

Form of Registrable Memorandum

Memorandum

Section 155A Land Transfer Act 1952

Class of instrument in which provisions intended to included:

Mortgage – All Obligations

Person executing Memorandum

Southland Building Society

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



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How you grant us this Mortgage

You grant us this Mortgage by either:

- signing a Paper Instrument to grant a mortgage, which incorporates the terms of this Memorandum, over the Land; or
- signing an authority and instruction form authorising a lawyer or conveyancing practitioner to register a mortgage, which incorporates the terms of this Memorandum, over the Land as an Electronic Instrument.

Defined Terms

Terms which are capitalised in this Memorandum have a specific meaning. The meaning of these terms is set out clause 85 (unless the term is defined elsewhere in this Memorandum). In addition:

- "**we**", "**us**" or "**our**" means Southland Building Society and, if we assign or transfer our rights under this Mortgage, means the person we have assigned or transferred our rights to.
- "**you**" and "**your**" means the person or persons named as the "mortgagor" in the Paper Instrument or Electronic Instrument under which this Mortgage is granted.

More than one mortgagor

If there is more than one person named as the mortgagor in this Mortgage:

- each reference to "you" or "your" will be a reference to each of you separately and to all of you together;
- the obligations under this Mortgage apply to each of you individually and to all or any number of you together; and
- you are liable for the full amount of the Mortgage Debt individually and together with all other persons.

WHAT IS SECURED BY THIS MORTGAGE

Property Secured by this Mortgage

1. To secure payment of the Mortgage Debt, you:
 - 1.1 mortgage to us all of your right, title and interest (present and future, legal and equitable) in the Land; and
 - 1.2 unconditionally and absolutely assign and transfer to us by way of security all of your right, title and interest (present and future, legal and equitable) in and to:
 - (a) all amounts payable to you in connection with, or relating to, your interest in the Land, including:
 - (i) all amounts arising from, or in connection with, the ownership, use or occupation of the Land or any agreement relating to its ownership, use, or occupation, including any rental payments under any lease or licence of the Land; and
 - (ii) all amounts payable to you arising from, or in connection with, the cultivation, harvesting, selling or otherwise utilising of trees, timber, logs or crops grown or growing on the Land (whether now or in the future), including all amounts payable to you pursuant to a forestry right or profit a prendre;
 - (b) the proceeds of any insurance policy relating to the Land;
 - (c) any resource consent issued in respect of the Land pursuant to the Resource Management Act 1991; and
 - (d) any trees on the Land.

Amounts Secured by this Mortgage

2. The amounts secured by this Mortgage (called the "**Mortgage Debt**") are all amounts (of whatever nature, whether on account of principal, interest, fees, charges or otherwise and whether present, future, actual or contingent) which you (either solely or together with one or more other persons) owe to us or that are otherwise payable to us on any account whatever (whether as principal, guarantor, surety or otherwise), including:
 - (a) any amount advanced by us to you, or at your request or direction, in connection with the granting of this Mortgage;
 - (b) any other amounts loaned or advanced by us to you or at your request or direction (including any authorised or unauthorised overdraft you have with us);
 - (c) any bill of exchange, promissory note, draft, order, letter of credit or other negotiable instrument drawn, accepted, endorsed, paid, discounted or held by us at your request (whether or not such obligation has matured);

- (d) all interest, costs, fees and charges payable by you to us under this Mortgage, or incurred by us in relation to this Mortgage or the Mortgage Debt, including all costs incurred by us in exercising or attempting to exercise our rights and remedies under this Mortgage;
- (e) any amount we pay to any person at your request or on your behalf, including any amounts we are expressly authorised to pay under this Mortgage;
- (f) any amount we pay under any guarantee, indemnity (express or implied) or other obligation given or undertaken by us at your request or on your behalf; and
- (g) any other amounts owing or payable by you to us.

Priority

- 3. For the purposes of section 92 of the PLA, the stated priority limit of this Mortgage, being the amount up to which this Mortgage has priority over any subsequent mortgage, charge, lien or encumbrance, is as stated in the Paper Instrument or Electronic Instrument. This clause does not:
 - (a) limit the Mortgage Debt;
 - (b) limit the total amount that can be secured by this Mortgage; or
 - (c) waive any priority of this Mortgage at law in respect of any amount over and above the stated priority limit.

NATURE OF SECURITY

Continuing Security

- 4. This Mortgage is a continuing Security. This Mortgage, and your obligations under this Mortgage, will remain in full force and effect until we grant a final discharge of this Mortgage regardless of:
 - (a) any payment made by you;
 - (b) any of your accounts with us being in credit;
 - (c) any action taken by us or any receiver; or
 - (d) any other event or circumstance.

Independent Obligations

- 5. This Mortgage is, and your obligations under this Mortgage are, in addition to, independent of, and not in substitution for, any other Security we may have at any time for any or all of the Mortgage Debt, and will not merge with or in any way be prejudiced or affected by, or prejudice or affect, any such Security. We may exercise any of our rights, powers and remedies under this Mortgage and any such other Security separately or concurrently.

Our discretion

- 6. We may at any time determine whether to enforce or refrain from enforcing this Mortgage (or any part of it) or any other Security.

Discharge of this Mortgage

- 7. You will not be entitled to a discharge of this Mortgage until the Mortgage Debt has been fully paid and we are satisfied that no payment may be required to be repaid by us under any law.

PAYMENTS

Payment

- 8. Unless any Agreement provides otherwise, you will pay the Mortgage Debt to us on demand. If we have entered into any other Agreement in relation to repayment of the Mortgage Debt, you must pay the Mortgage Debt as set out in that Agreement.

Interest

- 9. In the absence of any Agreement or arrangement to the contrary, interest will accrue on the Mortgage Debt daily, on the basis of a 365 day year, at such rate or rates as we from time to time advise. Interest will be payable on the last day of such periods as we from time to time advise you.
- 10. If you fail to pay any interest when due, we may, without giving you any notice, capitalise all or any interest (meaning that the interest will be added to the Mortgage Debt) and that interest will itself incur interest.
- 11. Any interest that is capitalised is not, and will not be deemed to be, a further advance by us to you.

Costs and Expenses

12. You will, on demand or request by us, pay all costs and expenses (including legal fees on a solicitor/client basis) incurred by us:
 - (a) in connection with the negotiation, preparation, execution, delivery, registration, amendment, variation or discharge of this Mortgage;
 - (b) in connection with the enforcement or attempted enforcement of any of our rights, remedies and powers under this Mortgage, including in relation to any notices under the PLA;
 - (c) converting any currency pursuant to clause 19;
 - (d) in connection with any inspection and/or valuation of the Mortgaged Property; and
 - (e) in exercising our rights under clause 54 of this Memorandum.
13. Any costs and expenses incurred by us (as set out in clause 12) will (until they are paid) form part of the Mortgage Debt.
14. You will pay any stamp, registration or other tax which this Mortgage, or any payment under this Mortgage, is or may be subject to.

Free and Clear

15. All amounts payable by you under or pursuant to this Mortgage must be paid:
 - (a) in cleared and immediately available funds;
 - (b) free and clear of any restriction or condition and (except as required by law) without any deduction or withholding;
 - (c) during normal banking hours on a Business Day; and
 - (d) on the due date and to the bank account specified by us.

Full Amount of Payment

16. If you or we are, for any reason, required to make any deduction, withholding or payment from, or in respect of, any amount paid or received under this Mortgage, you will increase the amount paid or received so that, after the making of such deduction, withholding or payment, we receive and retain (free from any liability) an amount equal to the amount we would have received had no such deduction, withholding or payment been made.

Application of payments

17. We can apply any and all amounts received by us in relation to the Mortgage Debt in any manner and in any order we determine.

Currency

18. Unless we agree in writing to accept payment of the Mortgage Debt in a different currency, you must pay the Mortgage Debt or any part of it in New Zealand dollars.
19. If we agree to accept payment in a different currency, your obligation to make any payment of the Mortgage Debt will only be discharged to the extent of the amount of New Zealand dollars actually obtained by us on conversion into the due currency. You acknowledge that we can convert any currency into the due currency at any time and at our prevailing rate of exchange.

Set-Off and Debit

20. We can:
 - (a) apply (without any prior notice or demand) any credit balance in any account (and in any currency) you have or maintain with us in satisfaction of the Mortgage Debt; and
 - (b) debit any amounts you owe under this Mortgage from any of your accounts with us.
21. To allow us to fully exercise our rights under clause 20, we can:
 - (a) break any term deposit; and
 - (b) use all or part of any credit balance in any account to buy any other currencies we consider may be necessary or desirable to allow us to exercise our rights.
22. You acknowledge that we are not obliged to exercise our rights under clause 20, and that those rights are in addition to any right of set-off, combination of accounts, lien or other right which we may at any time be entitled (whether by operation of law, contract or otherwise).
23. Our rights under clause 20 are contractual rights affecting the terms on which any credit balance is held, and the creation of such rights does not constitute the creation of any Security over any such credit balance.

24. You cannot set-off, for the purposes of calculation of interest or otherwise, the debit balance of any of your accounts with us against any credit balance in any other account unless we agree in writing.

Reinstatement

25. If any payment received by us or on our behalf under this Mortgage is or is likely to be avoided, whether by law or otherwise, or required to be repaid to a liquidator, the Official Assignee or similar official, then notwithstanding that we may have provided a release of your obligations under this Mortgage:
- (a) your obligations under this Mortgage and any Security will be deemed not to have been affected or discharged in respect of that payment;
 - (b) you and we will be deemed to be restored to the position in which we would have been, and we will be entitled to exercise the rights we would have had, if that payment had not been made; and
 - (c) you will indemnify us against any cost we may incur as a result of us having to refund or repay any such amount, and you shall pay to us, on demand or request by us, such amount.

YOUR OBLIGATIONS

Pay Outgoings

26. You must pay all rates, taxes, charges and any other outgoings payable by you in respect of the Land (or any part of the Land) when due and payable.

No Further Security

27. You must not grant, or allow to be registered, any mortgage, lien or charge over, and you must not in any way encumber, the Mortgaged Property or any part of the Mortgaged Property without our prior written consent.

No Sale

28. You must not sell, or otherwise dispose of, lease or subdivide the Land or any part of the Land without our prior written consent.

Insurance

29. You must, at all times, keep insured all improvements (including any buildings and other insurable structures) from time to time on the Land to our satisfaction against:
- (a) loss or damage by fire; and
 - (b) any other event or events normally covered by an insurance policy in respect of buildings, including (to the extent possible) loss or damage by natural disaster (as defined in the Earthquake Commission Act 1993).
30. The insurance policy or policies must be:
- (a) with an insurer approved by us;
 - (b) in your name as mortgagor and note our interest as mortgagee; and
 - (c) for the full replacement value of the buildings and other improvements insured, or for such other amount, or on such other basis, as is approved by us in writing.
31. You must, on request, provide us with the original, or a copy of, every policy of insurance in relation to the Land.
32. You must:
- (a) pay all premiums for, and all other amounts payable in respect of, all such insurances as and when due; and
 - (b) on request, provide us evidence (satisfactory to us) that all such amounts (including any premiums) have been paid.
33. You must advise us of any claim (and provide full details of such claim) you have made under any insurance policy. You must not settle any claim under any insurance policy without our prior written consent. You agree that you will hold any money you receive from any insurance payment on trust for us and pay it to us on request. We will apply all the proceeds of any insurance policy (in our discretion) either:
- (a) in or towards repairing any damage to the buildings or other improvements on the Land; or
 - (b) towards repayment of the Mortgage Debt, even though the Mortgage Debt may not be due for payment.

34. You must not do or fail to do anything that may prejudice or adversely affect any insurance policy or your ability to make a claim under that policy.
35. We can settle any insurance claim in respect of the Mortgaged Property on your behalf on terms and conditions acceptable to us.
36. You must do anything we request in relation to insuring all improvements on the Land, including naming us a co-insured on any policy of insurance, taking out any additional policies of insurance or increasing the cover of any existing policy of insurance.
37. You will, on request, assign to us any insurance policy (including any policy relating to loss of income or earnings), and all proceeds of, and rights at any time arising in connection with, those policies.

Maintenance

38. You must keep the Mortgaged Property, including all buildings, fences, drains and other improvements at any time on the Land, in good condition and promptly fix (or arrange to be fixed) any defects.
39. You must not do anything or permit anything to be done that, in our opinion, might significantly reduce the value of the Mortgaged Property.

Contamination

40. You must remove and clear up any Contamination on or in the Land.

Improvements

41. You must not cause or permit any buildings or other improvements on the Land to be removed, dismantled or structurally altered without our prior written consent.
42. You must ensure that:
 - (a) any building or other work carried out on the Land or to any improvements on the Land (the "**Improvements**") must be completed properly, in a timely manner and to our satisfaction, and in accordance with any plans or specifications (including timeframes) requested and approved by us; and
 - (b) any consents required for any Improvements have been obtained and that the work is done in accordance with such consents.

Business

43. Where you carry on any business on the Land:
 - (a) you confirm that you have the power and authority to carry on your business as and where it is being conducted;
 - (b) you agree to carry out that business in accordance with current best practice; and
 - (c) you agree not to change the type of business you are carrying out on the Land without our prior written consent.

Comply with Laws

44. You must:
 - (a) comply with all statutes, regulations, requirements, consents (including consents under the Resource Management Act 1991 and the Building Act 2004), orders, and all by-laws, requirements, notices, demands and orders of any authority, that relate to the Mortgaged Property;
 - (b) not cause or permit anything to be done where any charge or liability could be imposed on the Land (or any part of it) in priority to, or ranking equally with, this Mortgage, or that otherwise may adversely affect this Mortgage or the security provided by this Mortgage;
 - (c) obtain, keep current and ensure the continuation of any building consent required to be held pursuant to the Building Act 2004 in relation to the Land;
 - (d) obtain, give effect to, exercise, keep current and renew all resource consents and authorisations necessary in respect of the Land or any business conducted on or from the Land; and
 - (e) comply with all enforcement orders, abatement notices or other requirements issued in respect of the Land under the Resource Management Act 1991, and with all conditions applying to any resource consents and authorisations held by you or that relate to the Land.

Lease

45. If the Land is leased to you, or you own the Land and lease it to another person, you will:
 - (a) promptly perform all your obligations under the lease, including payment of any rent (if applicable);

- (b) do everything necessary or prudent to exercise any right of renewal of the lease and to obtain and register a new or renewed lease (if applicable) and to ensure that a mortgage is immediately granted to us over any such new or renewed lease;
- (c) take every reasonable step to enforce compliance by the lessor or the lessee (as applicable) with its obligations under the lease and, if the lease is a cross-lease, by the respective lessees and lessors (as applicable) with their obligations;
- (d) not agree to change the terms and conditions of the lease without our prior written consent; and
- (e) if you acquire a fee simple interest in the Land, ensure that we promptly obtain a valid mortgage over the fee simple interest (if we do not already hold such a mortgage) to further secure the Mortgage Debt.

Unit Titles

46. If the Land consists of, or includes, a stratum estate under the Unit Titles Act 2010, you will:
- (a) pay all levies to the body corporate in full and on time;
 - (b) ensure that the body corporate complies with the requirements of, and obligations on body corporates in, the Unit Titles Act 2010, including the requirement to insure and keep insured all buildings and other improvements to their full insurable value;
 - (c) ensure that our interest is noted on any insurance policy taken out and maintained by the body corporate;
 - (d) if we request, keep and maintain a mortgage redemption policy in our name for an amount not less than the Mortgage Debt;
 - (e) not vote, or abstain from voting, on any resolution that requires a unanimous vote or special resolution, or alters the rules of the body corporate, without our prior written consent, and you must vote (or abstain from voting) in accordance with our instruction;
 - (f) comply with the rules of the body corporate and the Unit Titles Act 2010; and
 - (g) provide us with a copy of any notice received by you from the body corporate or provided by you to the body corporate.

Farm Land

47. If the Land, or any part of it, is used or is suitable for agricultural, horticultural, pastoral, viticultural or silvicultural purposes, you will (at your expense):
- (a) cultivate, fertilise and manage the Land in accordance with best farm management practices;
 - (b) keep the Land clear of all noxious animals and plants;
 - (c) take all reasonable steps to control disease in crops, pastures, plants and stock; and
 - (d) not, without our prior written consent, make any material change in the type of farming conducted on the Land.

OUR RIGHTS

Right of Inspection

48. We, or any person or persons authorised by us, may, at any time, enter and inspect any part of the Land.

Default

49. You are in default under this Mortgage if any of the following occur:
- (a) any part of the Mortgage Debt is not paid on the due date for payment;
 - (b) you fail to comply with any of your obligations set out or implied in this Mortgage or in any other Agreement;
 - (c) any Guarantor fails to comply with their obligations under any Guarantee or other Agreement;
 - (d) you or any Guarantor die or cease to have legal capacity;
 - (e) an Insolvency Event occurs in relation to you or any Guarantor or we consider there is any reason that you or any Guarantor may not be able to meet your obligations under this Mortgage, any Guarantee or any other Agreement;
 - (f) you are in default (however described) under any other Agreement;
 - (g) any Guarantor is in default (however described) under any Guarantee or any other Agreement;
 - (h) you apply any money advanced to you for a purpose or purposes other than any purpose specified in any loan offer or written agreement from us to you;
 - (i) where you are a company, there is a material change in your shareholding;
 - (j) we consider that the value of:
 - (i) this Mortgage or any other Security;
 - (ii) the Mortgaged Property or any property the subject of any other Security,

- has, for any reason, reduced significantly; or
- (k) we consider that this Mortgage or any other Security, or our ability to enforce this Mortgage or any Security, has been adversely affected by any event or situation.

50. If you are in default under this Mortgage we may, without giving you any notice or waiting any time (other than as required by the PLA or any other applicable law), do all or any of the following:
- (a) require you to immediately repay the full amount of the Mortgage Debt and any other amounts you owe us under any other Agreement;
 - (b) cancel any of our obligations under this Mortgage or any other Agreement;
 - (c) charge interest on the Mortgage Debt at any penalty or default rate agreed with you in any other Agreement or, if no such rate has been agreed, as nominated by us from time to time;
 - (d) take possession of the Mortgaged Property;
 - (e) enter on and manage the Land or any part of the Land;
 - (f) sell or lease the Mortgaged Property or any part of the Mortgaged Property in such manner and on such terms and conditions as we consider appropriate;
 - (g) 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;
 - (h) grant any encumbrance, easement, right or restriction in relation to the Land or any part of the Land;
 - (i) do anything you could do in relation to the Mortgaged Property, including receive any rents or other income in relation to the Mortgaged Property;
 - (j) exercise all or any of the powers set out in this Mortgage, the PLA, the Land Transfer Act 1952 and any other law; and
 - (k) appoint one or more receivers over the Mortgaged Property or any part of the Mortgaged Property (including any rent and/or other income from the Land).

Receiver

51. Any receiver appointed by us under this Mortgage:
- (a) will be appointed in writing and the terms of such appointment will be notified to you;
 - (b) will be your agent and you will be responsible for their acts and defaults;
 - (c) can only be removed by us, and we can appoint any substitute receiver(s);
 - (d) can do anything as set out in clause 50 above and can exercise any right or power conferred on receivers by law; and
 - (e) may use any money received to pay any outgoings relating to any part of the Land (but is not required to do so), or may pay such money to us, and we may apply it towards payment of the Mortgage Debt.
52. We will determine the remuneration of any receiver, which will be payable by you on demand or request by us and will (until such amounts are paid) form part of the Mortgage Debt.
53. The appointment of a receiver by us will not be considered to be entry into possession of any part of the Land by us or the receiver.

Remedy Defaults

54. If you fail to do anything you are required to do under this Mortgage, or you are otherwise in breach of your obligations under this Mortgage, we may (but are not required to do so), without affecting any of our other rights and remedies, do anything and/or pay any amount to make good, or to attempt to make good or remedy, such breach to our satisfaction.
55. All amounts paid by us, and any costs incurred by us, in exercise of our rights under clause 54 are payable on demand or request by us and will (until such amounts are paid) form part of the Mortgage Debt. We can debit any such amounts or costs from any of your accounts with us. Interest will accrue on such amounts at the relevant rate of interest chargeable on the account to which we debit those amounts.

Attorney

56. You irrevocably appoint us as your attorney to do anything you have agreed to do under this Mortgage and any of the things listed in clause 62. Following any of the matters in clause 49 occurring, we (as your attorney) can also do any of the things listed in clause 50. Each attorney appointed by you:
- (a) is not obliged to exercise any of its powers as an attorney; and
 - (b) is not be responsible for any damage, loss or cost to you or any other person.
57. You will promptly confirm anything done by any attorney appointed under clause 56.

Assignment

58. You cannot assign or transfer any of your rights and obligations under this Mortgage without our prior written consent.
59. We can assign or transfer any of our rights and obligations under this Mortgage without your consent. If we assign or transfer some or all of our rights and obligations under this Mortgage, the person we have assigned or transferred this Mortgage to will have the same rights as they would have had if they had been a party to this Mortgage, and any reference in this Mortgage to "**we**", "**us**", "**our**" or "**Southland Building Society**" shall be considered a reference to that assignee or transferee.
60. You agree to do all things (including signing any documents) we reasonably request to assign or transfer our rights and/or obligations under this Mortgage. If you do not do anything reasonably requested by us, we can do such thing (and sign any document) on your behalf and in your name.
61. You agree that we may disclose information about you, the Mortgage Debt and this Mortgage to any person we may or are looking to assign or transfer our rights and obligations to.

GENERAL

Protect Security

62. You will, on request, do anything, including signing any documents, we require to:
 - (a) provide us with better security over the Mortgaged Property; and/or
 - (b) maintain, preserve and/or protect the Mortgaged Property and/or our interest in the Mortgaged Property.

Trustees

63. This section applies if you have entered into or signed this Mortgage as a trustee of a trust.
64. Subject only to the limitation of liability below for Independent Trustees, you are personally liable for the Mortgage Debt.
65. You must notify us immediately if you, or any other trustee of the trust, cease to be a trustee of a trust or intend to retire as a trustee of the trust.
66. On the appointment of any new or replacement trustee of the trust, the trustees of the trust (including the new trustee) must grant us a replacement mortgage on the same terms and conditions as this Mortgage.
67. If you are an Independent Trustee, your liability under this Mortgage shall be limited to an amount equal to the value of the assets of the relevant trust available from time to time to meet your liability as trustee, to which shall be added the sum (if any) by which the value of those assets has been diminished by any breach of trust caused by your wilful default or dishonesty.
68. You are an **Independent Trustee** if you have no right to, or interest in, any of the assets or property of the relevant trust (other than as trustee).

Provide information

69. You must keep up to date accounting records in accordance with proper practice and as required by law.
70. You must, at your cost (unless agreed otherwise), provide to us (or to any other person advised by us) any information about you and/or your financial position that we reasonably require on request from us.

Goods and Services Tax

71. You must advise us immediately in writing if you register for goods and services tax under the Goods and Services Tax Act 1985, and will notify us of your goods and services tax registration number. You must also advise us immediately if you terminate your registration.

Terms implied in this Mortgage

72. Certain covenants, powers and provisions are implied into this Mortgage by the PLA. Those covenants, powers and provisions apply to this Mortgage except:
 - (a) to the extent that they contradict any express provisions in this Mortgage, and in which case they will be negated to the extent of any contradiction; and
 - (b) clauses 3(2), 8(2) and 16(2) of part 1 of Schedule 2 to the PLA are expressly excluded.

Contracts (Privity) Act

73. You acknowledge that, in terms of the Contracts (Privity) Act 1982, this Mortgage is for the benefit of, and is intended to be enforceable by, us. This Mortgage is also made for the benefit of, and is intended to be enforceable by, each Receiver and each attorney. Each Receiver and each attorney is entitled to enforce against you any provision of this Mortgage that confers a benefit on the Receiver or attorney, but no consent of any Receiver or attorney is required for any amendment to this Mortgage.

Notices

74. Any demand, statement, notice or other communication from us under this Mortgage (each a "**Communication**"), including any disclosure required under the Credit Contracts and Consumer Finance Act 2003:
- (a) will be in writing;
 - (b) may be signed by any authorised signatory or any solicitor authorised to act for us; and
 - (c) will be provided or sent by personal delivery, post, fax or email to the latest address or number you have advised us.
75. Any Communication will be considered to have been received:
- (a) in the case of personal delivery, when delivered; or
 - (b) where posted, three Business Days after posting; or
 - (c) if faxed or emailed, the day it was faxed or emailed, provided that no notice is received advising that the fax or email has not been delivered or received.
76. If any Communication is received after 5.00pm or on a day that is not a Business Day, it will be considered, for the purposes of this Mortgage, to have been received on the next Business Day.
77. The modes of service provided by this clause do not limit any other lawful mode of service and are subject to any overriding statutory requirements.
78. If any Communication is not served in accordance with the modes of service provided in clause 74, or for any reason any Communication is not considered to have been received under clause 75, such Communication will be validly served if actually received by you.
79. If you reside outside New Zealand, any Communication under this Mortgage may be served on you by any of the above methods to your address for service in New Zealand, or by sending it to your agent or other person who you have notified us is authorised to accept notices on your behalf.

Your Information

80. You agree and acknowledge that we can:
- (a) collect information about you, the Mortgage Debt, the Mortgaged Property and/or any other Security you have provided to us from anyone else, including any insurer and any holder of a Security over your property, provided that any information required is limited to that reasonably required by us;
 - (b) use any information we hold at any time for the purpose of establishing, maintaining and managing our relationship with you and this Mortgage (including making any credit reference and other enquires) and to exercise or use any of our rights under this Mortgage and any other Security we hold from you; and
 - (c) share and disclose any information we hold about you to anyone we consider necessary, including any Guarantor, credit reporting agencies, any insurer, debt recovery agencies and any person that holds Security over any of your property which we also hold Security over, provided that any such disclosure is limited to that reasonably required by the person requesting it.

Conclusive Evidence

81. You agree that, unless we have made a clear administrative error, any certificate issued by us, or any determination made by us, in relation to the amount of any Mortgage Debt correctly represents the amount of the Mortgage Debt.

Non-Waiver

82. If we do not exercise any of our rights under this Mortgage immediately when they are available to us, we can choose to exercise those rights at a later time. By not exercising our rights immediately, we are not waiving or agreeing not to exercise or enforce our rights, unless we have agreed in writing to do so.

Invalidity

83. If at any time any provision of this Mortgage is or becomes illegal, invalid or unenforceable in any respect under the laws of New Zealand, that will not affect our ability to enforce the remaining provisions of this Mortgage.

New Zealand Law

84. This Mortgage is governed by New Zealand law, and any dispute in relation to this Mortgage must be brought before a New Zealand court.

Definitions and Interpretations

85. In this mortgage:

"Agreement" means any agreement or document which:

- (a) we and either you or any Guarantor are party to;
- (b) relates to the Mortgage Debt;
- (c) relates to any Security you or a Guarantor have granted to us; or
- (d) imposes obligations on you or any Guarantor in favour of us.

"Business Day" means any day other than a Saturday or Sunday on which we are open for business.

"Contamination" means the presence in or on the Land of a contaminant (as defined in the Resource Management Act 1993).

"Electronic Instrument" has the same meaning as in section 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

"Guarantee" means any document, agreement or deed under which a person agrees to guarantee your obligations to us.

"Guarantor" means any person that has guaranteed your obligations to us by entering into a Guarantee.

"Insolvency Event" means, in relation to a person, the occurrence of any of the following events:

- (a) that person ceases or threatens to cease to carry on all or any material part of its business or operations;
- (b) the dissolution or reorganisation of that person, or any step is taken towards the dissolution or reorganisation of that person, except for a solvent reorganisation previously approved in writing by us;
- (c) any general assignment, arrangement, compromise or composition with or for the benefit of any of its creditors is entered into, or any step is taken towards such assignment, arrangement, compromise or composition, with a view to avoiding insolvency;
- (d) that person is removed, or receives a notice of intention to remove it, from the register;
- (e) a trustee, receiver, receiver and manager, administrator, liquidator, provisional liquidator, inspector under any companies or securities legislation, or similar official, is appointed in respect of that person or the whole or any of its assets, or any steps are taken or threatened with a view to any such appointment;
- (f) a distress, attachment or other execution is levied or enforced upon, or commenced against, any assets of that person and is not discharged or stayed within 10 Business Days;
- (g) that person is declared or becomes insolvent, is unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with any applicable legislation;
- (h) that person has committed an act of bankruptcy, has been adjudicated bankrupt, or made an assignment of property or composition of debts under any law relating to bankruptcy, or (in accordance with Part 5 of the Insolvency Act 2006) has entered into a no asset procedure; or
- (i) anything analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (h) above happens;

"Land" means the land(s) described in this Mortgage together with all improvements from time to time on, or made to, such land(s).

"Mortgage" and **"this Mortgage"** means the relevant paper mortgage instrument or the electronic mortgage instrument, together with this Memorandum (as amended, added to or varied by the terms of any Annexure Schedule).

"Mortgage Debt" has the meaning given in clause 2.

"Mortgaged Property" means the Land and the property assigned, transferred and charged to us under clauses 1.1 and 1.2.

"Paper Instrument" means any printed or written document relating to the mortgage of land.

"PLA" means the Property Law Act 2007.

"Security" means any agreement or arrangement relating to, or that contains or sets out, a "security interest" (as defined in section 17 of the Personal Property Securities Act 1999), a mortgage, encumbrance, lien, charge (whether fixed or floating), sale and repurchase, sale and leaseback, title retention, assignment by

way of security, trust, or any other arrangement that in substance secures payment or performance of an obligation.

86. In this Mortgage:

"costs" includes any costs, charges, fees, commissions, indemnities, taxes, damages, losses, expenses (including legal fees and expenses on a full indemnity basis and goods and services and similar taxes thereon), claims, liabilities (absolute or contingent), fines and penalties and includes loss of profit and costs incurred in liquidating or redeploying deposits or other funds.

the **"dissolution"** of a person includes the winding-up, liquidation, removal from the register or bankruptcy of that person or an equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, carries on business or has assets;

"guarantee" includes any guarantee, indemnity, letter of credit, suretyship, bond, third party security or any other obligation:

(a) to pay, purchase, provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services or otherwise) for the payment or performance of; or

(b) otherwise to be responsible or assume liability for or in respect of,

any indebtedness or obligation of another person; and

"person" includes any individual, company, corporation, firm, club, partnership, limited partnership, joint venture, association of persons (corporate or not), organisation, trust, state or governmental agency (in each case, whether or not having separate legal personality).

87. In this Mortgage, reference 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;

any document include references to that document as modified, novated, supplemented, varied or replaced from time to time; and

the singular shall include the plural and vice versa and words importing one gender shall include the other genders as the case may require.