

Memorandum Setting Forth Provisions Intended for Inclusion in Instruments

MEMORANDUM

Land Transfer Act 1952

Sup Doc 648950 Memor:

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Class of Instrument in which provisions intended to be included:

Mortgage - All Obligations

Person executing Memorandum:

Nelson Building Society, At Nelson

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

1. INTERPRETATION

1.1 In this mortgage, unless the context otherwise requires:

"Accommodated Person" means any person the Society contracts or makes any arrangement with or to whom the Society provides any financial services or facility for the accommodation of the mortgagor.

"Consent" means any resource consent (as defined in the Resource Management Act 1991) and any other consent, approval, licence, determination, permission or right of any kind, which is required in relation to the Land or any Land use.

"Land" means the land (and any part of it) described in this mortgage including all buildings and improvements thereon.

"Land Use" means any use of the Land, including any activity or business on or in respect of the Land.

"Loan Agreement" means any agreement relating to loans, advances or other financial accommodation made between the Mortgagor and the Society before, at the same time as, or after the execution of this mortgage.

"Mortgagor" means every person or persons who executes this mortgage as Mortgagor or is a Mortgagor by virtue of an electronic instrument certified pursuant to Section 164A of the Land Transfer Act 1952 and their respective executors, administrators, successors and permitted assigns.

"On Demand" means on demand in writing signed by the Society or any authorised agent of the Society and delivered to the Mortgagor or Guarantor (as applicable) in accordance with Clause 9 of this Memorandum or as otherwise permitted by law.

"Person" includes a natural person and a company, statutory body, local authority, trust, partnership, society, association or other group whether or not incorporated.

"Prescribed Interest Rate" means the prescribed interest rate as determined pursuant to the loan agreement.

"Receiver" means a receiver or manager appointed pursuant to Clause 15.1 and includes any permitted delegate of any of them.

"Society" means the Nelson Building Society and includes its successors and assigns.

"This Mortgage" means, in relation to each executed mortgage (including an electronic instrument certified pursuant to Section 164A of the Land Transfer Act 1952) incorporating this Memorandum, that mortgage and this memorandum.

1.2 In this mortgage words importing the singular shall include the plural and vice versa and one gender shall include the other gender

1.3 Any reference in this mortgage to any statute shall extend to any statutory amendment, modification or re-enactment of the statute for the time being in force.

1.4 Headings of Clauses have been inserted for the sake of convenience only and shall not be taken to form any part of the context or to assist in the interpretation of the Clauses.

1.5 Nothing Contained or implied in this mortgage shall oblige the Society to provide any Secured Money to the Mortgagor.

2. DEFINITION OF "SECURED MONEY"

2.1 In this Mortgage the words "Secured Money" means all or any moneys that are or may become owing to the Society by the Mortgagor from time to time (without limitation) and include:

- a) all moneys advanced, credited, paid over or otherwise made available, lent or any other financial assistance provided by the Society, directly or indirectly, to the Mortgagor or to any other person on behalf or at the request or direction of the Mortgagor; and

- b) all moneys payable under any Loan Agreement or in respect of a bank account of the Mortgagor; and
- c) all moneys payable in respect of any bill of exchange, promissory note, letter of credit or other instrument whether or not negotiable or transferable; and
- d) all moneys payable in respect of any guarantee, indemnity or other obligation (express or implied) given or undertaken to the Society or by the Society to any Person on behalf of, or at the request or direction of the Mortgagor; and
- e) all interest, charges, fees and any other costs payable to or incurred by the Society under or in relation to this Mortgage under Clause 4,8 and 10 or any other indebtedness to the Society secured by this Mortgage.

2.2 The moneys, liabilities and obligations described in Clause 2.1 are in all cases to be regarded as Secured Money whether or not:

- a) they are matured or unmatured, direct or indirect, absolute or contingent or liquidated or unliquidated; or
- b) they are also secured by any other security; or
- c) any agreement or arrangement relating to such moneys expressly refers to this Mortgage; or
- d) they are payable on any accounts whatsoever and whether or not they arise by agreement (express or implied), operation of law or any other manner; or
- e) they are owing by any Mortgagor or accommodated Person (as the case requires), jointly with or otherwise in combination with any Person who is not a Mortgagor or accommodated Person.

3. PAYMENT OF SECURED MONEY

- 3.1 Where the Society and the Mortgagor have agreed as to payment to the Society of any Secured Money, the Mortgagor will pay to the Society that Secured Money together with interest strictly in accordance with the terms of that agreement.
- 3.2 Where there is no agreement between the Society and the Mortgagor, the Mortgagor will pay to the Society the Secured Money on demand and interest at the Prescribed Interest Rate. Such interest will be calculated daily from the date the Secured Money becomes owing to the Society.
- 3.3 The Mortgagor will execute all such instruments providing for payment of any Secured Money as the Society from time to time requests and will make all payments of Secured Money without deduction whatsoever.
- 3.4 The Society shall be entitled to apply any amount held or received by the Society in reduction of the Secured Money in such manner and to such account as the Society in its discretion may decide.

4. COVENANTS CONCERNING THE MORTGAGED PROPERTY

- 4.1 The Mortgagor will punctually pay all rates, taxes and charges in respect of the Land.
- 4.2 The Mortgagor will insure and keep insured all buildings and insurable improvements on the Land against fire and all other risks normally covered by a comprehensive policy. The insurance shall be with an insurance company approved by the Society and in joint names of the Society and the Mortgagor for their respective rights and interests. The insurance shall be for full insurable value and if the Society so requires, shall be on normal replacement terms.
- 4.3 The Mortgagor will duly and punctually pay all premiums and sums of money necessary for the purpose of keeping in force the insurance required in Clause 4.2 and shall produce to the Society if required the premium receipt forthwith.
- 4.4 In the event of any building or other improvements on the Land being destroyed or damaged, all moneys received by the Society under any insurance policy shall, subject to the rights of any prior mortgagee, be applied at the Society's discretion towards rebuilding or repairing the buildings and improvements or towards payment of any Secured Money even though such money may not have fallen due.
- 4.5 The Mortgagor shall keep all buildings and other improvements on the Land and all other parts of the Land in good and substantial repair, order and condition.
- 4.6 The Mortgagor shall not, without the prior written consent of the Society:
 - a) remove or dismantle or permit to be removed or dismantled any buildings or other improvements on the Land; and
 - b) construct or make any alterations or permit any construction or alteration to be made to any building or improvements on the Land

Such consent is not to be unreasonably withheld in the case of structural alterations, which will not detrimentally affect the value of the security.
- 4.7 The Mortgagor shall comply with and observe all statutes, ordinances, rules, regulations and bylaws now and hereafter in force relating to the Land or any business conducted on the Land.
- 4.8 The Mortgagor shall immediately advise the Society, in writing, of any contravention or threatened or likely contravention, of any of the statutes, ordinances, rules, regulations and bylaws referred to in Clause 4.7.
- 4.9 Any notice or other communication which may, or compliance of may, materially adversely affect the Land, any Land use or Consent or the Society's interest, is to be advised immediately to the Society in writing. The Mortgagor shall take all reasonable steps required by the Society in respect to the contents of any such notice or other communication.

4.10 The Mortgagor shall not, without the prior consent of the Society, further mortgage or encumber the Land, buildings or improvements on the Land.

4.11 The Society's employees or those authorised by the Society may, at any reasonable time, enter upon the Land to view and inspect it or, where applicable, exercise the powers contained in Clause 8.

5. RESOURCE MANAGEMENT ACT

5.1 The definition of any term in the Resource Management Act 1991 ("RMA") shall have the same meaning in this Clause (where the context permits) as it has in the Resource Management Act 1991.

5.2 Where the use of the Land is allowed only because of Sections 10, 10A or 20 of the RMA, the Mortgagor shall continue to use the Land so as to preserve the application of those sections.

5.3 The Mortgagor will, in respect to the Land, comply with all obligations that are binding on either the owner or occupier under the RMA or, the rules of any relevant regional or district plan. The Mortgagor will comply with all terms of a Consent, any certificates of compliance or permission deemed to be a Consent, Consent notice or other requirements or notices issued under the RMA. This paragraph does not affect Clause 4.7 of this mortgage.

5.4 The Mortgagor shall not institute proceedings to vary any Consent, variation of a plan or a rule in a plan that affects the Land without first obtaining the written permission of the Society.

5.5 The Mortgagor shall not, without obtaining the Society's prior written consent, transfer or surrender any Consent relating to the Land.

5.6 If the Society reasonably considers that the outcome of any event referred to in Clause 5.4 above shall materially affect the value of the Society's security then the Mortgagor shall, at the Mortgagor's expense, take all steps reasonably required by the Society to remedy that outcome.

6. SOCIETY'S RIGHT TO CALL UP

6.1 If:

- a) without the Society's prior consent the Mortgagor sells, transfers, exchanges, leases, parts with the possession of or otherwise disposes of the Land or any part of it or agrees to do any of those things; or
- b) the Land or any part is taken under statute; or
- c) the Land value, in the Society's opinion, is materially reduced as a result of any change of rules or designation in any plan; or
- d) the Land or any part of the Land or any interest in the Land is sold under a power of sale in any mortgage or charge affecting the Land; or
- e) any Secured Money is not paid to the Society by the Mortgagor on the date it is due pursuant to any agreement between the Society and Mortgagor; or
- f) the Mortgagor shall commit any default in the performance or observance of any of the Mortgagor's obligations contained or implied in this mortgage and/or in any Loan Agreement in writing between the Society and Mortgagor; or
- g) the Mortgagor's financial position or the value of Securities held by the Society in respect of the Secured Money or any part of it has in the opinion of the Society changed adversely to a material extent; or
- h) any guarantor of the Mortgagor's liability to the Society for the Secured Money or any part of it gives notice determining or reducing that guarantor liability; or
- i) a judgment of any Court against the Mortgagor shall remain unsatisfied for more than seven days; or
- j) the Mortgagor commits or suffers any act of bankruptcy or becomes insolvent; or
- k) a resolution is passed or an order is made for the winding up of the Mortgagor or a Receiver, liquidator, provisional liquidator or statutory manager is appointed; or
- l) in the Society's opinion an unsatisfactory feature exists or develops in the Mortgagor's affairs or the Mortgagor does not continue to conduct their affairs to the Society's satisfaction; or
- m) in the Society's opinion an unsatisfactory feature exists or develops in relation to the Land, any Land use or Consent; or
- n) any insurance policy in relation to the buildings or other improvements on the Land is cancelled by the Mortgagor or insurance company without the Society's prior consent; or
- o) any statement or representation made by or on behalf of the Mortgagor or any guarantor pursuant to any Loan Agreement or written obligation between the Society and Mortgagor was not true or accurate at the time it was made; or
- p) any Mortgagor is a company and there is a material change in the control of the company either by reducing or taking any action to reduce the shareholding of the company or any shareholder, or there occurs a change in the legal beneficial ownership of the company and the company ceases to be controlled by the same persons as at the date of this mortgage;

then the Secured Money shall, at the Society's discretion and on receipt of written notice from the Society, be immediately payable to the Society whether or not the appointed time for payment of all or part of the Secured Money has arrived.

6.2 Any delay or failure to act by the Society after obtaining knowledge of any events specified in Clause 6.1 shall not prejudice the rights of the Society to exercise any powers provided in this mortgage.

7. SECURITY PROVISIONS

- 7.1 Until the Society executes a discharge of this mortgage the Society shall be entitled to hold all documents of title to the Land.
- 7.2 The Society shall not be bound to produce this mortgage or documents of title to the Land to any Land Registry office or elsewhere:
- a) while the Mortgagor is in default of any covenants contained in any Loan Agreement or this mortgage; or
 - b) if production is required for the purposes of registering or giving effect to dealings of any kind referred to in Clause 6.1(a) or (d) or Clause 4.10 to which the Society has not given prior consent; or
 - c) until such reasonable costs of production have been paid to the Society.
- 7.3 Until the Society executes a discharge of this mortgage it shall have full force and effect as a running and continuing security for payment of the Secured Money and compliance with its terms. This clause shall apply notwithstanding:
- a) payment of any sums to the Society from time to time
 - b) any account between the Mortgagor and the Society being in credit at any time
 - c) any settlement of account or other circumstances whatsoever
- 7.4 For the purposes of Section 80A(2) of the Property Law Act 1952, the maximum amount up to which the sum owing under this mortgage shall rank in priority to any subsequent charge shall be the priority sum mentioned in this mortgage. This clause shall not be construed as a waiver of the Mortgagee's security under this mortgage for so much of the moneys hereby secured as may exceed the priority sum nor as a representation of the total amount of credit to be provided to or for the accommodation of the Mortgagor or to be secured by this mortgage.
- 7.5 This mortgage is in addition to and not in substitution for any other security, right or remedy which the Society now has or may at any time have in relation to the moneys hereby secured.
- 7.6 The Mortgagor will comply with the terms of every security at any time held by the Society for the Secured Money.
- 7.7 The Society may enforce this mortgage without first having recourse to any other securities or rights and exercises the Society's remedies under each security for the Secured Money separately or under any two or more of them concurrently.

8. ENFORCEMENT

- 8.1 If:
- a) the Mortgagor fails to do any thing or pay any sum which the Mortgagor has by this mortgage agreed to do or pay, the Society may do such thing or pay such sum in whole or in part; and
 - b) any sums are paid pursuant to Clause 8.1(a) or any costs, fees or other expenses are incurred by the Society in exercising or enforcing or attempting to exercise or enforce any power, right or remedy contained or implied in this mortgage, they shall be paid by the Mortgagor to the Society on demand and may be added to the Secured Money; and
 - c) default is made by the Mortgagor in payment of any Secured Money to the Society or in the observance or performance of any other covenant expressed or implied in this mortgage the Society may demand full or part payment of the Secured Money and sell the property either in full or part. The Society may exercise these remedies or any other remedies contained in this mortgage separately or any number concurrently.
- 8.2 The Society:
- a) may sell the mortgaged property either altogether or in lots, by public auction, private contract or in any other manner the Society considers appropriate;
 - b) may cancel any contract for sale, resell the mortgaged property without being answerable for any loss or diminution in price and may allow or refund to the purchaser any sum which the purchaser may be entitled to upon such cancellation and to that extent may reverse any application of sale proceeds previously made;
 - c) shall not be obliged to account for or apply any sale proceeds unless and until received by the Society. The Mortgagor shall remain liable for the Secured Moneys beyond those received;
 - d) shall not be responsible for any thing done or omitted by any purchaser nor be bound to enforce any remedy under any contract of sale;
 - e) may exercise such powers, not referred to in Clause 8.2, in relation to the sale as are conferred upon the Society by law;
 - f) will apply the money arising from any sale in accordance with the provisions of Section 104 of the Land Transfer Act 1952.
- 8.3 No Purchaser:
- a) shall be liable for the loss, misapplication or non-application of the purchase money or be obliged or concerned as to its application; or
 - b) shall be concerned to enquire as to any default having been made or otherwise as to the necessity, regularity or propriety of any matter in relation to such exercise of a power of sale.

9 NOTICE OF DEMAND

- 9.1 Any notice or demand required to be served on the Mortgagor under and in relation to this mortgage, may be signed by the Society or the Society's agent and may be served:
- a) by registered mail to the Mortgagor's place of residence or business last known to the Society;

- b) by delivering to the mortgagor personally;
- c) in the case of a company, by leaving it at its registered office or by posting it by registered mail addressed to the Mortgagor at its registered office or addressed to it at its place of business last known to the Society or by delivering it to any person who is named on the public register as a director or secretary of the company.

Where a demand or notice is not served in accordance with any of the foregoing methods, it shall nevertheless be sufficiently served if actually received by the Mortgagor.

- 9.2 The posting or delivery of a notice or demand specified in Clause 9.1 shall be deemed to be good service notwithstanding that at the date of service the Mortgagor, whether known by the Society or not, is dead, incapable, in liquidation or absent from New Zealand or does not receive the demand or notice and notwithstanding any other matter or event whatsoever.
- 9.3 No error or omission in a notice or demand shall affect its validity. The Mortgagor shall have no right of action, claim, demand or other entitlement against the Society by reason of any error or omission in the notice or demand.
- 9.4 The modes of service provided by this clause do not limit any other sufficient or lawful mode of service and are subject to any mandatory provisions in any statute.

10. GENERAL PROVISIONS

- 10.1 The covenants, powers and provisions implied in mortgages of land by the Property Law Act 1952 shall be implied in this mortgage except to the extent they are varied or negated.
- 10.2 The Mortgagor will On Demand pay to the Society all reasonable legal costs (as between solicitor and client) for:
 - a) the arranging, preparation and registration of this mortgage and any variation or discharge or transfer in lieu of discharge;
 - b) legal services arising from or relating to any default under this mortgage or the enforcement or exercise or attempted enforcement or exercise of any of the Society's rights, remedies and powers under this mortgage (including the giving or attempted giving of any notice under the Property Law Act 1952 or any enactment in substitution for that Act), the inspection and valuation of the Land;
 - c) dealing with any request by the Mortgagor for variation of or waiver or other concession in relation to this mortgage;
 - d) dealing with any request or requirement made of the Society by any person having or claiming an interest in the Land;
 - e) legal services relating to the protection of the Society's security interest under this mortgage (including the investigation of any claim relating to the Land which might affect that interest).
- 10.3 No waiver by the Society in relation to any default by the Mortgagor or to any other event or circumstance shall prejudice the Society's rights in respect of any other future default, event or circumstance, whether of a similar nature or not.
- 10.4 If the Society obtains judgment against the Mortgagor for any sum payable under this mortgage, the Mortgagor will pay to the Society interest on that sum from the date of judgment until the sum is paid in full and at the Prescribed Interest Rate.
- 10.5 The Society may (but shall not be obliged to) at any time and without notice to the Mortgagor set off and apply any and all credit balances or deposits owed to the Mortgagor by the Society in or towards satisfaction or reduction of the Secured Money. This clause will apply whether or not the Mortgagor is bankrupt, in receivership or liquidation.
- 10.6 If the Mortgagor is engaged in any business then the Mortgagor will permit the Society or its agents to inspect properly maintained accounting records of that business and will furnish the Society with a full set of financial accounts as at the end of each financial year and will furnish the Society with any other information relating to that business which the Society may require from time to time.
- 10.7 Should the Mortgagor or any other person at any time be in a position of or possess the rights of a surety in respect of the Secured Money or any part of it the Mortgagor shall remain the principal debtor and shall not be released by any act, matter or thing which would release one liable only as a surety.

11. PRIOR MORTGAGES

- 11.1 The Mortgagor shall duly and punctually pay all principal, interest and other moneys secured by, and shall perform and observe the covenants contained or implied in, every mortgage having priority to this mortgage.

12. UNIT TITLES

- 12.1 Where the Land is or includes any stratum estate under the Unit Titles Act 1972 ("the Act") Clauses 12.2 to 12.5 shall apply.
- 12.2 The Mortgagor shall:
 - a) duly and punctually pay all moneys payable to the body corporate by the Mortgagor under the Act and the rules of the body corporate ("the Rules"); and
 - b) comply with all other obligations of the Mortgagor under the Act and the Rules; and
 - c) keep and maintain a mortgage redemption policy under section 39 of the Act for a sum not less than the Secured Money and provide cover as referred to in Clause 4.2 subject to any necessary modifications; and
 - d) take all reasonable steps necessary from time to time to enforce the obligations of the body corporate and other proprietors under the Act and the Rules; and
 - e) give the Society such information relating to the affairs of the body corporate as the Society may require from time to time.

12.3 Notwithstanding anything otherwise contained or implied in this mortgage the Secured Money shall become due and payable On Demand if:

- a) the principal unit is damaged or destroyed as to be no longer habitable; or
- b) an administrator under section 40 of the Act is appointed.

12.4 The Mortgagor's voting rights under section 41 of the Act may be exercised by the Society. The Mortgagor shall not vote on any resolution, put to a meeting of the body corporate that requires a unanimous decision, without the prior consent of the Society and then only as directed by the Society.

12.5 The Mortgagor in consideration of the accommodation provided by the Society hereby irrevocably appoints the Society (including the person for the time being entitled to give receipt or discharge for the Secured Money) (if more than one, severally) 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 and obtain information from the body corporate concerning the affairs of the body corporate and compliance by the Mortgagor with the Rules.

13. LEASEHOLD

13.1 Where the Land is or includes a lease or licence (hereinafter referred to as "the Lease") Clause 13.2 to 13.5 shall apply.

13.2 The Mortgagor shall pay the rent under the Lease as and when it becomes due and payable, shall observe and perform all terms and conditions contained or implied in the Lease.

13.3 The Mortgagor shall at the Mortgagor's own cost execute all instruments and do all acts and things which the Mortgagor is required to do to obtain renewals of the Lease or new Leases of the Land.

13.4 If the Mortgagor should default under the terms of Clause 13.2 or neglect to perform the obligations referred to in Clause 13.3 then the provisions referred to in Clause 8 of this mortgage shall apply.

13.5 If the Mortgagor obtains a renewal or extension of the Lease or a new Lease or acquires a superior estate or interest in the Land the Mortgagor shall immediately mortgage such renewal, extension, new Lease, estate or interest to the Society to secure the payment of Secured Money and in the meantime hold such renewal, extension, new Lease, estate or interest in trust for the Society.

13.6 The Mortgagor hereby irrevocably appoints the Society (including the person for the time being entitled to give a receipt or discharge for the Secured Money) (if more than one, severally) the Attorney or Attorneys of the Mortgagor at the Mortgagors cost to:

- a) obtain information from the Lessor concerning the Lease and compliance by the Mortgagor with its terms;
- b) enforce any of the lessee's obligations under the Lease and if this is a mortgage of a cross-lease, their obligations under the other cross-leases;
- c) do all things and execute all documents necessary or expedient in the Society's opinion to obtain pursuant to the Lease an assurance of the lessor's reversion or a new or renewed lease in place of the Lease (whether or not for the same term or at the same rent or containing the same terms);
- d) give and execute a mortgage of any such reversion or new or renewed lease, having the same priority, securing the same moneys and containing (with any necessary and consequential modifications) the same terms as this mortgage including this clause;
- e) make any request to the Registrar under Section 117 or 118A of the Land Transfer Act 1952;
- f) do all things and execute all documents necessary or expedient in the Society's opinion to apply for and obtain from any Court any form of relief in relation to the Lease;
- g) conduct, prosecute or compromise any arbitration or litigation relating to the Lease or if this is a mortgage of a cross-lease, to any of the other cross-leases;
- h) recover and give receipts and discharges for any compensation, damages or other moneys for any cause including the value of improvements payable by any person purchasing any right to a lease of the Land;
- i) give any notice and exercise any right or power under the Lease and if this is a mortgage of a cross-lease, under any of the other cross-leases;
- j) appoint and remove any person as a substitute Attorney;
- k) execute and register any instrument necessary or expedient in the Society's opinion for the purpose of this clause.

14. LICENSED PREMISES

14.1 Where the Land or any part of the Land consists of "licensed premises" within the meaning of the Sale of Liquor Act 1989, the Mortgagor shall ensure that the provisions of that Act are complied with at all times. In particular the Mortgagor shall ensure that:

- a) all licences required under that Act are obtained, maintained and renewed; and
- b) all conditions of or concerning such licences are complied with; and
- c) any activity or business on or in respect of the licensed premises is conducted in a proper, lawful and orderly manner.

15. RECEIVER

- 15.1 At any time after the Secured Money has become due pursuant to Clause 6 of this mortgage the Society may, in writing, appoint a Receiver or manager (including an employee of the Society if permitted by law) of the Land and/or the rents, profits and other income of the Land and any Receiver shall be the Mortgagor's agent and the Mortgagor shall be solely responsible for the acts or defaults of the Receiver.
- 15.2 Where more than one person is appointed as Receiver, then those persons may be appointed as Receiver jointly and/or severally and shall have power and authority to act as Receiver according to the terms of their appointment.
- 15.3 In relation to the exercise of any of the Receivers powers the Society may at the request of the Receiver advance and pay to the Receiver such moneys as the Society thinks fit and all moneys so advanced shall be deemed moneys advanced on account of the Mortgagor and form part of the Secured Money.
- 15.4 The Society may, in writing, at any time replace the Receiver with another.
- 15.5 The Receiver shall have all the powers conferred on receivers or managers by statute or law together with the Society's powers under this mortgage.
- 15.6 The Receiver may demand, recover and issue receipts for the income of the Land or any part thereof.
- 15.7 The Receiver shall be entitled to retain, out of any moneys received, actual expenses and such amounts as agreed to by the Society.
- 15.8 Neither the Society nor the Receiver shall be liable to account as mortgagee in possession or for anything other than actual receipts or be liable for any loss on realisation or for any accidents occurring in the operations carried on or for any negligence, default or omission for which a mortgagee in possession might be liable.
- 15.9 The Mortgagor agrees to indemnify the Society and the Receiver against any liability the Society or the Receiver may incur as a result of becoming a mortgagee in possession or deemed occupier or owner of the Land or any part thereof or holder of any Consent.

16. FARMING PROVISIONS

- 16.1 If the Land is used for agricultural, pastoral, orchard or other farming purposes, the Mortgagor shall:
- keep the Land clear of all blackberry, gorse, noxious plants and animal and insect pests;
 - take all reasonable steps to control disease in crops, pastures, plants and stock on the Land;
 - farm and manage the Land in accordance with established farm management practice and cultivate and keep cultivated such part of the Land as is or has been usually cultivated;
 - Not (without the Society's prior consent) make any material change in the type of farming conducted on the Land.

17. BUILDING AND OTHER WORKS

- 17.1
- This clause applies if any development works (as defined in paragraph (b) of this Clause) are in the course of being, or are intended to be, carried out.
 - In this clause, "development works" includes subdivision, development or improvement of the land and also includes the construction, development, alteration or repair of any building or other improvement on the land.
- 17.2 The Mortgagor will immediately and continuously proceed with the development works until completion in a workmanlike manner and in accordance with plans and specifications submitted to and approved by the Society and, where applicable, in accordance with a building permit or other approval or consent issued by the relevant authority.
- 17.3 In exercising, in relation to Clause 17.2, the powers contained in Clause 8.1, the Society may complete the development works with such variations to the plans and specifications as the Society considers expedient and may do anything necessary or expedient in the Society's opinion to remedy, prevent or mitigate deterioration in the development works.


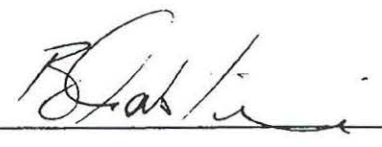
18. TRUSTEES

- 18.1 If any party to this mortgage is a trustee of a Trust then that person warrants and undertakes that:
- the party is a current and validly appointed trustee of the Trust and has powers and authority to enter into this mortgage and any related Loan Agreement or collateral security;
 - the mortgage and any related Loan Agreement or collateral security has been signed in accordance with the terms of the Trust and pursuant to a valid resolution of the trustees and are binding on and enforceable against the Trust;
 - the trustees have and will retain a right of indemnity from the Trust assets;
 - the Society will be immediately notified if during the term of the mortgage there is any alteration to the trustees or any change to the Trust which may adversely affect the Lender. No trustee will be released from his her or its liability under this mortgage until this is confirmed in writing by the Society.

18.2 If a mortgagor is agreed by the Society to be an independent trustee the liability of the independent trustee shall be limited to the net assets for the time being of the Trust under which the independent trustee has entered into this mortgage and is not personal unless the loss is incurred by the Society due to the wilful default or the dishonesty on the part of the trustee or unless the warranties in the foregoing paragraph 18.1 are incorrect.

Dated this 14th day of August 2007

EXECUTION

Signed by the Nelson Building Society  

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, Peter Richard Havill of Nelson, Credit Manager

AND Brian John Gabites of Nelson, Senior Lending Administrator

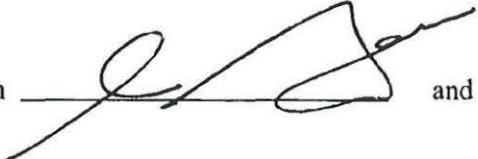

HEREBY CERTIFY -

1 **THAT** by Deed dated the 21st day of March 2006 copies are deposited with the Registrar General of Land under number **6798621.1**

NELSON BUILDING SOCIETY a society registered under the Building Societies Act 1965 and having its registered office at 111 – 113 Trafalgar Street, Nelson, New Zealand and carrying on the business of a building society appointed us its attorneys on the terms and subject to the conditions set out in the said Deed and the attached document is executed by us under the powers thereby conferred

2 **THAT** at the date hereof we were Credit Manager and Senior Lending Administrator of the said society, respectively.

3 **THAT** at the date hereof we have not received any notice or information of the revocation of that appointment by the winding up or dissolution of the said **NELSON BUILDING SOCIETY** or otherwise.

SIGNED at Nelson  and 

This *12th* day of *August* 2007

MEMORANDUM No. 2007/4231

Land Transfer Act 1952

MORTGAGE

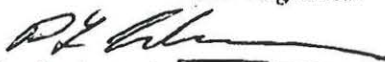
Registered pursuant to Section 155A
Land Transfer Act 1952.



Registrar-General of Land
Land Registry
(Abstract number/date 21/8/07)

7511786-1

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