

Term Loan Agreement

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**Loan Investment Trustees Limited**

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THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_

2023

## PARTIES

### LOAN INVESTMENT TRUSTEES LIMITED

("Lender")

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("Borrower")

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("Guarantor")

## BACKGROUND

- A. The Lender, at the request of the Borrower and the Guarantor (if any), has agreed to advance to the Borrower a loan on the terms and conditions contained in this Agreement.

## FIRST SCHEDULE – LOAN TERMS

<b>Name and address of Borrower:</b>	[ ]
<b>Name and address of Guarantor(s):</b>	[ ]
<b>Loan/Maximum Amount of the Loan:</b>	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 documentation fees;  (d) \$ [ ] to be made available to the Borrower.
<b>Commencement Date:</b>	The date upon which the Borrower makes a drawing of the Loan in accordance with this Agreement
<b>Expiry Date:</b>	The date which is [ ] months from the Drawdown Date
<b>Loan Purpose:</b>	[ ]
<b>Interest Period</b>	[ ]
<b>Interest Rate:</b>	[ ]% per annum
<b>Default Rate:</b>	[ ]% per annum – being 9.95% per annum above the Interest Rate
<b>Fees:</b>	\$[ ] Loan Application Fee, \$[ ] Lender's documentation fee and brokerage fee of \$[ ] . The fees shall be deducted from the Loan and

	will bear interest accordingly.
<b>Interest Calculation and Payment Dates:</b>	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 [ ] anniversary of the Commencement Date in [ ] equal instalments of \$[ ] each.
<b>Monthly administration fee</b>	\$25.00 per month
<b>Early Repayment Fee</b>	A fee equivalent to [ ] month's interest
<b>Bank account into which payments should be made (Subject to the Lender's right to change from time to time by notice to the Borrower):</b>	Bank of New Zealand (Loan Investment Trustees Limited) 02 0108 0255443 000
<b>Property:</b>	The land and property at [ ] and contained in record of title [ ]
<b>Securities:</b>	First registered all obligations mortgage over the Property  General security interest over all of the Borrower's present and after acquired property  Specific security interest over all of the Borrower's current and future intellectual property and statutory approvals in relation to the property at ("collateral address")
<b>Letter of Offer</b>	The letter of offer dated [ ]
<b>Independent Trustee (refer clause 19.16)</b>	It is acknowledged that [ ] is an independent trustee for the purposes of clause 19.16
<b>Conditions:</b>	<ol style="list-style-type: none"> <li>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;</li> <li>2. Original signed copies of registered valuations (if required in Letter of Offer) addressed to the Lender including a mortgage recommendation and confirmation that the valuer has adequate professional indemnity insurance;</li> <li>3. Any other matters reasonably required by the Lender's solicitor;</li> <li>4. Confirmation to the satisfaction of the Lender that all required insurance cover is in place;</li> <li>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.</li> </ol>

<p><b>Credit Fees and Charges</b></p>	<p>The following credit fee(s) and charge (s) are payable by the Borrower.</p> <p>\$25 loan administration fee per month</p> <p>\$300 per person for any property visit/client visit/meeting within the region of lender's office plus \$0.95 per kilometre travelled plus any out of pocket expenses</p> <p>\$500 per person for any property visit/client visit/meeting outside the region of lender's office plus \$0.95 per kilometre travelled plus any out of pocket expenses</p> <p>\$125 per hour for sundry loan administration attendances plus actual costs (minimum \$10)</p> <p>\$375 administration fee on security discharge and/or loan revision together with lender's legal or documentation costs (further fees payable on early repayment are disclosed under the repayment section)</p> <p>\$25 processing fee on all progress drawdown claims</p> <p>In the event of the Lender agreeing to increase its funding, renew the term of the loan, revise or vary any term of the loan at the request of the Borrower, the Borrower shall pay to the Lender such fees as the Lender may determine will adequately compensate the Lender in agreeing to the variation</p>
<p><b>Default Fees and charges</b></p>	<p>\$250 for each and every dishonoured, reversed or late payment</p> <p>\$125 per hour per person calculated on a time and attendance basis (minimum \$10)</p> <p>In the event of the Lender exercising remedies, further charges will apply as follows:</p> <p>\$500 on referral to in-house legal for issue of a Notice pursuant to section 119 of the Property Law Act</p> <p>\$500 on instruction of a real estate agent</p> <p>\$500 on undertaking an auction of security property or withdrawal of property from sale process</p> <p>All legal expenses (in-house legal or otherwise) incurred by the Lender in or in connection with the enforcement of the Lender's rights are for the account of the Borrower.</p> <p>In the event of a default the Lender may require a site visit and/or updated registered valuation, with any associated costs for the account of the Borrower.</p>

## AGREEMENT

### 1 Interpretation

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

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

“**Application Fee**” means an application fee of the amount set out in the First Schedule and/or the Letter of Offer.

“**Availability Date**” means the date which is five working days after the issue of loan instructions by the Lender’s solicitors or such earlier date as the Lender may agree to.

“**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.

“**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 and/or the Guarantor which is the subject of a security interest under this Agreement or any Security Document.

“**Default Interest Rate**” means with respect to each Interest Period the Default Interest Rate specified in the First Schedule.

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

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

“**Early Repayment Fee**” means a fee of the amount set out in the First Schedule.

“**Event of Default**” means any of the events specified as such in clause 9.1 of this Agreement.

“**Expiry Date**” means the date specified 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.

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

“**Independent Trustee**” means the person(s) named as Independent Trustee in the First Schedule.

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

“**Interest Period**” shall mean a 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 Drawdown Date and shall end at 3.00 pm 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 Expiry Date shall be of such duration that it shall end on the Expiry Date.

**“Interest Rate”** means, with respect to the Interest Period, the rate that is recorded as the Interest Rate in the First Schedule, subject to the Lender’s right to amend the Interest Rate under the terms of this Agreement.

**“Letter of Offer”** means the Lender’s letter of offer to the Borrower as described 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.

**“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 the Guarantor in favour of the Lender as security for the Moneys Owed.

**“Obligor”** means the Borrower and the Guarantor and each of them. Where there is no Guarantor, the terms “Obligor” and “Borrower” may be used interchangeably.

**“Platform”** means the Lender’s peer to peer lending platform.

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

**“PPSA”** means the Personal Property Securities Act 1999.

**“Purpose”** means the purpose described 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.

**“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 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:

1.3.1 headings are inserted for reference only and shall be ignored in construing this Agreement. References to clauses are references to clauses in this Agreement;

1.3.2 words importing one gender include the other gender and words importing the singular include the plural and vice versa;

1.3.3 references to a document are references to that document as varied, amended or novated from time to time;

1.3.4 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

1.3.5 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”, “Borrower”, “Guarantor” or “Obligor” 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.

1.5 **PPSA:** The terms “accessions”, “financing change statement”, “financing statement”, “personal property”, “security interest” and “verification statement” have the meanings given to them in, or in the context of, the PPSA.

## 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, or such other purpose previously notified in writing to, and accepted in writing by, the Lender. The Borrower shall not utilise the Loan for any other purpose without obtaining the prior written consent of the Lender. In particular, the Loan has been advanced for the Borrower's business and/or investment purposes and must not under any circumstances be used for personal, household or domestic purposes.
- 2.3 **Availability of Drawings:** Subject to the conditions precedent in clause 3 having been satisfied, the Borrower may draw down the Loan from the Availability 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, or charge such a fee as the Lender shall determine appropriate to compensate it for its expenses and losses, which sum shall be added to the outstanding principal on Drawdown Date. The Lender may at its entire discretion extend the Availability Date by five (5) working days.

### 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 Availability Date or such later date as the Lender may in its discretion approve the following in a form satisfactory to the Lender:
- 3.1.1 **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;
- 3.1.2 **Proof of Insurance:** Proof of insurance for all Property and Collateral provided as security under this Agreement that satisfies the following requirements:
- (a) Proof of insurance must be provided in the form of the original policy from the insurer; an original certificate of currency from the insurer, or a cover note plus a receipt for the full premium paid from the insurer and an undertaking to forward the original of the policy.
  - (b) The cover must be for an agreed sum insured value, including full earthquake cover, of no less than the amount recommended in the registered valuation, or as otherwise acceptable to the Lender.
  - (c) 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.
  - (d) The Lender does not accept brokers' certificates. Certificates must be from the leading underwriter.
  - (e) 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.
  - (f) In the case of a unit under the Unit Titles Act 2010, mortgage redemption insurance for the amount of the Loan will also be required.
- 3.1.3 **Lender's Settlement Requirements:** Satisfaction of all other matters 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:
- 3.2.1 if an Event of Default has occurred on or before the date of the Drawing, or will occur as a result of making available the Loan; and
- 3.2.2 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 or the Guarantor.

#### 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:
- 4.1.1 a monthly administration fee of the amount set out in the First Schedule (or that portion that applies to the payment frequency requested by the Borrower); and
- 4.1.2 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 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 **Amendment of Interest Rate:** The Lender has the right, on giving to the Borrower not less than one month's notice in writing, to increase the Interest Rate, with a consequential increase in the interest payable under this Agreement.
- 4.4 **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. Where the overdue moneys relate to interest which is not paid on the relevant Interest Payment Date, then the Interest Rate shall be increased to the Default Interest Rate payable upon the principal sum in respect of the period beginning:
- 4.4.1 where the Borrower has paid no instalment of interest under this Agreement, on the Drawdown Date;
- 4.4.2 in any other case, on the day after the due date of the last interest payment that at the time the rate is increased, has been paid by the Borrower; and
- ending on the date on which the payment is made or completed of interest on the principal sum calculated at the Default Interest Rate from the date when the default period begins down to and including the date on which the last mentioned payment is so made or completed.
- 4.5 The amount of any interest instalment that represents and includes interest for any part of the period described in clause 4.4 shall be increased to the extent required to give effect to the Interest Rate increase. Interest for the remainder of the Interest Period current at the time that any default interest ceases to run under the foregoing provisions of this subclause shall be payable on the Interest Payment Date on which that Interest Period ends and so long as there is no further or other default occasioning its increase, it shall be calculated at the Interest Rate.

- 4.6 If the Borrower fails to pay any instalment of interest on or before the relevant Interest Payment Date the Borrower shall pay to the Lender on demand, interest at the Default Interest Rate on the instalment for the period during which it remains unpaid.
- 4.7 **Application Fee:** The Borrower must pay the Application Fee to the Lender before the Loan may be drawn down. The Lender may agree to the Application Fee being paid from the Loan on the Drawdown Date.
- 4.8 **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.
- 4.9 **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, Variations and Renewals

- 5.1 **Final Repayment:** The Borrower shall repay in full to the Lender on the Expiry Date the Moneys Owed then outstanding.
- 5.2 **Early Repayment:** The Borrower may repay in part or full the Moneys Owed prior to the Expiry Date provided always that:
- 5.2.1 the Borrower shall pay, in addition to paying to the Lender on the date of the repayment the Moneys Owed, the Early Repayment Fee together with a reasonable estimate of the Lender's loss arising from the repayment prior to the Expiry Date; and
  - 5.2.2 any amount repaid cannot be reborrowed (except with the consent of the Lender); and
  - 5.2.3 in the event of repayment in full of the Moneys Owed, the Lender's obligations under this Agreement are then at an end.
- 5.3 **Variation of Loan:** In the event of the Lender agreeing to increase its funding, revise or vary any term of the loan at the request of the Borrower, the Borrower shall pay to the Lender such fees as the Lender may determine will adequately compensate the Lender in giving consideration to and consenting to the variation. If the Lender and the Borrower agree to the terms of the variation, then the Loan shall be deemed varied on such other terms as the parties agree and otherwise on the terms set out in this Agreement.
- 5.4 **Renewal of Term:** In the event the Borrower does not repay the moneys due hereunder on the Expiry Date, the Lender may, at its sole discretion, elect to extend the term of this Loan for such further period (not exceeding the original term of this Loan) as the Lender shall determine and the Borrower shall pay a fee equivalent to the original application fee (or such lesser sum as the Lender shall determine), which sum shall be added to the outstanding Moneys Owed. Upon the Lender so agreeing to such a renewed term, the Loan shall be deemed to be extended for such further period upon the terms and conditions as are contained herein unless otherwise varied in writing to the Borrower. Nothing in this Clause 5.4 shall oblige the Lender to renew the term, and if the Lender has not notified the Borrower by the Expiry Date of the renewal then the Borrower shall repay in full to the Lender all the Moneys Owed then outstanding on the Expiry Date.

## 6 Securities

- 6.1 **Provision of Security:** The Obligor covenants with the Lender to provide or procure the provision of the securities listed in the First Schedule, and any further securities as the Lender may from time to time require.

## 7 Representations and Warranties

- 7.1 **Representations and Warranties:** The Obligor represents and warrants to and for the benefit of the Lender as follows:
- 7.1.1 **Status:** The Obligor has the capacity to enter into, exercise its rights, perform and comply with its obligations under and engage in the transactions contemplated by any Related Document to which it is a party and those documents are legal and valid obligations, binding on the Obligor in accordance with their terms;
  - 7.1.2 **Purpose:** The Loan and any product resulting from the Loan will be used only for the Purpose;
  - 7.1.3 **No Default:** No Event of Default has occurred or might occur as a result of making the Loan and the Obligor is not in breach of or in default under any agreement which is binding on it to an extent or in a manner which could have a Material Adverse Effect;
  - 7.1.4 **Existing Charges:** Except as otherwise permitted under this Agreement or approved in writing by the Lender, no Charge of any nature exists on or over the Obligor's assets, the Property or the Collateral.
  - 7.1.5 **Solvency:** The Obligor is able to pay the Obligor's debts when due and the Obligor is not aware of any steps or legal proceedings being taken or threatened against the Obligor for the Obligor's bankruptcy, administration (whether voluntary or otherwise), liquidation or winding up.
  - 7.1.6 **Goods and Services Tax ("GST"):** The Obligor warrants that it will not claim GST pursuant to the Goods & Services Tax Act 1985 on the Property, unless the Obligor has provided the Lender with written confirmation, prior to acceptance of the loan offer by the Obligor, that a claim has been made in respect of the Property. The Obligor acknowledges and agrees the Moneys Owed shall become immediately due and payable should any GST be claimed in respect of the Property. The Obligor further acknowledges that in the event of the Moneys Owed falling due pursuant to this clause interest shall be payable at the Default Interest Rate plus five percent (5%) per annum from the date of any GST claimed.
- 7.2 **Repetition:** The representations and warranties contained above are deemed to be repeated, correct and complied with in all respects on the date of this Agreement, on the date of each Drawing 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.

## 8 Undertakings

- 8.1 **General Undertakings:** The Obligor undertakes to the Lender that it shall:
- 8.1.1 **Events of Default:** Notify the Lender of the occurrence of any Event of Default immediately upon becoming aware of it;

- 8.1.2 **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;
- 8.1.3 **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 the Property or Collateral;
- 8.1.4 **Pay Taxes:** File all tax returns as required by law, and pay and discharge all taxes when due, except only to the extent that such taxes are being contested in good faith by appropriate proceedings;
- 8.1.5 **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;
- 8.1.6 **Insurance:** As long as any Moneys Owed remain outstanding:
- (a) insure and keep insured with an insurer approved by the Lender all insurable assets of the Borrower and the 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 an agreed sum insured value, the agreed sum insured value being acceptable to the Lender. If the Loan is for construction works, a contractor's all risk or builder's policy is required. The interest of the Lender must be noted on the policy as the appropriately ranking chargeholder. 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;
  - (b) provide the Lender with particulars of all such insurances and 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.
- 8.1.7 **Statement of Financial Position:** Promptly provide, whenever requested by the Lender, a statement of the Obligor's financial position, setting out the Obligor's assets and liabilities (including contingent liabilities) as at the date of the Lender's request.

## 9 Events of Default

- 9.1 **Events of Default:** An Event of Default shall occur if:
- 9.1.1 **Non-Payment:** The Obligor fails to pay any amount due under this Agreement on its due date;
  - 9.1.2 **Breach by the Obligor of Other Obligations:** The Obligor commits any breach of or omits to observe or perform any of its obligations or undertakings under any Related Document on its due date;
  - 9.1.3 **Misrepresentations:** Any representation or warranty made, deemed to be made or repeated by the Obligor in or pursuant to any Related Document is

or was untrue or incorrect in any material respect when made, deemed to be made, or repeated;

- 9.1.4 **Insolvency:** The Obligor becomes insolvent, is unable to pay the Obligor's debts when due, or makes a general assignment, compromise or an arrangement or composition with or for the benefit of any of the Obligor's creditors or general moratorium on the payment of indebtedness or stops or threatens to stop any payment or payments generally or a judgement of any court against the Obligor shall remain unsatisfied for more than seven (7) days or, where the Obligor is an individual, as defined in sections 16 to 28 of the Insolvency Act 2006, that Act applies;
  - 9.1.5 **Act of Bankruptcy:** The Obligor commits an act of bankruptcy (as that term is defined in section 19 of the Insolvency Act 2006);
  - 9.1.6 **Cross Default:** Any other indebtedness of the Obligor is not paid when due, shall become due and payable prior to its stated maturity by reason of a default or event of default (however described), or if steps are taken to enforce any security for such indebtedness;
  - 9.1.7 **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 Obligor or its ability or willingness to perform or comply with all or any of its obligations under any Related Document;
  - 9.1.8 **Invalidity:** Any provision of any Related Document ceases to have effect or becomes illegal or unenforceable in whole or in part in any material respect, otherwise than in accordance with its terms;
  - 9.1.9 **Abandonment:** The Obligor 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; or
- 9.2 **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 Obligor take all or any of the following actions:
- 9.2.1 demand immediate repayment of the Moneys Owed. If so demanded the Obligor shall immediately repay the Moneys Owed to the Lender;
  - 9.2.2 enforce, or procure the enforcement of, its rights and remedies under the Related Documents in such order as it thinks fit.

## 10 Taxes

- 10.1 **Gross-Up:** If the Obligor is required by law to make any deduction or withholding from any amount paid or payable by it under any Related Document (including but not limited to any payment under this clause 10.1) 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 any Related Document then:
  - 10.1.1 the Obligor 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;

- 10.1.2 the amount payable by the Obligor 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
- 10.1.3 the Obligor 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.

## **11 Set-Off**

- 11.1 **Set-Off:** The Obligor 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:
  - 11.1.1 set-off against any debt or liability of the Lender to the Obligor, all or part of the Moneys Owed;
  - 11.1.2 apply all or any part of any credit balance (whether or not then due) to which the Obligor is at any time beneficially entitled on any account (including accounts in the name of the Lender or accounts in the name of the Obligor alone or jointly with others) in any currency 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 Obligor to the Lender under any Related Document, and to accelerate the date for payment of any deposit for this purpose; and
  - 11.1.3 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 Obligor to the Lender or partly the one and partly the other as determined by the Lender in its sole discretion.
- 11.2 Clause 11.1 is subject to any provisions of the CCCFA which may entitle the Obligor to cancel or repay a credit contract or which gives the Obligor other rights and which cannot lawfully be excluded.

## **12 Attorney**

- 12.1 **Lender as Attorney:** The Obligor 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 Obligor in the Obligor's name and on the Obligor'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:
  - 12.1.1 remedy any default or breach of the terms and provisions of any Related Document by the Obligor;

- 12.1.2 exercise any of the rights, powers and remedies of the Lender contained in any Related Document;
- 12.1.3 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 Security Documents 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 Obligor agrees to ratify and confirm whatever the Lender or its substitutes may lawfully do or cause to be done by virtue of this clause.

### **13 Indemnities**

- 13.1 The Obligor 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 any Related Document or the exercise by the Lender of any rights, powers or remedies under any Related Document 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:
  - 13.1.1 the occurrence of any Event of Default; or
  - 13.1.2 the repayment of the Moneys Owed otherwise than in accordance with the terms of this Agreement; or
  - 13.1.3 the unwinding or repayment of any fixed rate funding obtained by the Lender to fund the Loan; or
  - 13.1.4 any action by the Lender in the enforcement of or protection of its rights or remedies under any Related Document; or
  - 13.1.5 the operation of any statute, by-law or regulation affecting any Related Document or any asset the subject of any Security Document.

### **14 Further Assurance**

- 14.1 **Further Assurance:** The Obligor 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:
  - 14.1.1 perfect this Agreement or any security granted by the Security Documents; or
  - 14.1.2 perfect the Lender's title or interest to the assets and properties charged or encumbered or intended to be charged or encumbered by the Security Documents; or
  - 14.1.3 vest or enable the Lender to vest the assets or properties charged or encumbered by the Security Documents in itself or its nominees or any purchaser as permitted by the terms of any Related Document.

### **15 Payments**

- 15.1 **Time for Payment:** All payments to be made to the Lender under any Related Document shall, except to the extent otherwise provided in any relevant Security Documents, be made by automatic payment authority (or by Same Day Cleared Payment if it relates to a payment referred to in clause 5 of this Agreement) in cleared



funds prior to 3.00pm on the day on which payment is due and shall be made to the bank account recorded in the First Schedule or any other bank account nominated by the Lender in writing. 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.

- 15.2 If any sum becomes due for payment under any Related Document 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.
- 15.3 **Late Payment Fee:** The Lender shall be entitled to charge a late payment fee of \$250.00 in respect of any interest payment, dishonour of cheques, partial or incomplete payments whatsoever. Any fee so charged shall be deemed to form part of the Moneys Owed.
- 15.4 **No Counterclaim:** All payments to the Lender under any Related Document shall be made by the Obligor 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.
- 15.5 **Application of Moneys:** The Lender may apply any payment by the Obligor, or other funds received by the Lender in reduction of the liabilities of the Obligor under any Related Document, to the repayment of the principal, interest, fees or any other amount due under any Related Document in the order and manner as the Lender may determine in its discretion from time to time.

## 16 Notices

- 16.1 **Form and Delivery of Notice:** All notices, requests, demands or other communications to or upon the parties in connection with any Related Document ("Notice") shall be given or made in writing, and be:
- 16.1.1 signed by the party giving the Notice, or in the case of a company, a director or secretary or the company, or in the case of Notices served by or on behalf of the Lender, signed by a manager, director, secretary or other officer of the Lender;
- 16.1.2 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.
- 16.2 **Receipt of Notice:** A Notice shall be deemed to have been received:
- 16.2.1 in the case of personal delivery on a Business Day, on the date of that delivery;
- 16.2.2 if sent by post, on the third Business Day after posting; and
- 16.2.3 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.

## 17 Privacy of Information

- 17.1 **Use of Information:** The Obligor authorises the Lender to collect and hold information concerning the Obligor however gathered from any other person and to use or disclose any information it holds concerning the Obligor (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.
- 17.2 The Obligor 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:
- 17.2.1 with any guarantor of any indebtedness or other obligation of the Borrower to the Lender; and
- 17.2.2 with the Inland Revenue Department ("IRD") and for the IRD to provide to the Lender any information regarding the Obligor upon request by the Lender.
- 17.3 The Obligor 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 Obligor to provide to the Lender any and all information regarding the Obligor (or where the Obligor is a company, the Obligor's subsidiary) upon request by the Lender.
- 17.4 Nothing in clause 17.2 or 17.3 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.

## 18 PPSA

- 18.1 **Notice and waiver:** Without limitation to any other provisions of this Agreement, each Obligor that has granted the Lender a security interest that secures the Money Owed (in full or in part):
- 18.1.1 **Change of Name:** will give the Lender not less than 14 days' prior written notice of any proposed change in the Obligor's name (such notice to be given to an officer of the Lender responsible for the relationship with the Borrower);
- 18.1.2 **Care of Collateral:** will keep insured and in good working order, and take care of all Collateral;
- 18.1.3 **Preservation of Collateral:** will not dispose of, lend, part with possession of, or grant to any other person a security interest in the Collateral;
- 18.1.4 **Verification Statement:** waives its right to receive a verification statement in respect of any financing statement or financing change statement registered by the Lender in respect of the Collateral;
- 18.1.5 **Copies of Security Interests:** agrees to supply the Lender, within two (2) Business Days of the Lender's written request, with copies of all security interests registered over the Collateral, and authorises the Lender as its agent to request information from any secured party relating to any security interest which is held in the Collateral; and
- 18.1.6 **Reasonable Costs:** agrees to pay the Lender's reasonable costs, including legal costs on a solicitor-client basis, associated with the discharge or

amendment of any financing statement registered by the Lender, whether or not the change was initiated by the Obligor.

- 18.2 **Security over Collateral:** The Obligors grant to the Lender a security interest in all of the Collateral. Each Obligor agrees to maintain the Collateral at the address listed in the First Schedule, and undertakes not to remove the Collateral except with the written consent of the Lender.
- 18.3 **Repossession of Collateral:** Each Obligor and the Lender agree that, to the extent permitted by law and in respect of any Related Document, if the Borrower is in default of this Agreement, if any Obligor removes the Collateral from the address listed in the First Schedule without the Lender's written consent, or if the Lender reasonably believes that the Collateral is at risk, the Lender may enter into any premises where the Collateral may be stored, using such reasonable force as is necessary, and take repossession of the Collateral, at the cost of the Obligor, and the Obligor will indemnify the Lender against all costs incurred in doing so.
- 18.4 **Part 9:** Each Obligor and the Lender agree that, to the extent permitted by law and in respect of any Related Document the Obligor and the Lender contract out of the Obligor's rights to:
- 18.4.1 receive notice of the Lender's proposal to retain any Collateral under section 120(2) of the PPSA;
  - 18.4.2 object to the Lender's proposal to retain any Collateral under section 121 of the PPSA;
  - 18.4.3 not have goods damaged when the Lender removes an accession under section 125 of the PPSA;
  - 18.4.4 receive notice of the removal of an accession under section 129 of the PPSA;
  - 18.4.5 apply to the court for an order concerning the removal of an accession under section 131 of the PPSA;
  - 18.4.6 redeem any Collateral under section 132 of the PPSA.

Where the Lender has rights in addition to Part 9 of the PPSA, those rights shall continue to apply.

## 19 General Provisions

- 19.1 **Cost and Expenses:** The Borrower shall pay to the Lender on demand the amount of all costs, charges and expenses (including in-house legal fees and disbursements or legal fees and disbursements from an external legal provider) incurred by the Lender in connection with:
- 19.1.1 the negotiation, preparation and execution of the Related Documents;
  - 19.1.2 the amendment, discharge or release of any Related Document, or the grant of any consent or waiver which the Lender may give, or any negotiations or requests by an Obligor in connection with those matters; and
  - 19.1.3 the preservation, enforcement or attempted or intended enforcement of the Lender's rights or remedies under the Related Documents or any of them.
- 19.2 **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 7 of this Agreement.

- 19.3 **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.
- 19.4 **No Liability:**
- 19.4.1 The Loan has been made available under this Agreement for business purposes only. 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 Agreement subject to clause 18 of this Agreement, and the Lender shall not be liable to any Obligor in any way whatsoever for any indirect or consequential loss or damages.
- 19.4.2 To the greatest extent permitted by law, the Lender will not be liable to the Borrower for loss or damage of any kind however that loss or damage is caused or arises. This exclusion of liability includes, but is not limited to, costs, consequential loss, loss of profits, damage caused by or arising from delays, negligence (including a failure to do something which should have been done or to prevent something from happening).
- 19.4.3 Without in any way limiting the above, the Lender will not be liable to the Borrower for any losses caused by events beyond the Lender's reasonable control.
- 19.5 **Provide Valuation:** The Borrower shall at its own cost, when requested by the Lender and in any event upon any renewal or extension of the Loan, including an extension under clauses 5.3 and 5.4 hereof, provide to the Lender a current valuation of the Property addressed to the Lender, undertaken by a registered valuer previously approved by the Lender. If the Borrower fails to comply with this clause then the Lender shall be entitled to instruct registered valuers to carry out such valuations as it requires. The Borrower shall also provide to the Lender on request a current valuation of the Collateral undertaken by a valuer, the valuation to be carried out to the Lender's entire satisfaction. 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 and until payment shall form part of the Moneys Owed.
- 19.6 **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.
- 19.7 **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 any Related Document 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.
- 19.8 **Remedies Cumulative:** The rights, powers and remedies provided in the Related 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.
- 19.9 **Survival of Provisions:** The agreements, undertakings, representations and indemnities of the Borrower in the Related 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.

- 19.10 **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.
- 19.11 **Conflicts:** Where any conflict or inconsistency 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.
- 19.12 **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 the Related Documents or any of them.
- 19.13 **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 any of the Related Documents except with the prior consent in writing of the Lender. The Lender may assign all or part of its rights and benefits under any of the Related 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 the Related Documents such information about the Borrower as may have been made available to the Lender.
- 19.14 **Certificate Conclusive:** Where any provision of a Related 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.
- 19.15 **Entire Agreement:** The Related 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.
- 19.16 **Trustee's Limitation of Liability:** Notwithstanding anything else contained or implied in this Agreement, the Independent Trustee enters into and executes this Agreement in their capacity as trustee only and not in any personal capacity and with the intent that their liability under this Agreement shall be limited to the assets of the relevant trust from time to time, except in the case where they are in breach of trust or have acted dishonestly or have breached their obligations to the beneficiaries of the trust causing their right of indemnity under the trust to be lost.
- 19.17 **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.
- 19.18 **Counterparts -** This Agreement may be executed and exchanged in any number of counterparts (including copies, facsimile copies and scanned email copies) each of which is to be deemed an original, but all of which together are to constitute a binding and enforceable agreement between the parties.
- 20 Guarantee**
- 20.1 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:

- 20.1.1 **Payment:** Whenever any default has been made by the Borrower in the payment to the Lender of all or part of the Moneys Owed it will forthwith, whether or not demanded, pay such sum to the Lender.
- 20.1.2 **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 any Related Document 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 20;
  - (b) the liquidation, insolvency, death or bankruptcy of the Borrower or any other guarantor of the Borrower;
  - (c) any security interest held or taken by the Lender under this Agreement or any Related Document 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 any Related Document.
- 20.1.3 **Additional to Other Security:** The guarantee in this clause 20 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 any Related Document or any other agreement and in particular shall be independent of any other security recorded in a Security Document.
- 20.1.4 **Continuing Guarantee:** The guarantee in this clause 20 is a continuing guarantee and shall remain in full force and effect until the Moneys Owed have been paid in full.
- 20.1.5 **Lender's Discretion:** The Lender may determine from time to time whether it shall enforce or refrain from enforcing the guarantee in this clause 20 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.
- 20.1.6 **No Subrogation:** Until the Loan and all other moneys payable by the Guarantor under any Related Document 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.
- 20.2 In the event of the insolvency of the Borrower the following provisions shall apply:
  - 20.2.1 the Guarantor will not prove in such insolvency with the Lender or realise any security without the prior written consent of the Lender;
  - 20.2.2 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;
  - 20.2.3 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;
  - 20.2.4 the Guarantor authorises the Lender to prove for all moneys which the Guarantor has paid pursuant to this 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.
- 20.3 **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.
- 20.4 **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.
- 20.5 **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 all Moneys Owed shall have been duly paid and satisfied.
- 20.6 **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 20.6 would have operated to release the Guarantor wholly or partly from its liability hereunder to the Lender.
- 20.7 **Indemnity:** If the whole or any part of the Moneys Owed is 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:

- 20.7.1 the Guarantor as a separate and additional liability under the guarantee in this clause 20 agrees to indemnify the Lender in respect of such moneys;
  - 20.7.2 the Guarantor as a borrower agrees to pay the Lender when demanded a sum equal to the amount of such moneys; and
  - 20.7.3 for the purpose of this indemnity, the guarantee in this clause 20 shall be construed as if such moneys were recoverable.
- 20.8 **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.
- 20.9 **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:
- 20.9.1 remedy any default or breach of the terms and provisions of any Related Document by the Guarantor;
  - 20.9.2 exercise any of the rights, powers and remedies of the Lender contained in any Related Document;
  - 20.9.3 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 Security Documents 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.
- 20.10 **Amounts Recoverable:** The Guarantee in this clause 20 shall be security for the whole of the moneys hereby guaranteed.
- 20.11 **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 the guarantee in this clause 20 and in suing for or attempting to sue for or recovering any sum due to the Lender hereunder.



**SIGNATURES**

SIGNED by the Lender ) \_\_\_\_\_  
**LOAN INVESTMENT TRUSTEES LIMITED** ) \_\_\_\_\_  
by its Authorised Signatories: ) \_\_\_\_\_  
)

SIGNED by the Borrower ) \_\_\_\_\_  
**//10//** ) \_\_\_\_\_  
and ) \_\_\_\_\_  
**//10//** ) \_\_\_\_\_  
in the presence of: ) \_\_\_\_\_

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Witness Town/City of Residence

SIGNED by the Guarantor )

**//16//** )

and )

**//16//** )

in the presence of: )

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Witness Signature

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Witness Occupation

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Witness Town/City of Residence