property Law Act 2007 against loss or damage by any other event or events normally covered by a policy of insurance to full replacement value or at the Mortgagee's option, to full indemnity value, in an insurance office from time to time approved by the Mortgagee. Clause 2 of Part 1 Schedule 2 to the Property Law Act 2007 is varied by the deletion of the words "by fire" so that it applies to damage or destruction caused in any way.

## **16. PRODUCTION OF BOOKS OF ACCOUNT**

16.1 The Mortgagor will, upon demand by the Mortgagee, produce to the Mortgagee or to any person named for that purpose by the Mortgagee, all accounts, financial statements, books of account and any other financial information relating to the affairs of the Mortgagor (or any of them) as the Mortgagee may require.

## 17. LEASE OR LICENCE

- 17.1 Where the Land consists of or includes a lease or licence, the Mortgagor will pay the rental and will perform and observe all the covenants expressed or implied on the part of the lessee or licensee and will during the continuance of this Mortgage, at the cost of the Mortgagor, do all that shall be necessary for obtaining or attempting to obtain an extension or renewal of such lease or licence or a new lease or licence.
- 17.2 Where the Land consists of or includes a lease or licence, the Mortgagor will, immediately after service of any notice relating to the lease or licence given by the lessor/licensor or under the Property Law Act 2007 to the Mortgagor, serve a copy of that notice on the Mortgagee.
- 17.3 Where any lease or licence of any part of the Land contains a right to purchase the freehold estate of the Land comprised in such lease or licence, the Mortgagor, if requested to do so by the Mortgagee, will forthwith acquire the fee simple of the subject Land in the manner provided by the lease or licence and will execute in favour of the Mortgagee a valid registrable mortgage of the fee simple for the purpose of further securing the Mortgage Debt.

## 18. UNIT TITLES

- 18.1 Where the Land consists of or includes a stratum estate under the Unit Titles Act 2010 (or any Act passed in substitution or variation of the Act) (in this clause called "the Act") the Mortgagor will during the continuance of this Mortgage:
- (a) duly and punctually pay to the Body Corporate in respect of the Land upon which the Principal Unit and any Accessory Units comprising the Land are erected, all moneys payable by the Mortgagor under the Act and the rules of the Body Corporate; and
  - (b) comply with all other obligations of the Mortgagee under the Act, Unit Titles Regulations 2011 and any other regulations pursuant to the Act and the rules of the Body Corporate; and
  - (c) take all reasonable steps necessary to enforce the obligations of the Body Corporate and the other owners under the Act and the rules of the Body Corporate; and
  - (d) keep and maintain a mortgage redemption policy under Section 137 of the Act in the name of the Mortgagee for an amount not less than the Mortgage Debt and providing cover against such risks as the Mortgagee may require; and
  - (e) require the Body Corporate to insure and keep insured all buildings and other improvements on its Land to their full replacement value in accordance with Section 135 of the Act; and
  - (f) immediately after its receipt, give the Mortgagee written notification of having received notice of any meeting or resolution to be passed without general meeting of the Body Corporate at which it is proposed to move any resolution requiring a unanimous vote for its passing, any resolution altering the rules of the Body Corporate or any special resolution or a notice under Section 86 of the Act requiring the Mortgagor to sign any document; and
  - (g) irrevocably appoint the Mortgagee (including the person for the time being entitled to give a receipt or discharge for the Mortgage Debt) the attorney of the Mortgagor at the Mortgagor's cost to receive notice of, attend, vote

at and otherwise take part in meetings and other proceedings of the Body Corporate, appoint proxies for voting at meetings, sign resolutions passed by entry in the Body Corporate minute book, appoint an agent under section 81 of the Act and obtain information (including any information required for a disclosure statement under sections 144 to 153 of the Act) from the Body Corporate concerning the Land and the affairs of the Body Corporate and compliance by the Mortgagor with the rules of the Body Corporate; and

- (h) refrain from voting on any resolution under the Rules (whether it is to be put at a meeting of the Body Corporate or to be passed by entry in the Body Corporate minute book or otherwise) which requires a unanimous vote for its passing without the prior written consent of the Mortgagee and then will vote only as directed by any such consent; and
  - (i) give to the Mortgagee such information relating to the affairs of the Body Corporate as the Mortgagee shall reasonably require from time to time. Production of this Mortgage by the Mortgagee to the secretary of the Body Corporate shall be sufficient authority for the Secretary to give the Mortgagee any information which the Mortgagor would be entitled to be given.
- 18.2 On giving written notice to the Body Corporate the Mortgagee shall be entitled to exercise any vote that could be exercised by the Mortgagor under the Act, any regulations or the rules of the Body Corporate, however that vote may be exercised.
- 18.3 If the voting rights referred to in clause 18.2 are not exercised by the Mortgagee, the Mortgagor must exercise them in accordance with any written directions given by the Mortgagee.
- 18.4 Notwithstanding anything to the contrary contained in this Mortgage or in any other contract or arrangement, the Mortgage Debt shall at once become due and payable and may be called up by the Mortgagee in the event of destruction or damage of the unit(s) which are subject to this Mortgage or any of them so as to render them uninhabitable, or if an administrator shall be appointed pursuant to the provisions of Section 141 of the Act. If the units or any of them shall be damaged but not so as to become uninhabitable the Mortgagee may make demand for payment of the Mortgage Debt to the extent of an amount equal to the difference between the value of the unit(s) immediately prior to such damage occurring and the value after the occurrence of such damage, such values to be determined by a registered valuer appointed by the Mortgagee. The Mortgagor will permit the valuer to have access to the property for the purpose of the valuation.

## 19. CROSS LEASE

- 19.1 Where the Land consists of or includes a flat or unit held under cross lease title, being a title which comprises an undivided share as tenant in common in the fee simple estate in the Land on which the flat or unit is erected together with a lease of that flat or unit:
- (a) the Mortgagor will ensure that all covenants, conditions and agreements contained or implied in each of the leases registered against the fee simple estate are observed and performed by the respective lessees and the lessors; and
  - (b) the Mortgagor will forthwith supply to the Mortgagee a copy of any notice given by or to the Mortgagor pursuant to any of the leases and a copy of



any submission to arbitration and will comply with the Mortgagee's written instructions as to the conduct of any such arbitration.

## **20. FARM LAND**

20.1 Where the Land or any part of it is used or is suitable for agricultural, horticultural, pastoral or silvicultural purposes, the Mortgagor will at all times during the continuance of this Mortgage at the sole expense of the Mortgagor:

- (a) clear and eradicate all blackberry, gorse, noxious weeds, plants and vermin from the Land and comply with the law for the time being in force relating to such matters and will do such acts and things as shall be required by the Mortgagee in relation to such matters;
- (b) comply with all statutes, regulations and by laws for the time being in force relating to fences, to the condition of the Land or buildings, or to any business carried out upon the Land and comply with all notices lawfully given by any person pursuant to any such statute, regulation or by-law;
- (c) farm and manage the Land in a proper husband like manner, and keep the Land or such part as is, or has been or should be usually cultivated, properly cultivated and fertilised in accordance with accepted principles of farming management;
- (d) to the reasonable satisfaction of the Mortgagee, keep in good repair, order and condition all fences, drains, sewers, buildings, irrigation systems, shelters or other improvements now or from time to time erected or made on the Land; and
- (e) where appropriate, tend and maintain all plants and trees on the Land and the respective support structures (if any), in accordance with the best principles of horticultural and silviculture practice.

## **21. KEEP AND MAINTAIN IMPROVEMENTS**

21.1 The Mortgagor will regularly and when required by the Mortgagee, properly paint and keep in good decorative and weatherproof condition all buildings, structures and improvements on the Land and will keep the grounds in a neat and tidy condition.

## **22. COMPLETION OF IMPROVEMENT/PROGRESS PAYMENTS**

22.1 If the Mortgagee shall at any time agree to advance moneys to the Mortgagor for the purpose of building or carrying out any work on any buildings or other structures and works on the Land (in this clause called "the Improvements") the following provisions shall apply:

- (a) the Mortgagor will forthwith commence and promptly complete the improvements to the satisfaction of the Mortgagee, and will not make any deviation from the plans and specifications supplied to the Mortgagee without its prior consent;
- (b) the Mortgagee shall not be obliged to make payment of any part of such agreed advance to the Mortgagor under this Mortgage except in its sole discretion;
- (c) the Mortgagee may call for any certificates, valuations or other documents or reports which the Mortgagee considers necessary or prudent for the purposes of this clause, such to be provided at the cost of the Mortgagor;

- (d) the Mortgagor will not permit any lien or charge to be registered against the Land; and
- (e) if the Mortgagor shall fail to complete the improvements, the Mortgagee may enter upon the Land and at the cost of the Mortgagor complete the improvements and any moneys so expended by the Mortgagee shall bear interest at the penalty rate of interest for the time being chargeable to the Mortgagor on the Mortgage Debt and shall be deemed to form part of the Mortgage Debt.

### **23. RIGHT OF INSPECTION**

- 23.1 The Mortgagor will permit the Mortgagee or any person or persons authorised by the Mortgagee, at any time, to inspect and examine any part of the Land. The Mortgagor will afford the Mortgagee and its agents and employees access to the Land and such reasonable assistance as may be required for the purposes of this clause.

### **24. COMPLIANCE WITH STATUTES**

- 24.1 The Mortgagor will promptly comply with and observe all statutes at any time in force and all regulations and by-laws thereunder and all requirements and orders of any other authority which may in any way affect the Land or non-observance of which may prejudicially affect this security, and the Mortgagor will not do or suffer anything to be done whereby any charge or liability may be imposed upon the Land or any part thereof in priority to or pari passu with or in derogation of this Mortgage.
- 24.2 In any case where a resource consent or existing use rights exist, then within the meaning of the Resource Management Act 1991 or any amendment to that Act the Mortgagor will continue to use the Land and any improvements on it so as to preserve all such rights. In any case where pursuant to the Resource Management Act 1991 a resource consent affecting the Land has been or is hereafter granted upon or subject to any term or condition the Mortgagor will continually use and continue to use the Land and improvements on it in strict compliance with any such term or condition.
- 24.3 The Mortgagor will not carry on any offensive trades as defined by the Fourth Schedule, Land Transfer Act 1952. If any trade or business is carried on from the Land comprised in the Mortgage, the Mortgagor will not, without the prior consent of the Mortgagee, use the Land to carry on any other trade or business and will not cease to use the Land to carry on that trade or business without the prior consent of the Mortgagee and will carry on that trade or business in accordance with all laws and authorisations current and pertaining to such business.

### **25. STATUTORY MODIFICATIONS**

- 25.1 The covenants, powers and provisions implied in mortgages by virtue of the Property Law Act 2007 and the Land Transfer Act 1952 or any statutory modification or re-enactment of them, shall for the purposes of this Mortgage be negatived or modified insofar as the same or any of them are contradictory to or inconsistent with the terms and provisions of this Mortgage.

### **26. ASSIGNMENT OF INCOME**

- 26.1 The Mortgagee and any nominee of the Mortgagee shall be entitled on behalf of the Mortgagor to collect and receive payment of all rental and any other moneys (including but not limited to the proceeds from the sale of: trees, timber logs or crops grown or growing on the Land; and any other improvement on the Land)

for the time being payable to the Mortgagor in respect of the Land. The Mortgagor will forthwith upon being requested so to do by the Mortgagee or any nominee of the Mortgagee, execute all documents and do all such things as the Mortgagee may require to enable the Mortgagee to collect and receive payment of all such rental and other moneys.

- 26.2 The Mortgagee shall have the power to demand and recover all such rents and other moneys by action, distress or otherwise and to give effectual discharges for such rents or moneys in the name of the Mortgagor and a demand for receipt of rents and/or other moneys by the Mortgagee under this clause shall not be or be deemed to be an entry into possession of any part of the Land.
- 26.3 The production of this Mortgage by the Mortgagee to any lessee, tenant or other person liable for the payment of rents and other moneys shall be sufficient authority for such lessee, tenant or other person to pay such rents and other moneys to the Mortgagee.
- 26.4 The Mortgagee shall not be obliged to pay any money received by it in discharge of any outgoings affecting any part of the Land but shall be entitled to apply the same towards the payment of the Mortgage Debt.

## **27. SERVICE OF NOTICE**

- 27.1 Any demand or notice required or authorised by the Property Law Act 2007 or by this Mortgage to be served on the Mortgagor may be served in such manner as is prescribed by Sections 353-355 of the Property Law Act 2007 or by order of the Court. In the case of a Company any demand or notice may be served by leaving it at the registered office of the Company or by posting it by registered letter addressed to the Mortgagor at its registered office or addressed to it at its place of business last known to the mortgagee or by delivering it to any person who is named on the public register as a Director or Secretary of the Company.
- 27.2 Any service effected in the manner provided by this clause shall be valid and sufficient even though the Mortgagor, whether to the Mortgagee's knowledge or otherwise, may at the date of such service be of unsound mind, deceased, bankrupt or in liquidation or absent from New Zealand or shall not have received the demand or notice and notwithstanding any other event or matter.
- 27.3 The provisions of this clause shall also apply (with all necessary modifications) to service on any guarantor of the Mortgagor's obligations under this Mortgage.
- 27.4 The Mortgagee may, at its option, where it is so permitted by law, as an alternative to the preceding provisions, serve any notice by placing an advertisement in a newspaper or newspapers circulating in the area where the Land is located, and such notice shall be deemed to have been served on the Mortgagor on the date of advertisement of the notice.
- 27.5 The above modes of service are subject to any mandatory statutory provisions and are in addition to any other lawful methods of service.

## **28. CONCLUSIVE EVIDENCE**

- 28.1 A statement of account purporting to be made up from the books of the Mortgagee and signed by or for the Mortgagee, shall be conclusive evidence of the amount of the Mortgage Debt which is due from or unpaid by the Mortgagor.

## **29. MORTGAGEE EMPOWERED TO REMEDY DEFAULT**

- 29.1 If the Mortgagor shall make default in the prompt performance or observance of any covenant contained or implied in this Mortgage, it shall be lawful for but not

obligatory upon the Mortgagee without prejudice to any other right or remedy of the Mortgagee:

- (a) to do all things and pay all moneys necessary in the opinion of the Mortgagee to make good or to attempt to make good or remedy such default to the satisfaction of the Mortgagee; and
- (b) without further authority than this Mortgage, to debit and charge any account of the Mortgagor with any amount required to make good such default.

29.2 All moneys expended in this way by the Mortgagee shall bear interest at the default rate of interest for the time being chargeable to the Mortgagor on the Mortgage Debt, and shall be deemed to be part of the Mortgage Debt and shall be payable upon demand.

### **30. MORTGAGEE NOT ACCOUNTABLE FOR LOSS**

30.1 The Mortgagee shall not be under any obligation to exercise any power, right or authority implied or vested in the Mortgagee by this Mortgage or under any statute and the Mortgagee shall not be answerable or liable for any loss occasioned by its omission or delay in doing so or occasioned by any partial or attempted exercise or execution of any such power, right or authority.

### **31. NON WAIVER**

31.1 Delay by the Mortgagee in exercising all or any of its rights, remedies and powers contained or implied in this Mortgage upon the breach of any covenant or condition contained or implied in the Mortgage shall not operate as a waiver of any such breach or prevent the Mortgagee from at any time exercising all or any of its rights, remedies and powers.

### **32. INVALIDITY**

32.1 If at any time any provision of this Mortgage becomes illegal, invalid or unenforceable in any respect under the laws of New Zealand, that illegality, invalidity or unenforceability shall not affect or impair the ability of the Mortgagee to enforce the provisions or the remaining provisions of this Mortgage.

### **33. PRIVACY ACT**

33.1 The Mortgagee is authorised by the Mortgagor to use any information it may hold now or in the future provided the information is held securely and the Mortgagee will not disclose it to any other person except for the purposes described below or as authorised by the Mortgagor when required or authorised by law. The information will be used to establish and maintain the relationship between the Mortgagor and the Mortgagee; to administer, insure and enforce any contract the Mortgagor has with the Mortgagee; to maintain the Mortgagee's credit records; and to market any goods or services, subject to a strict confidentiality agreement, where relevant information is provided to a person or organisation who provides insurance or other credit support in respect of the Mortgagor's obligations. The Mortgagee may make credit reference and other enquiries at any time within its normal procedures and relevant information may be provided to or sought from credit reference agencies, credit providers, debt collection agencies, brokers and insurers, and previous and current employers. Any information collected will be held by the Mortgagee at its business address and where the information can be readily retrieved, the Mortgagor has certain rights of access to and correction of the information held.

**34. GOODS AND SERVICES TAX**

34.1 The Mortgagor shall immediately advise the Mortgagee in writing if the Mortgagor becomes registered with the Inland Revenue Department for Goods and Services Tax under the Goods and Services Tax Act 1985. The Mortgagor, upon registration, or if already registered, shall provide the Mortgagee with the Mortgagor's Goods and Services Tax Registration number and advise the Mortgagee immediately if it terminates its registration.

**35. CONSUMER GUARANTEES ACT**

35.1 No provision of this Mortgage will, or is intended to, have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993. All provisions of this Mortgage shall be deemed amended to give effect to that intention except as permitted by the Consumer Guarantees Act 1993. Where the moneys secured by this Mortgage are for a business purpose, the Consumer Guarantees Act 1993 shall have no application.

**36. MORTGAGEE NOT OBLIGED TO PRODUCE DOCUMENTS**

36.1 The Mortgagee shall, subject to Section 211(b) Land Transfer Act 1952, not be bound to produce any document of title or this Mortgage to the Land Registry Office or elsewhere while the Mortgagor is in default of any provision of this Mortgage, and until the proper and reasonable costs of such production have first been paid to the Mortgagee.

**37. COLLATERAL LIFE INSURANCE POLICY**

37.1 Any policy of life insurance held by or assigned to the Mortgagee in connection with the Mortgage Debt secured by this Mortgage shall be a security collateral to this Mortgage for the whole of the Mortgage Debt. The Mortgagor will make all payments and do everything which may be required to keep such policy in full force. All moneys received by the Mortgagee under the policy shall be applied in reduction or in extinguishment of the Mortgage Debt.

**38. DEFAULT PROVISIONS**

38.1 If any of the events set out in clause 38.2 occur the Mortgagee may, without giving the Mortgagor any notice or waiting any time except as required by Sections 119-126 of the Property Law Act 2007, exercise any one or more of the following powers:

- (a) charge interest on the Mortgage Debt at the penalty rate agreed with the Mortgagor or from time to time nominated by the Mortgagee;
- (b) enter upon and manage the Land or any part of the Land in such manner as the Mortgagee at its discretion thinks fit;
- (c) let or demise the Land or any part of the Land with or without option of purchase or renewal to such persons and on such terms and conditions as the Mortgagee at its discretion thinks fit;
- (d) make any arrangements with any lessees, tenants or occupiers of the Land or any part of the Land or with the holders of any encumbrance, lien, caveat or charge in respect of the Land or any part of the Land;
- (e) grant any encumbrance, right or restriction in relation to the Land or any part of the Land;

- (f) sell the Land or any part of the Land, in such manner and upon such terms and conditions as the Mortgagee at its discretion thinks fit;
- (g) by writing appoint any person to be a Receiver of the income of the Land or any part of the Land; and
- (h) exercise one, more than one or all of the other powers set out in this Mortgage, the Property Law Act 2007, the Land Transfer Act 1952 and any other Acts now or in the future in force.

38.2 The powers set out in Clause 38.1 above may be exercised (subject to the required notice) if:

- (a) any instalment or payment of any money required to be paid or any money demanded under this Mortgage or pursuant to any written agreement remains unpaid after the due date of payment; or
- (b) a distress attachment or other execution is levied or enforced upon or commenced against any of the assets of the Mortgagor or any guarantor of the Mortgagor's obligations under this Mortgage and is not discharged or stayed within seven days or a judgement is obtained against the Mortgagor or any guarantor of the Mortgagor's obligations under this Mortgage; or
- (c) any of the covenants or agreements binding upon the Mortgagor in this mortgage or in any written agreement are broken; or
- (d) the Mortgagor becomes bankrupt or assigns the Land or any part of it for the benefit of creditors; or
- (e) the Mortgagor has, without first obtaining the Mortgagee's written consent, applied money advanced to the Mortgagor to a purpose or to purposes other than those specified in any loan offer or written agreement; or
- (f) the Land is taken in execution by Court process or sold by any other mortgagees or chargeholders; or
- (g) where the Mortgagor is a company, an order is made or an effective resolution is passed for the appointment of a liquidator or a receiver is appointed or the Mortgagor is dissolved or placed on a voluntary administration or in the opinion of the Mortgagee the Mortgagor is insolvent or unable to pay its debts within the means of Section 287 of the Companies Act 1993; or
- (h) where the Mortgagor is a company and there is a Material change in the shareholding in the company; or
- (i) without the prior consent of the Mortgagee, the Mortgagor or any guarantor of the Mortgagor's obligations under this Mortgage, if a body corporate, reduces or takes any action to reduce its capital (including purchase of its own shares but not including redemption of redeemable preference shares) or cancels or reduces or takes any action to cancel or reduce the liability of any shareholder of the Mortgagor or any guarantor of the Mortgagor's obligations under this Mortgage in respect of any shares held that person; or
- (j) there occurs any Material change in the status, Constitution, Rules, Memorandum and Articles of Association or other document of the Mortgagor or any guarantor of the Mortgagor's obligations under this Mortgage, if a body corporate; or

- (k) where there is a Material reduction in the value of the Land as a result of the intervention of the Resource Management Act 1991 or any other statutory provision; or
- (l) if any local authority or Governmental agency takes action or there is any claim or requirement of expenditure or alteration of activity pursuant to the provisions of the Resource Management Act 1991 relating to the use of the Land or environment, or if a breach of any authorisation occurs or is threatened which, in the opinion of the Mortgagee results in a material adverse effect as used in the Resource Management Act 1991, or it affects the value of any asset which is the subject of the security in favour of the Mortgagee; or
- (m) any undertaking given to the Mortgagee by or on behalf of the Mortgagor or any guarantor of the Mortgagor's obligations under this Mortgage is breached or not wholly performed within the period specified in the undertaking and if no period is specified, within seven days of the date of the undertaking; and
- (n) any other security given in respect of any loan to, guarantee by or indebtedness of the Mortgagor becomes enforceable.

38.3 The Mortgagee will not be liable for any damage or loss caused by the exercise of the powers set out in Clause 38.1 hereof.

### **39. APPOINTMENT OF ATTORNEY**

39.1 By signing this Mortgage the Mortgagor irrevocably appoints the Manager, the secretary and the directors for the time being of the Mortgagee and any one or more of them, the Mortgagor's attorney(s) on the Mortgagor's behalf and at the Mortgagor's cost to do all or any of the following:

- (a) to execute any document which in the opinion of the Mortgagee is necessary or expedient to protect the Land or to protect the moneys hereby secured;
- (b) to do all works which in the opinion of the Mortgagee are necessary to protect the security hereby afforded;
- (c) to do anything which the Mortgagor has failed to do in fulfilment of the terms of this Mortgage;
- (d) to demand, collect and sue for all money or other property due to the Mortgagee in respect of the Land;
- (e) to litigate, settle or compromise claims, disputes or other legal proceedings touching the Land;
- (f) to delegate any of the powers conferred by this clause;
- (g) for any of these purposes, to sign the Mortgagor's name or affix the Mortgagor's seal to any document;
- (h) in respect of any stratum estate under the Unit Titles Act 1972 to exercise the Mortgagor's voting rights under Section 41 of that Act; and
- (i) in respect of any Land comprising a fee simple interest held in conjunction with a leasehold interest to exercise the Mortgagor's voting rights (if any) given under the lease.

- (j) In respect of any lease or licence:
  - (i) to execute all documents and do all such things that the Mortgagee shall think desirable for the purpose of keeping the lease valid and in full force and effect and perfecting this security;
  - (ii) for the purpose of giving effect to the provisions relating to the renewal and valuation contained in the lease or licence, or for obtaining renewals of the lease or licence or any new lease or licence of the said Land or any part of it, including all instruments, acts and things requisite on the part of the Mortgagor for the appointment of a valuer or arbitrator, to sign and execute in the name of the Mortgagor any new or renewed lease or licence of the said Land or any part of it; and
  - (iii) to sign and execute such mortgage of any new or further term or interest in the said Land or any part thereof or (at the option of the Mortgagee) a request under Section 117(1) of the Land Transfer Act 1952 and generally to act in relation to the Land as fully and effectually as the Mortgagor could act.
- (k) In respect of any rental or other moneys payable to the Mortgagor in respect of the Land which the Mortgagee shall become entitled to collect and receive:
  - (i) to demand, sue for and receive all such moneys payable to the Mortgagee; and
  - (ii) to exercise all or any of the rights, remedies and powers vested in the Mortgagor by virtue of any lease or tenancy to which the Land is subject as fully and effectually as if this instrument had not been executed and the Mortgagor was personally present and acting in the matter, and at such times and in such manner as the Mortgagee may think fit.

#### **40. RELEASE OF SECURITY**

- 40.1 The Mortgagor shall not be entitled to a discharge of this Mortgage so long as the Mortgagor has any actual or contingent liability to the Mortgagee whether for the Mortgage Debt or otherwise or whether under any guarantee or other document executed by the Mortgagor.
- 40.2 Upon the Mortgage Debt being fully paid, and upon the Mortgagee being satisfied that all other obligations secured by this Mortgage have been performed, the Mortgagee will deliver up all securities and security documents (including policies of life insurance) held on account of the Mortgage Debt and a discharge of this Mortgage on a separate form of discharge, or where registration is to be completed electronically, shall give its authority to discharge.

#### **41. TRANSFER BY MORTGAGEE**

- 41.1 The Mortgagee may, without notice at any time, assign, transfer or transmit, or grant a security interest in this Mortgage and any security interests created thereto. The Mortgagor agrees that the assignee, transferee or successor of the Mortgagee will have all rights and remedies available under this Mortgage and the Mortgagor will pay the Mortgage Debt to the assignee or transferee (as the case may be) as it becomes due.



## 42. MISCELLANEOUS

- 42.1 References to any legislation or to any provision of any legislation shall be deemed references to that legislation or provision as amended, re-enacted or substituted from time to time and unless otherwise stated, refers to New Zealand legislation.
- 42.2 References to any document include references to that document as modified, novated, supplemented, varied or replaced from time to time by the Mortgagee.
- 42.3 Nothing contained in this Mortgage shall oblige the Mortgagee to provide any financial accommodation or services to any person.

## 43. DEFINITIONS

**"Authority and Instruction"** means a document entitled "Client Authority and Instruction" given by the Mortgagor to a Conveyancer (in the form approved by the Mortgagee) that authorises and instructs the Conveyancer to register this Mortgage as an Electronic Instrument and includes all documents and pages that are attached to the Authority and Instruction.

**"Conveyancer"** has the meaning given to it by the Lawyers and Conveyancers Act 2006.

**"Electronic Instrument"** has the meaning given to it by the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

**"Land"** means the Land(s) described together with all improvements made to such Land(s) being the property charged under this Mortgage.

**"Material"** means any event which in the opinion of the Mortgagee is prejudicial to the security of the Mortgagee under this Mortgage.

**"Mortgage"** means this Memorandum together with the Mortgage Instrument, and if the Mortgage is to be registered electronically, includes an Authority and Instruction, and includes any provisions set out in this Memorandum which are amended, added or varied specifically by the terms of any annexure or schedule attached to the Mortgage Instrument.

**"Mortgagee"** means Heartland Bank Limited.

**"Mortgage Debt"** has the meaning given by Clause 1.1.

**"Mortgage Instrument"** means the document signed by the Mortgagor and entitled "Mortgage Instrument (All Obligations)" and includes each schedule annexed or attached to it and if the Mortgage is to be registered electronically, includes a Mortgage in the form of an Electronic Instrument certified under s164A of the Land Transfer Act 1952 pursuant to an Authority and Instruction given by the Mortgagor.

**"Mortgagor"** except where the context otherwise requires includes all persons jointly and severally who execute this Mortgage and any person who accepts, subject to this Mortgage, a transfer, assignment, or transmission of the land the subject of this Mortgage and a reference to the Mortgagor shall also include their respective successors, executors, administrators, transferees, personal representatives and permitted assigns.

A reference to a **person**:

- (a) includes a corporation; and
- (b) extends to and includes the executors, administrators, transferees, successors and permitted assigns of that person.

"Receiver" has the meaning set out in the Property Law Act 2007.

"Upon Demand" means upon demand being made by notice in writing signed by the Mortgagee or by any agent or servant of the Mortgagee and served in the manner provided in Clause 27.

A reference to the singular shall include the plural and vice versa,


Words importing one gender shall include the other genders as the case may require.

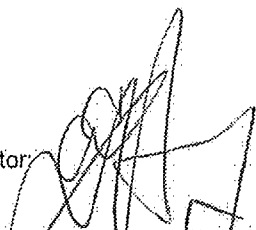
Dated this 15<sup>th</sup> day of February 2013

Execution:

HEARTLAND BANK LIMITED

by two directors

Director: 

Director: 

Memorandum 2013/4311

Land Transfer Act 1952

**MORTGAGE**

All obligations

Registered pursuant to Section 155A

Land Transfer Act 1952

Registrar-General of Land

Land Registry

(Abstract Number/date

)

"Particulars Entered in Register  
Southland, Otago, Canterbury,  
Westland, Marlborough, Nelson,  
Wellington, Hawkes Bay, Gisborne,  
Taranaki, South Auckland and North  
Auckland Land Registries.

For Registrar-General of Land"