

Commercial and Farm Mortgage

- These are the terms and conditions which form part of your mortgage. As this is an important document, please store it in a safe place.

Commercial and Farm Mortgage

Granting a Mortgage

To grant a mortgage over land you must either:

- sign a document entitled "Mortgage (Commercial and Farm)"; or
- sign an authority and instruction for an electronic transaction form, authorising a solicitor to register an electronic mortgage against the land.

You will be bound by the terms of this mortgage from the time that you grant the mortgage.

Memorandum of Common Provisions

This forms part of your mortgage. Some terms used in these terms and conditions have special meanings. These are set out in clause 6.

1 What is covered by the mortgage

1.1 Operative clause

In consideration of the "Secured Money" (defined in clause 1.2 below), you, as the mortgagor, hereby mortgage to Westpac NZ, for the benefit of itself and Westpac Banking Corporation ABN 33 007 457 141, incorporated in Australia, all of your estate and interest in the land to which this mortgage relates.

1.2 Secured Money

Westpac NZ and Westpac Banking Corporation (together, the "Secured Parties"), may from time to time provide you with banking and other financial services. The "Secured Money" secured by the mortgage is all money which you (whether alone or with one or more others) may owe to the Secured Parties (including any transferee referred to in clause 4.8) now or in the future for any reason, including all further advances by way of financial accommodation as defined in section 93 of the Property Law Act 2007, and when used in relation to a Secured Party means the Secured Money owing to that Secured Party.

It includes money which you contingently owe a Secured Party now or in the future. It also includes money which you may owe a Secured Party if something happens or is discovered, even where there is no existing obligation to pay it.

Where there is more than one of you, the Secured Money includes amounts owed by any one or more of you and amounts owed by all of you.

1.3 Priority

The stated priority limit for the purposes of section 92 of the Property Law Act 2007, being the maximum amount for which the mortgage

has priority in relation to any subsequent mortgage, is as stated in the mortgage.

2 What you must pay

2.1 Payment

You must pay to the Secured Parties, on time, the Secured Money. You must pay the Secured Money on demand except where a Bank Document provides otherwise in which case you must pay in the manner agreed in that other Bank Document.

2.2 Expenses

You must reimburse the Secured Parties, each Officer, each Receiver and each Attorney on demand for their expenses in relation to:

- the Mortgaged Property;
- the Secured Money;
- the preparation, execution and completion of each Bank Document, and any subsequent consent, approval, waiver, amendment or release;
- any valuation, inspection or report of or concerning the Mortgaged Property;
- any contemplated, attempted or actual enforcement of any Bank Document or the contemplated, attempted or actual exercise or defence of any Power; and
- any enquiry by a governmental agency concerning you or related to a Bank Document.

This includes expenses incurred in any review or environmental audit, in reimbursing or indemnifying any Receiver or Attorney, or in retaining consultants to evaluate matters of concern to the Secured Parties. It also includes administrative time and costs including the time of Officers and other employees of the Secured Parties (whose time and costs are to be charged at reasonable rates).

It will include, in each case, legal fees and expenses on a full indemnity basis plus goods and services tax on those amounts.

2.3 Costs

You agree to indemnify the Secured Parties, every Officer, every employee of the Secured Parties and each Receiver and Attorney on demand against any loss, cost, expense, charge, damage, claim or liability which the Secured Parties, an Officer, an employee of the Secured Parties, a Receiver or an Attorney may suffer or incur as a direct or indirect consequence of:

- an Event of Default;
- any exercise, contemplated exercise or attempted exercise of any Power or the

failure to exercise any Power;

- a Secured Party receiving any amount under any Bank Document on a date other than the due date;
- your interest in, or possession of, the Mortgaged Property or any control or Power over the Mortgaged Property or you.

2.4 Interest

The following will apply except to the extent that you and the Secured Parties agree otherwise:

- interest will accrue on all parts of the Secured Money at the same rate as applies to the Secured Money under the relevant Bank Document. If there is no such rate, interest will accrue at the rate certified by an Officer to be the relevant Secured Party's Indicator Lending Rate (or the rate declared by the relevant Secured Party to be in substitution for it) plus the margin then applicable to similar accounts. If that rate changes, the changed rate will apply from the day on which the changed rate becomes generally applicable;
- interest will accrue on a daily basis based on a year of 365 days. It will be calculated on the outstanding balance of each sum included in the relevant Secured Party's Secured Money, up to the date of actual payment from (and including) the date when that sum became owing by you. That date, in the case of an amount payable to cover a sum paid by a Secured Party to you or anyone else, will be taken to be the date when the Secured Party paid that amount;
- no offset is allowed, for the purpose of calculation of interest, for credit balances in any account held by you with a Secured Party;
- accrued interest is payable by you on demand;
- a Secured Party may, at the end of any period determined by that Secured Party, debit any of your accounts with unpaid interest. That interest shall bear interest as provided in this clause;
- the obligations in this clause apply after as well as before any judgment of a court.

2.5 Government charges

You must pay any government duties, taxes and charges on the Bank Documents and payments and receipts under them. If a Secured Party pays any such amount you must reimburse it on demand.

2.6 Payments in the wrong currency

If, for any reason:

- a Secured Party receives or recovers an amount under a Bank Document in a currency other than the currency in which it should have been paid; and
- after that Secured Party has converted that other currency to the correct currency there is not enough to pay off the full amount then due under the Bank Document, you must pay that Secured Party the full amount of the shortfall.

2.7 Deduction from payments

You must not make any payment subject to any condition, restriction or claim you may have against the Secured Parties. You may only make a withholding or deduction from money you pay to a Secured Party under the mortgage if that withholding or deduction is required by law. If the law requires you to make a withholding or deduction then the following rules apply:

- a) you must make sure that the withholding or deduction is for not more than the minimum amount required by that law;
- b) you must make sure that the withholding or deduction is paid to the relevant revenue or government authority by the due date for payment;
- c) you must send the relevant Secured Party, within 30 days of the withholding or deduction, a receipt showing that the withholding or deduction has been paid to the relevant revenue or government authority;
- d) you must increase the amount you pay to the relevant Secured Party so that the Secured Party receives the amount it would have received had there been no withholding or deduction.

If a Secured Party receives a tax credit, refund or allowance resulting from an increased amount you paid under clause 2.7 (d), the following rules apply. The relevant Secured Party will provide you with that part of the tax credit, refund or allowance that it determines was obtained as a result of the increased amount you paid. This will be calculated so that the Secured Party is in no better or worse position than it would have been had no amount been paid under clause 2.7 (d). However, the Secured Parties are under no obligation to disclose any information relating to the calculation of their tax liability or benefits. Also, this clause does not interfere with the Secured Parties' rights to arrange their tax affairs as they wish. In particular, the

Secured Parties may apply tax credits, refunds and allowances available to them as they like.

3 What you must do

You undertake to the Secured Parties as follows, except to the extent that the Secured Parties consent or as expressly permitted in a Bank Document:

a) **title** Only you own the Mortgaged Property or will do so on completion of any purchase financed under the mortgage.

You must make sure that no other party has any:

- interest in; or
- rights over or to use, the Mortgaged Property,

except:

- as set out in the mortgage or noted on the Land Transfer Register; and
- those which the Secured Parties consent to in writing.

b) **maintenance** You must look after the Mortgaged Property and protect and maintain it in a good state of repair.

c) **outgoings** You must promptly pay all outgoings relating to the Mortgaged Property. These include rates and taxes.

d) **insurance** You must make sure that all buildings and improvements which are on the Mortgaged Property or include the Mortgaged Property are insured at all times to the Secured Parties' satisfaction:

- with a New Zealand insurer approved by the Secured Parties;
- against fire, earthquake, flood, riot, explosion, weather damage and other risks as is prudent in accordance with best commercial practice to insure against;
- against third party liability as is prudent in accordance with best commercial practice;
- for an amount at least equal to their full replacement cost or on another basis acceptable to the Secured Parties; and
- in your name as owner and in Westpac NZ's name as mortgagee.

You must give the policy or a certificate of currency to the Secured Parties on request.

You must pay the insurance premiums when due and, if requested by the Secured Parties, provide evidence of payment to the Secured Parties.

You must do everything necessary or desirable, in the opinion of the Secured Parties, to enable the Secured Parties to claim under any insurance policy and to collect or recover money due.

You must hold any proceeds of any insurance policy on trust and pay them to a Secured Party (for the benefit of the Secured Parties). The Secured Parties will at their option:

- apply them towards payment of the Secured Money, including principal even though the Secured Money may not yet be due for payment; or
- pay them into an interest bearing account from which they can apply them (and interest credited to the account) in restoring the Mortgaged Property.

You must not do, fail to do or permit anything which might prejudice the insurance cover or settle any claim under any insurance policy without the written consent of the Secured Parties.

You must provide the Secured Parties with such information in relation to insurance as the Secured Parties may from time to time require.

- e) **building and alterations** You must not make any material alteration to the Mortgaged Property without the written consent of the Secured Parties. You must make sure all building work and alterations on the Mortgaged Property are completed properly.
- f) **business** If you conduct any business or other activity from the Mortgaged Property, you must make sure that business or other activity is carried out in accordance with the best practice applicable to that business or activity.
- g) **change of use** You must not, without the consent of the Secured Parties, change the use of the Mortgaged Property.
- h) **law** You must comply with all laws binding on you where non-compliance, in the opinion of the Secured Parties, may have a Material Adverse Effect. You must:
- make sure there is nothing on or relating to the Mortgaged Property which does or might give rise to a claim against you or the Secured Parties;
 - make sure that everything that has been or will be built and done on the Mortgaged Property complies with the law;
 - comply with any notices issued under any law which affects the Mortgaged Property.
- i) **environmental law** You must maintain procedures which, in the opinion of the Secured Parties, are adequate to monitor:
- your compliance with Environmental Law; and
 - circumstances which may give rise to a claim, to a requirement of substantial

expenditure by you, or to a requirement that you cease or materially change your activities.

The Secured Parties may have an audit conducted of the Mortgaged Property, your procedures and any circumstances in relation to the Mortgaged Property where the Secured Parties reasonably suspect that:

- you are not complying, or might not in future comply, with an Environmental Law or this clause 3 (i); and
- such non-compliance may have a Material Adverse Effect.

You must do everything necessary to facilitate that audit and it will be at your expense. Where the monitoring procedures or the audit referred to above reveal any non-compliance with Environmental Law or any circumstances requiring remedial action, you must remedy any non-compliance or take the necessary remedial action immediately and at your cost.

- j) **no dealings** You must obtain the Secured Parties' written consent to:
- lease any of the Mortgaged Property. If consent is given, you must use reasonable efforts to make sure that the lessee pays the rent and complies with the terms and conditions of the lease and you must not agree to change, waive or accept any surrender of all or any part of the lease;
 - sell or dispose of the Mortgaged Property or any interest in it;
 - the creation or continuation of any right or interest in or over the Mortgaged Property or any right to use any of the Mortgaged Property; or
 - the creation or continuation of any mortgage, charge or other security interest over the Mortgaged Property.
- k) **leases and cross leases** If the Mortgaged Property is leased to you, you must:
- pay the rent and comply with the terms and conditions of the lease;
 - make sure that all renewals or extensions of the lease or new leases of the Mortgaged Property are obtained promptly and immediately mortgaged to Westpac NZ for the benefit of the Secured Parties with the same priority as the mortgage;
 - use reasonable efforts to make sure the lessor complies with the terms and conditions of the lease; and
 - not agree to change or waive all or any part of any such lease.

- l) **other obligations** You must comply with all obligations which relate to the Mortgaged Property or your interest in it.
- m) **unit title** If the Mortgaged Property includes any stratum estate under the Unit Titles Act 1972 you must:
- make sure the body corporate complies with the Unit Titles Act 1972;
 - give to a Secured Party a copy of any notice received from the body corporate; and
 - not vote in favour of or agree to a body corporate resolution to amend the body corporate rules or which requires a unanimous vote without the Secured Parties' written consent.
- n) **protect security** You must do everything necessary or which Westpac NZ reasonably asks you:
- to better secure the mortgage; and
 - to maintain, preserve and protect:
 - the Mortgaged Property and its value; *and*
 - your title and Westpac NZ's title.
- In particular, if anyone, other than the Secured Parties, lodges a caveat with the Registrar-General of Land you must do everything in your power to remove it.
- o) **notify events of default** You must notify the Secured Parties of the occurrence of any Event of Default immediately upon becoming aware of it, giving full details of it and any action taken (or to be taken) in respect of it.
- p) **information** Subject to the Privacy Act 1993, you must give the Secured Parties promptly any information that the Secured Parties reasonably request.
- q) **full disclosure** You have disclosed to the Secured Parties all facts and circumstances which might adversely affect the decision of a person considering whether or not to provide indebtedness to you and must disclose to the Secured Parties immediately you become aware of them, any facts or circumstances which might adversely affect the decision of a person considering whether or not to continue to provide indebtedness to you.

4 What the Secured Parties can do

4.1 Generally

The Secured Parties and any Receiver, Attorney or Officer may do any one or more of the following at any time at your cost:

- inspect the Mortgaged Property and your records;
- do what you agree to do in any Bank Document but fail to do;
- pay amounts which they understand to

be due under other mortgages, charges, security interests or encumbrances over the Mortgaged Property and other liabilities relating to the Mortgaged Property;

- obtain a valuation of the Mortgaged Property; and
- notify anyone of the mortgage.

4.2 Default

Each of the following is an Event of Default (whether or not it is in your control):

- a) **payment** You fail to pay any Secured Money when due (time being of the essence).
- b) **obligations under bank documents** You fail to comply with any of your other obligations under a Bank Document.
- c) **obligation of guarantor** A Guarantor fails to comply with any of its obligations under a Bank Document.
- d) **cross default** Any amount owed by you or any Guarantor to anyone is not paid when due (or within an applicable grace period) or becomes due or capable of being declared due and payable before its stated maturity. In the case of money owed for the purchase price of an asset or service in the ordinary course of business, this will only apply if it is not paid within 90 days of the due date or the vendor has earlier taken any step to recover the asset or withdraw the service. Any facility or obligation to provide loans or credit to you or a Guarantor is terminated early. Any other mortgage, charge, encumbrance or security interest over the Mortgaged Property is enforced or becomes enforceable. Any lease of the Mortgaged Property becomes liable to forfeiture.
- e) **insolvency** You or any Guarantor are unable to pay your debts, or are deemed or presumed to be unable to pay your debts, or stop or suspend or threaten to stop or suspend payment of all or a class of your debts. Any step is taken for the Bankruptcy of you or any Guarantor. This includes you being declared to be a corporation at risk under the Corporations (Investigation and Management) Act 1989. You or any corporate Guarantor are removed from the Register of Companies or a request that you or any corporate Guarantor be removed from the register is made.
- f) **limitation of bank documents** All or any part of the mortgage or any other Bank Document is terminated or is or becomes illegal, invalid, unenforceable or of limited

force and effect.

A party becomes entitled to terminate, limit, cancel, rescind or avoid all or any part of the mortgage or any other Bank Document.

- g) **material adverse effect** Any event or series of events, whether related or not, occurs which, in the opinion of the Secured Parties, may have a Material Adverse Effect.
- h) **compulsory acquisition** All or any part of the Mortgaged Property is compulsorily acquired or any step is taken for its acquisition.
- i) **guarantor** A Guarantor gives notice stopping its obligations or a human Guarantor dies, ceases to be of full legal capacity or commits an act of bankruptcy.
- j) **change of control** In the opinion of the Secured Parties, there is a material change in the direct or indirect ownership, management or control of you or of any corporate Guarantor.
- k) **environmental event** You or any other person breach an Environmental Law and, in the opinion of the Secured Parties, that breach may have a Material Adverse Effect on or cause a claim or demand to be made on or against you or the Mortgaged Property by a government agency or any other person requiring either:
 - the cessation or modification of any activities being, or proposed to be, conducted by you from the Mortgaged Property; or
 - the carrying out of, or demand for payment for, any clean up, rehabilitation or remediation of the Mortgaged Property.
- l) **information** Anything you tell or have told a Secured Party or any information you give or have given a Secured Party is untrue, misleading or deceptive in any material respect.

4.3 Powers

At any time after an Event of Default, and subject to the Property Law Act 2007 and any other relevant laws, the Secured Parties may do all or any of the following:

- require you to immediately pay all or any of the Secured Money;
 - terminate any obligation they may have under any Bank Document;
- and Westpac NZ may do all or any of the following:
- take possession of the Mortgaged Property;
 - sell the Mortgaged Property in one or more lots or with or without other property;
 - do anything you could do in relation to all or

- part of the Mortgaged Property;
- appoint one or more Receivers who alone or together can do anything as set out above, remove any Receiver and fix the remuneration of any Receiver. To the extent permitted by law, every Receiver appointed is your agent and you alone are responsible for his or her acts and defaults.

4.4 Power of attorney

You appoint the Secured Parties, each Officer and Receiver severally your Attorney to do any of the things listed in clauses 4.1 and, at any time after an Event of Default, 4.3 of the mortgage. Each Attorney may also delegate its powers (including delegation). This appointment is made for valuable consideration and you may not revoke it.

4.5 Use of money

To the extent permitted by law, any money received or recovered by the Secured Parties, any Receiver or any Attorney under the mortgage may be used to pay off any part of the Secured Money which the Secured Parties choose.

The Secured Parties may open a separate or new account and credit payments received to that new account so that you will remain liable for the full amount despite that payment.

4.6 Amounts contingently due

If any of the Secured Money is contingently owing to a Secured Party at the time of any application of any amount under clause 4.5, that Secured Party may retain any of that amount. If it does, it will place the amount retained on short term interest bearing deposit until the relevant Secured Money becomes actually due or ceases to be contingently owing, and it shall then pay to itself the amount which becomes actually due to it.

4.7 Set off and combination

If you have any money in any account with the Secured Parties, then the Secured Parties can use it to pay amounts you owe under the mortgage, but need not do so. If you are in default, the Secured Parties can use money which has not yet matured due, and convert money in your accounts in foreign currencies.

Subject to any applicable Bank Document, where you have two or more accounts with the Secured Parties:

- the Secured Parties may at any time combine any two or more of those accounts. They may do so without notice and whether or not they have allowed

a set-off for a calculation of interest between any of those accounts;

- the Secured Parties may at any time combine any two or more of those accounts even where one or more of the combined accounts are in different currencies and may effect currency exchanges appropriate to implement that combination; and
- if the Secured Parties combine two or more accounts, they may decline to pay cheques and they may otherwise act as if the combined accounts had always been one account.

To the maximum extent allowed by law, you give up any right to set off any amounts the Secured Parties owe you against the Secured Money including amounts you owe under the mortgage.

4.8 Assignment

Westpac NZ can transfer the mortgage and the Secured Parties can transfer any Bank Document and all or part of the Secured Money to someone else, and may disclose information about you to any potential transferee. If Westpac NZ transfers the mortgage, the mortgage will apply to the transferee as if it were Westpac NZ. If the Secured Parties transfer all or part of the Secured Money, the mortgage and any transferred Bank Document will apply to the transferee as if it were a Secured Party.

To the maximum extent allowed by law, any transfer will be free of set off, equity or cross claim which you would have had against Westpac NZ or the Secured Parties, as the case may be, or transferees of any Bank Document but for this clause.

4.9 Consents and opinions

Except where expressly stated, the Secured Parties may give or withhold, or give conditionally, approvals and consents, may be satisfied or unsatisfied, may form opinions and may exercise its Powers, at its absolute discretion.

4.10 Disclosure of information

You authorise the Secured Parties to collect, use and disclose information about you for any purpose related to your association with the Secured Parties and you authorise any other person to disclose information to the Secured Parties for that purpose. The Secured Parties do not need to get your consent each time they collect, use or disclose information about you.

4.11 Rights and powers separate

The Secured Parties can, but need not, do anything under this mortgage at once or after a time or more than once. The Secured Parties can exercise all other rights and powers that they have under law even if they overlap with the above. If the Secured Parties do not do something when they are able to, that does not mean they are giving up that right and cannot do it later.

5 General

5.1 Obligations continue

Your obligations under the mortgage continue after your death or Bankruptcy and after the Secured Parties learn of it.

5.2 Secured Parties' enquiries and inspections

You agree that if the Secured Parties or their representatives inspect any building work on the Mortgaged Property, they are doing so for themselves and not you. You should not rely on that inspection.

The Secured Parties and their representatives are not responsible to you if the building work has not been properly done, even if a Secured Party or a representative has said it is satisfied as to the work, and provides finance against the work.

The same applies to any search, enquiry, inspection or valuation which is checked, carried out or obtained by the Secured Parties or their representatives with respect to any other aspect of the Mortgaged Property.

In particular, if you are buying the Mortgaged Property, you or your lawyer (if any) are responsible for making sure you get good title. You should not rely on the Secured Parties or their representatives.

5.3 Notices

Any Officer can sign a demand, certificate or other document for a Secured Party. A Secured Party can:

- deliver the document personally;
- send it through the post to the place where:
 - you carry on business;
 - In the case of a company, you have your registered office; or
 - in the case of an individual, you live or work; or to the Mortgaged Property, or the place most recently known to the person signing the document as such a place;
- leave it at any one of those places; or
- send it by facsimile to your last known facsimile number.

If the document is sent through the post, it is to be regarded as having arrived on the third business day after posting, even if it never arrived.

If it is sent by facsimile, it is to be regarded as having arrived when the sending machine receives a confirmation that it has been sent in its entirety.

Where any document is given or appears to have been given by you to a Secured Party by facsimile, that Secured Party shall have no obligation to make any enquiry or require any evidence as to the validity of that document even where that document proves not to have been authorised or not to have been signed or given by the person who appears to have signed or given it. If you are a company, the Secured Parties are entitled to rely on any document given under this clause where it appears that that document has been signed by one of your directors or an authorised signatory.

You can give notice to a Secured Party by delivering, posting, leaving or faxing it to the branch of the Secured Party where you maintain your accounts or any other address which the Secured Parties may have given you.

A notice given, or required to be given, under the mortgage to, or by, the Secured Parties is validly given if it is given to, or by, one Secured Party only.

You are entitled to rely on such notice given by one Secured Party as being authorised by both the Secured Parties and will have no obligation to enquire as to whether any instructions have been given to that Secured Party or as to the terms of any such instruction.

5.4 Contracts (Privity) Act 1982

For the purposes of the Contracts (Privity) Act 1982, each Officer, every employee of the Secured Parties, each Receiver and each Attorney is a designated person pursuant to Section 4 of the Contracts (Privity) Act 1982. He or she is entitled to enforce against you every provision of the mortgage which confers a benefit on an Officer, employee of a Secured Party, Receiver or Attorney.

5.5 Certificate of amount of money

You agree that a certificate from the Secured Parties setting out the amount which you owe to them under the mortgage is proof that you owe the amount stated, unless you prove to the contrary.

5.6 Survival of indemnities

Each indemnity and reimbursement obligation

in the mortgage will survive discharge of the mortgage.

5.7 Saving of mortgage

If any clause in the mortgage is not enforceable in any country because of the laws of that country then that will not affect:

- the other clauses in the mortgage; or
- the enforceability of that clause in any other country.

5.8 No merger

No Power and nothing in the mortgage or any Bank Document, is adversely affected merely because of the existence of any other Bank Document, or by any judgment, right or remedy against any person which a Secured Party or someone claiming through a Secured Party may have at any time.

5.9 Protection of third parties

No person who is party to a dealing and no person asked to lodge for registration with the Registrar-General of Land a dealing is affected by express notice that the dealing is unnecessary or improper, nor is that person bound to enquire whether the mortgage has become enforceable, whether the dealing is valid or whether any Receiver or Attorney is properly appointed.

For the protection of any person who is party to a dealing or a person lodging for registration a dealing, the dealing will be taken to be authorised by the mortgage and it will be valid, even if there is something wrong with the dealing.

In this clause, a “dealing” is any payment, or any delivery or handing over of an asset to, or any acquisition, incurring of debt, receipt, sale, lease, disposal or other dealing by a Secured Party, any Receiver, any Officer or Attorney or any person who purports to be one.

If a Secured Party, any Officer or any Receiver or Attorney (or any person who purports to be one) gives a receipt for any money or assets, that will save the person paying that money or handing over that asset from being concerned as to its application, or being liable or accountable for its loss or misapplication.

5.10 Protection of officers

To the extent permitted by law, neither the Secured Parties nor any Officer, Receiver or Attorney will be liable in respect of any conduct, omission, delay, negligence or breach of duty in the exercise of or failure to exercise a Power or for any loss (including consequential loss) which results. However, such party will be

liable where liability arises from its, his or her own fraud or wilful misconduct.

5.11 More than one mortgagor

If you sign, or otherwise consent to or authorise the registration of the mortgage with one or more others, its terms apply to each of you individually and to all or any number of you as a group.

Each of you is individually liable for the full amount of the Secured Money. The Secured Parties can make a claim or demand on any one or more of you.

You are still bound by the mortgage, even if anyone in the group – or anyone you thought was going to be in the group – does not sign, or otherwise consent to, the mortgage, or is not bound by it or is released from part or all of its obligations under it.

5.12 Trustee

This clause only applies if you are a trustee and sign, or otherwise consent to or authorise the registration of the mortgage as trustee of that trust.

The mortgage will bind you as trustee of the trust. It will also bind you personally unless you are an independent trustee.

In the mortgage, the expression “Secured Moneys” includes all money owed by you in your capacity as a trustee of the trust (whether or not actually within your powers or properly authorised) as well as by any former, present or future trustee of the trust.

You confirm:

- you have the power to enter into the mortgage either under the terms of the trust document or under the powers given to you by the Trustee Act 1956;
- you have properly signed, or otherwise consented to, the mortgage in accordance with the terms of the trust.

The above are warranties, which means that the Secured Parties can sue you if either are incorrect.

The Secured Parties' rights against you will be limited only if you are an independent trustee. In that case, the Secured Parties will only be entitled to recover Secured Money from any of your personal assets if they are not able to recover the Secured Money from the Mortgaged Property because the warranties you gave above were incorrect. The Secured Parties will only be entitled to recover from your personal assets the amount they would have recovered from the trust assets had those warranties been correct. If you are not an independent trustee,

the Secured Parties may seek to recover any Secured Money from your personal assets as well as from trust assets.

You are an “independent trustee” for the purposes of this clause unless you have any right to or interest in any of the assets of the trust except in your capacity as trustee of the trust.

For example, if you are a beneficiary of the trust then you are not an “independent trustee”.

For the purposes of Section 128 of the Land Transfer Act 1952, none of the terms set out in this clause applicable to trustees are to be, or are to be construed as, notice of any trust.

5.13 Governing law

The law of New Zealand applies to the mortgage. You accept the non-exclusive jurisdiction of its courts.

5.14 Continuing security

The mortgage is a continuing security until a final discharge has been given by Westpac NZ despite any payment or anything else.

You will not be entitled to a final discharge of the mortgage until the Secured Parties are satisfied that all Secured Money has been repaid in full and that no payment may be voided, voidable or required to be repaid by the Secured Parties under any law. In any event you acknowledge that (subject to any law to the contrary) any request for a discharge must give the Secured Parties 15 Banking Days' notice.

If any payment or other transaction under the mortgage is void, voidable, or required to be repaid by any law, that payment or other transaction will be deemed not to have affected your liability to the Secured Parties even if the mortgage has already been released. In those circumstances, the Secured Parties will be restored to the position they had been in prior to that release, payment or other transaction. If that happens, you must do all things and sign all documents as may be necessary to restore the Secured Parties to that position.

6 Reading the mortgage

6.1 Definitions

The following definitions apply unless the context requires otherwise.

Attorney means a person appointed as attorney under the mortgage.

Bank Document means a document or agreement:

- to which the Secured Parties and any one or more of you and/or any Guarantor are or become parties or purport to be or become

parties; or

- under which obligations arise or are intended to arise from any one or more of you and/or any Guarantor to the Secured Parties, in each case whether or not other parties are involved or it arises as a result of an assignment or transfer. It includes the mortgage.

Banking Day means any day (other than a Saturday or Sunday) on which registered banks within the meaning of the Reserve Bank of New Zealand Act 1989 are open for business in Auckland and Wellington for the transaction of general banking business.

Bankruptcy includes liquidation, receivership, statutory management, administration, reconstruction, striking off or removal from the register under the Companies Act 1993, winding-up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors or bankruptcy.

Environment includes the natural physical surroundings of humankind (whether affecting individuals or groupings of individuals) and any human made changes to them and any buildings.

Environmental Law means a provision or law which relates to an aspect of Planning, the Environment or the health, safety and the welfare of humans individually and collectively.

Event of Default means any of the events described in clause 4.2.

Guarantor means anyone who provides any guarantee or other security in relation to all or any part of the Secured Money.

Material Adverse Effect means a material adverse effect on:

- the ability of you or any Guarantor to perform its obligations under a Bank Document;
- the security position of the Secured Parties including any guarantee; or
- the financial condition or business of you or any Guarantor.

Mortgaged Property means the property mortgaged by the mortgage.

It includes:

- the land described in the mortgage;
- all buildings, fixtures and improvements on that land; and
- all rights attaching to that land.

Officer includes an employee of a Secured Party whose title includes the word “Manager”, or occupying an office whose title includes the word “Manager” or “Legal Counsel” or

any person (who need not be an employee) authorised by a Secured Party.

Planning includes any obligation or requirement to apply for, renew, hold or comply with any authorisations relating to the conduct of, any activity in or the use of any part of the Environment or any restrictions on such activity or use.

Power means a power, right, authority, discretion or remedy which is conferred on the Secured Parties, an Officer, a Receiver or an Attorney by a Bank Document or by law in relation to a Bank Document.

Receiver means a receiver, receiver and manager or manager appointed under the mortgage.

Secured Money has the meaning given in clause 1.

Secured Parties means, subject to clause 4.8, Westpac NZ and Westpac Banking Corporation ABN 33 007 457 141, incorporated in Australia or, as the context requires, either of them.

Westpac NZ means, subject to clause 4.8, Westpac New Zealand Limited, company incorporation number 1763882.

6.2 General

Headings are for convenience only. They do not affect interpretation.

The following rules apply unless the context requires otherwise:

- singular includes the plural and converse;
- a gender includes all genders;
- reference to law includes present or future common or customary law and any statute, statutory instrument, subordinate legislation, regulation, by-law, order or other legislative measure or any judgment or judicial or administrative order or determination or decision, in any jurisdiction;
- reference to a person includes a natural person, company, corporation, trust, partnership, firm, joint venture or governmental agency, in each case whether or not having separate legal personality, and any association of entities;
- an example does not limit what else might be included.

6.3 No statutory implied terms

Schedule 2 of the Property Law Act 2007 does not apply to the mortgage.

