

**FORM OF REGISTRABLE MEMORANDUM**  
**REGISTERED UNDER SECTION 155A LAND TRANSFER ACT 1952**

**HEARTLAND BANK**  
**MORTGAGE MEMORANDUM**

Class of instrument in which provisions are intended to be included:

**Mortgage – All obligations**

Person executing Memorandum

**Sentinel Custodians Limited** (as trustee for **Heartland Bank Limited**)

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

**\*\*\* PLEASE READ THIS PAGE FIRST \*\*\***

## **Heartland Home Equity Loan Agreement**

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This document (which we refer to as the **Mortgage Memorandum**) forms part of your Agreement with us for a Heartland Home Equity Loan.

Its terms bind you when you agree to borrow against the security of your Home.

This Mortgage Memorandum includes the following sections which apply to your Loan and the Mortgage over your Home:

- Section 1: Loan Terms
- Section 2: Security Terms

This Mortgage Memorandum is deemed to incorporate the terms of the **Loan Details** provided to you at the same time as this document. This document does not create the Mortgage by itself.

The term "Loan Details" and other capitalised and legal terms used in this Mortgage Memorandum are defined in the **Dictionary in clause 29**.

### **When does this Agreement – and the Mortgage over your Home - take effect?**

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**You will have given us a Mortgage over your Home if you:**

- **sign an Authority and Instruction; and**
- **give it to a lawyer to register the Mortgage electronically.**

From the time you give it to the lawyer you agree to be bound by the terms of this Mortgage and this Agreement as if it were a deed.

From the time this Mortgage is registered against your Home, your Home is security for payment to us of the Secured Debt (that is, all amounts and for all obligations you now owe, or may in future owe, to us under this Agreement or another document).

That means if you fail to pay us any amount when due we can sell your Home and use the sale proceeds to repay the Secured Debt.

***YOU MUST TAKE ADVICE FROM AN INDEPENDENT LAWYER BEFORE YOU GIVE US THIS MORTGAGE***

***KEEP THIS AGREEMENT IN A SAFE PLACE***

## Contents

1.	<b>Borrowing your Heartland Home Equity Loan</b>	1
2.	<b>Interest Charges</b>	2
3.	<b>Payment</b>	3
4.	<b>Fees and Charges</b>	4
5.	<b>Accounts and Statements</b>	5
6.	<b>The security</b>	6
7.	<b>Amount secured</b>	6
8.	<b>Your obligations</b>	6
9.	<b>Selling the Home</b>	7
10.	<b>Working out the Home's value</b>	8
11.	<b>Unit titles</b>	8
12.	<b>Default</b>	9
13.	<b>Our rights if you Default</b>	9
14.	<b>The role and powers of a receiver</b>	10
15.	<b>Agency</b>	12
16.	<b>Amendments, waivers and consents</b>	12
17.	<b>Annual Questionnaire</b>	12
18.	<b>Valuers</b>	13
19.	<b>Trustee borrowers</b>	13
20.	<b>Notices</b>	13
21.	<b>Personal Representative</b>	13
22.	<b>Assignment</b>	13
23.	<b>Law of New Zealand</b>	14
24.	<b>Certificates</b>	14

<b>25. Your responsibility .....</b>	<b>14</b>
<b>26. Goods and service tax.....</b>	<b>14</b>
<b>27. Invalidity.....</b>	<b>14</b>
<b>28. Our Privacy Policy .....</b>	<b>14</b>
<b>29. Dictionary .....</b>	<b>15</b>

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## **SECTION 2 – LOAN TERMS**

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### **1. Borrowing your Heartland Home Equity Loan**

#### **1.1 Borrowing**

Your Heartland Home Equity Loan will consist of:

- (a) an initial advance, the Initial Loan, which must be no less than \$10,000 or such other amount as we may determine from time to time; and
- (b) any Express Top Up Facility, enabling you to borrow additional amounts up to the Express Top Up Facility Limit over the term of the loan, subject to clause 1.6; and
- (c) all fees, charges, interest and other amounts charged to your Loan account in accordance with this Agreement (which amounts will form part of the Unpaid Balance on which interest is calculated in accordance with clause 2.1).

You must borrow the whole Initial Loan in one advance on the First Loan Date.

We only have to lend the Initial Loan to you under this Agreement if we consider the following are met or we agree to waive them in our discretion:

- (i) we are satisfied with the results of all title searches we have conducted in respect of the Home;
- (d) you have given us or we have seen a copy of a buildings insurance policy or certificate of currency that notes our interest as mortgagee and is otherwise satisfactory to us;
- (e) no Continuing Default has occurred or remains unremedied and no other Payment Event has occurred;
- (f) Default under this Agreement or any other Relevant Document;
- (g) this Mortgage is registered against the title to the Home (or we are satisfied that immediately after the Initial Loan is made it will be);
- (h) we have received a valuation of the Home, acceptable to us, dated not less than six months prior to the date of the Initial Loan;
- (i) no Payment Event has occurred; and
- (j) you are in compliance with any other “special conditions” noted in the Loan Details.

#### **1.2 How to access the Initial Loan**

You must use our standard payment instructions form to request the drawdown of the Initial Loan or any amount under the Express Top Up Facility (if any). If there is more than one of you, then we require all of you to sign the payment instructions form, unless we agree otherwise.

When you submit the payment instructions form, you promise that you are not currently in **Default** (as defined in clause 12).

#### **1.3 Express Top Up Facility**

Under the Express Top Up Facility (if any), we allow you to apply to draw down additional funds over the term of your Heartland Home Equity Loan, up to the Express Top Up Facility Limit, subject to clause 1.6.

You must not exceed the Express Top Up Facility Limit (if any). If you do, then you must pay back the excess immediately, with interest and fees (if any).

When calculating whether the Express Top Up Facility Limit is exceeded we include each drawdown under the Express Top Up Facility and all fees and charges charged to your Loan account, but do not include any interest charges either charged to or accrued on the Loan account.

Any early Loan repayments you make under clause 3.5 will **not** increase your Express Top Up Facility Limit.

You are not permitted to re-borrow any principal amounts of the Loan you have repaid or prepaid.

Individual top ups under any Express Top Up Facility must not be less than:

- (a) \$5,000; or

- (b) the undrawn balance available under the Express Top Up Facility (if the undrawn balance is less than \$5,000); or
- (c) such other amount as we may tell you from time to time.

#### **1.4 How to request an increase to your Express Top Up Facility Limit**

We may agree to increase the Express Top Up Facility Limit following your request.

We do not have to agree to any change to the Express Top Up Facility Limit.

#### **1.5 Considering your request**

In considering your request for an increase to the Express Top Up Facility Limit we will take into account our then-current lending criteria, including:

- (a) your age;
- (b) the value of the Home;
- (c) the proposed Unpaid Balance as a percentage of the value of the Home; and
- (d) the Total Amount Owing.

#### **1.6 How we may reduce or stop further credit under an Express Top Up Facility**

We may review your Express Top Up Facility at any time. When we review your Express Top Up Facility we will review your circumstances and any changes to the value of the Home.

When we undertake a review, you must give us any information we reasonably ask for.

If we consider that your circumstances have changed significantly, we may require a revaluation of your Home at our cost. We may also require you to ask your lawyer for advice.

The availability of any Express Top Up Facility referred to in the Loan Details is available to you at our discretion. This means that we have the right to tell you at any time that the balance not already drawn is no longer available, or has been reduced. We will only decide to reduce or cancel your Express Top Up Facility if we think it is necessary or appropriate for us to do so in accordance with:

- (a) the lender responsibility principles set out in the Credit Contracts and Consumer Finance Act 2003, the Responsible Lending Code and any related regulator commentary; and/or
- (b) prudent standards of commercial practice.

## **2. Interest Charges**

### **2.1 Calculating interest**

Interest charges (including default interest charges) are calculated daily on the Unpaid Balance of your Loan.

The daily Interest Rate that we will charge you is calculated by dividing the Annual Interest Rate on any date by 365, even in a leap year. The current Annual Interest Rate is published on our website and will change from time to time, in accordance with clause 2.2.

The interest charges accrue daily and are charged to your Loan account at the end of each Monthly Cycle in which they accrue.

For the purpose of calculating interest charges in a period, we do not include in that period the day interest charges are charged to your Loan account. However, we do include that day as the first day of the next period for which we calculate interest charges.

### **2.2 Changes to the variable interest rates and interest payment dates**

The Annual Interest Rate and, therefore, the daily Interest Rate that applies to your Loan, is variable and, accordingly, will change from time to time. These changes will be caused by a range of factors, including what is happening in the funding market and economy both in New Zealand and overseas, as well as changes to our own borrowing costs.

Also, we currently charge you interest monthly, by charging this amount to your Loan account so that it becomes part of the Total Amount Owing. However, we can change the timing of these interest payments from time to time. We will only change the timing of these charges after having regard to current economic conditions and other considerations that a reasonable lender would take into account.

If we do change the Annual Interest Rate, or the way the Interest Rate applies under this Agreement, we will give you notice no later than

the day the change is to take effect by using any method permitted by Law, including, if we choose, any of the following methods:

- (i) by displaying the notice at all of our premises;
- (ii) by publishing the notice in the major daily newspapers in New Zealand; or
- (iii) by posting the information on our website.

We will also give you details of the change in your next statement after the change.

### **3. Payment**

#### **3.1 Repaying your Heartland Home Equity Loan**

You must repay your Loan by paying the Total Amount Owing immediately when a Payment Event occurs, subject to the terms of the remaining sub-clauses of this clause 3.

#### **3.2 Loan Repayment Guarantee and Lifetime Occupancy Guarantee**

Unless and until a Payment Event occurs (including any Continuing Default):

- (a) you are not required to make any payment to us on your Loan; and
- (b) we will not change the time for payment of the Total Amount Owing, as set out in the Loan Details; and
- (c) you can reside in the Home for as long as you wish (as we will not sell the Home).

However, from the date of this Agreement you will be required to pay outgoings on the property such as rates, body corporate levies, insurance premiums and the cost of maintaining the property (see Section 3).

#### **3.3 No Negative Equity Guarantee**

We guarantee that, at the time the Home is sold, the maximum amount you will be required to pay to us is:

- (a) the Net Sale Proceeds of the Home; minus

- (b) any Equity Protection Percentage (see clause 3.4),

even if this amount is less than the Total Amount Owing, but this guarantee does **not** apply if:

- (i) any Continuing Default has occurred at that time; or
- (ii) you and we have agreed otherwise in writing.

#### **3.4 Equity Protection Option**

If you have selected the Equity Protection Option (and paid the Equity Protection Option Fee) the maximum amount that you will need to pay us at the end of the Loan term will be the amount of:

- (a) the Net Sale Proceeds; minus
- (b) the relevant Equity Protected Percentage that you have chosen,

even if this amount is less than the Total Amount Owing, unless a Continuing Default has occurred.

For example, if the Net Sale Proceeds are \$500,000 and the Equity Protected Percentage that you have selected is 25%, the maximum you would be required to pay to us is \$375,000, even if the Total Amount Owing is, say, \$450,000.

#### **3.5 Your right to repay early (“prepay”)**

You may repay the whole or any part of the Total Amount Owing at any time either in full or in part, subject to the following conditions:

- (a) If you are repaying only part of the Total Amount Owing, the remaining Unpaid Balance immediately after the part repayment must be at least \$10,000.
- (b) If you repay the amount we confirm to be the Total Amount Owing in full, you must also pay the Discharge Fee specified in the Fees Schedule (which is a credit fee that reasonably compensates us for our administrative loss in relation to the full prepayment), but we will not charge you any other break cost or prepayment or repayment fee.

(Please note that this clause does not apply if you exercise your right to cancel this Agreement in accordance with the section headed "Your right to cancel this Agreement" in the Loan Details).

### **3.6 How we apply payments**

We will credit payments that you make (i.e. deduct them from the Total Amount Owing) in the following order:

- (a) to interest accrued or debited (i.e. charged) to your Loan account;
- (b) to fees and charges payable or debited (i.e. charged) to your Loan account; then
- (c) to the Initial Loan.

Then we will apply the balance of any payments in the order we determine.

### **3.7 Payments generally**

Payment is to be made to the account that we notify you from time to time.

We will credit any payment as soon as practicable after it is actually received by us. This may not be the same day it is received by an adviser or other third party. Payments received by us after 3.00 pm on a Working Day will not be credited until the next Working Day.

All payments must be in New Zealand currency.

Except to the extent you have a right of set-off granted by Law which we cannot exclude by agreement, you must pay all amounts owed under this Agreement in full, without setting off amounts you believe we owe you, and without counterclaim.

### **3.8 Other amounts you must pay and authority to debit your Loan account**

You agree to pay us:

- (a) all interest charges in accordance with this Agreement;
- (b) all applicable fees and charges under this Agreement;
- (c) any government charges, duties, taxes, or levies in connection with this Agreement; and

- (d) any Enforcement Expenses and other reasonable administrative costs and expenses incurred by us in connection with a Default.

You authorise us to charge each of these amounts to your Loan account on its due date for payment. Those amounts will then form part of the Unpaid Balance on which interest charges are calculated in accordance with clause 2.1.

## **4. Fees and Charges**

### **4.1 Types of fees and charges payable**

The types of fees and charges payable are set out in the Fees Schedule.

The information in the first Fees Schedule provided with this Agreement is correct as at the Disclosure Date. However, the types of fees and charges may change after the Disclosure Date in accordance with this Agreement. The actual amount of any fee or charge is the then-current amount payable at the time you incur the fee or charge. These are set out in the Fees Schedule.

### **4.2 Changes to credit fees and charges**

We may charge new credit fees and charges, and change:

- (a) the amount of the credit fees and charges; or
- (b) the timing for payment of the credit fees and charges,

in accordance with the requirements of applicable law by giving you at least 15 Working Days' notice by using any method permitted by Law, including, if we choose, the following method:

- (i) by displaying the notice at all of our premises;
- (ii) by publishing the notice in the major daily newspapers in New Zealand; or
- (iii) by posting the information on our website.

We will also give you details of the change in your next statement after the change.

## **5. Accounts and Statements**

### **5.1 Establishing your account**

On the First Loan Date we will open a Loan account in your name. We debit (i.e. charge) to your Loan account:

- (a) each Loan amount advanced to you on the date it is advanced; and
- (b) any amount that is payable under this Agreement on the date it is due.

### **5.2 Statements**

We will send you six monthly statements for your Heartland Home Equity Loan.

If the Law permits and only if you have requested that we do so by ticking the box in the Loan Details, we may give you statements electronically instead of giving them to you in hard copy: for example, by email or by making them available on a website or other online portal for you to view and download.

## **SECTION 3 – SECURITY TERMS**

### **6. The security**

You mortgage to us all of your right, title and interest in the Home.

This Mortgage remains in force and is effective as a security, until we formally release it.

We may exercise our rights under this Agreement:

- (a) in any order we wish; and
- (b) separately or together; or
- (c) alternatively, not exercise our rights.

As a separate matter, you also assign to us by way of security, all of your entitlements to receive any money arising out of the ownership, use, or occupation of the Home. This assignment includes your entitlement to any insurance proceeds.

### **7. Amount secured**

This Mortgage is security for the **Secured Debt** – that is, all amounts and for all obligations you now owe, or may in future owe, to us under this Agreement or another Relevant Document.

### **8. Your obligations**

#### **8.1 Covenant to pay and comply**

You must:

- (a) pay each amount required at the times and in the manner provided by this Agreement; and
- (b) comply with all of the other obligations contained in this Agreement.

#### **8.2 Maintain the property**

You will keep the Home in good repair and condition. This means that you will carry out all reasonable repairs required from time to time to keep all buildings in a reasonably habitable state so as not to negatively affect the value of the Home.

If we disagree on what constitutes reasonable repairs then we will refer the matter to an independent arbitrator that we can both agree

on. If between us we can't agree, then the arbitrator will be a person appointed by the president of the Law Society for the district in which the Home is situated. The arbitrator will act in accordance with the Arbitration Act 1996.

After giving you at least 48 hours' notice, we may enter the Home at any time during daylight hours or, in the event of an emergency without notice, to view the condition of the Home.

If an inspection of the Home reveals the need for repairs to be undertaken to restore the property to good repair and condition, then you agree to carry out the repairs specified in the inspection report.

You agree those repairs must be carried out within a reasonable time having regard to their nature. Unless there is any urgency, this time will be twelve months.

If the repairs are not carried out in a reasonable time, then we may carry out the repairs. You agree that we may enter the Home at all reasonable times for this purpose.

You must pay us the costs of the repairs we carry out when we ask. Such costs are Enforcement Expenses and may be charged to your Loan account.

You must comply with all consents, conditions or approvals from any relevant authority in relation to the Home.

#### **8.3 Not devalue the Home**

You must not, without our consent, do any of the following if they are likely to reduce the value of the Home:

- (a) alter, remove or dismantle any buildings or structures on the Home;
- (b) commence any construction of any building or structure intended to be part of the Home; or
- (c) subdivide any part of the Home.

Despite this, you may ask us to consent to improvements or alterations for medical purposes even if this may reduce the value of the Home. We will give our consent if we are satisfied that these improvements or alterations are reasonably required.

#### **8.4 Pay rates, taxes and other charges**

You must pay all outgoings on the property including all rates, body corporate levies, insurance premiums, taxes and other charges in respect of the Home when they are due for payment.

Please note that if you make any rate deferral agreement with the local authority, this will be a Default under this Agreement.

### **8.5 Comply with government regulations**

You will comply with all the requirements of the Law in respect of the Home, in particular any Law relating to your use of the Home.

### **8.6 Not give another mortgage**

You will not give another mortgage over the Home, charge it, or offer it as security for any obligations, without first obtaining our written consent.

### **8.7 Not give a lease or other interest**

You must not give any rights or interest in the Home to another person without first obtaining our written consent. For example, you must not lease, or create any interest in, the Home or any part of it to another person.

### **8.8 Maintain insurance**

You must keep the Home insured (under a sum insured policy correctly reflecting the cost to reinstate the Home as detailed in the most recent valuation of the Home (or any other sum we may reasonably require)) against fire and all other risks normally covered in a comprehensive insurance policy. You must ensure that our interest as mortgagee is noted in the insurance policy.

You must insure the Home through an insurance company satisfactory to us (at our sole discretion) and pay all premiums and do all things required to keep the insurance in full force and effect.

If you make a claim under the insurance in respect of any building or improvement, we have the right to decide how that claim is to be made.

You will hold any money you receive from an insurance claim or under the insurance policy on trust for us and we may direct you as to how the insurance money is used.

If we ask you must give us all documents relating to your insurance policy and any claims or payments made under it.

### **8.9 Things you must tell us**

You, or your Personal Representative, must tell us as soon as practicable if:

- (a) you enter into an agreement to sell the Home;
- (b) a Nominated Resident dies;
- (c) a Nominated Resident enters into Permanent Long-Term Care or remains absent from the Home, whether or not with an intention to return, for six months without our consent;
- (d) your address changes;
- (e) a notice is given to, or given by, you of a change or proposed change to the uses to which the Home may be put;
- (f) a legal action or a dispute arises in respect of the Home;
- (g) the building or improvements on the Home are damaged or destroyed; or
- (h) you make a home insurance claim in respect of the Home.

## **9. Selling the Home**

You have the right by Law to sell the Home and repay the Total Amount Owing in full at any time without our consent.

You will, however, need to obtain our consent to sell if the Net Sale Proceeds are likely to be less than the Total Amount Owing on the date of settlement of the sale.

If you need our consent to sell then:

- (a) we may require a valuation before considering your request. You must pay the cost of obtaining the valuation. If you do not pay, we may pay and charge the cost to your Loan account; and
- (b) we must consent to a sale of the Home at the value determined by an arbitration in accordance with the provisions of the following clause 10.

## **10. Working out the Home's value**

If there is a dispute between you and us about the value of the Home then either you or we may, in accordance with any Law relating to arbitration, refer the matter to an arbitrator who will be a qualified valuer, independent of us.

You will select the arbitrator from two such valuers nominated by the President of the Law Society of the district in which the Home is located.

If for any reason the President does not nominate two eligible valuers then you may request the President of any other Law Society in New Zealand to nominate two eligible valuers from which you will select the arbitrator.

The valuer selected by you will be the arbitrator to determine the valuation of the Home. Unless otherwise agreed, you and we will be bound by the rules, including any optional additional rules, generally applying by Law to arbitrations.

Nothing set out above limits our rights in the event of a Default under this Agreement.

## **11. Unit titles**

If the Home is an interest in a stratum estate, building unit, group title or similar estate in land, then you must:

- (a) comply with all lawful requirements of the body corporate;
- (b) pay all body corporate levies together with any other amounts payable under Law or the rules of the body corporate on time;
- (c) tell us of any resolutions that require the unanimous consent of the body corporate or that propose to alter the rules of the body corporate, in sufficient time for us to consider the proposed resolution and give you direction as to how to vote;
- (d) tell us of any court action or other type of legal proceedings that is threatened against or by the body corporate;
- (e) vote on any proposed resolution as we direct you; and
- (f) ensure that our interest as mortgagee is noted by the body corporate and by each insurer.

## SECTION 4 - DEFAULT

### 12. Default

You are in Default under this Agreement if at any time any of the following occurs:

- (a) you do not pay us an amount when it is due and payable (unless the non-payment is caused solely by the failure of the payment system which is beyond your control and we receive payment within 2 days of its due date);
- (b) you have granted, or purported to grant, a mortgage over the Home to someone else in addition to this Mortgage without our prior written consent;
- (c) you have:
  - (i) acted fraudulently; or
  - (ii) given us incorrect or misleading or deceptive information in connection with this Agreement,and this has caused, or partially caused, us to make you the Loan or any part of it (including any amount under the Express Top Up Facility) when we would otherwise not have done so; or
- (d) you are in Default under another Relevant Document and this has or is likely to have a material and adverse effect on our rights or remedies and/or the value of our security under any Relevant Document;
- (e) you have:
  - (i) breached a material term of this Agreement; or
  - (ii) taken an action, or not taken an action or permitted something to happen that has adversely affected, or is capable of adversely affecting, the value of the Home or our ability to exercise our rights under this Agreement.

### 13. Our rights if you Default

#### 13.1 Default interest and charges

If you do not pay us an amount when it is due and payable, we will be able to charge the Default Interest Rate on the due but unpaid

amount from the date of Default until the date the Default is remedied.

The Default Interest Rate applies at all times until the Default has been remedied.

The Default Interest Rate will change if the Interest Rate (on which it is based) changes in accordance with clause 2.2.

We will also charge you our reasonable administration costs and expenses and any Enforcement Expenses incurred in connection with the Default.

#### 13.2 Notice to remedy Default

If you are in Default under this Agreement, and the Default is capable of remedy, we will give you at least one calendar month's written notice advising you of the Default. The notice will specify the amount of time you have to remedy the Default.

#### 13.3 Our powers if Default not remedied

If you do not, or are unable to, remedy the Default within the period specified in the notice or required by Law then we may (but are not obliged to) do whatever is necessary or pay any amount we reasonably believe is necessary to rectify the event that caused the Default.

If we incur any Enforcement Expenses in rectifying the matter that caused the Default, that amount will be added to the Unpaid Balance, and will accrue interest as part of the Unpaid Balance.

#### 13.4 When the Default is a Continuing Default

If:

- (a) the Default is in our opinion not capable of remedy; or
- (b) the Default is not remedied within the period required under clause 13.2 and we have not rectified the matter under clause 13.3; or
- (c) we have rectified the Default under clause 13.3 but you have not yet paid us the relevant Enforcement Expenses and all interest that has accrued on that amount,

and in our view this:

- (i) has caused, or is reasonably likely to cause (directly or indirectly):
  - (A) an increase in our exposure under the No Negative Equity Guarantee; or
  - (B) a reduction in the value of the Home,
 in either case by an amount we consider to be material (in our capacity as mortgagee), compared to the date on which we agreed to make this Loan to you; or
- (ii) will or is reasonably likely to materially limit, or deprive us of, our ability to enforce a material right under this Agreement,

the Default will be a **Continuing Default**.

### **13.5 Waiver of Continuing Default**

If a Default is a Continuing Default, we may (but we are not obliged to) agree to waive the Default (in which case the Default will cease to be a Continuing Default). We may, as a condition precedent to waiving the Continuing Default, offer you alternative terms and conditions in respect of all or part of the Total Amount Owing at the time of the Continuing Default. These alternative terms will reflect our increased risk as a result of waiving the Continuing Default. If you accept the alternative terms, the Default will cease to be a Continuing Default. Such alternative terms are designed to find a way for you to stay in your Home despite your inability to remedy the Default otherwise.

### **13.6 Our powers if a Continuing Default is not remedied**

If we do not agree to waive a Continuing Default in accordance with this Agreement, we may (but are not obliged to) do all or any of the following:

- (a) call up the Total Amount Owing and it will be immediately due for payment;
- (b) sell the Home in any manner we reasonably believe is appropriate, including by public auction, private treaty, tender or in any combination of those processes;
- (c) buy the Home, or any part of it, in any manner permitted by Law;
- (d) appoint a receiver of the Home;

- (e) do anything a mortgagee may otherwise do at Law;
- (d) exercise all incidental rights and powers to give effect to our rights under this Agreement; and/or
- (g) cancel all or any of the No Negative Equity Guarantee, the Equity Protection Option, the Lifetime Occupancy Guarantee and the Loan Repayment Guarantee.

If we do not exercise the powers described in this clause in the event of a Continuing Default, you must co-operate in good faith with us to identify how the Continuing Default may be remedied.

If we exercise any of our rights in the event of a Continuing Default, then in addition to any other rights we may have by Law:

- (a) any Enforcement Expenses that we incur will be payable by you;
- (b) we will not be responsible for the acts of any purchaser nor will we be obliged to enforce any remedy against any other person; and
- (c) we may give effective receipts and such assurances, and do all such other things as we may consider appropriate in the exercise of our rights and powers.

## **14. The role and powers of a receiver**

If we appoint a receiver, they will be your agent and not ours. You will be solely responsible for the actions of the receiver, even if they are negligent.

We may remove any receiver and appoint another in their place.

The receiver will be entitled to remuneration at a rate to be agreed between them and us. If there is no such agreement, then, by way of a commission, at a rate of no more than 6% of the total of all money received by them.

The receiver may demand, recover (by any lawful means) and issue receipts for the income of the Home or any part of it, and may exercise any of the powers conferred on a receiver by Law.

No person paying money to a receiver:

- (a) will be responsible for any loss, mis-application or non-application of the money nor be obliged to see how it may be applied; and
- (b) need be concerned with whether a Default has occurred, nor whether we have, or the receiver has, prior to the exercise of our or the receiver's rights and powers complied with any requirements, either at Law or under this Agreement.

The receiver, without limiting the powers conferred on a receiver by Law, can do anything we can do under this Agreement. They may repair, maintain and insure any buildings or improvements on the Home, engage a manager for the Home and pay all management costs and expenses and do anything that they consider proper in order to continue to receive the income of the Home.

The receiver will apply any money received against the Total Amount Owing (and any amount owing by you under any other agreement with us). They will apply the money in the same order, as we would.

We do not enter into possession of the Home simply by appointing a receiver.

## **SECTION 5 - GENERAL TERMS**

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### **15. Agency**

You irrevocably appoint us to be your agent to do all such things as we consider necessary to give effect to this Agreement and to protect our rights under it.

### **16. Amendments, waivers and consents**

#### **16.1 General**

Except as otherwise set out in this clause 16, this Agreement cannot be amended except by a written agreement signed by both you and us.

We do not waive any of our rights under this Agreement except if it is in writing signed by us.

No one has any authority to waive our rights except in accordance with this clause. If we give you a waiver in respect of one event, the waiver does not apply to a future event.

When we are asked to give our consent to any matter, we must act reasonably when considering the request.

#### **16.2 Changes required by Law**

If there is any change to a Law that requires us to conduct our business of providing Heartland Home Equity Loans differently from that contemplated under this Agreement, then we can make such changes to this Agreement as are required to comply with that Law.

We will give you notice of the changes as are required by Law.

#### **16.3 Substitution of Security**

You may ask us at any time to accept a new Qualifying Home as security for your Heartland Home Equity Loan.

In considering the request to substitute the Home, we will take into account our then-current lending criteria including:

- (a) your age;
- (b) the value of the property proposed to substitute the Home;

- (c) the proposed Unpaid Balance as a percentage of the value of the Home; and

- (d) the Total Amount Owning.

We will not discharge the old mortgage until you have given us a new mortgage and any conditions have been satisfied.

#### **16.4 Adding a Nominated Resident**

You may ask us to include a new (or replace an existing) Nominated Resident at any time.

The following provisions apply to any such request:

- (a) we are not obliged to accept any such request and our then-current lending criteria will apply (including our requirement that all of the Nominated Residents must be 65 years of age or older);
- (b) if the new Nominated Resident is younger than the remaining Nominated Resident:
  - (i) we may require a new valuation of the Home to determine the maximum permitted borrowing under our then-current lending criteria; and
  - (ii) you will be required to reduce the Unpaid Balance of the loan to the amount that we tell you is the maximum permitted borrowing based on the age of the youngest Nominated Resident and our then-current lending criteria; and
- (c) following the acceptance of the new Nominated Resident there are no more than two Nominated Residents.

You will be required to pay us any applicable fees and charges (including any Valuation Fee) and reimburse us for any costs and expenses we incur in approving a new or substituted Nominated Resident.

### **17. Annual Questionnaire**

Each year you will need to answer a questionnaire we send you about your circumstances, and any other matters we consider may be relevant for us to know; for example confirmation that the insurance for the Home is still current.

If you are unable or refuse to answer the questionnaire, the failure to answer will not be a Default. In this case we have the right to:

- (a) ask someone to help you to answer it; or
- (b) obtain the information we require from any alternative source that we may reasonably decide.

If we incur any cost in doing this, we may charge the costs to your Loan account.

## 18. Valuers

Any valuer we use is an independent contractor and not our agent or employee. We are not responsible for the acts or omissions of the valuer.

The valuation obtained is for our use and benefit only. Even if we give you a copy, you may not rely on it or take any action against us based on it. If you wish to rely on it you will need to arrange this with the valuer.

## 19. Trustee borrowers

If you enter into this Agreement as a trustee, then you have full personal liability under this Agreement and promise that:

- (a) your Heartland Home Equity Loan is for the benefit of the Nominated Residents;
- (b) you have the authority to enter into this Agreement and give the Security; and
- (c) you have the right to be fully indemnified out of trust assets for obligations incurred under this Agreement.

However, if you are identified in this Agreement as a limited liability trustee, then despite what we say above, your liability is limited to the value of the assets of the trust. You must not do anything to limit your right of indemnity out of trust assets. If you do, your liability will be unlimited and you will be personally liable for any loss we suffer.

## 20. Notices

You may give us notice in writing, or in any other form approved by us, at the address stated in this Agreement or to the last address we notify to you.

A notice making demand for payment of the Total Amount Owing may be combined with a notice that the Loan term has ended.

We may give you notice of anything by:

- (a) giving it to you or your Personal Representative personally;
- (b) leaving it at your or your Personal Representative's address last known to us;
- (c) sending it to your or your Personal Representative's address last known to us; or
- (d) giving it in any other way permitted by Law.

If we send you a notice by post, you will be deemed to receive the notice on the third Working Day after we post it. Otherwise, you will receive it when we give it to, or leave it for, you.

If you have provided us in writing with an electronic address to receive information or any notices in respect of this Agreement from us by electronic communication (including email and the internet) and if you have requested that we do so by ticking the box in the Loan Details, we may from time to time provide information and notices to you electronically to the electronic address you have supplied to us.

## 21. Personal Representative

Your Personal Representative is the person with whom we may communicate or to whom we send notices under this Agreement, if for any reason, we cannot reasonably communicate with you. Any communication with or notice to your Personal Representative under this Agreement has the same effect as if it was with or to you.

You may change your Personal Representative by telling us in writing.

The Personal Representative does not have any power under this Agreement to act on your behalf or to bind you in any dealings with us.

## 22. Assignment

We may assign, transfer or otherwise deal with our rights and interests under this Agreement without your consent to any person:

- (a) to any person whom we genuinely believe can perform all of our obligations under this Agreement; or
- (b) if we believe it is sensible or necessary to do so to comply with the law (including statutes, directives, case law or official guidance),

and each of our assignees and transferees has the same rights against you under the Relevant Documents as if it were named in this Agreement as the lender or the creditor. We may also disclose any information, including documents, we hold about you to any party to facilitate this right.

You may not assign your rights under this Agreement.

### **23. Law of New Zealand**

The Laws of New Zealand apply to this Agreement. You and we submit to the nonexclusive jurisdiction of the courts of New Zealand.

### **24. Certificates**

A certificate from a medical practitioner in respect of a Nominated Resident:

- (a) entering into Permanent Long-Term Care; or
- (b) remaining absent from the Home, whether or not with an intention to return, for six months or more without our prior written consent,

is sufficient evidence of that fact.

### **25. Your responsibility**

By entering into this Agreement, you agree that you have done so after receiving independent legal advice.

You agree that you have not relied on any representation from us, our employees or our agents in relation to any matters.

### **26. Goods and service tax**

If you have told us you are not registered, and you are not liable to register, for goods and services tax, then if this changes you must tell us. You must also tell us your registration number.

### **27. Invalidity**

If this Agreement or any part of it is found to be invalid, void, illegal or unenforceable, then the remaining parts of this Agreement will continue in force.

### **28. Our Privacy Policy**

Each Relevant Person agrees that we can ask for any information about that person in accordance with the Privacy Act 1993 and our Privacy Policy. To find out more, you can see our Privacy Policy on our website at [www.heartland.co.nz](http://www.heartland.co.nz) or phone us on 0800 656 800. We can change our Privacy Policy from time to time to reflect changes in the Law and also our business needs, so long as the changes do not disadvantage you.

Key terms of our current Privacy Policy are summarised below.

#### ***28.1 What we can do with a Relevant Person's information***

Each Relevant Person agrees that we can use any information we have for the following purposes:

- assessing the Loan application and the Relevant Persons' ability to pay the Loan and other debts;
- checking information about that person's identity documentation, such as a driver's licence or passport;
- our related companies' business functions and activities, including marketing products and services to the Relevant Person by mail, email and telephone – a Relevant Person can opt-out of this by telling us in writing;
- collecting amounts owed to us under the Relevant Documents, including by taking enforcement action;
- making sure the Home is properly insured and all premiums and rates bills are paid; and
- exercising our rights under the Relevant Documents and fulfilling our obligations under any Relevant Document or at Law.

#### ***28.2 Who we can share a Relevant Person's information with***

Each Relevant Person agrees that we can share any information we get with:

- our related companies;
- existing and potential business partners;
- credit reporting and identity verification agencies – credit reporting agencies may retain information about you (including Default information) and use it to provide their credit reporting services;
- the New Zealand Transport Agency's 'Driver Check' service;
- insurers;
- any person providing us with guarantees or security for the Loan;
- anyone that we consider assigning or transferring the Loan, the Mortgage and/or this Agreement or any part of it to under clause 22;
- anyone that we engage with about selling all or part of our business to; and
- government agencies and regulators, or anyone else who has rights under a Relevant Document or that we are legally required to share your information with.

### **28.3 A Relevant Person's rights to their information**

A Relevant Person has the right to access and request correction of information we hold about that person, and full details of every organisation to whom we have disclosed information about that person, by contacting us on 0800 656 800.

## **29. Dictionary**

### **29.1 Meanings of important words**

- We use ordinary words where possible. But sometimes we have to use "legal" words or terms because there is no ordinary word with the same meaning.
- Also, some of the ordinary words we use have special meanings in this Agreement.
- We explain some legal and ordinary words, and set out the rules for interpreting this Agreement, in the **Dictionary below**.

Some words and phrases in this Agreement have the following meaning given to them.

**accrued (interest)** means interest which is calculated and grows on the principal amount of the Loan.

**act fraudulently** – you will act fraudulently if you intend to deceive us by knowingly:

- (a) making a false representation verbally, in writing or by your conduct; or
- (b) failing to disclose a material matter when you are under a duty to disclose it to us,

(and **acted fraudulently** has a corresponding meaning).

**Agreement** means:

- (a) the Loan Details – these include terms specific to your Loan and the attached Fees Schedule; and
- (b) this Mortgage Memorandum – this includes the general terms that apply to the Loan and the Dictionary – including any term or condition implied by Law into a mortgage of land which we have not lawfully excluded by agreement between us. (It is the document that is registered under the Land Transfer Act 1952 that creates a Mortgage over the Home which is security for the Heartland Home Equity Loan and the terms of the Loan Details are deemed incorporated into it); and
- (c) the Authority and Instruction you have given for an electronic mortgage transaction to be registered, and all attachments to it.

**Annual Interest Rate** means the annual variable interest rate referred to in Section 1 (*Disclosure*) of the Loan Details, which is subject to change in accordance with clause 2.2.

**Authority and Instruction** means the document titled "private individual client authority and instruction for an electronic transaction" which is referred to in the Agreement.

**Continuing Default** is defined in clause 13.4.

If an amount is **debited to** your Loan account it will be **charged to** your Loan account and, therefore, it will be **added to the Total Amount Owning** that you have to pay us.

**Default** is defined in clause 12.

**Default Interest Rate** is defined in the Loan Details.

**Disclosure Date** means the disclosure date specified in the Loan Details. This is also the effective date for the purposes of initial disclosure as required under the Credit Contracts and Consumer Finance Act 2003.

**Enforcement Expenses** includes any internal costs or external or third party costs we may bear to deal with a Default under this Agreement and expenses incurred by us (including those as between solicitor and client):

- (a) repairing, preserving or maintaining the Home (including insurance, body corporate levies, rates and taxes payable in respect of the Home);
- (b) rectifying a Default by you;
- (c) taking possession of, and/or selling, the Home;
- (d) taking proceedings in court or otherwise to recover amounts due under this Agreement or any other agreement with us; and/or
- (e) appointing an agent or receiver, including any amounts due to them by way of remuneration and as reimbursement of expenses incurred by them in exercise of their powers.

**Equity Protection Option** means the option for you to protect the Equity Protected Percentage of the Net Sale Proceeds if the Home is sold, as described in clause 3.4 of the Mortgage Memorandum and in the Loan Details.

**Equity Protected Percentage** means the percentage of the Net Sale Proceeds specified as such in the Loan Details (if any).

**Express Top Up Facility** means the total advances (if any) that we allow you to draw down after we advance the Initial Loan to you, up to the Express Top Up Facility Limit.

**Express Top Up Facility Limit** is defined in the Loan Details.

**Fees Schedule** means a schedule of the fees and charges that are or may be payable by you. We will give you a fees schedule when we first give you a copy of this Agreement and will send you updated Fees Schedules when fees and charges change in accordance with this Agreement.

**First Loan Date** means the date we advance you the Initial Loan.

**Heartland** means Heartland Bank Limited.

**Heartland Home Equity Loan** means the Loan.

**Home** means each Home described in the Loan Details which is the mortgaged property, and includes the land, buildings and all improvements (including any dwelling) secured by this Agreement, and all proceeds of the foregoing. Each Home must be a Qualifying Home.

**Initial Loan** is the amount specified as the "Initial Loan" under the heading "Initial Loan Balance" in Section 2 of the Loan Details.

**Initial Loan Balance** means the total amount identified as such in Section 2 of the Loan Details.

**Interest Rate** means the daily variable interest rate calculated in accordance with clause 2.1, which is subject to change in accordance with clause 2.2.

**Law** means common law, principles of equity, statutes and any subsidiary legislation of any government or local authority which apply from time to time in New Zealand.

**Lifetime Occupancy Guarantee** means the guarantee contained in clause 3.2 of this Mortgage Memorandum that you can live in the Home for as long as you wish (subject to the occurrence of a Payment Event).

**Loan** means the principal amount of the loan that that we pay you under this Agreement (the "Total Advances") and, depending on the context, also includes all accrued and unpaid interest and fees and charges relating to the principal amount of the loan payable under this Agreement and, for the avoidance of doubt, includes all amounts advanced under the Express Top Up Facility (if any).

**Loan Details** means the separate document titled "Loan Details" which are deemed to form part of this Mortgage Memorandum.

**Loan Repayment Guarantee** means the guarantee contained in clause 3.2 that you are not required to make any payment on your Heartland Home Equity Loan prior to the end of the Loan term as described in the Loan Details (subject to the occurrence of a Continuing Default).

**Monthly Cycle** means the period of one month, commencing from the date on which the loan is first advanced. For example if the advance is made on the 15th day of a calendar month, the first Monthly Cycle ends on the 15th day of the following month. If there is no corresponding day in a month, for example in February, then that Monthly Cycle ends on the last day of the month.

**mortgage** is a loan that is **secured** over property – that is, a loan that gives the lender rights to take control of and sell the property. the mortgage granted over the Home which secures your Heartland Home Equity Loan. This gives us the right to take control of and sell your Home to repay the Loan in the circumstances set out in clause 13.6 and 14.

**this Mortgage** means the mortgage created over your Home by the Agreement which secures the Total Amount Owed and all other Secured Debt (and references to **the Mortgage** have a corresponding meaning), and includes all of the rights we have under this Agreement and in respect of your Heartland Home Equity Loan from time to time

**Mortgage Memorandum** means this document titled "Heartland Bank Memorandum of Mortgage" which forms part of the Agreement.

**Net Sale Proceeds** means the sale price of the Home after deducting the costs associated with the sale, such as legal costs, advertising costs, marketing costs, auctioneer's fees, real estate agent's commission and any other costs incurred in order to effect the sale (such as the payment of rates arrears or body corporate levies).

**Nominated Residents** are the people identified as such in the Loan Details.

**No Negative Equity Guarantee** means the guarantee contained in clause 3.3 that, if the Home is sold, you will not have to pay to us more than the Net Sale Proceeds reduced by

any Equity Protected Percentage (unless there is a Continuing Default).

**Owner** means each legal owner of the Home – that is, the person or persons named on the legal title for the property at Land Information New Zealand.

**Payment Event** means one or more of the following occurs:

- (a) the Home is sold; or
- (b) a period of six months has elapsed since the death of the last Nominated Resident; or
- (c) a period of six months has elapsed since the day the last Nominated Resident:
  - (i) entered into Permanent Long-Term Care; or
  - (ii) left the Home, whether or not with an intention to return, and has remained absent for such six month period without our consent; or
- (d) a Continuing Default has occurred and we make demand under clause 13.6.

**Permanent Long-Term Care** means, in respect of a Nominated Resident, that a medical assessment confirms:

- (a) they require care or supervision for mental, physical or cognitive incapacity or impairment; or
- (b) the care or supervision is within a licensed rest-home or hospital for an indefinite length of time; and

**Personal Representative** means the person appointed as your Personal Representative in the Loan Details or under any other agreement with us and, in the event of your death, means the person(s) empowered to administer your estate.

**Privacy Act** means the Privacy Act 1993.

**Privacy Policy** is described in clause 28.

**Qualifying Home** means a home or other property that meets our requirements for a security property at the time you apply for a Heartland Home Equity Loan. These requirements will change from time to time. At

the date that this Mortgage Memorandum was prepared, these requirements included the following:

- (a) it must be the Nominated Residents' principal residence (that is, the main place they live);
- (b) it must have been built using conventional construction;
- (c) it must be mortgage-free, or capable of being mortgage-free (that is, if you agree to use the Loan to pay any existing mortgage back); and
- (d) it meets our minimum value and condition criteria.

**Relevant Document** means the Agreement and any certificate, agreement or document you sign or deliver to us in accordance with those documents, and any other document you and we agree in writing is a "Relevant Agreement" for the purposes of this Agreement at any time.

**Relevant Person** means any debtor or borrower in relation to the Loan, the Owners of the Home and each Nominated Resident.

**Security** means this Mortgage and each other security interest described in this Agreement.

**Secured Debt** means all amounts and for all obligations you now owe, or may in future owe, to us under this Agreement or another Relevant Document.

**Total Amount Owning** means, at any time, the Unpaid Balance of your account plus all amounts of interest charges, fees and charges that have accrued under this Agreement but that have not yet been charged to your Loan account at that time.

**Unpaid Balance** means, on any day, the difference between all amounts debited to (i.e. charged) to and credited to (i.e. deducted from) your Loan account.

**we, our, or us** means Sentinel Custodians Limited and Heartland in its capacity as beneficial owner of this Agreement jointly and severally, and includes the successors, permitted substitutes and assigns of each of Sentinel Custodians Limited and Heartland Bank Limited.

**Working Day** has the meaning set out in the Credit Contracts and Consumer Finance Act 2003.

**you or your** means each Relevant Person jointly and severally, as well as all successors, permitted substitutes and assigns of each of those persons.

## 29.2 *Interpreting this Agreement*

This Agreement (including this Mortgage Memorandum) must be interpreted using the following rules, unless it would not make sense to do so:

- Ignore all headings, bolded text and italicised text when interpreting this Agreement.
- Where we have provided an explanation of a legal word (in brackets), the legal word or phrase takes priority over the explanation.
- Where we refer to one thing (the singular), we include multiple things (the plural), and the other way around.
- Where we define a word or expression in the Dictionary or somewhere else in this Agreement, the other grammatical forms of that word or expression have corresponding meanings.
- Where we give an example or illustration, it does not limit the meaning of words or the relevant term of this Agreement.
- Where we refer to a document, we include any change to it or replacement of it;
- Where we refer to any statute, we include all future versions if it, including all changes to it, all re-enactments or replacements of it, and all regulations and orders in-council made in connection with it.
- Where we refer to a clause, we mean a clause of this Mortgage Memorandum unless we say otherwise.
- Where we refer to you (including to a Nominated Resident or to an Owner), we include any person that legally takes over your or that person's responsibilities or rights, or both.

- Where we refer to the Lender (or **we** or **us**), we include any person that legally takes over our responsibilities or rights, or both. This includes any of our transferees or assignees under clause 22 above.

Dated this        day of                    2015

**Signing**

Executed on behalf of Sentinel Custodians Limited (as trustee for Heartland Bank Limited) by:

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

Sentinel Custodians Limited enters into this Memorandum as trustee. Subject to applicable Law, our liability under this Agreement is limited to our right of indemnity out of the assets we hold as trustee of the trust.