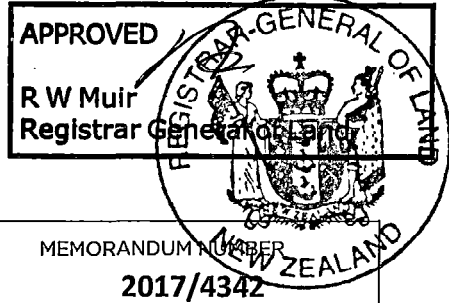


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**MORTGAGE MEMORANDUM
FORM OF REGISTRABLE MEMORANDUM**

REGISTERED UNDER SECTION 155A LAND TRANSFER ACT 1952

**HEARTLAND
BANK**

Class of instrument in which provisions are 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

Dated this **14TH** day of **SEPTEMBER** 2017

Signed by

DARRYL HARNETT

For and on behalf of Heartland Bank Limited

Terms of Mortgage

1 Payment of Secured Money

- 1.1 Payment:** You agree to pay us the Secured Money and perform and comply with the Secured Obligations. Unless otherwise agreed in writing, all Secured Money is payable on demand by us.
- 1.2 Interest:** You agree to pay interest on the Secured Money at the rates and on the terms from time to time agreed between you and us. If no rate is agreed, interest is payable at the rate and time, and will be calculated in the manner, determined by us from time to time.

2 Security

- 2.1 Mortgage:** To secure payment of the Secured Money and performance of the Secured Obligations, you:
- a mortgage to us all your right, estate and interest in the Land;
 - b assign by way of security to us all your right, title and interest (present or future) in:
 - i the Insurances;
 - ii the Earnings; and
 - iii all agreements, documents, rights and consents (excluding any consents under the Resource Management Act 1991) existing at any time relating to the purchase or sale, construction, maintenance, repair or condition of any of the Land, or which contain any warranties relating to any of the Land; and
 - c grant to us a charge, in terms of section 122(3) of the Resource Management Act 1991, in any resource consent issued in respect of the Land pursuant to that Act.
- 2.2 Land Transfer Act registration:** Nothing in this mortgage is intended to constitute entry in the register of any security interest under the Land Transfer Act 1952 other than over an estate or interest in land (except as may be permitted by Law).
- 2.3 Further assurance:** You promise that you will, at your cost and in a timely manner, provide us with all documents we ask for, and do anything else we request, in order to:
- a perfect your right, title or interest in any of the Secured Assets;
 - b maintain, perfect or otherwise give full effect to the security intended to be given under this mortgage, and the priority of that security;
 - c facilitate the exercise of any right by us or by any Receiver;
 - d facilitate the realisation of any of the Secured Assets following an Enforcement Event; and/or
 - e otherwise give effect to your promises under this mortgage, and enable us to obtain the full intended benefit of this mortgage.
- 2.4 Priority:** For the purposes of section 92 of the PLA, you acknowledge that:
- a the security given under this mortgage secures further advances by way of financial accommodation (within the meaning of that section) up to a stated priority limit; and
 - b the maximum amount for which the security given under this mortgage has priority over any subsequent security is the priority amount stated in this mortgage. If a priority amount is not stated elsewhere in this mortgage, the priority amount is \$100,000,000 plus interest.
- This clause is included solely to assist our priority. Nothing in this clause limits the nature or amount of the Secured Money.
- 2.5 Security independent and continuing:** This mortgage, and the security given under it, is:
- a in addition to and enforceable independently of any other guarantee, security or other agreement; and
 - b a continuing security, and remains in full force and effect until we agree in writing that it has been released.

3 Release and reinstatement

- 3.1 Release:** We do not have to provide a release of this mortgage (or release any Secured Assets from the security given under this mortgage) unless:
- a all Secured Money has been finally repaid and we are under no obligation to make available any further credit, advance or accommodation which, if provided, would give rise to Secured Money;
 - b all Secured Obligations have been finally performed and we are under no obligation to do anything which would give rise to Secured Obligations; and
 - c we are satisfied that there is no reasonable possibility that anything received or recovered by us in respect of Secured Money or Secured Obligations might be avoided by, or be required to be refunded or otherwise accounted for under, any applicable Law (including any Law relating to preferences or insolvency).
- 3.2 Reinstatement:** If any amount received or recovered by us in respect of any Secured Money is avoided by, or is required to be refunded or repaid under, or is required to be accounted for under, any applicable Law (including any Law relating to preferences or insolvency), then to the maximum extent permitted by Law:
- a that amount will be deemed not to have been received or recovered in the first place, and any indebtedness repaid from it will be reinstated; and
 - b we and you will be deemed to be returned to the respective positions in which each of us would have been, and we will be entitled to exercise all the rights which we would have had, as if that amount had not been received or recovered by us.
- To avoid any doubt, this provision applies even if we provided a release of this mortgage (or a release of any Secured Assets from the security given under this mortgage).

4 Undertakings

- 4.1 Secured Assets:** You promise that:
- a you are and will remain the sole legal and beneficial owner of the Secured Assets;
 - b you have not given and will not give security in the Secured Assets to anyone other than us;
 - c you will not sell, transfer, loan, lease or otherwise part with possession or dispose of any Secured Assets;
 - d you will keep the Secured Assets in good condition, promptly repair any damage to them, and promptly remedy any defects in them;
 - e you will ensure compliance with all Laws applicable to any of the Secured Assets or their use;
 - f you will pay all outgoing in relation to the Land including rates, body corporate levies, insurance premiums, taxes and other charges in respect of the Land when they are due for payment (and you will not make any rate deferral agreement with the local authority);
 - g you will notify us of any:
 - i claim or dispute which might arise in respect of or in connection with any Secured Assets;
 - ii requirement to carry out repair, construction or maintenance work in respect of any of the Land or any occurrence which may result in this being required;
 - iii structural alterations or renovations in respect of any of the Land before they commence; and/or
 - iv Major Damage,in each case, immediately upon becoming aware of it;
 - h you will notify us of any proposed change of zoning or change of land use controls in respect of any of the Land immediately on becoming aware of it and, if required by us, take all reasonable steps to oppose the same if it might be expected to reduce the value of the Land;

- i if any part of the Land is an interest in a stratum estate, building unit, group title or similar estate in land, you will notify us of any resolutions that require unanimous consent of the body corporate or that propose to alter the rules of the body corporate and vote on any such proposed resolution, or other resolution, as we direct;
- j you will not use the Land or permit its use for any purpose, trade or business except as used at the date of this mortgage;
- k you will not do or fail to do anything that will affect the value of any Secured Assets in a material way;
- l you will provide us with access (on any Business Day) to inspect any Secured Assets following reasonable notice from us; and
- m you will provide us on request with an up-to-date valuation for any or all of the Secured Assets at your cost.

4.2 Environmental: You promise that:

- a you will put in place, maintain and comply with proper procedures adequate to monitor compliance with your Environmental Obligations in respect of the Land;
- b you will obtain, maintain and comply with all consents and other material requirements in relation to your Environmental Obligations in respect of the Land;
- c you will notify us immediately on becoming aware of any actual or potential environmental liability, encumbrance, judgment, claim, order, obligation or expense of any nature which might have a material effect on you or result in a material reduction in the value of the Land and provide us with full details of all action taken or proposed to be taken in relation to such liability; and
- d you will provide us on request, at your sole cost, with environmental audits and reports in respect of the Land, in a form and from an independent consultant acceptable to us.

4.3 Insurance: You promise that:

- a you will keep all buildings and other erections on the Land insured against loss or damage by fire, explosion, earthquake, flood, environmental impairment and all other risks that should sensibly be insured against for a value agreed with us, and with our Interest as lender noted on the policy;
- b you will keep all other Secured Assets insured against all risks that should sensibly be insured against for a value agreed with us, and with our interest as lender noted on the policy;
- c you will take out and maintain all other proper insurance against third party liability which it is prudent to insure against in accordance with best commercial practice;
- d you will take out and maintain all insurance in respect of the Secured Assets with reputable insurers and, where applicable, through reputable brokers;
- e you will duly and punctually pay all premiums necessary to maintain all insurance in respect of the Secured Assets; and
- f you will not do or fail to do anything that will affect any insurance in respect of the Secured Assets in a material way.

4.4 Information: You promise that you will:

- a promptly give us any information about you, or your business, financial condition or the Secured Assets, that we reasonably request;
- b give us at least 14 days' prior notice of any change of your name, ownership, authorised persons or contact details;
- c notify us of any loss or damage to the Secured Assets or any other thing that may or does give rise to a claim under any insurance policy for the Secured Assets, and any amounts recoverable under any such insurance policy and, at our direction, apply such amounts in or towards replacement or reinstatement of the Secured Assets or, if we so require, in or towards payment of the Secured Money; and
- d provide us with any information or documents we may require from time to time for the purposes of Regulatory Compliance.

5 Enforcement

5.1 Our rights if there is an Enforcement Event: Subject to applicable Law, if an Enforcement Event happens, then (in addition to our rights under any other Relevant Document or otherwise) the security given under this mortgage will be immediately enforceable and we can do all or any of the following:

- a take possession of all or any Secured Assets;
- b appoint a receiver to all or any of the Secured Assets;
- c sell, transfer, loan, lease or otherwise part with possession or dispose of all or any Secured Assets;
- d exercise all or any rights which a person would have if appointed as a Receiver under this mortgage (whether or not a Receiver has been appointed);
- e for any of these purposes, we (or any person on our behalf) may enter any premises where any of the Secured Assets are reasonably believed to be located (whether or not any occupier is present); and
- f if we reasonably consider it necessary to do so, use your name and act on your behalf in exercising any of our rights under this mortgage.

5.2 Leasing: In exercising any rights in relation to lease of the Land, we:

- a may lease (with or without any purchase or renewal option) to any person for any term at such rent, and generally subject to such terms and conditions, as we think desirable;
- b may accept surrenders of any present or future leases or tenancies;
- c may determine any such leases or tenancies; and
- d may make any arrangements with any lessee, tenant or occupier of the Land, or the holder of any security interest affecting any Secured Assets.

5.3 Power of sale: In selling all or any part of the Secured Assets, we:

- a may sell by auction, public tender, private contract or another method;
- b may sell generally on such terms and conditions as we think desirable;
- c may buy in at any sale by auction;
- d may cancel any sale contract (and refund to the purchaser any amount which the purchaser may be entitled to on cancellation) and resell the relevant assets without being answerable for any loss or reduction in price;
- e are not responsible for anything a purchaser does or fails to do, and are not obliged to enforce any right under any sale contract;
- f may give effective receipts for the purchase money and do everything else to complete the sale as we think desirable; and
- g may exercise such other incidental powers in relation to the sale as are conferred on us (whether under this mortgage or by Law, or otherwise).

5.4 Power to appoint Receiver:

- a If an Enforcement Event happens or you so request we may (whether or not we have exercised any of our other rights) at any time appoint any person to be Receiver of all or any Secured Assets.
- b We may at any time remove any Receiver we have appointed.
- c Every Receiver is your agent, except to the extent that the Receiver is required by notice from us to act as our agent. We are not responsible for a Receiver's actions (including any misconduct, negligence or default of a Receiver).
- d A Receiver also has and may exercise all the rights we have under clauses 4.1, 4.2 and 4.3 (whether or not those rights are yet enforceable by us) and, in addition, all rights in relation to the Secured Assets and your business as if the Receiver

had absolute ownership of the Secured Assets and carried on your business for the Receiver's own benefit.

- e We may fix the remuneration of a Receiver at an amount, or on a basis, agreed with the Receiver or, failing agreement, as we determine.
- f Expenses incurred by a Receiver, and the remuneration of a Receiver, form part of the Secured Money.

5.5 Application of recoveries: Unless otherwise specified in a Relevant Document or required by Law, all amounts received or recovered by us or any Receiver under this mortgage (or under the security given under it) will be applied in the manner and order determined by us or the Receiver notwithstanding any purported application by a Relevant Party or any other person or entity, or any other matter or circumstance.

5.6 Contingent liabilities: If any Secured Money is contingently owing or not yet owing at the time any amount is received or recovered under this mortgage (or under the security given under it), we or any Receiver:

- a may retain an amount equal to all or part of the amount of such Secured Money;
- b will place that retained amount in an interest bearing deposit account until such Secured Money becomes actually due and payable or ceases to be contingently owing;
- c will apply the amount retained, and interest earned on it, to Secured Money which becomes actually due and payable after that time; and
- d once all Secured Money has been finally repaid, will apply the balance of the amount retained, together with interest earned on it, in accordance with clause 5.5.

6 Right to appoint attorney

6.1 You irrevocably and for valuable consideration appoint us and any Receiver individually to be your attorney with full power and authority (including to execute any document) to:

- a do anything which you have promised to do (but have failed to do) under this mortgage;
- b do anything which the Attorney thinks necessary or expedient to give effect to any right conferred on us by this mortgage or otherwise.

6.2 Each Attorney may delegate its power (including this power of delegation) to any person for any period, and may revoke a delegation. You agree to ratify anything done by an Attorney or any delegate in accordance with this clause. Upon registration of this mortgage under the Land Transfer Act 1952, the power of attorney contained in this clause will be deemed to be deposited in the Land Registry Office concerned.

7 Protection provisions

7.1 Our protections: Subject to applicable Law, neither we nor any Receiver is:

- a obliged to enforce payment of the Secured Money or performance of the Secured Obligations;
- b liable to account as mortgagee in possession in respect of the Secured Assets;
- c accountable for any proceeds of enforcement other than to the extent net proceeds are actually received;
- d liable for any expense or damage resulting from the exercise, attempted exercise or non-exercise of any right; or
- e liable for any expense resulting from or consequential upon any of the other matters set out in this clause.

7.2 Third party protections: No person dealing with us, any Receiver or any Attorney need enquire:

- a whether any right is exercisable; or
- b whether any Receiver or Attorney has been properly appointed.

8 Leases

8.1 Where the Secured Assets is or includes a lease or licence (in this clause called the **lease**) you promise that:

- a you will properly perform all of your obligations under the lease;
- b you will do everything that should be done to extend or renew the lease; and
- c you will do everything necessary to apply for and obtain relief against any forfeiture of the lease or relief against refusal of the lessor to grant a renewal of or a new lease in place of the lease.

9 Development

9.1 Continuance of construction: You promise that you will immediately and continuously proceed with any construction on the Land of buildings which you have indicated to us you will start or continue with construction of (such buildings being referred to as the **Development**). You promise to complete the erection, construction and finishing of the Development in a good and workmanlike manner, in accordance with all relevant Laws and building codes, and in accordance with any plans and specifications provided to and approved by us.

9.2 Completion by us: If you fail to comply with any promise in this clause then (in addition to any other rights we have, and without prejudice to our right to rely on that failure as an Enforcement Event) we may do whatever we think appropriate to complete the erection, construction and finishing of the Development and the deposit of any necessary plan. This includes:

- a calling tenders, and accepting any tender if tenders are called;
- b entering into (with any person you may have contracted employed) any arrangement we think appropriate for the completion of any of the Development, and paying to any such person any amount which we think appropriate for any work previously done or materials previously supplied;
- c making any deviation from the plans and specifications we think appropriate;
- d carrying out any work and doing anything else we think appropriate to preserve, secure, protect and maintain any partly finished portion of the Development;
- e taking any step, incurring any liability and paying any expense to procure the removal of any security from the title to the Land;
- f entering on to any of the Land for any of these purposes, and excluding you from any of the Land;
- g effecting any insurance we think appropriate;
- h employing consultants, contractors, servants, agents and workmen; and
- i doing anything we think appropriate to deposit any Land Transfer Plan required to facilitate completion of the Development and the conversion of the Development to strata titles under the Unit Titles Act 2010, or (at our discretion) to cross-lease the title to the Land, or to amalgamate the title to the Land or whatever other title arrangements we think appropriate.

9.3 No liability: We:

- a assume no responsibility, liability or obligation to you for any matter relating to the Development (or its completion, erection, construction or finishing); and
- b at any time can abandon all further work in relation to the Development (and will not incur any liability as a result of any work carried out before abandonment).

9.4 No implication of skill: Completion or partial completion by us in accordance with this clause will not imply our exercise of any care or skill, and will not relieve you from your promise to ensure good and workmanlike construction of the Development.

10 Other important things

10.1 Waivers: The only time we give up any of our rights under this mortgage is if we agree to do so in writing. A failure or delay in exercising any right does not operate as a waiver of that right. A single or partial exercise of any right does not preclude further exercise of that right or the exercise of any other right.

10.2 Assignment:

- a We can assign or transfer any of our rights or obligations under this mortgage without seeking specific consent from you.
- b You may not assign or transfer any rights or obligations under this mortgage without our prior written consent.

10.3 Right to appoint experts and advisers: We may at any time, where we reasonably believe it sensible or necessary to do so, instruct lawyers, accountants, investigators, valuers or other experts or professional advisers in relation to any matter arising in connection with this mortgage. Each such person or entity will be engaged to represent our interests, even if the costs are paid or payable by you or another person. To the fullest extent permitted by Law, we will not be liable for any expense to any person arising from the provision of services by a third party expert or professional adviser instructed under this clause 10.3.

10.4 Interaction with Law:

- a The covenants set out in clauses 2, 3, 8(2), 11 and 18 of Part 1 of Schedule 2 to the PLA are excluded from this mortgage. The remaining provisions of Part 1 of Schedule 2 to the PLA apply to this mortgage, but in the event of any conflict with the provisions of this mortgage or any other Relevant Document, this mortgage or that other Relevant Document shall prevail.
- b Subject to the immediately preceding provisions of this clause, the rights provided in this mortgage are in addition to any rights provided by Law. If any provision of this mortgage conflicts with any provisions of Law, then:
 - i to the extent that the relevant provisions of Law may be varied or excluded, the provisions of this mortgage prevail; and
 - ii to the extent that the relevant provisions of Law may not be varied or excluded, then the provisions of this mortgage must be read subject to those provisions of Law.

10.5 Severability: If any part of this mortgage is illegal, invalid or unenforceable, the other parts of this mortgage will still be legal, valid and enforceable.

10.6 Governing Law: This mortgage is governed by and must be interpreted under New Zealand Law.

11 Dictionary and interpretation

11.1 Dictionary: In this mortgage (unless it would not make sense):
Attorney means an attorney appointed under this mortgage.

Business Day means a day (other than a Saturday, Sunday or public holiday observed in New Zealand) on which registered banks are open for general banking business in New Zealand.

Earnings means all amounts payable to you during the term of this mortgage arising out of (or out of any agreement relating to) the ownership, use or occupation of the Land (including rents, sale proceeds of crops and other produce, any damages and the proceeds of any insurance in respect of loss of earnings or income and any profit à prendre or forestry rights).

Enforcement Event means:

- a you do not pay us when due any amount payable by you to us; or
- b the occurrence of any event of default (however described) under a Relevant Document.

Environmental Obligation means any obligation relating to the occupation or use of the Land or the use of assets, development, pollution, waste disposal, toxic and hazardous substances

or conservation of natural or cultural resources, whether or not arising pursuant to any Law (including the Resource Management Act 1991 and the Building Act 2004) or pursuant to any contract or arrangement with a governmental agency.

Insurances means all policies and contracts of insurance in respect of any of the Land, and includes all proceeds of them and rights arising in connection with them.

Land means the land described in this mortgage and includes all buildings, erections and improvements on that land.

Law means any law, regulation, rule, official directive, order, request, guideline or consent (whether or not having the force of law) of any governmental body or regulatory authority and, if not having the force of law, with which responsible entities in the position of the relevant party would normally comply.

Major Damage means, in relation to the Land, damage which results in:

- a a loss or claim totalling 20% or more of the full replacement value of the improvements and buildings for insurance purposes; or
- b the Land becoming substantially unoccupiable as a personal residence in the same manner as previously, or so that the trade or business normally carried on from it can no longer be efficiently carried on;

PLA means the Property Law Act 2007.

Receiver means a person appointed as a receiver under this mortgage.

Regulatory Compliance means the requirements for us to comply with all applicable Laws, including those relating to money laundering, terrorist financing, bribery, corruption, tax evasion, fraud or similar, and manage all economic and trade sanction risks.

Relevant Document means this mortgage, each other Security Document and each other agreement (present or future) evidencing or relating to Secured Money or Secured Obligations.

Relevant Party means each party to a Relevant Document (other than us) and, in the case of a party that is a trust, partnership or limited partnership, includes each trustee or partner (as applicable) as well as the relevant trust, partnership or limited partnership.

Secured Assets means the assets in respect of which you give us security under this mortgage.

Secured Money means all your indebtedness to us.

Secured Obligations means all your obligations (whether present or future) to us, other than Secured Money.

Security Document means each guarantee, security, or other agreement (present or future) which guarantees or secures all or any part of the Secured Money or all or any Secured Obligation (directly or indirectly).

11.2 Interpreting this mortgage: This mortgage must be interpreted using the following rules (unless it would not make sense to do so):

- a where we refer to **this mortgage** we mean this mortgage memorandum together with the client authority and instruction signed by you that refers to this mortgage memorandum and authorises and instructs the registration of a mortgage;
- b where we refer to **we** or **us** we mean Heartland Bank Limited;
- c where we refer to **you** we mean each person who is registered as the owner of the Land;
- d where we refer to any statute, we include all future versions of it, including all changes to it, all re-enactments or replacements of it, and all statutory instruments issued under it;
- e where we refer to a document we mean that document as varied or replaced from time to time;
- f each reference to us or any other person includes any person or entity that legally takes over our responsibilities or that other person's responsibilities (as applicable);

g each reference to including, when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

h each reference to an asset includes:

i anything that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible;

ii any right or interest in the above; and

iii any right, benefit or undertaking;

i each reference to any expense includes all expenses, losses, claims, costs (including legal costs on a solicitor and own client basis), disbursements, taxes, travel expenses, out of pocket expenses and audit, investigative or administrative costs;

j each reference to indebtedness includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint, several or joint and several, and as principal or surety or otherwise) for the payment or delivery of money;

k each reference to a right includes any right, power, remedy, authority or discretion; and

l each reference to security includes a security interest (as defined in the PPSA), mortgage, assignment by way of security, charge, encumbrance, lien, pledge, finance lease, deferred purchase, title retention, sale-and-repurchase, sale-and-leaseback arrangement and preferential arrangement of any kind, the practical effect of which is to secure a creditor.

Memorandum

2017/4342

Land Transfer Act 1952

Mortgage



Registered pursuant to Section 155A

Land Transfer Act


Register-General of Land

Land Registry

(Abstract number / date 17.10.17)

10932789.1

"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"