

Regulated Term Loan
Agreement

SCFL Nominees Limited



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THIS DEED is made the _____ day of _____ 2017

Parties

SCFL Nominees Limited (“Lender”)

The Party identified below as the Borrower (“Borrower”)

The Party identified below as the Guarantor (“Guarantor”)

Background

A. The Lender, at the request of the Borrower, has agreed to advance to the Borrower a loan on the terms and conditions contained in the First and Second Schedules of this Agreement.

Deed

First Schedule – Loan Terms

Name and address of Borrower:	
Name and address of Guarantor(s):	
Loan/Maximum Amount of the Loan:	A term loan of _____ as set out in the Term Loan Offer, to be applied as follows: (a) \$ _____ to be applied to the Loan Application Fee payable to the Lender; (b) \$ _____ to be applied to the brokers fee; (c) \$ _____ to be applied to the Lender’s estimated legal fees; (d) \$ _____ to be made available to the Borrower.
Commencement Date:	The date upon which the Borrower makes a drawing of the Loan in accordance with this Agreement
Repayment Date	The date which is _____ months from the Commencement Date.
Loan Purpose:	
Interest Period	
Interest Rate:	_____ % per annum
Default Rate:	_____ % per annum – being 9.95% per annum above the Interest Rate

Fees:	\$ Loan Application Fee and brokerage fee of \$. The fees shall be deducted from the Loan and will bear interest accordingly.
Interest Calculation and Payment Dates:	Interest will be calculated on a daily basis from the Commencement Date, to the Repayment Date and will be paid, together with the monthly administration fee, on each monthly anniversary of the Commencement Date in equal instalments of \$ each.
Bank account into which interest payments should be made (Subject to the Lender's right to change from time to time by notice to the Borrower):	Bank of New Zealand (SCFL Nominees Limited) 02 0108 0255443 000
Property:	The property at and contained in certificate of title (North Auckland Registry)
Securities:	First and only registered all obligations mortgage over and contained in certificate of title (North Auckland Registry)
Letter of Offer	The letter of offer dated .
Limited Liability Trustee (refer clause 18.15)	It is acknowledged that is an independent trustee for the purposes of clause 18.15
Conditions:	<ol style="list-style-type: none"> 1. No event occurring which, in the absolute discretion of the Lender, might materially affect the value of the Securities or the Borrower's ability to fulfil its obligations under the Relevant Documents; 2. Original signed copies of signed registered valuations addressed to the Lender including a mortgage recommendation and confirmation that the valuer has adequate professional indemnity insurance; 3. Any other matters reasonably required by the Lender's solicitor; 4. Confirmation to the satisfaction of the Lender that all required insurance cover is in place; 5. The Lender conducting (and being satisfied in its sole discretion with) a site inspection on the secured properties and its own due diligence on the viability of the funding proposal.
Credit Fees and Charges	<p>The following credit fee(s) and charge (s) are payable by the Borrower.</p> <p>\$25 loan administration fee per month</p> <p>\$95 per hour per person for any property visit/client visit/meeting plus \$0.70 per kilometre travelled plus any out of pocket expenses</p> <p>\$125 per hour for sundry loan administration attendances plus actual</p>

	<p>costs (minimum \$10)</p> <p>\$325 top up administration fee on application for increased funding</p> <p>\$600 renewal fee on any renewal of this loan agreed to by the Lender and Borrower</p> <p>\$550 revision fee on any revision or variation of this loan agreed to by the Lender and Borrower</p> <p>Up to \$50 administration fee on security discharge and/or loan revision together with lender's solicitors costs</p>
Default Fees and charges	Up to \$125 per hour per creditor employee or contractor on a time and attendance basis for the management of any loan in default, plus any associated costs, plus up to \$10 for a dishonoured payment/late payment or missed payment.
<p>Where a credit fee or charge or a default fee or charge is indicated as being up to a certain dollar value then this is the maximum that the Lender will charge the Borrower. If the Lender determines that a credit fee or default fee would be unreasonable then the Lender will charge the borrower a lesser fee which is not unreasonable. In determining whether a fee is unreasonable the Lender will have regard to those matters set out in section 44 of the CCCFA.</p>	

Second Schedule – General Terms and Conditions

1. Interpretation

1.1 **Definitions:** In this Agreement, unless the context otherwise requires:

“**Agreement**” means this Agreement as amended from time to time.

“**Business Day**” means any day other than a Saturday, Sunday or a public holiday in the place of payment.

“**CCCFA**” means the Credit Contracts and Consumer Finance Act 2003 and all amendments thereof.

“**Charge**” means any mortgage, charge, encumbrance, lien, pledge, hypothecation, financial lease, deferred purchase, sale and re-purchase, sale and leaseback, title retention or any other arrangement (however described) which in effect is, or has the commercial effect of, a security interest.

“**Collateral**” means any personal property of the Borrower which is the subject of a security interest under this Agreement.

“**Default Interest Rate**” means a rate which is 9.95% above the Interest Rate.

“**Commencement Date**” means the date upon which the Borrower makes a Drawing of the Loan in accordance with this Agreement.

“**Drawing**” means a drawing of the Loan by the Borrower in accordance with this Agreement.

“**Event of Default**” means any of the events specified as such in clause 8.1 of this Agreement.

“**FMCA**” means the Financial Markets Conduct Act 2013.

“**Interest Payment Date**” means the last day of each Interest Period during the term of this Agreement.

“**Interest Period**” shall mean the period recorded as the Interest Period in the First Schedule (or such other period as agreed in writing between the Borrower and the Lender) provided that:

- (a) the first Interest Period shall commence on the Commencement Date and shall end at 3.00pm on the last day of that Interest Period;
- (b) each subsequent Interest Period shall commence on the day following the last day of the preceding Interest Period;
- (c) any Interest Period that would otherwise extend beyond the Repayment Date shall be of such duration that it shall end on the Repayment Date.

“**Interest Rate**” means, with respect to the Interest Period, the rate that is recorded as the Interest Rate in the First Schedule. The Lender has the right, on giving to the Borrower not less than one month’s notice in writing, to increase either or both of the rates of interest payable hereunder with a consequential increase in the instalments payable hereunder.

“Letter of Offer” means the Lender’s letter of offer to the Borrower dated in accordance with the date recorded in the First Schedule.

“Loan” means the loan of the sum recorded in the First Schedule to be made by the Lender to the Borrower in accordance with the terms and conditions of this Agreement.

“Loan Application Fee” means the fee payable by the Borrower to the Lender for the Lender’s costs of the establishment of this Loan.

“Material Adverse Effect” means something which has material adverse effect on the Borrower’s financial condition or operations or its ability to perform and comply with its obligations under this Agreement or any of the Security Documents.

“Moneys Owed” means all principal, interest, capitalised interest, default interest, fees, costs, expenses, charges, indebtedness and other moneys of whatever nature owed or payable by the Borrower to the Lender under this Agreement or the Security Documents.

“Mortgage” means the registered mortgage over the Property granted by the Borrower and/or Guarantor in favour of the Lender as security for the Moneys Owed.

“Platform” means the peer to peer lending platform of Southern Cross Partners Limited.

“PPSA” means the Personal Property Securities Act 1999.

“Property” means the Property recorded as the property in the First Schedule.

“Related Document” means this Agreement, the Security Documents, the Letter of Offer and each other agreement, present or future, required or contemplated by or relating to this Agreement, the Security Documents or the Letter of Offer.

“Repayment Date” means the date which is recorded as the Repayment Date in the First Schedule, or such other date as may be agreed in writing by the Borrower and the Lender, subject to the Lender’s right to require payment at an earlier date under the terms of this Agreement.

“Security Documents” means the agreements, securities and other documents granted in favour of or obtained by the Lender which secure the Moneys Owed, including but not limited to the Mortgage and all other Securities listed in the First Schedule..

1.2 **References:** In this Agreement, unless the context otherwise requires:

“dollars” or **“\$”** means New Zealand dollars, or such other lawful currency of New Zealand from time to time;

“fortnight” means calendar fortnight;

“indebtedness” includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal, surety or otherwise) for the payment or repayment of money;

“laws” means all applicable statutes (including all regulations thereunder), regulations, by-law, order in Council, judgement and decrees, and includes common or customary law, of any relevant jurisdiction and any other measure which has the force of law and includes any environmental law and building law;

“month” means calendar month;

“or” includes “and/or”;

“person” includes any individual, firm, company, corporation, partnership, joint venture, association, trust, state or agency of state, in each case whether or not having separate legal personality;

“week” means calendar week;

“written” and “in writing” includes all means of reproducing words in a visible form, and includes reproduction by facsimile or electronic transmission.

1.3 **General:** Unless otherwise stated or the context otherwise requires, this Agreement shall be permanently visible form, and includes reproduction by facsimile:

- (a) headings are inserted for reference only and shall be ignored in construing this Agreement. References to clauses are references to clauses in this Agreement;
- (b) words importing one gender include the other gender and words importing the singular include the plural and vice versa;
- (c) references to a document are references to that document as varied, amended or novated from time to time;
- (d) references to a statute, regulation, order, bylaw or other legislation are references to that statute, regulation, order, bylaw or other legislation as amended, consolidated, re-enacted, substituted or extended from time to time. References to a statute includes a reference to all regulations as may be passed under that statute; and
- (e) references to a party in this Agreement includes the representatives, successors and permitted assigns of that party.

1.4 **Joint and Several:** If any of the terms “Lender” or “Borrower” in this Agreement refers to two or more parties, then those terms shall mean and include throughout this Agreement all those parties and each of them, and shall so far as the context admits be construed in the singular as well as the plural. All covenants, agreement, undertakings and warranties in this Agreement whether expressed or implied on the part of the parties referred to by that term shall be deemed to be joint and several.

2. **Loan**

2.1 **Grant of Loan:** The Lender agrees to advance the Loan to the Borrower on the terms and subject to the conditions of this Agreement.

2.2 **Purpose:** The Loan shall only be used by the Borrower for the purpose recorded as the Loan Purpose in Schedule 1. The Borrower shall not utilise the Loan for any other purpose without obtaining the prior written consent of the Lender.

2.3 **Availability of Drawings:** Subject to the conditions precedent in clause 3 having been satisfied, the Borrower may draw down the Loan on the Commencement Date. If the Loan is not drawn down, either fully or partially, within 30 days of the issue of this loan documentation the Lender may, at its sole discretion, elect to withdraw the availability of the Loan facility.

2.4 **Security Documents:** The Borrower and Guarantor shall enter the Security Documents and grant the securities therein to secure the Loan.

3. **Conditions Precedent**

3.1 **Items Lender to Receive:** The Lender shall not be obliged to make the Loan available to the Borrower under this Agreement unless the Lender has received, not later than two (2) Business Days before the Commencement Date or such later date as the Lender may in its discretion approve the following in a form satisfactory to the Lender:

- (a) **Security Documents:** An original executed copy of this Agreement and the Security Documents together with all discharges, releases and other documents as may be required to register the Security Documents and to afford the Lender the security and priority the Lender requires;
- (b) **Proof of Insurance:** Proof of insurance for all property and Collateral provided as security under this agreement. The following are acceptable to the lender:
 - i) the original policy from the insurer;
 - ii) an original certificate of currency from the insurer;
 - iii) a cover note plus a receipt for the full premium paid from the insurer and an undertaking to forward the original of the policy.

The cover must be for full replacement costs and include earthquake risk.

The interest of the lender must be noted as the appropriately ranking chargeholder on the insurance policies and such interest must appear on the insurance evidence produced on settlement.

The lender does not accept brokers' certificates. Certificates must be from the leading underwriter.

If the advance is for construction work, a contractor's all risks or builder's policy is required by the lender for the period of construction with the interest of the lender noted.

- (c) **Lender's Settlement Requirements:** Satisfaction of those conditions set out in the First Schedule and the settlement requirements requested by the Lender or the Lender's solicitors.

3.2 **Conditions Precedent to Drawdown of Loan:** The Lender shall not be obliged to make a Drawing available to the Borrower:

- (a) if an Event of Default has occurred on or before the Commencement Date, or will occur as a result of making available the Loan; and
- (b) until the Lender is satisfied that no event has occurred or circumstances have arisen which in the opinion of the Lender may have a Material Adverse Effect on the Borrower.

4. **Interest and Fees**

- 4.1 **Payment of Interest and Monthly Administration Fee:** The Borrower shall pay to the Lender on each Interest Payment Date the monthly administration fee of \$25.00 (or that portion that applies to the payment frequency requested by the Borrower), and interest in arrears at the Interest Rate, calculated on the Moneys Owed for the time being outstanding during the preceding Interest Period.
- 4.2 **Calculation of Interest:** Interest, including default interest, shall accrue and be calculated on the Moneys Owed on a daily basis, and shall be calculated on the basis of days elapsed in a three hundred and sixty five (365) day year.
- 4.3 **Default Interest on Overdue Moneys:** The Borrower shall pay to the Lender upon demand interest calculated on a daily basis at the Default Interest Rate on all moneys (including interest) payable under this Agreement which may from time to time be overdue, such interest to accrue after as well as before judgment and up to and including the date of actual payment.

If the Borrower fails to pay any instalment of interest or principal on or before the relevant Interest Payment Date, or the Repayment Date as the case may be, the Borrower shall pay to the Lender on demand, interest at the Default Interest Rate on the instalment and that portion of the principal which remains unpaid by the Borrower for the period during which it remains unpaid.

- 4.4 **Payments of Interest:** Interest shall be paid to the Bank Account of the Lender as specified in the First Schedule or such other bank account as the Lender may notify to the Borrower in writing.
- 4.5 **Loan Application Fee:** The Borrower shall pay the Loan Application Fee which shall be deducted by the Lender at drawdown of the Loan.
- 4.6 **Default and Credit Fees:** The Lender shall be entitled to charge the credit fees and charges and the default fees and charges identified in the First Schedule Any fee so charged shall be deemed to form part of the Moneys Owed.
- 4.7 **Variation of Fees and Charges:** The fees and charges set out in the First Schedule may be varied from time to time by the Lender giving you no less than 30 days notice thereof or at the time of any renewal of this loan that the Borrower and Lender agree to. Such fees and charges shall be subject to the provisions of the CCCFA.

5. **Repayment**

- 5.1 **Final Repayment:** The Borrower shall repay in full to the Lender on the Repayment Date the Moneys Owed then outstanding.
- 5.2 **Partial Repayment:** The Borrower may repay in part or full all of the Moneys Owed provided always that the amount repaid cannot be reborrowed (except with the consent of the Lender) and the Lender's obligations under this Agreement are then at an end.
- 5.3 **Extension to Term:** If the Lender and Borrower agree to extend the term of the Loan then the Loan shall be deemed extended for such further period and on such other terms as the parties agree and otherwise the extension shall be on the terms set out in this agreement

6. Representations and Warranties

6.1 **Representations and Warranties:** The Borrower jointly and severally represents and warrants to and for the benefit of the Lender as follows:

- (a) **Status:** Each of them have the capacity to enter into, exercise their rights, perform and comply with their obligations under and engage in the transactions contemplated by this Agreement and the Mortgage and those documents are legal and valid obligations, binding on them in accordance with their terms;
- (b) **Purpose:** The Loan and any product resulting from the Loan is to be used only for the purpose set out in clause 2.2 of this Agreement;
- (c) **No Default:** No Event of Default has occurred or might occur as a result of making the Loan and they are not in breach of or in default under any agreement which is binding on them to an extent or in a manner which could have a Material Adverse Effect;
- (d) **Existing Charges:** Except as otherwise approved in writing by the Lender, no charge of any nature exists on or over the Borrowers and/or Guarantor's assets, the subject of the Mortgage or security interest;
- (e) **Solvency:** The Borrower is able to pay the Borrower's debts when due and the Borrower is not aware of any steps or legal proceedings being taken or threatened against the Borrower for the Borrower's bankruptcy.
- (f) **Goods and Services Tax ("GST"):** The Borrower warrants that it will not claim GST pursuant to the Goods & Services Tax Act 1985 (or any replacement or substituted legislation) on the Property, unless the Borrower has provided the Lender with written confirmation, prior to acceptance of the loan offer by the Borrower, that a claim has been made in respect of the Property. The Borrower acknowledges and agrees the Moneys Owed shall become immediately due and payable should any GST be claimed in respect of the Property.
- (g) **Pre-Contract Information:** All information provided by the Borrower to the Lender, including all information provided through a broker, is true and correct including, without limitation, the information relating to the needs and requirements and the income and expenditure of the Borrower.

6.2 **Repetition:** The representations and warranties contained above will be correct and complied with in all respect on the date of this Agreement and on each date upon which any payment is due under this Agreement, as if given on that date by reference to the facts and circumstances then prevailing.

7. Undertakings

7.1 **General Undertakings:** Each of the Borrowers jointly and severally undertakes to the Lender that it shall:

- (a) **Events of Default:** Notify the Lender of the occurrence of any Event of Default immediately upon becoming aware of it;
- (b) **Litigation:** Promptly deliver to the Lender details of any litigation, arbitration or administrative proceeding which has or could give rise to a Material Adverse Effect;
- (c) **Compliance with Laws:** Promptly comply with all laws non-compliance with which might impose any charge of any nature on its business or its assets or have a Material Adverse Effect on it including the compliance with any

applicable environmental laws and building laws in respect of its properties or assets the subject of the Security Documents;

- (d) **Pay Taxes:** File all tax returns as required by law, and pay and discharge all taxes when due;
- (e) **Inspection:** Permit the Lender or any authorised officer of the Lender, upon reasonable notice and at reasonable intervals during normal business hours, to inspect its premises, books, documents and records;
- (f) **Insurance:** As long as any Moneys Owed remain outstanding:
 - (i) insure and keep insured in the name of the Lender with an insurer approved by the Lender all insurable assets of the Borrower and/or Guarantor against all risks as it is prudent to insure against, (including without limitation) loss or damage by fire, earthquake or natural disaster damage (as defined in the Earthquake Commission Act 1993) for full replacement value. All moneys received by virtue of any such policy shall be applied, at the option of the Lender, either in or towards making good the relevant loss or damage, or in or towards payment of all or any of the Moneys Owed, notwithstanding that the time or times for payment may not have arrived;
 - (ii) provide the Lender with particulars of all such insurances and to duly and punctually pay all premiums and sums of money necessary to keep on foot those insurances, and, if required by the Lender, to deliver to the Lender the receipts for those payments.
- (g) **Statement of Financial Position:** Promptly provide, whenever requested by the Lender, a statement of the Borrower's financial position, setting out the Borrower's assets and liabilities (including contingent liabilities) as at the date of the Lender's request.

8. Events of Default

Events of Default: An Event of Default shall occur if:

- (a) **Non-Payment:** The Borrower fails to pay any amount due under this Agreement on its due date; or
- (b) **Breach by the Borrower of Other Obligations:** The Borrower commits any breach of or omits to observe or perform any of its obligations or undertakings under this Agreement or the Security Documents or any of them on its due date; or
- (c) **Misrepresentations:** Any representation or warranty made, deemed to be made or repeated by the Borrower in or pursuant to this Agreement or the Security Documents or any of them is or was untrue or incorrect in any material respect when made, deemed to be made, or repeated; or
- (d) **Insolvency:** The Borrower becomes insolvent or is unable to pay the Borrower's debts when due; or
- (e) **Act of Bankruptcy:** The Borrower commits an act of bankruptcy as that term is defined in section 19 of the Insolvency Act 1967 (or as defined in sections 16 to 28 of the Insolvency Act 2006 where that Act applies);

- (f) **Cross Default:** Any other indebtedness for borrowed money of the Borrower is not paid when due or if steps are taken to enforce any security for such indebtedness; or
- (g) **Material Adverse Effect:** Any other event or series of events, whether related or not occurs, or circumstances arise or exist which in the reasonable opinion of the Lender may have a Material Adverse Effect on the Borrower or its ability or willingness to perform or comply with all or any of its obligations under this Agreement or Security Documents or any of them; or
- (h) **Invalidity:** Any provision of this Agreement or the Security Documents or any of them ceased to have effect or becomes illegal or unenforceable in whole or in part in any material respect, otherwise than in accordance with its terms; or
- (i) **Abandonment:** The Borrower abandons the Property to the extent that the Lender considers in its sole discretion that the Property value is being, or may be, adversely affected, or in the event of a development loan, the development of the Property is not being progressed appropriately, as the Lender may in its sole discretion reasonably consider, or in accordance with schedules provided to the Lender, notwithstanding weather and other unforeseen circumstances.

8.1 **Remedies on Default:** Upon or at any time after the occurrence of an Event of Default the Lender may at its discretion and without prejudice to its other rights and remedies by notice in writing to the Borrower take all or any of the following actions;

- (a) demand immediate repayment of the Moneys Owed. If so demanded the Borrower shall immediately repay the Moneys Owed to the Lender;
- (b) enforce, or procure the enforcement of, its rights and remedies under this Agreement and the Security Documents or any of them in such order as it thinks fit.

9. Taxes

9.1 **Gross-Up:** If the Borrower is required by law to make any deduction or withholding from any amount paid or payable by it under this Agreement or the Security Documents (including but not limited to any payment under this clause 9.1) or the Lender is required by law to make any payment on account of tax (other than tax on the overall net income of the Lender) or otherwise, on or in relation to any amount received or receivable by it under this Agreement or the Security Documents then:

- (a) the Borrower shall ensure that any such deduction or withholding does not exceed the legal minimum and shall pay any such tax or other amount required to be deducted or withheld to the relevant taxation or other authority before the date on which penalties accrue due to the non-payment;
- (b) the amount payable by the Borrower in respect of which such deduction, withholding or payment is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction, withholding or payment, the Lender receives and retains (free from any liability in respect of any such deduction, withholding or payment) a net amount equal to the amount which the Lender would have received and so retained had no such deduction, withholding or payment been made; and
- (c) the Borrower shall deliver to the Lender, within thirty (30) days after each deduction or withholding is required by law to be made, a receipt issued by

the applicable taxation or other authority evidencing that such deduction or withholding has been made.

10. **Set-Off**

10.1 **Set-Off:** The Borrower irrevocably authorises the Lender (without prior notice or demand) and despite any settlement of account or other matter at any time after the occurrence of an Event of Default to:

- (a) set-off against any debt or liability of the Lender to the Borrower, all or part of the Moneys Owed;
- (b) apply all or any part of any credit balance (whether or not then due) to which the Borrower is at any time beneficially entitled on any account with the Lender (any such credit balance in this clause called "a credit balance") in or towards satisfaction of any sum due from or liabilities of any nature of the Borrower to the Lender under this Agreement or the Mortgage, and to accelerate the date for payment of any deposit for this purpose; and
- (c) if at any time any amount is contingently due or is not quantified, retain and withhold repayment of all or any part of any credit balance pending such amount becoming due or becoming quantified, or set-off all or any part of any credit balance up to the maximum liability which may at any time be or become owing by the Borrower to the Lender or partly the one and partly the other as determined by the Lender in its sole discretion.

This clause is subject to any provisions of the Credit Contracts and Consumer Finance Act 2003 which may entitle the Borrower to cancel or repay a credit contract, or which give the Borrower other rights, and which cannot lawfully be excluded.

11. **Attorney**

11.1 **Lender as Attorney:** The Borrower irrevocably appoints the Lender and every manager, officer or duly appointed agent for the time being of the Lender severally the lawful attorney of the Borrower in the Borrower's name and on the Borrower's behalf at any time and in such manner as the Lender in its absolute discretion shall think fit, to take all steps and proceedings and to do all acts, matters and things as the Lender shall think proper to:

- (a) remedy any default or breach of the terms and provisions of this Agreement or the Mortgage by the Borrower;
- (b) exercise any of the rights, powers and remedies of the Lender contained in this Agreement or the Mortgage;
- (c) execute any deed, instrument or document necessary for the Lender to perfect its title to any of the assets charged or intended to be charged by the Mortgage as required for the purpose of this clause;

and the Lender as attorney shall have power from time to time to appoint a substitute or substitutes and to remove that substitute or those substitutes at its pleasure and the Borrower agrees to ratify and confirm whatever the Lender or its substitutes may lawfully do or cause to be done by virtue of this clause.

12. **Indemnities**

12.1 The Borrower indemnifies, and agrees to save harmless, the Lender from and against all losses, claims, demands, liabilities, payments, charges and expenses which may be made against or incurred by the Lender arising from or relating to this Agreement or the Security Documents or the exercise by the Lender of any rights, powers or remedies under this Agreement or the Security Documents and further from and against any losses, costs or expenses which the Lender sustains or incurs from any reason or cause whatever and as a consequence of, but not limited to:

- (a) the occurrence of any Event of Default; or
- (b) the pre-payment of the Moneys Owed otherwise than in accordance with the terms of this Agreement; or
- (c) the unwinding or pre-payment of any fixed rate funding obtained by the Lender to fund the Loan to the extent permitted by law; or
- (d) any action by the Lender in the enforcement of or protection of its rights or remedies under this Agreement or the Security Documents; or
- (e) the operation of any statute, by-law or regulation affecting this Agreement or any Security Document or any asset the subject of any Security Document.

13. **Further Assurance**

13.1 **Further Assurance:** The Borrower shall when required by the Lender at the Borrower's cost make, execute, do and perform all such further assurances, instruments, acts or things as the Lender may from time to time reasonably require to:

- (a) perfect this Agreement or the Mortgage; or
- (b) perfect the Lender's title or interest to the assets and properties charged or encumbered or intended to be charged or encumbered by the Mortgage; or
- (c) vest or enable the Lender to vest the assets or properties charged or encumbered by the Mortgage in itself or its nominees or any purchaser as permitted by the terms of this Agreement or the Mortgage.

14. **Payments**

14.1 **Time for Payment:** All payments to be made to the Lender under this Agreement or the Security Documents or any of them shall, except to the extent otherwise provided in any relevant Security Documents, be made by automatic payment in cleared funds prior to 3.00pm on the day on which payment is due and shall be made to a bank account nominated by the Lender in writing, or if the Lender fails to nominate a bank account then payment shall be made to the address of the Lender to which notices are to be served under this Agreement. Payments received after 3.00pm shall be deemed to have been received on the following Business Day. Any costs associated with any other method of payment will be for the account of the Borrower.

- 14.2 **Sum due on a day not a Business day:** If any sum becomes due for payment under this Agreement or the Security Documents or any of them on a day which is not a Business Day then that payment shall be made on the following Business Day, unless that day falls in another month, in which case that payment shall be made on the preceding Business Day, and interest adjusted accordingly.
- 14.3 **No Counterclaim:** All payments to the Lender under this Agreement or the Security Documents shall be made by the Borrower without set-off, counterclaim, condition or qualification and free and clear of, and without any, deduction or withholding except to the extent that this Agreement may otherwise provide.
- 14.4 **Application of Moneys:** The Lender may apply any payment by the Borrower, or other funds received by the Lender in reduction of the liabilities of the Borrower under this Agreement or any Security Document, to the repayment of the principal, interest, fees or any other amount due under this Agreement or any Security Document in the order and manner as the Lender may determine from time to time.
15. **Notices**
- 15.1 **Form and Delivery of Notice:** All notices, requests, demands or other communications to or upon the parties in connection with this Agreement and the Security Documents or any of them shall be given or made in writing, and be:
- (a) signed by the party giving notice, or in the case of a company, a director or secretary or the company, or in the case of the Lender, signed by a manager, director, secretary or other office of the Lender in the case of notices served by or on behalf of the Lender;
 - (b) served upon or delivered to the recipient personally, or sent by post or facsimile to the recipient's usual, or last known place of abode or business, or in the case of a company, to the company's registered office.
- 15.2 **Receipt of Notice:** A notice, request, demand or other communication letter shall be deemed to have been received:
- (a) in the case of personal delivery on a Business Day, on the date of that delivery;
 - (b) if sent by post, on the third Business Day after posting; and
 - (c) in the case of a facsimile sent on a Business day, during normal business hours in the place of receipt, upon the facsimile machine from which the facsimile was sent producing a transmission report which evidences that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purposes of this clause, provided that if transmission is after normal business hours in the place of receipt, it shall be deemed to be received on the commencement of the Business Day, in the place of receipt, following the facsimile machine producing that transmission report.

16. **Privacy of Information**

16.1 **Use of Information:** The Borrower authorises the Lender to collect and hold information concerning the Borrower however gathered from any other person and to use or disclose any information it holds concerning the Borrower (now or in the future) for any purpose relating to the usual business functions and activities of the Lender or any person that is associated with the Lender.

16.2 The Borrower irrevocably authorises the Lender and its lawyers and/or accountants to discuss its financial statements, financial affairs and matters relating to the Lender's security at any time throughout the term, or any extended term, of the Loan:

- (a) with any guarantor of any indebtedness or other obligation of the Borrower to the Lender;
- (b) with the Inland Revenue Department ("IRD") and for the IRD to provide to the Lender any information regarding the Borrower upon request by the Lender; and
- (c) irrevocably authorises and directs its accountants, lawyers, credit reference agencies, previous and current employers, and any providers of credit to the Borrower or any Guarantor and any advisor or party who has knowledge or information relating to the affairs of the Borrower to provide to the Lender any and all information regarding the Borrower (or where the Borrower is a company, the Borrower's subsidiary) upon request by the Lender.

Nothing in this clause shall oblige the Lender to provide any information concerning the financial statements, financial affairs (including, without limitation, details of any indebtedness) or any other matter concerning the Borrower to a guarantor or any other person.

16.3 The Obligor authorises the Lender to carry out identity checks using the Verifi Identity Services system and in accordance with Verifi's terms and conditions, privacy policy and other policies on Verifi's website (www.verifidentity.com).

17. **General Provisions**

17.1 **Cost and Expenses:** The Borrower shall pay to the Lender on demand the amount of:

- (a) all costs, charges and expenses (including legal fees and disbursements calculated on a solicitor and own client basis) incurred by the Lender in connection with the negotiation, preparation and execution of this Agreement and the Security Documents;
- (b) all costs, charges and expenses (including legal fees and disbursements calculated on a solicitor and own client basis) incurred by the Lender in connection with the amendment, discharge or release of this Agreement and the Security Documents or any of them, or the grant of any consent or waiver which the Lender may give, or any negotiations in connection with those matters; and
- (c) all costs, charges and expenses (including legal fees and disbursements calculated on a solicitor and own client basis) incurred by the Lender in connection with the preservation, enforcement or attempted or intended enforcement of the Lender's rights or remedies under this Agreement and Security Documents or any of them.

- 17.2 **Reliance on Representations:** The Borrower acknowledges that the Lender has been induced to enter in to this Agreement in reliance on the representations and warranties made by the Borrower in clause 6 of this Agreement.
- 17.3 **No Representation by the Lender:** The Borrower acknowledges that the Lender has not at any time made any representation to the Borrower as to whether the Loan or any product resulting from the Loan is fit for a particular purpose or is of such nature and quality that it can be expected to achieve a particular purpose.
- 17.4 **No Liability:** If the loan made available under this Agreement is applied to business purposes (whether or not the Lender has agreed to its application for those purposes), the Borrower agrees that the provisions of the Consumer Guarantees Act 1993 are excluded to the fullest extent permitted by law, the provisions of Part 9 of the PPSA will apply to this contract and all provisions which may be lawfully excluded under sections 107(2) will be excluded, and the Lender shall not be liable to the Borrower in any way whatsoever for any direct, indirect or consequential loss or damages.
- 17.5 **Provide Valuation:** The Lender may, at the cost of the Borrower, at the time of each and any extension or renewal of the term of this loan procure a current registered valuation of the Property and/or a valuation of the Collateral, the valuation(s) to be carried out by a valuer or valuers of the Lender's choice and to be to the Lender's entire satisfaction. After obtaining such valuation or valuations the Lender, may, at its entire discretion, elect not to extend or renew the term of this loan. All costs and disbursements incurred by the Lender, either directly or indirectly, in obtaining any valuations required by the Lender under the terms of this Agreement shall be paid by the Borrower promptly on request by the Lender, or at the Lender's discretion, added to the loan balance.
- 17.6 **Site Visit:** The Lender may undertake a site visit of the Property at their discretion and upon giving notice to the Borrower. All reasonable costs and any associated expenses incurred by the Lender, either directly or indirectly, shall be for the account of the Borrower. Costs will be charged at \$95.00 per hour per person plus \$0.70c per kilometre travelled.
- 17.7 **Non-Waiver:** No failure to delay by the Lender in exercising or single or partial exercise of a right, power, discretion, remedy or privilege in connection with this Agreement or the Security Documents shall operate as a waiver of that right, power, discretion or remedy. No course of dealing between the Borrower and the Lender shall operate as a waiver of any right, power, discretion, remedy or privilege of the Lender.
- 17.8 **Remedies Cumulative:** The rights, powers and remedies provided in this Agreement and the Security Documents are cumulative and are not exclusive of any rights, powers or remedies provided by law or pursuant to any other agreement or securities granted either before or after the date of this Agreement.
- 17.9 **Survival of Provisions:** The agreements, undertakings, representations and indemnities of the Borrower in this Agreement and the Security Documents or any of them will survive the termination or expiry of this Agreement, the release or discharge by the Lender of the Security Documents and the repayment of the Moneys Owed.
- 17.10 **Partial Invalidity:** Each of the provisions of this Agreement is severable and distinct from the others. If at any time one or more of those provisions is or becomes invalid, illegal or unenforceable, then the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.
- 17.11 **Conflicts:** Where any conflict or consistency shall arise between any of the terms, conditions and provisions, whether express or implied, of this Agreement and those of

any Security Document, the terms, conditions and provisions of this Agreement shall prevail unless otherwise determined by notice in writing to the Borrower by the Lender.

- 17.12 **Amendment:** This Agreement shall not be amended or varied except in writing signed by the Borrower and the Lender.
- 17.13 **Time of the Essence:** Except as otherwise provided in this Agreement, time is of the essence with respect to any of the Borrower's obligations to pay money under this Agreement and the Security Documents or any of them.
- 17.14 **Assignment:** This Agreement is binding upon and will inure for the benefit of the parties and their respective successors and permitted assigns. The Borrower shall not assign or transfer any of their respective rights or obligations under this Agreement or the Security Documents except with the prior consent in writing of the Lender. The Lender may assign all or part of its rights and benefits under this Agreement and Security Documents without the consent of the Borrower. The Lender may disclose on a confidential basis to a potential assignee or any other person with whom it may wish to enter into contractual relations in connection with this Agreement and the Security Documents such information about the Borrower as may have been made available to the Lender.
- 17.15 **Assignment to Assignee with Contract Manager:** If the Lender assigns all its rights and benefits under this Agreement and Security Documents and if the conditions set out in regulation 20 or 21 of the Credit Contracts and Consumer Finance Amendment Regulations (no 2) 2015 ("the Regulations") are met then any complaint that the Borrower may have shall be brought against the contract manager as those words are defined in the Regulations.
- 17.16 **Certificate Conclusive:** Where any provision of this Agreement or any Security Document provides that the Lender may certify or determine an amount or rate payable by the Borrower, a certificate by the Lender or a manager, director or secretary or other officer of the Lender as to that amount or rate or a notice containing information shall, in the absence of manifest error or fraud, be conclusive and binding on the Borrower.
- 17.17 **Peer to Peer Platform:** The Borrower agrees and acknowledges that an aggregate limit of \$2,000,000 will apply in relation to loans entered into by the Borrower through the Platform in any 12 month period when added together with any other amounts raised by the Borrower from any other peer to peer lending or equity crowd-funding platform, or under the "small offers" exemption, under the FMCA. The Borrower shall not apply for or enter into loans in excess of this aggregate amount.
- 17.18 **Entire Agreement:** This Agreement and the said Security Documents contain all the terms of the agreement between the parties and supersede all prior discussions and arrangements in relation to the subject of this Agreement.

18. Guarantee

The Guarantor hereby unconditionally and irrevocably guarantees to the Lender the due and punctual payment by the Borrower of the Moneys Owed and the due observance and performance of the Borrower of all its obligations under this Agreement and the Guarantor hereby agrees that:

- 18.1 **Payment:** Whenever any default has been made by the Borrower in the payment to the Lender of all or part of the Loan it will forthwith, whether or not demanded, pay such sum to the Lender.

18.2 **Liability not Prejudiced:** The liability of the Guarantor under this Agreement shall not be abrogated, prejudiced or affected by any of the following:

- (a) the granting of time, credit or any indulgence or other concession to the Borrower or to any other guarantor by the Lender or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any securities or of any of the rights of the Lender against the Borrower or by anything done or omitted or neglected to be done by the Lender in exercise of the authorities, powers and discretions vested in it by this Agreement or by any other matter, dealing or thing which but for this provision might operate to abrogate, prejudice or affect the guarantee in this clause 19;
- (b) the liquidation, insolvency, death or bankruptcy of the Borrower or any other guarantor of the Borrower;
- (c) any security held or taken being void, defective or unenforceable on any ground whatsoever;
- (d) failure by the Borrower or the Guarantor to provide any security which ought to be provided under or pursuant to this Agreement or the release thereof;
- (e) any alteration, modification, variation or addition to this Agreement or any of the security documents.

18.3 **Additional to Other Security:** The guarantee in this clause 19 shall be in addition to and not in substitution for or collateral to any other security or right which the Lender may have under or by virtue of this Agreement or any other agreement and in particular shall be independent of any other security.

18.4 **Continuing Guarantee:** The guarantee in this clause 19 is a continuing guarantee and shall remain in full force and effect until the Loan has been paid in full.

18.5 **Lender's Discretion:** The Lender may determine from time to time whether it shall enforce or refrain from enforcing the guarantee in this clause 19 or any other guarantee and may from time to time make any arrangement or compromise with the Borrower or Guarantor which the Lender may think expedient.

18.6 **No Subrogation:** Until the Loan and all other moneys payable by the Guarantor under this Agreement have been fully paid or satisfied and the Lender is of the reasonable opinion that payments made in respect of the Loan will not be set aside under any insolvency provision the Guarantor shall not:

- (a) be entitled to be subrogated to the position of the Lender or to claim the benefit of any security now or in the future held by the Lender for payment of the Loan; or
- (b) exercise any rights (including rights of set-off) or claim any amounts by way of contribution or indemnity from any other surety and/or the Borrower.

In the event of the insolvency of the Borrower the following provisions shall apply:

- (a) the Guarantor will not prove in such insolvency with the Lender or realise any security without the prior written consent of the Lender;

- (b) the Guarantor, if required by the Lender in writing, immediately will prove in any such insolvency owed for all indebtedness to the Guarantor and, in such event, will not exercise or attempt to exercise any right of set-off against or realise any security taken from the Borrower;
- (c) moneys recovered by the Guarantor from any such insolvency shall be received and held in trust for the Lender to the extent of the unsatisfied liability of the Guarantor under this Agreement;
- (d) the Guarantor authorises the Lender to prove for all moneys which the Guarantor has paid pursuant to the Agreement and to retain and to carry to a suspense account and appropriate at the discretion of the Lender any amount received (including amounts from the realisation of any security) until the Lender shall have received payment in full of the Moneys Owed together with any accrued interest and any other payment due hereunder.

18.7 **No Competition:** In the event of the bankruptcy of the Borrower, the Guarantor will not prove in such bankruptcy in competition with the Lender and hereby authorises the Lender to prove for all moneys which any Guarantor has paid hereunder or are otherwise owing to the Lender and have not been paid to it by the Borrower and to retain and to carry to a suspense account and appropriate at the discretion of the Lender the amount received until the Lender shall have received one hundred cents in the dollar in respect of the Moneys Owed and any accrued interest and any other payment due hereunder.

18.8 **Reinstatement:** If any payment made to the Lender by or on behalf of the Borrower be avoided by law such payment shall be deemed not to have discharged or affected the liability of the Guarantor under this Agreement and in that event the Lender and the Guarantor shall be restored to the position in which each would have been and be entitled to exercise all the rights which each would have had if such payment had not been made.

18.9 **Deferred Priority:** The Guarantor shall in respect of any sums paid by it hereunder and in respect of any other rights which may accrue howsoever to it in respect of any sum so paid rank and be entitled to enforce the same only after the Loan shall have been duly paid and satisfied.

18.10 **Borrower:** Although as between the Guarantor and the Borrower, the liability of the Guarantor to the Lender may be that of surety only nevertheless as between the Guarantor and the Lender the liability of the Guarantor shall be deemed to be the liability of Borrower and such liability shall not be affected or diminished by any of the matters hereinbefore mentioned or by any other act, indulgence or omission which but for this clause 19.10 would have operated to release the Guarantor wholly or partly from its liability hereunder to the Lender.

18.11 **Indemnity:** If the whole or any part of the Loan are or may be for any reason irrecoverable from the Borrower and all or part of such moneys are not recoverable from the Guarantor by the Lender by virtue of the guarantee herein contained, then and in each such case:

- (a) the Guarantor as a separate and additional liability under the guarantee in this clause 19 agrees to indemnify the Lender in respect of such moneys;
- (b) the Guarantor as a Borrower agrees to pay the Lender when demanded a sum equal to the amount of such moneys; and
- (c) for the purpose of this indemnity, the guarantee in this clause 19 shall be construed as if such moneys were recoverable.

18.12 **Security:** In support of its guarantee obligations under this Agreement the Guarantor agrees that the Loan has been made available by the Lender is in part at the request of the Guarantor and agrees to grant to the Lender the Security Documents (if any) as security for the payment of the Moneys Owed and the due observance and performance by the Borrower of all of its obligations under this Agreement.

18.13 **Lender as Attorney:** The Guarantor irrevocably appoints the Lender and every manager, officer or duly appointed agent for the time being of the Lender severally the lawful attorney of the Guarantor in the Guarantor's name and on the Guarantor's behalf at any time and in such manner as the Lender in its absolute discretion shall think fit, to take all steps and proceedings and to do all acts, matters and things as the Lender shall think proper to:

- (a) remedy any default or breach of the terms and provisions of this Agreement or the Mortgage by the Guarantor;
- (b) exercise any of the rights, powers and remedies of the Lender contained in this Agreement or the Mortgage;
- (c) execute any deed, instrument or document necessary for the Lender to perfect its title to any of the assets charged or intended to be charged by the Mortgage as required for the purpose of this clause;

and the Lender as attorney shall have power from time to time to appoint a substitute or substitutes and to remove that substitute or those substitutes at its pleasure and the Guarantor agrees to ratify and confirm whatever the Lender or its substitutes may lawfully do or cause to be done by virtue of this clause.

19.14 **Amounts Recoverable:** This guarantee shall be security for the whole of the moneys hereby guaranteed.

18.14 **Costs:** The Guarantor agrees to indemnify the Lender for all costs and expenses (including legal expenses) incurred by the Lender in or in connection with the preservation and/or enforcement of the Lender's rights under this guarantee and in suing for or attempting to sue for or recovering any sum due to the Lender hereunder.

18.15 **Guarantor Trustee's Limitation of Liability:** Notwithstanding anything else contained or implied in this Agreement, if a party entering this guarantee is recorded in the First Schedule as a limited liability trustee then the liability of that trustee shall be limited to the same extent set out in clause 32(c) of Mortgage Memorandum 2011/4301.

SIGNATURES

SIGNED by the Lender)
SCFL Nominees Limited)
by its attorney Struan Grant McOmish)
in the presence of:)

Witness Signature

Witness Occupation

Witness Town/City of Residence

SIGNED by the Borrower)
)
in the presence of:)

Witness Signature

Witness Occupation

Witness Town/City of Residence

SIGNED by the Guarantor)
)
In the presence of :)

Witness Signature

Witness Occupation

Witness Town/City of Residence

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

(Individual - Schedule 1- Property Law Act 2007)

I, Struan Grant McOmish of Auckland, Solicitor, certify -

1. That by deed dated 28 July 2015, SCFL Nominees Limited appointed me its attorney.
2. That I have not received notice of any event revoking the powers conferred by the said deed.

Signed at Auckland on

Struan Grant McOmish
Attorney