

Memorandum of 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.



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Mortgage

Granting a Mortgage

To grant a mortgage over land you must either:

- sign a document entitled “Mortgage”; or
- sign an authority and instruction for an electronic transaction form, authorising a practitioner 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.

Terms and Conditions

These terms form 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:

- mortgage all of your estate and interest in the Land;
- transfer and assign absolutely, by way of security, all of your rights, title, and interests (present, future, legal, and equitable) in and to the Assigned Property; and
- charge any resource consent issued under the Resource Management Act 1991 in respect of the Land,

to Westpac NZ, for the benefit of the Secured Parties.

1.2 Secured Money

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 now or in the future for any reason. When “Secured Money” is used in relation to a particular Secured Party, it means the Secured Money that is Owing to that Secured Party. The Secured Money includes:

- all further advances by way of financial accommodation (as defined in section 93 of the Property Law Act 2007) to you;
- all money that you contingently Owe a Secured Party now or in the future (including under a guarantee);
- all amounts needed to reimburse a Secured Party for:
 - any amounts that it has paid or may in the future pay; and
 - any amounts that it is or becomes liable to pay, to any person at your request or direction, or on your behalf;
- (to the maximum extent permitted by law) any debt or liability to a Secured Party on your part that is reasonably likely to arise at a future date, and that is connected with something that happens while this mortgage is in force; and
- all money you now or in the future Owe under a right or claim against you which a Secured Party has taken over, or at any future date takes over, from somebody else. To the maximum extent permitted by law, this will be the case even if your obligation to pay that money was unsecured before the Secured Party took over the right or claim.

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; 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 Officer, employee, 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 indemnify the Secured Parties and each Receiver and Attorney, on demand, against any Loss or Liability it may suffer or incur as a direct or indirect consequence of:

- an Event of Default or Potential Event of Default;
- any exercise, contemplated exercise, attempted exercise, or defence, 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; or
- your interest in, or possession of, the Mortgaged Property, or any control or Power over the Mortgaged Property or you, except to the extent that the Secured Parties’, Receiver’s or Attorney’s Loss or Liability results directly from their fraud or negligence.

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 set off 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; and
- 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 the Secured Party will have the sole discretion to convert the currency when it chooses, and conversion will be at Westpac's published rate of exchange applicable to such transactions on that day. If, 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 Deductions 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; and
- 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 in respect of 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 leaves the Secured Party in no better or worse position than it would have been had no amount been required to be withheld or deducted. 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 in writing 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.
- 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 that 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 for a residential property owner to insure against or, if you are a Commercial Party, as is prudent in accordance with best commercial practice to insure against;
 - if you are a Commercial Party, 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.

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 cause or permit any buildings, fixtures, or improvements forming part of the Mortgaged Property to be removed, dismantled, or materially altered, in whole or part. 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 change the use of the Mortgaged Property, including by making any material change to the type of activity or, in the case of farming, the type of farming, conducted on the Mortgaged Property.
- h. **law** You must comply with all laws that relate to the Mortgaged Property. You must also 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 that 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; and
 - comply with any notices issued under any law which affects the Mortgaged Property.
- i. **environmental law** If you are a Commercial Party 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 not:
- 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;
 - create, or permit the continuation of, any right or interest in or over the Mortgaged Property, or any right to use any of the Mortgaged Property; or
 - create, or permit the continuation of, any mortgage, charge or other security interest over the Mortgaged Property, or agree to any of the above.
- 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. **licence to occupy** If the Mortgaged Property is a registered licence to occupy under the Land Transfer Act 1952 you must:

- comply with the terms and conditions of the licence to occupy and the constitution of the flat or office owning company;
- pay all contributions levied by the flat or office owning company when due and, if requested by the Secured Parties, provide evidence of payment to the Secured Parties;
- deliver to the Secured Parties your copy of the licence to occupy and the share certificate issued for the shares to which the licence relates;
- not sell or dispose of the shares to which the licence to occupy relates;
- not agree to change or waive all or part of the licence to occupy;
- make sure the licence to occupy is not cancelled, surrendered, revoked, rescinded, or forfeited, and that no new licence to occupy is issued;
- not concur or agree to any dealing with the building or the property of which the Mortgaged Property forms part, or to any amendment to the constitution of the flat or office owning company;
- not make or permit to be made any material alteration to the Mortgaged Property;
- promptly give the Secured Parties a copy of any notice received from the flat or office owning company; and
- grant the Secured Parties the right to attend company meetings as proxy of the mortgagor, and if a Secured Party is present, to vote at those meetings instead of you.

m. **other obligations** Unless inconsistent with the terms of this mortgage, you must comply with all obligations which relate to the Mortgaged Property or your interest in it.

- n. **unit title** If the Mortgaged Property includes any stratum estate under the Unit Titles Act 2010 you must:
- make sure the body corporate complies with the Unit Titles Act 2010;
 - give to a Secured Party a copy of any notice received from the body corporate;
 - request from the body corporate, and give to a Secured Party, such information and documents as a Secured Party reasonably requests; and
 - not vote, or abstain from voting, in relation to a body corporate resolution to amend the body corporate rules, or which requires a unanimous vote or special resolution, without the Secured Parties' written consent (and then you must vote only in accordance with such consent).

Your voting rights under the Unit Titles Act 2010 and the rules of the body corporate (whether at a meeting or by entry in the minute book or otherwise) may be exercised by the Secured Parties, at your expense.

- o. **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 interest.

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.

- p. **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.
- q. **information** Subject to the Privacy Act 1993, you must give the Secured Parties promptly any information that the Secured Parties reasonably request.
- r. **full disclosure** You have disclosed to the Secured Parties all facts and circumstances that 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 upon becoming 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 expressly or impliedly agree to do in any Bank Document but fail to do;
- pay amounts that 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, death, etc.** 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.

You or any Guarantor suffer a Bankruptcy Event or an Insolvency Event.

You or any Guarantor die or cease to be of full legal capacity.

- f. **limitation of bank documents** All or any part of the mortgage or any other Bank Document is terminated or is or becomes or is claimed to be 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 reducing or stopping its obligations.
- 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; or
 - cause a claim or demand to be made on or against you, or the Mortgaged Property, or a Secured Party, 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 or a Guarantor tell or have told a Secured Party or any information you or a Guarantor give or have given a Secured Party is untrue, misleading or deceptive in any material respect.
- m. **flat or office owning** The flat or office owning company, which granted any licence to occupy comprising the Mortgaged Property, suffers an Insolvency Event.
- n. **amalgamation** Any Amalgamation, by you or any Guarantor with another company, without the prior written consent of the Secured Parties.
- o. **related parties** Any event referred to in paragraph (d), (e) or (l) of this clause 4.2 occurs in relation to any Related Party as though references to you were references to that Related Party.

4.3 Powers

At any time after an Event of Default, and subject to any applicable 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 including (but not limited to) receive rents and/or other income payable in respect of the Mortgaged Property;
- exercise any Power; and
- appoint one or more Receivers who alone or together can do anything as, set out above and can exercise any other right conferred on receivers and/or managers by law, remove any Receiver and fix the remuneration of any Receiver, such remuneration to be payable by you and to form part of the Secured Money. 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 as your Attorney to do any of the things listed in clause 3(n), clause 3(o) and clause 4.1 and, at any time after an Event of Default, clause 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

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, 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.

Where an Event of Default has occurred and remains unremedied, you will have no right to withdraw (and the Secured Parties will have no obligation to repay) any of your money held in any account with the Secured Parties.

If an amount payable by you to the Secured Parties under any Bank Document is unable to be quantified or is contingent and not yet due, the Secured Parties may retain any of your money in an account with the Secured Parties until the amount is quantifiable and falls due.

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 Authority to debit

The Secured Parties may debit any of your accounts with any amount of the Secured Money that is Owed to the Secured Parties from time to time. The Secured Parties may exercise this right even if the account concerned is already in debit, and even if the amount debited takes the debit balance of the account over any approved limit.

4.9 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 and the mortgage will continue to apply to the other Secured Parties in respect of any Secured Money that is not transferred by the Secured Parties.

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.

4.10 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.

4.11 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.

4.12 Rights and powers separate

The Secured Parties can, but need not, do anything under the 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.

4.13 Exercise of Powers

When the Secured Parties exercise any powers under the mortgage, they will do so in a reasonable and consistent way.

5. General

5.1 Obligations continue

Your obligations under the mortgage continue after you die or you suffer a Bankruptcy Event or Insolvency Event 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, subject to the

requirements of any applicable law:

- 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;
- send it by facsimile to your last known facsimile number; or
- send it by e-mail or electronic transmission to your last known address.

If the document is sent through the post, it is to be regarded as having been received 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 been received when the sending machine receives a confirmation that it has been sent in its entirety.

If it is sent by e-mail, it is to be regarded as having been received by you on the day that it is sent, provided that no record has been generated notifying the Secured Parties that the transmission has failed.

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.

Such a notice to a Secured Party will be regarded as having been received by the Secured Party only when actually received by an Officer of the relevant Secured Party.

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 Waiver

No waiver by the Secured Parties of any right arising under this mortgage, or relating to this mortgage but arising under any other Bank Document, will be effective unless it is given in writing and is signed by the Secured Parties.

5.5 Contracts (Privity) Act 1982

For the purposes of the Contracts (Privity) Act 1982, 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 him or her. The Secured Parties and you may agree to vary or discharge any such provision without the consent or agreement of any such designated person.

5.6 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.

5.7 Survival of indemnities

Each indemnity and reimbursement obligation in the mortgage will survive discharge of the mortgage.

5.8 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 .

5.9 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.

5.10 Protection of third parties

No person who is party to a dealing, and no person asked to lodge a dealing for registration with the Registrar-General of Land, 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 of 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.

5.11 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 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 negligence.

5.12 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.

5.13 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.

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 in their capacity as 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; and
- you have and will retain a right of indemnity from the trust assets.

The above are warranties, which means that the Secured Parties can take legal action against you if any are incorrect.

If you are an independent trustee, 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 any of 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".

5.14 Governing law

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

5.15 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.

in relation to the Land and rights to payment that arise in connection with an interest in the Land, including, without limitation, rights to rental payments under a lease of, or licence to occupy, the Land, the proceeds of any insurance (including in respect of loss of earnings or income), sale proceeds of crops, trees, and other produce, damages and the proceeds of any profit à prendre or forestry right.

Attorney means a person appointed as attorney under the mortgage.

Amalgamation has the meaning it bears under the Companies Act 1993.

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 Event in relation to a person means that:

- he or she commits an act of bankruptcy;
- an application is made to declare him or her, or he or she is declared, bankrupt;
- he or she enters into a compromise with creditors, or makes any proposal to them;
- he or she is the subject of a summary instalment order or the subject of, or applies for entry to, the no asset procedure; or
- an application or order is made for his or her estate to be administered as an insolvent estate, under the Insolvency Act 2006.

A person suffers a Bankruptcy Event if any of these events occurs to him, her, or his or her estate.

Commercial Party means you, if you are the mortgagor under this mortgage and:

- the Mortgaged Property is not used primarily for personal, domestic or household purposes; or
- the Secured Parties have determined, in their absolute discretion, that you are a Commercial Party and have given you notice of this determination.

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.

Insolvency Event in relation to a person means that:

- an encumbrancer (for example, a mortgagee) seeks to exercise, or exercises, a power to take possession of or sell any of its assets;
- a distress, attachment or other execution is levied or enforced on, or commenced against, any of its assets, or a judgment is obtained against it that is not satisfied within 10 days (unless it contests the execution or judgment in good faith by appropriate proceedings, to the Secured Parties' satisfaction);

6. Reading the mortgage

6.1 Definitions

The following definitions apply unless the context requires otherwise:

Assigned Property means documents and consents

- a receiver, receiver and manager, judicial manager, statutory manager, trustee, administrator, liquidator, interim liquidator or any similar officer is appointed in respect of it, its undertaking or any of its assets;
- it is wound up or dissolved, it is struck off or removed from the register under the Companies Act 1993 or its registration under the legislation under which it was incorporated, constituted or established is otherwise cancelled or suspended (irrespective of whether the registration is subsequently restored or reactivated), an event occurs or the date arrives on which it is to terminate under that legislation or its constitutive documents, or its existence is otherwise terminated, suspended or interrupted (except in each case for the purposes of, and followed by, an Amalgamation, solvent reconstruction or transfer of registration to another jurisdiction in each case on terms previously approved in writing by the Secured Parties);
- (if it is incorporated or established outside New Zealand) it fails to be registered in New Zealand in breach of any mandatory New Zealand law, it is removed from the relevant New Zealand register, or an application is made for the liquidation of its assets in New Zealand;
- a registrar of competent authority gives a direction prohibiting it from carrying on any activity or suspending its constitution or its officers' powers;
- an inspector is appointed to investigate its affairs under the Companies Act 1993 or the Corporations (Investigation and Management) Act 1989;
- it is declared to be a corporation at risk under the Corporations (Investigation and Management) Act 1989;
- it proposes any dealing to any of its creditors to avoid insolvency or in expectation of insolvency, or enters into any dealing of that nature with or for the benefit of any of its creditors (for example, it proposes or makes any assignment, arrangement, compromise or composition to, with or for the benefit of its creditors generally or any of them);
- any analogous event occurs under any applicable law or in any country; or
- any resolution is passed or step is taken (whether by it or another person) for any of the above,

and a person suffers an Insolvency Event if any of the above are done or experienced by it or occur in relation to any of its assets.

Land means:

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

Loss or Liability means a cost, expense, loss, damage, liability or claim, including due to the indemnification of an Officer or employee of the Secured Parties (and includes any goods and services tax, all legal fees and expenses in full, all costs awards, and the cost of management or administration time as calculated by the person incurring that cost, acting reasonably).

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 Land;
- the Assigned Property; and
- any resource consent issued under the Resource Management Act 1991 in respect of the Land, or any part thereof.

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.

Owe, in relation to money, means to owe that money or to be liable to pay that money, and Owed, Owes, and Owing shall have corresponding meanings.

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.

Potential Event of Default means a situation or event that will or may develop into an Event of Default if time passes or if something happens (for example, if a notice is given or a particular event occurs).

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.

Related Company has the meaning given to that term in the Companies Act 1993 but on the basis that Subsidiary has the meaning given to it in this mortgage and the term company (as used in relation to the definition of Related Company and Subsidiary) includes a body corporate, an individual person, any organisation or body (whether incorporated or not), and any other entity.

Related Party means you and any Guarantor and any Related Company of you or any Guarantor.

Secured Money has the meaning given in clause 1.2.

Secured Parties means Westpac NZ and Westpac Banking Corporation ABN 33 007 457 141, incorporated in Australia (and includes any transferee referred to in clause 4.9) and Secured Party means either of them.

Subsidiary has the meaning given to it in the Financial Reporting Act 1993.

Westpac NZ means Westpac New Zealand Limited, company incorporation number 1763882 and includes any transferee referred to in clause 4.9.

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; and
- a reference to any legislation or to a provision of any legislation includes any amendments and re-enactments of it, a legislative provision substituted for it, and a regulation, rule, order, or instrument made under or issued pursuant to it.

6.3 Statutory implied terms

Clauses 3(2), 8(2), 16(2) and 18 of Part 1 of Schedule 2 to the Property Law Act 2007 do not apply to this mortgage.

The rest of Part 1 of that Schedule applies to this mortgage except to the extent to which it is inconsistent with the express terms of this mortgage or any other Bank Document.