

21873

THIS DEED OF MORTGAGE made this 12 day of March Two thousand and Nine (2009).

BETWEEN

VILIAMU TOLEAFOA, Police Officer and
SITALELE TOLEAFOA, Administration Officer
both of Alafua.

(herein "the Mortgagor" but which expression whenever appearing in this security bears the meaning given it in Clause 38 hereof) and

(herein "the Customer" but which expression whenever appearing in this security bears the meaning given it in Clause 38 hereof) and

THE ANZ BANK (SAMOA) LTD a duly incorporated banking corporation having its registered office and principal place of business in Samoa at Beach Road Apia (herein "the Bank")

NOW THIS DEED WITNESSETH as follows:

IN CONSIDERATION of the Bank at the request of each of the persons undersigned (which request is respectively testified by their execution hereof) forbearing to sue forthwith in respect of all moneys obligations or liabilities whether actual or contingent loans advances credits or banking accommodation now or hereafter due owing or incurred to the Bank and in each said case whether such moneys obligations or liabilities loans advances credits or banking accommodation are at the discretion and during the pleasure of the Bank or otherwise to the Customer whether alone or with any other person the Mortgagor doth hereby covenant and agree with the Bank as Mortgagee as follows:-

1.

Covenants by
Mortgagor

- 1.01 The Mortgagor hereby covenants on demand which demand may be made at any time or from time to time to pay to the Bank all moneys and discharge all obligations and liabilities whether actual or contingent now or hereafter due owing or incurred to the Bank by the Mortgagor and/or the Customer in whatever currency denominated whether on any current or other account or otherwise in any manner whatsoever (whether alone or jointly and in whatever style name or form and whether as principal To pay on demand or surety) when the same are due including all liabilities in connection with foreign exchange transactions, accepting endorsing in writing or discounting any notes or bills or under bonds guarantees indemnities documentary or other credits or any instruments whatsoever from time to time entered into by the Bank for or at the request of the Mortgagor and/or the Customer together with interest to date of payment at such rates and upon such terms as may from time to time be agreed and all commission fees and other charges and all legal and other costs and expenses incurred by the Bank in relation to the Mortgagor and/or the Customer or the property hereby charged on a full indemnity basis.
- 1.02 The Bank shall cease to be under any further commitment to the Mortgagor and/or the Customer and all moneys obligations and liabilities hereby secured shall immediately become due and payable on demand and the Mortgagor and/or the Customer shall provide cash cover on demand for all contingent liabilities of the Mortgagor and/or the Customer to the Bank and for all notes or bills accepted endorsed or discounted and all bonds guarantees indemnities documentary or other credits or any instruments whatsoever from time to time issued or entered into by the Bank for or at the request of the Mortgagor and/or the Customer on the occurrence of any of the following events of default, namely:
- (a) if either the Mortgagor and/or the Customer fails to pay on the due date any money or to discharge any obligation or liability payable by him/her from time to time to the Bank or fails to comply with any term condition covenant or provision of this Mortgage or of any facility from the Bank or to perform any obligation or liability of the Mortgagor and/or the Customer to the Bank or if any representation by the Mortgagor and/or the Customer is or becomes incorrect or misleading in a material respect;





- (b) if either the Mortgagor and/or the Customer defaults under any loan agreement facility letter or other agreement or obligation relating to borrowing (which expression includes all liabilities in respect of any type of credit and accepting endorsing or discounting any notes or bills and all unpaid rental and other liabilities present and future under hire-purchase credit sale conditional sale leasing and similar agreements or under any guarantee (which expression includes all contingent liabilities undertaken in respect of the obligations or liabilities of any third party including all guarantees indemnities or bonds whether constituting primary or secondary obligations or liabilities) or if any borrowing or other money payable under any of the foregoing becomes or is capable of being declared payable prior to its stated maturity or is not paid when due or if any mortgage charge or other security now or hereafter created by the Mortgagor becomes enforceable;
- (c) if a bona fide petition is presented or an order made or analogous proceedings are taken for making either the Mortgagor and/or the Customer bankrupt or if a company winding up the same or if either the Mortgagor and/or the Customer dies or becomes of unsound mind;
- (d) if an encumbrancer takes possession or exercises or attempts to exercise any power of sale or a receiver is appointed of the whole or any part of the property assets or revenues of either the Mortgagor and/or the Customer;
- (e) if any final judgment or order made against either the Mortgagor and/or the Customer is not complied with within seven days or if an execution distress sequestration or other process is levied or enforced upon or sued out against any part of the property assets or revenues of the Mortgagor and/or the Customer;
- (f) if either the Mortgagor and/or the Customer stops payment or agrees to declare a moratorium or becomes or is deemed to be insolvent or unable to pay his/her debts as and when they fall due or if a notice is issued convening a meeting of or either the Mortgagor and/or the Customer proposes or enters into any composition or arrangement with his/her creditors generally or any class of his/her creditors;
- (g) if either the Mortgagor and/or the Customer without the prior consent in writing of the Bank ceases or threatens to cease to carry on his/her business or any material part thereof in the normal course or changes the nature or mode of conduct of his/her trading in any material respect or if any partnership in which either the Mortgagor and/or the Customer is or becomes a partner is dissolved;
- (h) if any material part of the property assets or revenues of either the Mortgagor and/or the Customer is sold or disposed of or threatened to be sold or disposed of (otherwise than in the normal course of trading) whether in a single transaction or a number of transactions or is nationalised compulsorily acquired seized or appropriated;
- (i) if the effective Management and/or control of any Mortgagor and/or Customer being a Company alters or changes from that applying at the time of execution of this security;
- (j) if any necessary consent to the user of the property hereby charged for its existing use is revoked or withdrawn or if any notice served with a view to forfeiture of any leasehold premises hereby charged pursuant to s 118 of the Property Law Act 1952 is not complied with within the period specified;
- (k) if this Mortgage or any guarantee indemnity or other security for any money obligation or liability hereby secured fails or ceases in any respect to have full force and effect or to be continuing or is terminated or disputed or becomes in jeopardy invalid or unenforceable;
- (l) if any licence authorisation consent or registration at any time necessary or desirable to enable either the Mortgagor and/or the Customer to comply with his/her obligations to the Bank or to carry on his/her business in the normal course shall be revoked withheld or materially modified or shall fail to be granted or perfected or shall cease to remain in full force and effect;
- (m) if any matter or thing requiring the Bank's consent hereunder shall be done without having first obtained such consent;

- (n) if any of the foregoing events occurs without the prior consent in writing of the Bank in relation to any third party who now or hereafter has guaranteed or provided security for or given an indemnity in respect of any money obligation or liability hereby secured;
- 1.03 The Mortgagor and/or the Customer hereby covenant immediately to notify the Bank in writing of the occurrence of any of the events of default specified in Clause 1.02 or of the occurrence of any event which with the lapse of time or giving of notice would or may constitute any of the same.
- 2.
- Interest
- 2.01 So long as any principal money shall be owing or unpaid under or by virtue of this security the Mortgagor and/or the Customer will pay interest thereon at the rate or rates usually charged by the Bank to its other Customers in respect of similar loans advances credits or banking accommodation which interest shall be considered as accruing from day to day and shall be computed from the day or respective days of such money being paid or disbursed or becoming owing and shall be payable on demand but until demanded shall be payable at the end of every period or periods of such duration as the Bank may from time to time determine as appropriate for each and every loan advance credit or banking accommodation ending at the end of such day or days as the Bank may from time to time determine (with the Bank having power to vary from time to time the length of such period or periods or the day or days on which such period ends) or in the absence of any such effective determination at the end of each period of one calendar month ending at the end of the last day thereof and any interest remaining unpaid at the end of each such period may together with all customary charges and whether or not the relation of Banker and Customer may for the time being be existing be turned into principal and shall thenceforth be deemed part of the principal money intended to be hereby secured and carry interest in like manner. And it is declared that a certificate in writing signed by any of the Officers of the Bank certifying to the rate or rates of interest from time to time or at any time charged by the Bank as aforesaid shall be conclusive evidence of the rate or rates therein certified to be payable hereunder and that a statement of the principal interest and other moneys due or owing under or secured by this mortgage at the date mentioned in such statement signed in like manner shall be prima facie evidence against all parties interested hereunder of the amounts so due owing or secured.
- 3.
- 3.01 **THAT** a certificate signed by for or on behalf of any Officer of the Bank stating the amount of the moneys hereby secured at the date mentioned in any such certificate shall be conclusive evidence against the Mortgagor that the amount so stated is the amount of the moneys due by the Mortgagor under these presents at the date mentioned in the said certificate and is the amount of the moneys hereby secured as at such date.
- 4.
- 4.01 If the Mortgagor shall be surety for the Customer then without in any way limiting any of the other provisions of this Mortgage
- (a) This Mortgage shall be security to the Bank for
- (i) the whole of the amount or balance referred to in Clause 1 hereof whether or not the Customer shall be legally liable to pay the same to the Bank and whether or not demand shall have been made on the Customer in respect thereof.
- (ii) All sums of money which the Bank may after the date of any demand made hereunder or of the Mortgagor determining this security as to future transactions as hereinafter provided pay to or for the Customer in respect of cheques drafts bills or other negotiable or other instruments drawn before such demands or determination on any account in which the Customer may be interested or concerned either alone or jointly or in common as aforesaid or in respect of any other obligations incurred by the Bank with or on behalf of or on account of the Customer either alone or jointly or in common as aforesaid prior to such demand or determination AND ALSO for all sums of money received by the Bank for credit of any account in which the Customer may be interested or concerned either alone or jointly or in common as aforesaid and for which the Bank may be obliged to account or may in its discretion account to any official assignee receiver trustee liquidator or other person in the administration or winding up of the estate or affairs of the Customer in any liquidation bankruptcy or receivership for the Customer or under any assignment for the benefit of or arrangement or compromise with creditors of the Customer or otherwise Together with interest on all such sums of money at such rate or rates as may from time to time be determined by the Bank being a rate or rates not exceeding the highest of the rates for the time being charged on any other
- Outstanding Cheques & Obligations



part of the principal money hereby secured or in the event of no other principal money being hereby secured then at such rate as may from time to time be charged by the Bank on accounts of a similar nature to the account to which such sums of money are debited.

- (b) No assurance security or payment which may be avoided under any statutory provision or enactment (whether relating to bankruptcy the winding up or receivership of Companies or any other matter whatsoever) and no release settlement discharge or arrangement which may have been given or made on the faith of any such assurance security or payment shall prejudice or affect the Bank's right to recover from the Mortgagor to the full extent of his liability under this Mortgage as if such assurance security payment settlement discharge or arrangement (as the case may be) had never been granted given or made and any such release settlement discharge or arrangement shall as between the Bank and the Mortgagor be deemed to have been given or made upon the express condition that it shall become and be wholly void and of no effect if the assurance security or payment on the faith of which it was made or given shall at any time thereafter be avoided under any statutory provision or enactment (whether relating to bankruptcy the winding up or receivership for Companies or any other matter whatsoever) to the intent and so that the Bank shall become and be entitled at any time after such avoidance to exercise all or any of the rights in this Mortgage expressly conferred upon the Bank and/or all or any other rights which by virtue and as a consequence of this Mortgage the Bank would have been entitled to exercise but for such release settlement discharge or arrangement AND FURTHER that notwithstanding anything herein or (so far as the same can lawfully be excluded) in any rule of law or equity or any statutory provision to the contrary and without prejudice to any other right which the Bank may have to retain this Mortgage the Bank shall be at liberty at its absolute discretion to retain this Mortgage for a period of twenty five months after repayment of all the principal interest and other moneys hereby secured or the granting or giving of any assurance or security by the Customer to the Bank notwithstanding any release settlement discharge or arrangement given or made by the Bank on or as a consequence of such repayment or the granting or giving of any such assurance or security either a bankruptcy petition shall be presented against or filed by the Customer or a petition shall be presented for an Order for the winding up of the Customer (being a Company) or the Customer (being a Company) shall commence to be wound up voluntarily the Bank shall be at liberty and notwithstanding as before mentioned to continue to retain this Mortgage for and during such further period as the Bank in its absolute discretion shall determine AND the Mortgagor agrees that this Mortgage shall be deemed to have been and to have remained held by the Bank as and by way of security for the payment to the Bank of the principal interest and other moneys secured hereby in the event of and upon or after any avoidance of any assurance security or payment under any statutory provision or enactment (whether relating to bankruptcy the winding up or receivership of Companies or any other matter whatsoever).
- (c) All compositions dividends and payments which the Bank may receive in respect of any moneys in or for which the Customer is now or may hereafter be indebted or liable to the Bank on any account whatsoever (other than any moneys paid in cash by the Mortgagor hereunder) and all moneys which the Bank may receive in respect of any other security which the Bank may now or hereafter hold for the principal interest and other moneys hereby secured or any part thereof shall be taken and applied as payment in gross and shall as regards the Mortgagor go or be taken to reduce the liability of the Mortgagor hereunder only by the amount actually received by the Bank in cash after deducting the costs and expenses of or incidental to obtaining payment thereof and all moneys paid by the Mortgagor or received by the Bank on account of the Mortgagor in pursuance of this Mortgage may (at the option of Bank) be carried to a suspense account and the Bank shall not be bound to give credit in account in reduction of the moneys secured hereby until the Bank shall have been paid one hundred cents in the dollar in respect of all the principal interest and other moneys secured hereby And the Mortgagor shall not nor will prove in or against the estate of the Customer in bankruptcy insolvency liquidation or receivership or in or under any assignment for the benefit of or composition or arrangement with the Bank or seek in any way to deprive the Bank or to hold the Bank accountable to the Mortgagor for any dividends or sums of money the Bank may receive or be entitled to in any such bankruptcy insolvency liquidation receivership assignment composition arrangement or administration And the Bank shall be entitled to prove against the estate of the Customer for any moneys received by the Bank from the Mortgagor in pursuance of this Mortgage.
- (d) This Mortgage shall be a security for all moneys obligations or liabilities whether actual or contingent loans advances credits and banking accommodation together with interest thereon

made created or given by any Branch of the Bank at which any account in which the Customer may be interested or concerned either alone or jointly or in common as aforesaid shall for the time being be kept to or for the Customer after the death mental incapacity or bankruptcy of the Mortgagor or any one or more of them (if more than one) and before notice in writing of such death mental incapacity or bankruptcy signed by one or more of the personal representatives of the deceased or the Public Trustee or the Committee of the Estate or the Official Assignee shall have been received by the Manager for the time being of such Branch.

- (e) If the Mortgagor shall not be in default under any of the provision of this Mortgage and the Bank shall not at the time of the service of the notice of determination be under any obligation to make any further payments or advances to or on account of the Customer, (subject to the restriction imposed by subclause (h) of this clause) the Mortgagor may determine this Mortgage as to future transactions at any time by service of notice in writing of such determination signed by the Mortgagor or all of them (if more than one) upon the Manager for the time being at every Branch of the Bank at which any account hereby secured is then kept and upon payment to the Bank of the whole of the moneys hereby secured.
- (f) That it is acknowledged that the Mortgagor does not execute this instrument as a result of or by reason of any promise representation statement or information of any nature or kind whatsoever given or offered to him by or on behalf of the Bank whether in answer to any enquiry by or on behalf of the Mortgagor or not (unless such promise representation statement or information is referred to specifically or by necessary implication in this instrument or is made in writing and signed on behalf of the Bank by an Officer of the Bank duly authorised in that behalf) and that the Bank except as provided in this instrument or in any statute was not prior to its execution by the Mortgagor and is not thereafter under any duty to disclose to the Mortgagor or to do or execute any matter or thing relating to the affairs of the Customer or his transactions with the Bank.
- (g) The Bank may from time to time increase or otherwise vary the limit (if any) of advances and accommodation to the Customer or otherwise amend or vary or agree to any amendment or variation for the contracts or other arrangements now or from time to time hereafter in force between the Bank and the Customer or replace the same with new contracts or arrangements and may transact any business with or on account of the Customer at its absolute discretion and without any consent by the Mortgagor being necessary to the intent that this security shall extend to cover the contracts or arrangements from time to time in force between the Bank and Customer.
- (h) That where this security is given in connection with any advances approved in whole or in part for the purpose of enabling or assisting the Customer to finance the making construction or alteration of any improvements to land then until the Bank shall have issued a certificate signed by or for and on behalf of any Manager that such improvements have been completed to the satisfaction of the Bank the Mortgagor shall not be entitled to and hereby expressly waives and renounces all rights which he may have or claim to have to discontinue further liability hereunder as a surety.

Notwithstanding anything in this Clause the Mortgagor shall be considered principal debtor to the Bank for the moneys intended to be hereby secured.

5.

- 5.1 The giving by the Bank of any time or any other indulgence to or the entering into any arrangement or negotiation with or the taking of any bill of exchange or promissory note or other security from or accepting any composition from or any dividend in or upon the estate of or releasing wholly or partially or in any manner dealing with the Customer or any other person now or at any time hereafter liable to the Bank for or in respect of the principal interest and other moneys secured hereby or any part thereof or the abandoning or releasing wholly or partially or exchanging varying giving up or in any way dealing with any security whatsoever which the Bank now holds or which the Bank may hereafter hold in respect of the interest and other moneys hereby secured or any part thereof shall not in any manner discharge the Mortgagor from any liability under the covenants herein contained or implied or otherwise prejudice this Mortgage and the Mortgagor hereby waives all defences (whether or not of the aforesaid description) of a surety.

6.

6.01 The Mortgagor will:-

- Insurance Clause
- (a) At his expense forthwith and at all times hereafter until this Mortgage is discharged insure such of the mortgaged premises as are of an insurable nature against such risks of loss or damage of any kind whatsoever (including loss or damage by fire civil commotion explosion earthquake and fire resulting from earthquake subsidence landslip heave aircraft and articles dropped therefrom cyclone windstorm flood storm lightning burst pipes theft malicious damage impact and such other risks and contingencies as the Bank shall from time to time requests and at such value which the Bank may from time to time require in the names of the Bank as Mortgagee and the Mortgagor as owner in such insurance office as the Bank from time to time approves.
 - (b) Deliver forthwith to the Bank the policy or policies of such insurance
 - (c) Not later than the forenoon on the day on which any premium falls due pay such premium and upon request deposit with the Bank the Receipt for such premium.
 - (d) Not do or suffer to be done anything whereby or by reason whereof any such policy of insurance may be prejudiced or rendered void or voidable.
 - (e) Not effect any further or other insurance on the improvements in the name of the Mortgagor alone.

And every such policy (whether or not the same shall cover any other property of the Mortgagor not comprised herein) shall be held by the Bank as a further security for the payment of the moneys hereby secured PROVIDED HOWEVER and without in any way limiting the Bank's rights hereunder that compliance by the Mortgagor with this covenant shall be subject to the rights of the holder of any Mortgage to which these presents are expressed to be subject.

6.02

That in the event of loss of or damage to the mortgaged premises or any part thereof from any cause covered by insurance or in the event of injury to any person employed by the Bank or any attorney of the Mortgagor in the exercise or attempted exercise of any right power authority or remedy conferred on the Bank or on the attorney of the Mortgagor under or by virtue of this security or any statute the Bank alone shall have full power to make enforce settle and compromise all claims in respect of insurance or for compensation and to sue for recover receive and give discharges for all moneys payable by virtue thereof whether the insurance be in the name of the Bank or the Mortgagor or both or any attorney of the Mortgagor and whether it does or does not cover any other property of the Mortgagor not comprised herein AND if notwithstanding the foregoing provisions any moneys payable under any policy of insurance over any part of the mortgaged premises shall come into the hands of the Mortgagor before a final discharge of these presents shall have been given to the Mortgagor such moneys shall be held by the Mortgagor in trust for the Bank and shall be paid to the Bank upon demand.

7.

Will pay all rates, taxes, etc

The Mortgagor will at all times during the continuance of this security promptly and duly pay or cause to be paid all taxes rates assessments impositions and outgoings whatsoever now or at any time hereafter payable or chargeable in respect of the mortgaged property or any part thereof AND all principal interest and other monéys payable under any mortgage or encumbrance noted hereunder as an encumbrance and will perform and observe all Mortgagor's covenants conditions and agreements contained or implied in any such mortgage or encumbrance AND also will at the expense of the Mortgagor comply with all Acts Statutes and Ordinances regulations and requirements now or hereafter in force affecting the mortgaged property and all regulations requirements by law and orders heretofore or which may hereafter be made by any Public Municipal or other Authorities or Bodies in respect of the mortgaged property and now or at any time hereafter in force And that upon any breach or non-observance of this covenant the Bank shall be at liberty (but without obligation so to do) at any time and from time to time to make and do all or any of such payments acts and things as aforesaid on behalf of the Mortgagor.

8.

Mortgagor's Title 8.01

THAT the Mortgagor has good right and title to charge the mortgaged premises by these presents free from all encumbrances other than those to which these presents are expressed to be subject and other than the securities (if any) executed by the Mortgagor in favour of the Bank;

8.2 That the Mortgagor will not without the previous consent in writing of the Bank convey assign surrender forfeit mortgage charge lease or otherwise deal with or dispose of the mortgaged premises or any part thereof.

9.

Further Assurance 9.01 The Mortgagor and every person having or claiming any estate right title or interest in or to the mortgaged property or any part thereof (otherwise than by virtue of some encumbrance notified hereunder) will at all times hereafter at the request of the Bank and until sale at the cost of the Mortgagor and afterwards at the cost of the person or persons requiring the same execute every such document deed instrument or assurance and do every such thing for further or more effectually securing the rights or interest of the Bank to the mortgaged property or any part thereof pursuant to these presents as shall by the Bank be from time to time required AND the Mortgagor authorises the Bank or any of the Officers of the Bank for and on behalf of the Mortgagor to sign or execute every such document deed instrument and assurance and do every such thing so as to perfect or attempt to perfect the security intended to be hereby given and also for and on behalf of the Mortgagor to comply with all or any requisitions of the Land Registrar.

10.

Mortgage not to prejudice any other security 10.01 Nothing herein contained or implied shall discharge abate or prejudice any other security now held or which may hereafter be held or taken by the Bank or any other right or remedy which the Bank now has or may hereafter have for payment of the principal interest and other moneys hereby secured or any part thereof or waive extinguish prejudice or affect any claim or demand which the Bank now has or may hereafter have against the Mortgagor and/or the Customer or any other person whomsoever or whatsoever as surety for or party to any bill of exchange or promissory note or other negotiable or other security or guarantee or otherwise nor shall any other security abate or prejudice this Mortgage or any of the powers and provisions herein contained or implied nor shall the Mortgagor and/or the Customer having given or hereafter giving any bill of exchange promissory note or other negotiable security or guarantee to the Bank operate as a payment of the principal interest and other moneys hereby secured or any part thereof until the same shall have been actually paid in cash And that this Mortgage and the covenant for payment herein contained shall be a collateral security only and shall not operate as a merger of the remedy upon any negotiable or other security or guarantee as aforesaid or upon any simple contract And That all the powers and authorities herein contained or implied may respectively be exercised notwithstanding the currency of any such negotiable or other security or guarantee or simple contract as aforesaid And notwithstanding any Judgment or order being obtained in respect of the principal interest and other moneys hereby secured or any part thereof the Mortgagor will pay to the Bank interest at the rate or rates and calculated in the manner and with the rests aforesaid on the amount of the principal money for the time being remaining unpaid under this Mortgage.

Non-Merger
10.02 That if the Mortgagor shall default in duly performing or observing any covenant or agreement on the part of the Mortgagor herein contained or implied it shall be lawful for but not obligatory upon the Bank without prejudice to any other rights power or remedy of the Bank hereunder (whether expressed or implied)-

- (a) to do all things and pay all moneys necessary or expedient in the opinion of the Bank to make good or in attempting to make good such default to the satisfaction for the Bank
- (b) to pay off any prior mortgage debt or at the cost of the Mortgagor to take a transfer thereof for the benefit of the Bank which shall not be bound to enquire whether the moneys claimed to be owing on the said prior mortgage are actually owing nor shall such prior mortgagee be bound to enquire whether any moneys remain due or owing on this mortgage.

11.

Continuing Security 11.01 Until finally discharged this Mortgage shall be and remains a continuing security for the due payment of all principal interest and other moneys hereby secured and for the time being remaining unpaid irrespective of any sums which may from time to time be paid to the credit of any account of the Mortgagor and/or the Customer with the Bank and that notwithstanding the account of the Mortgagor and/or the Customer may at any time appear to be in credit and notwithstanding any settlement of account or any other matter or thing whatsoever And the Bank shall be at liberty without any notice to or consent of the Mortgagor to apply in or towards satisfaction of any of the moneys hereby secured all or any moneys which may from time to time be paid in or may be standing to the credit of any current account of the Mortgagor and/or the Customer with the Bank And Also that nothing herein contained or implied shall render it in any way obligatory upon the Bank to make any further

advances or give any further credits or banking accommodation and this whether any agreed limit of overdraft has or has not been reached.

12.

- After default, power to enter, manage, lease, etc. 12.01 In case the power of sale hereinafter mentioned or referred to shall have risen it shall be lawful for but not obligatory upon the Bank or any of the Officers of the Bank immediately thereupon or at any time or times thereafter and notwithstanding any previous neglect or waiver of any rights to sooner exercise any of the powers herein mentioned or any act of abandonment or waiver whatsoever by the Bank and notwithstanding any acceptance by the Bank of any money or interest or any negotiations between or on behalf of the Customer and/or the Mortgagor and the Bank after the happening of any default by the Customer and/or the Mortgagor hereunder and notwithstanding the currency of any promissory note or bill of exchange or any other negotiable or other security or guarantee that now is or may at any time hereinafter be held by the Bank on account of any part of the moneys hereby secured all of which promissory notes bills of exchange and other negotiable or other securities and guarantees shall immediately on the power of sale having arisen as aforesaid and for the purposes of these presents be considered to become immediately due and payable and notwithstanding any other matter or thing whatsoever and without the necessity of any further consent or concurrence on the part of the Mortgagor and (subject to the provision of Section 92 of the Property Law Act 1952) without the necessity of any notice being given to the Mortgagor without becoming liable as Mortgagee in possession to enter upon and take possession of the mortgaged property or any part or parts thereof in the name of the whole and enter into receipt of the rents and profits thereof and to manage the mortgaged property or any part thereof with power to erect make remove or alter any fences buildings or other improvements or additions whatsoever upon the mortgaged property and with liberty at any time to abandon such possession and also to sell or otherwise dispose of any produce of the mortgaged property and to do all such acts and purchase all such things as may be necessary for the efficient working of the mortgaged property or for deriving or obtaining an income or return therefrom and at the risk of the Mortgagor to carry on any business for the time being carried on thereon or any other business which the Bank may think proper and for all such purposes to employ such managers overseers workmen servants or agents and to expend such money as the Bank may think fit and from time to time either with or without entering into such possession or after abandoning such possession to let or demise the same or any part thereof either with or without an option of renewal to any person for any terms at such rent with such powers and subject to such covenants and conditions as the Bank shall think fit and either with or without taking any fine or premium and either for the purpose of occupation building agriculture grazing mining or for any other purpose whatsoever and either together with or separately from any other property comprised in any other security for the time being held by the Bank from the Mortgagor or otherwise for all or any part of the same moneys as are intended to be hereby secured And further the Bank shall be at liberty in case any other property than that comprised in these presents shall be included in any such lease to apportion the costs and expenses of such lease and the rent between the properties leased and to accept surrenders of any leases or tenancies now existing or which may hereafter be created of such mortgaged property or any part thereof and also to determine such leases and tenancies or any of them and to compromise with or make any concession or arrangements with the lessees or tenants or occupiers thereof or with the holders of any encumbrances liens or charges whatsoever over the mortgaged property or any part thereof or with any caveator or person claiming any charge or interest over or in respect of the mortgaged property or any part thereof or over or in respect of any rents or profits or income derived therefrom in all cases as the Bank may from time to time think fit and so as to bind the Mortgagor and all persons claiming through or under the Mortgagor AND that the powers hereby conferred upon the Bank shall be in addition to or enlargement of the powers conferred upon the Mortgagees by any Act of Parliament now or at any time hereafter in force and affecting the mortgaged property or any part thereof AND ALSO that during the continuance of this security none of the restrictions imposed upon the Mortgagees under or by the virtue of any such Act as aforesaid shall apply to these presents and the Mortgagor shall not be entitled to exercise any powers of leasing or of accepting surrenders of leases which are or may be conferred by any such Act as aforesaid.

13.

- Power of Attorney 13.01 For the purpose of giving full effect to this Mortgage the Mortgagor doth hereby irrevocably during the continuance of the security appoint the Bank and each of the Officers of the Bank jointly and each of them severally the Attorneys and Attorney for the Mortgagor for and on behalf of the Mortgagor and without the Bank being liable as Mortgagee in possession to enter into and execute all such documents deeds instruments assurances agreements and leases and to do all such acts matters deeds and things as such Attorneys or Attorney may deem expedient for carrying out all or any of the powers or authorities herein contained or conferred upon the Bank and also to demand sue for recover and receive all or any rents or sums of money from time to time owing to the Mortgagor in respect of the mortgaged property under any present or future tenancy and to accept surrenders and make concessions to or compromise with tenants upon terms or gratuitously and otherwise with

respect to such tenancies and lands to have all the powers of an absolute owner And the Mortgagor hereby ratifies and agrees to ratify all and whatsoever the said Attorneys or Attorney shall lawfully do or cause to be done in or about the premises under or by virtue of these presents.

14.

- Covenant to Repair 14.01 The Mortgagor will from time to time and at all times during the continuance of this security at the sole expense in all things of the Mortgagor keep the mortgaged property free from noxious weeds rabbits and other noxious animals pests or vermin and comply with the law for the time being in force relating to such matters and for any of such purposes will erect or maintain such fencing and do such other acts and things as shall be required by the Bank and if any fence shall be erected by the owner or occupier of the adjoining land then will if called upon so to do and be so required by law pay the Mortgagor's share and proportion of the expense of erecting and maintaining the same and also will farm cultivate and manage in a proper and workmanlike manner and preserve and maintain in a good and efficient state of improvement and cultivation the mortgaged property or such part (if any) as is or has been usually cultivated or which may be brought into cultivation or is of a nature or kind capable of or suitable for cultivation and also will well and sufficiently to the satisfaction of the Bank repair and keep both in tenable and also in good and substantial repair all fences buildings and other improvements now erected or made and which may hereafter be erected or made on the mortgaged property and will keep all drains and sewers in good repair order and condition And that the Mortgagor will not without the prior consent in writing of the Bank make or suffer or permit to be made any structural alteration to any buildings or other improvements now or hereafter to be on the mortgaged property And will not without the like consent remove or attempt to remove such buildings or other improvements or any part thereof or any fixtures or fittings from the mortgaged property And will permit the Bank and the Officers agents and servants of the Bank at all times to enter upon the mortgaged property and all buildings and improvements thereon to inspect the state and condition thereof and the report of the person so inspecting the same shall be conclusive evidence of any default or otherwise under this covenant or otherwise under this Mortgage And also that the Bank or any of the Officers of the Bank or the agents servants or workmen of the Bank may (but without any obligation so to do) enter upon the mortgaged property (without the Bank thereby becoming liable as Mortgagee in possession) and at the expense of the Mortgagor make good any breaches of this or any other covenant on the part of the Mortgagor herein contained on implied and at such expense do and execute all such works repairs acts and things and incur and pay such costs charges and expenses as the Bank may deem requisite.

Bank to repair

15.

- 15.1 If the whole or any part of the principal money shall be advanced or lent or agreed to be advanced or lent to enable the Mortgagor and/or the Customer to erect construct or complete any buildings and/or improvements on the mortgaged property the Mortgagor and/or the Customer shall duly erect construct or complete the same or cause the same to be erected constructed or completed upon the mortgaged property within such period (if any) as the Bank shall stipulate and in a good and workmanlike manner to the satisfaction in all respects of the Bank and of the Architect or servant of the Bank (if any) nominated by the Bank for the purposes of this Clause And that in default of the Mortgagor and/or the Customer so doing (as to which default a certificate under the hand of any of the Officers of the Bank shall be conclusive evidence) or if the said power of sale shall become exercisable it shall be lawful for but not obligatory upon the Bank at any time thereafter to enter upon the mortgaged property and to erect construct and complete the said buildings and/or improvements or such of them as the Bank may think fit with any such variations or omissions or additions as the Bank shall think proper (with power to vary the original design) and for that purpose to use any material including any material on the mortgaged property and to engage and employ upon such terms and conditions as the Bank shall think fit such contractors workmen agents or servants and to enter into such contracts or agreements as the Bank shall consider necessary or proper PROVIDED ALWAYS that the Bank shall not by reason of any approval given or satisfaction expressed by the Bank or by any Officer Architect or servant of the Bank or by reason of the exercise of any of the powers conferred by this clause or otherwise howsoever be under any responsibility in respect of the proper erection construction or completion of the said buildings and/or improvements or be in any way liable or responsible to the Mortgagor or any other person for any defects therein of any nature whatsoever or howsoever arising AND Provided Further that the Bank shall not by reason of the exercise of any of the powers conferred by this clause be deemed to be a mortgagee in possession.

16.

- Power to appoint 16.01 At any time after the Bank shall have demanded payment of any money or the discharge of any obligation or liability hereby secured or if requested by the Mortgagor the Bank may in writing under its Common Seal or under the hand of any Attorney or Manager of the Bank appoint any person to



be a receiver and/or manager of the mortgaged property or any part thereof (with power to authorise any joint receiver and/or manager to exercise any power independently of any other joint receiver and/or manager) and may from time to time fix his or their remuneration and may remove any receiver and/or manager so appointed and appoint another in his place as to the whole or any part of the mortgaged property. A receiver and/or manager so appointed shall be the agent of the Mortgagor and the Mortgagor shall be solely responsible for his acts or defaults and for his remuneration and such receiver and/or manager so appointed shall have all the powers conferred by the Companies Act 1955 (NZ) and in addition power on behalf and at the cost of the Mortgagor (notwithstanding the death bankruptcy or insanity of the Mortgagor) to do or omit to do anything which the Mortgagor could do or omit to do in relation to the mortgaged property or any part thereof and in particular (but without limitation) any such receiver and/or manager may:

- (a) take possession of collect get in and give receipts binding on the Mortgagor for the mortgaged property and all rents and other income thereof whether accrued before or after the date of his appointment in such manner as he may think fit and bring defend or discontinue any proceedings or submit to arbitration in the name of the Mortgagor or otherwise as may seem expedient to him;
- (b) Sell by public auction or private contract, let surrender or accept surrenders grant licences or otherwise dispose of or deal with all or any part of the mortgaged property hereby charged or concur in so doing in such manner for such consideration and generally on such terms and conditions as he may think fit with full power to convey let surrender accept surrenders or otherwise transfer or deal with the mortgaged property in the name and on behalf of the Mortgagor or otherwise and so that covenants and contractual obligations may be granted and assumed in the name of and so as to bind the Mortgagor (or other the estate owner) if he shall consider it necessary or expedient so to do. Any such sale lease or disposition may be for cash debentures or other obligations shares stock securities or other valuable consideration and be payable immediately or by instalments spread over such period as he shall think fit and so that any consideration received or receivable shall ipso facto forthwith be and become charged with the payment of all moneys obligations and liabilities secured hereby. Fixtures and fittings may be severed and sold separately from the mortgaged property and the receiver may apportion any rent and the performance of any obligations affecting the premises sold without the consent of the Mortgagor;
- (c) Generally deal with manage develop or reconstruct the mortgaged property or any part thereof or concur in so doing including power to lease or otherwise acquire and carry out or complete any works of building repair or reconstruction (with power to use any machinery and incorporate in any building any unfixed materials) without being responsible for loss or damage;
- (d) make any arrangement or compromise allow time for payment or enter into abandon cancel or disregard any contracts which he shall think expedient;
- (e) make and effect such repairs renewals and improvements to the mortgaged property or any part thereof as he may think fit and maintain renew take out or increase insurances;
- (f) appoint managers agents officers and employees for any such purposes or to guard or protect the mortgaged property at such salaries and commissions for such periods and on such terms as he may determine and dismiss the same;
- (g) acquire renew extend grant vary or otherwise deal with such easements rights privileges and licences over or for the benefit of the mortgaged property which he shall think expedient;
- (h) raise or borrow any money (including money for the completion with or without modification of any building in the course of construction or renovation and any development or project which he considers beneficial) from or incur any other liability to the Bank or others on such terms and with or without security as he may think fit and so that any such security may be or include a charge on the whole or any part of the mortgaged property ranking in priority to this security or otherwise;
- (i) sign any document execute any deed and do all such other acts and things as may be considered by him to be incidental or conducive to any of the matters or powers aforesaid or to the realisation of the Bank's security and use the name of the Mortgagor for all the above purposes.

16.02 All money received by the Bank or by any receiver or manager appointed by the Bank in the exercise of any powers conferred by this Mortgage shall be applied after the discharge of the remuneration and expenses of such receiver and all liabilities having priority thereto in or towards satisfaction of such of the moneys obligations and liabilities hereby secured and in such order as the Bank in its absolute discretion may from time to time conclusively determine (save that the Bank may credit the same to a suspense account for so long and in such manner as the Bank may from time to time determine and the receiver may retain the same for such period as he and the Bank consider expedient).

16.03 The Mortgagor hereby covenants with the Bank on demand to pay all costs charges and expenses incurred by the Bank or by any such receiver or which it or he shall properly incur in or about the enforcement preservation or attempted preservation of this security or of the mortgaged property or any of it or in the exercise or purported exercise of any of the powers herein contained on a full indemnity basis with interest at the rate for the time being payable pursuant to clause 2.01 hereof from the date of being incurred to the date of payment by the Bank or such receiver. Any such receiver shall be entitled to remuneration appropriate to the work and responsibilities involved upon the basis of charges from time to time adopted by such receiver in accordance with the current practice of his firm.

17.

Power of Sale
Upon Default

17.01 Subject to the provisions of Section 92 of the Property Law Act 1952 the words "one day" shall be read in lieu of and in substitution for the words "two months" where such words occur in Clause 8 of the Fourth Schedule of the Property Law Act 1952 and that the words "after demand as aforesaid" shall be read in lieu of and in substitution for the words "and thereafter at least one month's notice in writing of his intention so to do" where such words occur in the said Clause 8 of the said Fourth Schedule AND THAT it shall be lawful for the Bank at any time thereafter without any further notice or demand from time to time to sell the mortgaged property or any parts thereof and/or the estate and interest which the Bank can dispose of therein either together or in parcels and either by public auction or by private contract or by tender and either at one or several times in one lot or in such separate lots as the Bank may think fit and at such prices in such way and manner and upon and subject to such terms and conditions in all respects as to the Bank shall seem expedient including conditions for obtaining barring or allowing compensation for any errors in the description of the property or other matters in any contract or particulars of sale and that on any such sale any time may be allowed for the payment of the whole or any part of the purchase money either with or without interest in the meantime and if with interest then at any rate or rates and either with or without security as the Bank may think fit and also with power to buy in or rescind or vary any Contract for Sale and to resell without being answerable for any loss occasioned thereby and to otherwise exercise all or any of the rights powers and remedies of a Mortgagee under or by virtue of the Property Law Act 1952 and/or other Act or Acts now or at any time hereafter in force as the Bank shall think proper.

18.

May be exercised
at any time after
default

18.01 The said power of sale may be exercised notwithstanding any previous neglect or waiver of any right to make any sale under the said power or any act of abandonment or waiver whatsoever by the Bank and notwithstanding any acceptance by the Bank of any money or interest or any negotiations between or on behalf of the Customer and/or the Mortgagor and the Bank subsequently to the service of any such demand and before the power of sale is exercised and notwithstanding the currency of any promissory note or bill or exchange or any other negotiable or other security or guarantee that now is or may at any time hereafter be held by the Bank on account of any part of the moneys hereby secured all of which promissory notes bills of exchange and other negotiable or other securities and guarantees shall immediately on default being made by the Mortgagor in payment of the principal interest and other moneys hereby secured or any part thereof upon demand as aforesaid or in the performance or observance of any of the covenants conditions or agreements herein contained or implied and on the part of the Mortgagor to be performed or observed and for the purposes of these presents be considered to become immediately due and payable and notwithstanding any other matter or thing whatsoever and that any such sale may be made either in conjunction with or separately from any other property real or personal over which the Bank may have any mortgage or other security for the payment of the principal interest and other moneys hereby secured or any part thereof by one Contract and at one price or in any other manner as the Bank may think fit AND Further the Bank shall be at liberty in case any other property than that comprised in these presents shall be included in any such sale to apportion the costs and expenses of sale and the purchase moneys between the properties sold.

19.

- Power to get easements, etc. 19.01 Upon any such sale it shall be lawful for the Bank at the sole discretion of the Bank from time to time to reserve land for roads and to grant any rights or easements or carriage or other way or passage or drainage or any other easements or rights and to impose building or other restrictive covenants over upon or in respect of the mortgaged property or any part thereof and/or acquire easements or rights of any description at the cost of the Mortgagor as the Bank may think fit and also at the like cost apply for and proceed to obtain any amendment of any title relating to the mortgaged property or any part thereof and or make or cause to be made a subdivision or re-subdivision of the mortgaged property or any part or parts thereof and make or cause to be made all such surveys plans and applications and execute and do all such instruments acts and things and register and deposit such Plan or Plans of Subdivision of the mortgaged property or any part or parts thereof as may be necessary or expedient for that purpose.

20.

- 20.1 And it is hereby declared and agreed that the covenants implied against Mortgagors by virtue of any Act now or at any time hereafter in force shall be implied by these presents save and except so far as the same are hereby altered modified or negatived and that all covenants rights and remedies implied in favour of or given to Mortgagees by virtue of any Act now or at any time hereafter in force shall be implied and given by these presents save and except so far as the same are hereby altered modified or negatived And Further that the Bank shall not be under any obligation to exercise any of the powers or rights hereby or by any such Act or Acts conferred on it and the Bank shall not nor shall any of the Officers of the Bank or any agent or servant of the Bank be answerable or accountable for any loss which may happen in the exercise or execution or attempted exercise or execution or through the non-exercise of any of the powers or rights conferred by this Mortgage or any Act or Acts now or hereafter in force or in doing anything hereby or by any such Act or Acts as aforesaid authorised or directed to be done nor shall the Bank or any of the Officers of the Bank or any agent or servant of the Bank be liable as mortgagee in possession.

21.

- Application of Sale Proceeds 21.01 Every receipt which shall be given by the Bank or its agent for any rent or purchase money or interest in any lease or sale or for any other money payable hereunder shall be an effectual and complete discharge to the person paying the same And no person whether a purchaser or otherwise shall be entitled to enquire into the propriety or regularity of any sale or any other act deed or thing which may be made executed done or performed or purported so to be under any of the powers by this Mortgage or by the law conferred upon the Bank nor shall any such person dealing with the Bank with respect to the mortgaged property or any part thereof be concerned or bound to enquire whether the moneys hereby secured or any part thereof have been paid by means of any other security or whether any money is in fact owing hereunder or whether any default has been made hereunder and no such person shall be affected by notice express or constructive that all moneys hereby secured have been actually paid And all such sales acts deeds and things shall be valid and effectual notwithstanding any impropriety or irregularity And Further that the moneys to arise from the collection of rents and profits of the mortgaged property or from any such sale as aforesaid or otherwise coming into its hands hereunder shall subject to the rights of any prior encumbrancer be applied by the Bank in the first place in or towards defraying the costs charges and expenses of or connected with the said lease or sale and the getting in of such moneys and in the next place in or towards payment of the principal interest and other moneys hereby secured (whether or not represented by any bills of exchange or promissory notes or other negotiable or other securities or guarantees and whether then actually due or current) and subject thereto any surplus (but without interest) shall be paid upon application therefore to the Mortgagor or other persons entitled thereto according to their rights and interest respectively as appearing by the Land Register Book.

22.

- 22.01 In applying the purchase money to arise from any sales by the Bank hereunder towards satisfaction of the principal interest and other moneys hereby secured the Bank shall be accountable for or chargeable with so much only of the said purchase money available for that purpose as it shall actually receive in cash and from the time of such receipt notwithstanding that it may have transferred the property sold to the purchaser and taken a mortgage from him to secure so much of the said purchase money as shall not have been then actually paid or may have sold the mortgaged property or any part thereof to a purchaser on terms without transferring it to such purchase and that the Mortgagor shall remain liable for the moneys hereby secured beyond the amount of the moneys actually received as aforesaid.

- 23.
- 23.01 The Mortgagor will on demand as aforesaid pay to the Bank the balance which shall be due to the Bank after any sale shall be effected under the powers herein contained or implied in the event of the proceeds of such sale not being sufficient to pay and satisfy to the Bank the whole of the principal interest and other moneys hereby secured.
- 24.
- 24.01 It shall be lawful for the Bank at any time after the said power of sale shall have arisen to exercise and obtain the benefit of all or any rights powers or privileges which the holder mortgagee or owner of any land of similar tenure to the mortgaged property might exercise and obtain the benefit of and otherwise to deal with the mortgaged property or any part thereof in the same manner as the Mortgagor could do if these presents had not been executed.
- 25.
- Title documents to remain with Bank 25.01 The several documents of title to the mortgaged property shall at all times during the continuance of this security remain in the custody of the Bank but subject to the right of any prior mortgagee or encumbrancer (if any) to hold the same during the currency of any prior mortgage or encumbrance.
- 26.
- Partners 26.01 This Mortgage shall not be discharged or affected by the death mental incapacity or bankruptcy of the Customer or any one or more of them (if more than one) or any principal debtor or by the death mental incapacity or bankruptcy of the Mortgagor or any one or more of them (if more than one) or by any change which may take place in the person or persons now or hereafter comprising any partnership or Firm or the Trustees of any Trust for the time being constituting the Customer or the Mortgagor and notwithstanding the incorporation of such partnership or Firm or Trust and notwithstanding also (if the Customer or the Mortgagor is a company) any reconstruction or other change in the constitution of such company or its amalgamation with or its absorption of or by any other company or by any change which may take place in the constitution of the Bank or by any other circumstance or events but shall continue to be operative until actually discharged by the Bank And that in the event of there being more than one Mortgagor the Bank may give such release discharge or indulgence to any one or more of them as the Bank may think fit and such release discharge or indulgence shall not discharge or affect in any way the rights and remedies of the Bank under these presents or otherwise against the other or others of them.
- 27.
- Bank not required to ascertain Customer's powers 27.01 The Bank shall not in any event or in any circumstances be concerned to enquire into the powers of the Customer (being a company) or its Officer or Officers or other person or persons purporting to act on its behalf and no objection shall be taken by the Mortgagor with regard to the liability of the Customer to the Bank or with regard to the liability of the Mortgagor to the Bank on the ground of the borrowing or other act in respect of which any demand or claim of the Bank may be made having been outside or in excess of the powers of the Customer or of any such Officer or other person as aforesaid or having been in any way irregular defective or informal and that this security and the liability for the Mortgagor hereunder shall extend to all advances made or to be made by the Bank as aforesaid and to all other moneys or accommodation made available to the Customer or any such person or persons as aforesaid notwithstanding that the Bank may have no legal right or claim to recover from the Customer all or any of such advances moneys or accommodation.
- 28.
- Costs & Expenses 28.01 The Bank shall be at liberty from time to time without further authority than these presents to debit and charge the account of the Customer or the account of the Mortgagor with all costs charges and expenses hereinafter mentioned and the same shall be covered by this security and shall be a portion of the moneys hereby secured and the Mortgagor will indemnify the Bank against the same.
- 28.02 The expression "costs charges and expenses" shall for the purposes of this covenant include all costs charges and expenses stamp and other duties and payments legal or otherwise which the Bank or any attorney of the Mortgagor herein appointed may incur sustain make be put to pay or be liable to pay in connection with
- (i) any valuation inspection or report of or concerning the mortgaged premises;
 - (ii) any premiums for insurance and compensation and other moneys paid or payable by the Bank or by any such attorney including insurance and compensation under any statute relating to compensation:

- (iii) any account of the Customer or of the Mortgagor;
- (iv) the mortgaged premises
- (v) the obtaining or attempting to obtain payment of the moneys hereby secured or any part thereof from the Customer the Mortgagor and any other person
- (vi) the preparation completion stamping and registration enforcement and protection of this security or any variation thereof or collateral security thereto and the discharge or partial discharge thereof.
- (vii) the exercise or attempted exercise of any right power authority or remedy conferred on the Bank or on any Attorney of the Mortgagor under or by virtue of this security or by statute; or
- (viii) the assisting or defending of the title of the Mortgagor or the Bank in relation to this security;

and in relation to any actions or proceedings arising out of or concerned with any of the above matters or any other matter connected with this security and whether or not the Customer or the Mortgagor is a party thereto shall include not only all legal costs charges disbursements and expenses incurred by the Bank against which the Mortgagor or the Customer may by any order of any Court be liable to indemnify the Bank but also notwithstanding any such order or any order of any Court under which the Bank would not otherwise be entitled to recover the same all legal costs charges disbursements and expenses which the Bank has paid or may pay to its solicitors or to any other person including the Customer and the Mortgagor and in the case of payments to the Bank's solicitors on a solicitor and own client basis.

29.

- | | |
|----------------|--|
| Notices | 29.01 Any demand or notice required to be given to the Mortgagor under or by virtue of these presents may (without prejudice to any other sufficient mode of demand or notice) be signed by any of the Officers of the Bank or by the Solicitors of the Bank or by any servant or agent of the Bank expressly or impliedly authorised to sign the same or whose authority so to do may be subsequently ratified by the Bank and may be served upon the Mortgagor or by being delivered personally to the Mortgagor or any one or more of them (if more than one) or by leaving the same upon the mortgaged property or by posting the same in a registered letter at any public Post Office addressed to the Mortgagor or any one or more of them (if more than one) at his or their address or the address of any of them above appearing or at his or their place of abode or business or the place of abode or business of any of them last recorded in the books of the Bank or addressed to the then registered proprietor of the mortgaged property at his address appearing in the Register Book and the production of the receipt of the Post Office for such registered letter shall be conclusive proof of the service of any demand or notice so sent at the time when the same ought to be delivered in due course of post and although such letter may be returned through the Post Office undelivered and every such demand or notice shall be sufficient and bind the person or persons entitled to any right equity of thereof if so served left or posted as aforesaid. |
| 30. | 30.01 The Mortgagor will not without the previous written consent of the Bank change or permit to be changed any existing lawful non-conforming use of the mortgaged property or any part thereof under any Town Planning legislation ordinances or by-laws or similar legislation applicable thereto nor shall the Mortgagor without the prior written consent of the Bank apply for or consent to any application to re-zone or change the use of the mortgaged property or any part thereof under any Town Planning legislation ordinances or by-laws or similar legislation applicable thereto. |
| 31. | 31.01 In case the Mortgagor shall receive notice of any intended resumption or taking by the State or any other authority (pursuant to the provisions of the Taking of Lands Act 1964 or any other Acts now or hereafter in force) of the mortgaged property or any part thereof the Mortgagor will forthwith notify the Bank thereof and will furnish the Bank with a copy of such notice and will without delay upon the request of the Bank and after having first obtained the Bank's written approval to the amount and particulars thereof lodge a claim for compensation with the proper authority and proceed to obtain a prompt decision on such claim and will not reduce or compromise such claim without the consent in writing of the Bank first had and obtained And that the Mortgagor will not lodge any such claim for compensation without first obtaining the written approval of the Bank to the amount and particulars of such claim which approval shall not be unreasonably withheld. |

32.

32.01 During the continuance of this security the Bank shall be solely entitled to receive and any of the Officers of the Bank may and is hereby appointed the Attorney of the Mortgagor during the continuance of this security to ask payment of and to give good and valid receipts and discharges for all or any moneys payable to the Mortgagor for improvements or as compensation on any account (including compensation if the lease, licence or other title the estate and interest whereof is hereby mortgaged to the Bank is taken by the State or any other authority pursuant to the provisions of the Taking of Lands Act 1964 or any other Act now or hereafter in force) or otherwise or by an incoming tenant or tenants for improvements or compensation or otherwise in respect of the mortgaged property or any part thereof and also for any moneys payable or which may become payable to the Mortgagor on any account whatever in respect of any and every lease, licence or title the estate and interest whereof of the Mortgagor is hereby mortgaged or arising thereout or connected therewith and no person or persons or Authority paying to the Bank any such moneys shall be concerned to enquire whether any default or breach has been made by the Mortgagor under these presents or whether the Bank is legally entitled to receive such moneys or any part thereof or not and on any sale of the mortgaged property or any part thereof being made by the Bank under the powers contained or implied in this Instrument the Bank shall have full power to assign the right to receive all or any part of such moneys as aforesaid to the Purchaser or Purchasers at such sale.

33.

- Currency Clause 33.01 All moneys received or held by the Bank or by a receiver under this mortgage may from time to time after demand has been made by the Bank be converted into such other currency as the Bank considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Mortgagor in that other currency at the then prevailing spot rate of exchange of the Bank (as conclusively determined by the Bank) for purchasing that other currency with the existing currency.
- 33.02 If and to the extent that the Mortgagor fails to pay the amount due on demand the Bank may in its absolute discretion without notice to the Mortgagor purchase at any time thereafter so much of any currency as the Bank considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Mortgagor in such currency hereby secured at the prevailing spot rate of exchange of the Bank (as conclusively determined by the Bank) for purchasing such currency with tala and the Mortgagor hereby agrees to indemnify the Bank against the tala cost incurred by the Bank for such purchase.
- 33.03 No payment to the Bank (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Mortgagor in respect of which it was made unless and until the Bank shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability actual or contingent expressed in that currency the Bank shall have a further separate cause of action against the Mortgagor and shall be entitled to enforce the charge hereby created to recover the amount of the shortfall.

34.

34.01 That where the Mortgagor alone has two or more accounts with the Bank or the Customer alone has two or more accounts with the Bank or the Mortgagor jointly the Customer has two or more accounts with the Bank then in any such case the Bank without being under any obligation whatsoever so to do and whether or not the Bank has agreed to permit any set-off for the purpose of calculation of interest between any two or more of such accounts shall be at liberty at any time (but subject to the terms of any agreement in writing by which such right is restricted or excluded) without any notice to any party to combine any two or more accounts of the Mortgagor or any two or more accounts of the Customer or any two or more accounts of the Mortgagor and the Customer jointly with the Bank and thereafter to proceed in all respect in relation to such combined accounts as if they were and had always been a single account and without limiting in any way whatsoever the generality for the foregoing the Bank may to the extent to which it would be so entitled if the combined accounts had at all times been conducted as a single account decline to pay any cheques or make any advances or meet any obligations to for or for the accommodation of or on behalf of the Mortgagor and the Customer jointly or either of them as the case may be.

35

- Moratorium Clause 35.01 The provisions of every Act of Parliament proclamation rule and regulation now existing or which may hereafter be enacted or come into force whereby or in consequence whereof the date or dates whereon any principal interest or other moneys hereby secured ought to be paid shall or may be



postponed or stayed or the time for payment of such moneys or any of them shall or may be extended or enlarged or suspended or the amount of such moneys reduced or cancelled or the exercise by the Bank of any of the powers rights or remedies hereunder curtailed or precluded either absolutely or otherwise are hereby expressly (so far as the same lawfully can or may be) excluded from and shall not apply to these present or the recovery of all or any of the moneys hereby secured.

36

36.01 Where the consent or approval of the Bank is required pursuant to any provision of this instrument

- (a) Such consent or approval shall be required for each separate occasion notwithstanding any prior consent obtained for the like purpose on any prior occasion and notwithstanding any waiver or indulgence granted by the Bank on any prior occasion.
- (b) Such consent or approval may on any such occasion be on such terms and conditions as the Bank in its absolute discretion may think fit.

37.

37.01 That this instrument shall bind each of the signatories hereto to the extent aforesaid notwithstanding that one or more of the persons named herein as the Mortgagor or the Customer may never execute the same or that the execution of this instrument by any one or more of such persons (other than the person sought to be made liable hereunder) is or may become void or voidable.

38.

38.01 IT IS HEREBY AGREED AND DECLARED that:

- (a) Where in this Mortgage the context requires or admits the plural number includes the singular number and vice versa and the masculine gender includes the feminine gender and also the neuter gender, the word "person" includes a Company and "Company" includes a Corporation, and any reference to the death or personal representatives of a person shall refer also to the liquidation or appointment of a receiver or liquidator or receiver of a company where the sense requires;
- (b) The expression "the Mortgagor" used herein includes if this Mortgage is given by one person that person his executors administrators and transferees and if this Mortgage is given by more persons than one those persons jointly and every two or more of them jointly and each of them severally and their respective executors administrators and transferees and if a Company is a Mortgagor includes that company its successors and transferees;
- (c) If this Mortgage is given by more than one Mortgagor the covenants and agreements on the part of the Mortgagor herein contained or implied shall bind the mortgagors jointly and every two or more of them jointly and each of them severally;
- (d) The expression "the Customer" used herein includes when the Customer is a person such person his executors administrators and transferees and when the Customer consists of more persons than one such persons jointly and every two or more of them jointly and each of them severally and their respective executors administrators and transferees and when the Customer is a partnership or firm includes such partnership or firm and not only the persons constituting the partnership or firm at the date of this security but also all and every persons and person who for the time being and from time to time shall be members of such partnership or firm and their respective executors administrators and transferees and all successors in business of such company
- (e) The expression "the Bank" includes the successors in business of such company
- (f) The expression "the Officers of the Bank" shall include the following Officers for the time being of the Bank namely the General Manager of the Bank, the Acting General Manager of the Bank any Attorney for the Bank, the Manager Commercial Business and the Manager Loans of the Bank
- (g) Without in any way limiting any of the provisions of this Mortgage this Mortgage shall be a security for all moneys in which (if there be one Mortgagor only) the Mortgagor and if there be more Mortgagors than one) the Mortgagors or any or either of them or any two or more of them and (if there be one Customer only) the Customer and (if there be more Customers than one) the Customers or any or either of them or any two or more of them shall be

- indebted or liable immediately or contingently to the Bank either alone or jointly or in common with any other or others on any accounts or by any means whatsoever.
- (h) All references to Statutes shall refer also to Statutes amending modifying or re-enacting the Statutes referred to.
- (i) In the event of the Mortgagor and the Customer being identical then notwithstanding anything herein this Mortgage shall not in any way be prejudiced by reason of the Mortgagor being sometimes called "the Customer"
- (j) References to bankruptcy shall include (and the word "bankrupt" shall have a similar meaning)
- (i) in the case of a natural person any assignment or arrangement of property or composition of debts under any law relating to bankruptcy;
 - (ii) in the case of a corporation the winding up or dissolution of the corporation the placing of the corporation under statutory management whether under any statute for the time being in force or enacted for the purpose the appointment of a Receiver of the whole or any part of the assets of the corporation and any compromise arrangement or reconstruction of or relating to any class of such creditors or members.
- (k) In the case of a corporation bankruptcy shall be deemed to commence
- (i) on the passing of a resolution or the presentation of a petition for the winding up of the corporation, or
 - (ii) on the lodgement with any Court of any application in relation to a proposed compromise or arrangement between the corporation and its creditors or any class thereof or between the corporation and its members or any class thereof or in relation to a proposed reconstruction of the corporation, or
 - (iii) on the appointment of a Receiver of the whole or part of the assets of the corporation;

and references to "death" where used in relation to a corporation shall mean the winding up or dissolution of the corporation.

AND for the consideration aforesaid

- (a) the Customer hereby agrees and consents to the provision of this security and further agrees to be bound by all provisions thereof which affect his rights or duties and accepts all obligations imposed upon him hereunder and agrees that notwithstanding the terms of any other arrangements between the Bank and Customer or any rights which the Customer might otherwise have as against the Bank under any such arrangement or by operation of law the terms of this security shall regulate the rights of the Customer in respect of any matters with which it deals and shall prevail over any such other arrangements or rights;
- (b) the Customer further acknowledges that in all cases where the Customer is directly or indirectly liable to pay to the Bank the whole or any part of the moneys hereby secured whether such liability arises under this security or otherwise then if there are two or more customers their obligation to pay the Bank shall bind them and every two or greater number of them jointly and each of them severally.



AND THIS DEED WITNESSETH that for the consideration aforesaid the Mortgagor doth hereby convey and assure unto the Bank all those pieces or parcels of land described in the Schedule hereto together with all buildings erected thereon or at any time hereafter erected thereon and all the rights and appurtenances thereunto belonging TO HOLD the same to the Bank but subject nevertheless to the proviso for redemption herein implied (and subject also to a certain Deed of Mortgage in favour of to secure repayment of the principal sum of \$ and interest thereon) PROVIDED ALWAYS and it is hereby agreed that the conveyance hereby made is by way of Mortgage for the purpose of securing the repayment demanded as aforesaid by the Mortgagor to the Bank of the moneys hereby secured or intended so to be together with interest thereon and all other moneys payable hereunder in manner aforesaid.

SPECIAL CONDITIONS

IN WITNESS WHEREOF the said parties have executed these presents the day and the year
first above written.

THE SCHEDULE

ALL that piece or parcel of land containing
an area of two thousand and twenty four
square metres 2024m² (0a.2r.00p) more or less,
situated at Moamoa in the District of
Tuamasaga described as Parcel 2024 being
part of Parcel 1149 Flur VIII Upolu and
part of the land registered in VOLUME 8
FOLIO 255 of the Land Register of Samoa as
the same is more particularly delineated on
Plan 5801 deposited in the Office of the
Chief Executive Officer of the Ministry of
Natural Resources, Environment (MNRE),
Apia.

SIGNED by VILIAMU TOLEAFOA)
and SITALELE TOLEAFOA)
in the presence of :)

Ashley.....

.....S.

....A.L.C.A.

Bof
Haliafua

THE COMMON SEAL of

was hereunto affixed in the presence of:-

DIRECTOR

DIRECTOR

21873

MEMORANDUM

The Mortgagee **HEREBY DISCHARGES** the land comprised in the within Deed of Mortgage from the whole of the moneys intended to be thereby secured **BUT WITHOUT** releasing or discharging the Mortgagor or any other person or persons or any other security or securities for the time being held by the Mortgagee from payment of any moneys whatsoever remaining owing to it under the said Deed of Mortgage or any collateral instrument or otherwise.

DATED the day of 20

DATED

20 09

**VILIAMU TOLEAFOA
& SITALELE TOLEAFOA**

TO

ANZ BANK (SAMOA) LTD

ANZ BANK (SAMOA) LTD
By its Attorney

Mortgagee

Witness to the execution by **ANZ BANK (SAMOA LTD)**

by its Attorney

General Manager

Witness:

Name

Occupation

Address

I _____ General Manager do solemnly and sincerely declare as follows:-

1. That I have executed the foregoing Discharge of Mortgage as the Attorney of the therein named and described Bank under and by virtue of a certain Power of Attorney bearing date the 29th day of August 1991 and registered at the office of the Land Registrar at Apia under Number 837 P.A.
2. That I have not received any notice of revocation for the said Power of Attorney by liquidation or otherwise and I do verily believe the same to be in full force and effect.

AND made this solemn declaration conscientiously believing the same to be true under and by virtue of the Oaths Affidavits and Declarations Act 1963.

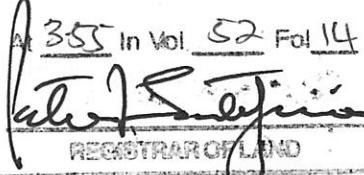
DECLARED at Apia this day of 20 before me:-)

SAMOA LAND REGISTER

RECEIVED FOR REGISTRATION

Date 20th March 2009

At 355 In Vol 52 Fol 14


REGISTRAR OF LAND

new Title LR 52/14.

A Solicitor of the Supreme Court of Samoa

Rec- 19/08/09

R/47641

\$ 75.00



**LATU EY & CLARKE LAWYERS
FIRST FLOOR, POST OFFICE BUILDING
MATAFELE**