Squirrel

Squirrel P2P Trustee Limited

General terms and conditions

Definitions

1. Location of Definitions

In this Loan Agreement, terms have the meaning given in the Loan Agreement Summary, and unless the context otherwise requires, terms used in upper case in these General Terms and Conditions will have the meanings set out in the “Definitions” section on and from page 27 of these General Terms and Conditions. Please also refer to the "References” section on page 25 for guidance on how certain undefined, lower-case terms are used in the context of these General Terms and Conditions.

Fairness

2. Standard of fairness

The Lender will, when doing anything under the Loan Agreement, act in a reasonable, consistent, and fair way, having regard to its investors, the Obligors and its own business interests and circumstances at the time.

Loan availability and purpose

3. Availability

Subject to the other provisions in the Loan Agreement and the satisfaction of the conditions precedent in Schedule 1 of the Loan Agreement Summary being provided in form and substance satisfactory to the Lender (acting reasonably), the Lender agrees to make the Loan available to the Borrower.

The Loan will be advanced in accordance with the drawdown mechanics set out in Schedule 2 of the Loan Agreement Summary.

4. Purpose

The Borrower must apply the Loan for the Purpose specified in the Loan Schedule. The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to the Loan Agreement.

Interest, fees, repayment and prepayment

5. Interest

(a) Interest will accrue daily on the Principal Amount at the Interest Rate from the Effective Date until the entire Amount Outstanding has been paid in full.

(b) Accrued interest will be paid or capitalised (if permitted) in arrears on each Interest Payment Date.

(c) If the Loan Schedule specifies that interest will be capitalised:

  (i) interest will be added to the Principal Amount on each Interest Payment Date and, as part of the Principal Amount, that interest will also bear interest at the applicable interest rate, provided that interest may not be capitalised unless:

(aa) the Amount Outstanding does not or will not exceed the Loan Limit as a result of such capitalisation; and

(bb) no Event of Default has occurred or is continuing or will occur as a result of such capitalisation; and

(ii) any interest not added to the Principal Amount under (i) above must be paid in accordance with clause 5(d) below.

(d) If the Loan Schedule does not specify that interest will be capitalised or if capitalisation is not permitted as set out in clause 5(c), interest will be payable in arrears on every Interest Payment Date.

(e) If any amount is not paid on its due date, a default rate of interest of 10.00% per annum plus the Interest Rate shall apply in respect of such amount.

(f) If the Loan Schedule specifies that the Interest Rate will be variable, the Lender will as soon as reasonably practicable following a change to the Business Variable Rate, notify the Borrower of such change. For the avoidance of doubt, interest will accrue at the rate published on the Lender's website irrespective of the contents of any notification or any failure by the Lender to notify the Borrower under this clause. No such failure by the Lender or any other matter will relieve the Borrower of any of its obligations under this Loan Agreement.

6. Fees

(a) If the Loan Schedule specifies that fees will be capitalised:

(i) fees will be added to the Amount Outstanding on the dates specified for payment in the Loan Schedule and, as part of the loan, those fees will also bear interest at the applicable interest rate, provided that fees may not be capitalised unless:

(aa) the Amount Outstanding does not or will not exceed the Loan Limit as a result of such capitalisation; and

(bb) no Event of Default has occurred or is continuing or will occur as a result of such capitalisation; and

(ii) any fees not added to the Amount Outstanding under (i) above must be paid in accordance with clause 6(b) below.

(b) If the Loan Schedule does not specify that fees will be capitalised, the Borrower will pay to the Lender the fees specified in the Loan Schedule on the dates specified for payment in the Loan Schedule.

7. Repayment

The Borrower shall:

(a) if specified in the Loan Schedule, repay the Principal Repayment Amount on the relevant Principal Repayment Date.

(b) repay the Amount Outstanding on the Expiry Date.

8. Prepayment

(a) Any amounts prepaid or repaid shall be in permanent reduction of the Loan.

(b) At the time of the prepayment of all or part of the Loan, the Borrower must pay to the Lender:

(i) any fees specified in the Loan Schedule; and

(ii) any interest accrued on the amount prepaid or repaid.

9. Timing and manner of payments

(a) All amounts payable to the Lender by an Obligor under a Finance Document must be made:

(i) in immediately available, fully transferable, same day cleared funds for value on the due date to the bank account (if any) specified by the Lender;

(ii) free and clear of any restriction or condition; and

(iii) in New Zealand dollars.

(b) If an Interest Payment Date falls on a day which is not a Business Day, that Interest Payment Date will fall on the next succeeding Business Day. If any payment that is not an interest payment falls on a day which is not a Business Day, that payment will be due on the next succeeding Business Day.

10. Taxes

(a) The Obligor may be required to withhold and account to Inland Revenue for RWT, NRWT or AIL in respect of interest paid under a Loan to the Lender, depending on the tax residency of the investor on whose behalf the Lender has advanced the Loan.

(b) The Lender has agreed to meet all RWT, NRWT or AIL obligations on behalf of the Obligor, immediately upon receipt of an interest payment into the Lender's bank account. Accordingly, the Obligor agrees that it will pay all interest under the Loan free and clear of any withholding or deduction in relation to RWT, NRWT or AIL.

(c) The Obligor authorises the Lender (or its duly appointed agent) to act on its behalf in accordance with clause 10(b) and to do all that is required to meet any RWT, NRWT or AIL obligations in relation to interest paid by the Obligor under the Loan (including the provision of information about the Obligor and the Loan to Inland Revenue, where necessary).

(d) The Obligor agrees to provide the Lender (or its duly appointed agent) with any information that may be requested in connection with the fulfilment of the purposes described in clauses 10(b) and 10(c).

(e) The Obligor is not required to make any additional payment, or to increase the amount of an interest payment due, on account of RWT, NRWT or AIL.

The following clauses 11 to 20 (inclusive) apply if there is a Guarantee.

Guarantee and indemnity

11. Guarantee

The Guarantor, unconditionally and irrevocably, guarantees to the Lender the Guaranteed Indebtedness and Guaranteed Obligations.

12. Payment and performance

If any Obligor:

(a) fails to pay all or any part of its Guaranteed Indebtedness when due, the Guarantor shall pay that Guaranteed Indebtedness to the Lender, whether or not demand for payment has been made on the Obligor or any other person; and

(b) defaults in the due and punctual observance or performance of all or any part of the Guaranteed Obligations, the Guarantor indemnifies the Lender in respect of any Loss, cost or expense suffered by the Lender, directly or indirectly, as a result and shall pay to the Lender on demand the amount of such Loss, cost or expense. However, the Guarantor is not required to indemnify the Lender to the extent that any losses, costs or expenses arise from any fraud, negligence or wilful misconduct by the Lender (or its officers, employees, contractors or agents).

13. Indemnity

(a) If, for any reason whatsoever (whether or not within the Lender's knowledge), any of the Guaranteed Indebtedness is not recoverable from an Obligor by the Lender or any of the Guaranteed Obligations are not enforceable by the Lender for any reason whatsoever, then the Guarantor, as a separate and additional liability indemnifies the Lender for any Loss, cost or expense suffered by the Lender as a direct result of any Guaranteed Indebtedness not being recoverable or any Guaranteed Obligations being unenforceable. However, the Guarantor is not required to indemnify the Lender to the extent that any losses, costs or expenses arise from any fraud, negligence or wilful misconduct by the Lender (or its officers, employees, contractors or agents).

(b) Amounts due under the indemnity in this clause 13 shall be paid to the Lender on demand.

(c) The obligations under clause 13(a) survive the termination of the Loan Agreement and payment of the Guaranteed Indebtedness and performance of the Guaranteed Obligations.

14. Liability not prejudiced

The liability of the Guarantor under the Loan Agreement will not be affected or diminished, nor will any other guarantee, indemnity or security provided by the Guarantor be released or discharged, by any act, indulgence, omission or matter whatsoever which, but for this clause, would have operated to release the Guarantor wholly or partly from its liability to the Lender. However, this clause will not apply if the act, indulgence, omission or matter whatsoever was due to any fraud, negligence or wilful misconduct by the Lender (or its officers, employees, contractors or agents).

15. Continuing guarantee

The Guarantor's obligations in the Loan Agreement:

(a) are obligations as a principal borrower and not merely as surety;

(b) continue and remain in full force and effect until the whole of the Guaranteed Indebtedness has been fully and irrevocably paid and satisfied, irrespective of any intermediate payment, settlement of account or any other matter, and, in the Lender's reasonable opinion all of the Guaranteed Obligations have been performed;

(c) are in addition to and independent of, and not in substitution for, any other guarantee, security or right the Lender may have at any time; and

(d) will not merge with or in any way be prejudiced or affected by, or prejudice or affect, any such guarantee, security or right.

16. Lender's discretion

The Lender may, at any time, enforce the Loan Agreement without first taking steps or proceedings against the Borrower or any other person, and may make any arrangement or compromise with the Borrower or any other person, without any notice to or consent of the Guarantor, notwithstanding that this may increase the Guaranteed Indebtedness or Guaranteed Obligations. The Lender is not required to marshal or exercise any Security, guarantee or other right held by it at any time before enforcing the Loan Agreement against the Guarantor. No waiver by the Lender of its rights under the Loan Agreement will be effective unless it is in writing signed by the Lender.

17. No competition

Until such time as the Lender grants a release in writing of the Guarantor's obligations, the Guarantor may not exercise or enforce any right to, directly or indirectly:

(a) be indemnified by the Borrower (whether by subrogation, contributions or otherwise);

(b) prove in the liquidation of the Borrower, or take formal steps to recover (whether directly or by set- off, counterclaim or otherwise), or accept, money or other property in respect of any amount due to it (whether actually or contingently) from the Borrower;

(c) claim the benefit or enforce any Security Interest or guarantee from the Borrower; or

(d) exercise any other right it may have to receive the benefit of any distribution or payment,

except, in each case, with the Lender's prior written consent, and then only in such manner and on such terms as the Lender may require (acting reasonably).

18. Hold on trust

If any money or other property is received or recovered by the Guarantor:

(a) as a result of any exercise of any such right under clause 17; or

(b) in the dissolution of the Borrower or any other person,

the Guarantor must immediately pay or transfer that money or property to the Lender (and, in the case of money, all interest accruing on it), and, pending that payment or transfer, will hold that money or property in trust for the Lender.

19. Waiver

The Guarantor waives in favour of the Lender all rights the Guarantor has against the Borrower and any other person or its or their estate and assets so far as reasonably necessary to give effect to the payment of any Guaranteed Indebtedness and the performance of any Guaranteed

Obligations.

20. Void payments

(a) If any payment received or amount applied by the Lender in respect of any Guaranteed Indebtedness is avoided, whether by law or otherwise, then:

(i) that payment will be deemed not to have discharged or affected the liability of either the Borrower or the Guarantor in respect of which that payment or application was received or made; and

(ii) the Lender, the Borrower and the Guarantor will, to the maximum extent permitted by law, be deemed to be returned to the position in which each would have been, and will be entitled to exercise all the rights which each would have had, if that payment had not been received or that amount had not been applied.

This clause 20 survives any release or discharge of the Loan Agreement by the Lender.

Representations, warranties and undertakings

21. General representations and warranties

Each Obligor represents and warrants to the Lender that:

(a) (**status**) in the case of a company:

(i) it is a company duly incorporated and validly existing under the laws of New Zealand; and

(ii) it has the power to own its assets;

(b) (**power and authority**) it has the power to enter into, perform, deliver and comply with and has taken all necessary action to authorise its entry into, delivery of and performance and compliance with the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents;

(c) (**Authorisations**)

(i) it has taken all necessary corporate and other relevant action (including the obtaining of consents and other requirements) required to be taken to authorise the entry into and performance of, and compliance with, its obligations under each Finance Document; and

(ii) all Authorisations required or reasonably desirable to enable it lawfully to enter into, and exercise its rights and comply with its obligations in the Finance Documents to which it is a party, and to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation and New Zealand, have been obtained,

and such consents and Authorisations are in full force and effect;

(d) (**binding obligations**) its obligations expressed to be assumed by it in the Finance Documents to which it is party are legal, valid and binding and enforceable obligations, in accordance with their respective terms;

(e) (**no conflict**) the entry into and delivery, and the exercise of its rights, and performance of and compliance with its obligations, under the Finance Documents to which it is party and

each transaction contemplated thereby, do not and will not:

(i) conflict with any law or regulation applicable to it;

(ii) conflict with any constitutive documents applicable to it;

(iii) conflict with any agreement or instrument binding on it or any of its assets;

(iv) exceed any limitation on, or constitute an abuse of, the powers of its directors or officers;

(v) result in the acceleration of any financial indebtedness owing by it or result in any financial indebtedness owing by it being capable of being accelerated; or

(vi) result in an Event of Default or termination event (however described) under any other agreement which it has entered into;

(f) (**no default**)

(i) no Event of Default is continuing or might reasonably be expected to result from its entry into the Finance Documents to which it is party; and

(ii) no event or circumstance has occurred or exists and is outstanding which constitutes a breach of, or default under, any Finance Document or other agreement which is binding on it or to which its assets are subject, and such breach or default would likely Materially Increase the Lender's Risk;

(g) (**solvency**) no Insolvency Event exists in respect of it;

(h) (**litigation**) no litigation, dispute or proceeding is current or pending or, to the best of its knowledge and belief after due enquiry, threatened in relation to it which is likely to be adversely determined and, if so determined, would, or would be likely to Materially Increase the Lender's Risk;

(i) (**good title**)

(i) it is the sole legal owner of its assets, subject to any trust; and

(ii) in the case of the Secured Property, the Borrower is the sole legal and beneficial owner of the Secured Property (unless the Borrower enters into the Finance Documents as trustee of a trust, in which case the Borrower represents and warrants that it is the sole legal owner of the Secured Property);

(j) (**ranking of obligations**) its liabilities under each Finance Document to which it is a party will at all times rank by virtue of the Security in priority to the claims of any other creditor;

(k) (**Taxes**) it has complied with all Tax laws in all jurisdictions in which it is subject to taxation and has paid all Taxes payable by it when due;

(l) (**insurance**) all insurances reasonably required by the Lender are in place and in full force and effect;

(m) (**no material adverse effect**) no event or circumstance has occurred which would be likely to Materially Increase the Lender's Risk (including any breach of law or regulation);

(n) (**Environmental Law**) no fact or circumstance exists:

(i) which has given rise, or may give rise, to a claim against the Borrower or a requirement of substantial expenditure or the cessation or alteration of material activity under or as a result of the application of Environmental Law;

(ii) arising out of the ownership, occupation or control of the Secured Property by it, which would render the Lender or any occupier or controller of the Secured Property with the Lender's authority liable to be served with orders, notices or directions or to be dealt with or subjected to a penalty or fine under any Environmental Law;

(o) (**immunity**) it does not, nor do any of its assets, enjoy immunity from any suit or execution;

(p) (**no reliance**) it consulted or had the opportunity to consult independent legal advisers and it took into account the provisions of the Finance Documents and such independent advice and other enquiries as it may have deemed necessary and did not rely on any statement, representation, warranty, document, information or promise (if any) made or provided by or on behalf of the Lender; and

(q) (**full disclosure**)

(i) all written information (other than forecasts and projections) provided to the Lender by or on that Obligor's behalf was true, complete and accurate in all material respects and not misleading in any material respect as at the date of this document, or if later, at the time it was provided; and

(ii) all written forecasts and projections (including budgets) provided to the Lender are based on reasonable grounds as at the date of this document or, if later, at the time provided, using historical information and have been made in good faith.

22. Repetition

Each of the representations and warranties contained in a Finance Document are made on the date of that Finance Document and are deemed to be repeated by each Obligor on each Interest Payment Date and on an Event of Default by reference to the facts and circumstances then existing.

23. Reliance and survival

Each Obligor acknowledges that:

(a) the Lender has entered into the Finance Documents in reliance on the representations and warranties in the Loan Agreement and in the Finance Documents; and

(b) those representations and warranties survive execution and delivery of the Finance Documents and the provision of financial accommodation under them.

24. Positive Undertakings

Each Obligor will:

(a) (**corporate existence**) in the case of a company, maintain its corporate existence and its registration in the place of its registration as at the date of the Finance Document and not relocate its principal place of business outside New Zealand;

(b) (**cancellation**) not cause or permit (to the extent it is within their control) any Finance Document entered into to be repudiated, rescinded, cancelled or terminated, and not abandon or settle, compromise or discontinue or become non-suited in respect of any right against any person under or in respect of any Finance Document without the Lender's prior written

consent;

(c) (**sales**) not sell nor agree to sell any part of the Secured Property or the Development nor grant any rights of occupation other than for full market value and on reasonable commercial terms and, if so required by the Lender, in compliance with conditions and requirements (including sale prices and application of deposits paid) specified by the Lender;

(d) (**leasing**) not lease, nor agree to lease, nor grant rights of occupation (in respect of real property), in respect of any part of the Secured Property or the Development without the Lender's prior written consent;

(e) (**purpose**) in the case of the Borrower, use the Loan (including its proceeds) only for the Purpose specified in the Loan Schedule;

(f) (**comply with laws**) promptly comply with and observe all applicable laws and directives, where failure to do so would Materially Increase the Lender's Risk;

(g) (**avoid Environmental Liability**) maintain procedures to monitor its compliance with Environmental Law material to the Development, and take whatever action the Lender reasonably requires to avoid any related liability where failure to do so, in the Lender's reasonable opinion, would have or be likely to Materially Increase the Lender's Risk;

(h) (**Authorisations**) obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required to comply with its obligations under the Finance Documents, or for the ownership, use or operation of the Secured Property;

(i) (**pay Taxes and outgoings**) subject to clause 10(b), file all Tax returns as required by law, and pay and discharge all Taxes, rates, assessments and outgoings on it or against its property where due except only to the extent that such Taxes, rates, assessments and outgoings are being contested in good faith by appropriate proceedings and adequate resources are set aside (and maintained) for their payment;

(j) (**anti-money laundering documentation**) supply or procure the supply of, documentation and other evidence reasonably requested by the Lender which is required to satisfy or comply with the "know your customer", "know your client" or "client vetting" procedures of the Lender, any related parties of the Lender or any potential assignee or potential sub-participant or any other person who is considering contracting with the Lender or in connection with a Finance Document;

(k) (**GST refunds**) promptly lodge each claim for a refund of the GST component of the costs of the Development and take all necessary steps to prevent any delay to the payment of the GST refund by Inland Revenue;

(l) (**GST returns**) at any time requested in writing by the Lender, complete to the reasonable satisfaction of the Lender, execute and provide to the Lender a document which authorises refunds of GST due to the Borrower to be paid to a nominated bank account;

(m) (**conduct of business**) conduct its business properly and efficiently, in a prudent and business-like manner;

(n) (**records**) keep proper records and accounts (and prepare accounts in accordance with Accounting Standards);

(o) (**financial statements**) ensure that the financial statements of the Borrower, and the Borrower and its subsidiaries (if any), at any time delivered to the Lender:

(i) are prepared in accordance with Accounting Standards;

(ii) give a true and fair view of its financial position and operations as at the date, and for the period to which the financial statements relate;

(iii) together with the notes to them, disclose all liabilities (actual or contingent) of the Borrower and its subsidiaries (if any); and

(iv) are prepared and delivered to all relevant persons within the period in which they are required by law or under any agreement to be delivered.

(p) (**maintain assets**) maintain all of its physical assets in good state of repair and in good working order and condition (fair wear and tear excepted);

(q) (**access and inspection**) ensure that its business, financial records and property are available for inspection at reasonable times by the Lender and persons acting on the Lender's behalf, and give reasonable assistance to them and allow them to inspect and copy extracts from its business and financial records.

25. Development Undertakings

Where the Borrower is undertaking a Development, the Borrower (and, where relevant, each Obligor) will:

(a) (**cost overruns**)

(i) fund, from sources other than the Loan, all cost overruns in relation to the Development (within five Business Days of occurring) including, without limitation, payment to the Lender of interest and fees that cannot be accommodated within the operation of the Loan Agreement; and

(ii) provide sufficient evidence to the Lender that cost overruns have been met;

(b) (**progress**) diligently progress all work on the Development in a timely fashion;

(c) (**construction contract**)

(i) upon reasonable request by the Lender, take all action necessary to enforce the terms of any construction contract;

(ii) not accept defective construction work;

(iii) not agree with, or acknowledge to, any construction contractor in respect of the Development that its obligations in relation to liability for defects in the construction works have been satisfied;

(d) (**Quantity Surveyor**) if a Quantity Surveyor is engaged, provide all reasonable assistance to, and information required by, the Quantity Surveyor to enable it to perform its duties to the Lender in respect of the Finance Documents, ensure that all material information provided to the Quantity Surveyor is complete, accurate, and not misleading, and pay all of the Quantity Surveyor's costs;

(e) (**code compliance certificate**) provide the Lender with a code compliance certificate for the Development as soon as one is available, and in any event, no later than one month after the date of practical completion of the Development and, if engaged, certified by a Quantity Surveyor;

(f) (**authorisations**) obtain and comply with all Authorisations necessary or reasonably desirable to carry out and complete the Development;

(g) (**not vary authorisations**) not apply to materially vary or change any Authorisations or regulatory controls obtained in relation to the Development or make or agree to any material variation to the scope of the Development plans;

(h) (**development plan**) ensure that the Development (including each part of it) is carried out and completed materially in compliance with the Development budget, the Development plans, applicable Authorisations and the construction programme for the Development;

(i) (**variations**) not:

(i) cause, instruct, request or consent to a material variation to the construction works in respect of the Development other than a variation permitted in writing by the Lender,

(j) (**no shutdown**) not consent or agree to any shutdown or suspension of activity (other than a scheduled shutdown or suspension in the ordinary course of business) relating to the construction works in respect of the Development;

(k) (**access**) subject to compliance with the Borrower's reasonable health and safety requirements in relation to the Development, provide the Lender and the Quantity Surveyor with reasonable access to the Secured Property, in particular the Property for the purposes of monitoring progress of the Development, including carrying out inspections, undertaking reasonable inquiries and attending project control group meetings;

(l) (**retention moneys**) if any retention moneys, as defined in the *Construction Contracts Act 2002,* are held, comply with the obligations under that Act;

(m) (**completion sunset date**) ensure that completion of the Development occurs as soon as reasonably practicable after the date of anticipated practical completion of the Development notified (and approved by the Lender) by the Quantity Surveyor and, in any event, on or before the Sunset Date;

(n) (**publicity**) not use or refer to the Lender in any publicity regarding the Development;

(o) (**council inspection certificates**) provide certification from the relevant council at any stage of the Development.

(p) (**further assurance**) promptly, and at its own cost, execute and deliver to the Lender all transfers, assignments and other agreements and do anything else the Lender considers reasonably necessary to secure to the Lender the full benefit of its rights under the Finance Documents.

(q) **Sale Contract undertakings**

Each Obligor must (unless the Lender otherwise consents in writing):

(i) (**Qualifying Sale Contracts**) ensure that each Sale Contract entered into after the date of the Loan Agreement is a Qualifying Sale Contract, meaning it has been approved by the Lender in substance and form (acting reasonably);

(ii) (**Deposits**):

(aa) ensure that all Deposits paid or payable under all Sale Contracts are deposited

into a solicitor trust bank account specified by the Lender, and that when such Deposits become payable to an Obligor, the Deposits are fully applied in repayment of the Amount Outstanding; and

(bb) ensure that all Deposit bonds given in relation to Sale Contracts are issued by an issuer acceptable to the Lender (in its sole discretion), are on terms acceptable to the Lender in all respects and are deposited with the Lender;

(iii) (**inspection**) on reasonable request by the Lender, make available for inspection each original Sale Contract and related documents;

(iv) **(performance obligations**) comply with the terms of and perform its obligations under the Sale Contracts and make all disclosures and statements required by law (including all disclosures and statements required to ensure the enforceability of each Sale Contract);

(v) (**enforce Sale Contracts**) prudently:

(aa) enforce the Sale Contracts; and

(bb) exercise its rights, powers and remedies under the Sale Contracts;

(vi) (**no variation**) not vary a Sale Contract or any document annexed to a Sale Contract or provided to a purchaser in connection with a Sale Contract where this gives the purchaser an additional right of rescission or termination or, in the case of a Qualifying Sale Contract, results in it no longer meeting with the Lender's reasonable requirements or results in the Minimum Presale Level specified in Schedule 1 of the Loan Agreement Summary not being maintained;

(vii) (**no termination**) not terminate or rescind, or allow a Sale Contract to be terminated or rescinded unless, following the termination or rescission, the Minimum Qualifying Sale Contract Level specified in Schedule 1 of the Loan Agreement Summary (as reasonably approved by the Lender) will be maintained and the Lender is notified promptly following any such termination or rescission;

(viii) (**Pro-Forma Sale Contract**) ensure that:

(aa) subject to paragraph (bb) below, the pro-forma Sale Contract is updated whenever required to reflect:

a. any change in law or change in details in any attachment; or

b. any general changes in market practice, including a new version of the pro forma contract for sale of land; and

(bb) obtain the Lender's consent to any update of the pro-forma Sale Contract before entering into further Sale Contracts based on that update.

(ix) (**Tripartite Deed**) the Borrower will:

(aa) comply with all obligations under the Tripartite Deed;

(bb) promptly give notice of any Contract Default (as defined in the Tripartite Deed) to the Lender upon becoming aware of it; and

(cc) co-operate with the Lender in the exercise of any step-in rights or novation rights under the Tripartite Deed.

26. Negative Undertakings

The Obligors will not without the Lender's prior written consent:

(a) (**constituent documents)** change its constituent documents in any way material (if it has them) or adopt a constitution (if it does not);

(b) (**borrower activity**) undertake any business, dealing, transaction or any other activity or acquire an asset or incur a liability, other than as necessary for its entry into, and observance of its obligations and exercise of its rights under, each transaction document to which it is a party;

(c) (**grant interest in Secured Property**) at any time create or permit to subsist any Security Interest or any other interest in the Secured Property in favour of a party other than the Lender;

(d) (**disposals**) dispose of any of its assets with a value of more than $10,000;

(e) (**Major Transactions**) enter into a major transaction (as defined in the Companies Act);

(f) (**Distribution**) make or allow an Obligor to make any:

(i) distribution as defined in section 2 of the Companies Act;

(aa) in respect of any share capital of any Obligor, any dividend, charge, interest, fee, payment or other distribution (whether in cash or in kind) or redemption, repurchase, defeasance or retirement;

(bb) any payment in respect of any direct or indirect shareholder loans;

(cc) any release, reduction or cancellation of any paid up capital or any liability of a shareholder in respect of unpaid or uncalled capital; or

(dd) any other payment to a shareholder or an affiliate of that Obligor, or to a director, officer, of that Obligor, including the payment of management fees, advisory fees or payments of a similar nature.

(g) (**own shares**)

(i) acquire, redeem or issue any of its own shares;

(ii) give financial assistance for the purpose of, or in connection with, the purchase of shares issued or to be issued by it or by its holding company, whether directly or indirectly; or

(iii) cancel, limit or reduce the liability of a shareholder to it in relation to a share held by that shareholder

(h) (**amalgamation**) amalgamate or make any proposal to amalgamate with any company.

(i) (**no partnership or joint venture**) enter into any partnership or joint venture;

(j) (**acquisition subject to security interest**) acquire an asset which is subject to a security interest (other than a security interest for purchase moneys in the ordinary course of business) or which becomes the subject of such a security interest on its acquisition;

(k) (**arm's length commercial transactions**) enter into any transaction other than on arm's length commercial terms;

(l) (**incur debt**) incur any Debt (including giving a guarantee) other than:

(i) Debt incurred under the Finance Documents;

(ii) Debt owed to trade creditors to acquire goods or services on extended arm's-length commercial terms in the ordinary course of an Obligor's day-to-day trading, provided the Debt is paid within 60 days of the invoice date; and

(iii) Debt to which the Lender consents in writing, but does not include any Debt to which the Lender has consented on one or more conditions if any of those conditions is not complied with.

(m) (**change to business**) change the nature or scope of its business as presently conducted;

(n) (**remove caveat**) take any steps to remove any caveat lodged by the Lender in relation to the Secured Property or any Security;

(o) (**withhold payments**) withhold payments to any subcontractor and suppliers (other than if the relevant item is in dispute);

(p) (**off balance sheet commitments**) enter into or incur any off balance sheet commitment or contingent liabilities;

(q) **(calls)** pass or allow to be passed any resolution declaring or providing that any portion of its capital for the time being not already called up will not be called up or will only be called up on the occurrence of a particular event or in any other way limiting, qualifying or modifying its ability to call up or obtain payment of any capital;

(r) (**Contract**) where the Borrower is undertaking a Development, amend, vary, terminate, rescind or waive any material term of the Contract, without the prior written consent of the Lender (not to be unreasonably withheld).

27. Insurance undertakings

Each Obligor agrees that, unless the Lender has otherwise consented in writing or as otherwise directed by the Lender, it will:

(a) insure and keep insured all of the Secured Property (including buildings and other erections subject to the Security) against Loss or damage by fire, explosion, earthquake, flood, environmental impairment and all other risks which should prudently be insured against and maintain insurance against third party liability which it is prudent to insure against, in each case in accordance with the best commercial practice and, if the Lender requires, in amounts approved by the Lender (in each case, acting reasonably);

(b) in the case of the Development (if applicable), adequate public and builders' all risk/contracts work insurance which includes (but is not limited to) full replacement insurance for all assets that are subject to the Security including fire, earthquake and flood protection insurance and professional indemnity cover, consequential loss, industrial special risk, contracts public liability insurance and consultants' professional indemnity cover;

(c) effect all insurances on terms and with insurers approved by the Lender and provide the Lender with particulars of the insurances and the policies;

(d) duly and punctually pay all premiums and money necessary to maintain the insurances;

(e) ensure that each insurance policy provides that:

(i) the Lender's interest is noted on each policy (in the manner reasonably required by the Lender);

(ii) no cancellation,
change or reduction of insurance is effective until at least seven days after receipt by the Lender of written notice to that effect;

(iii) the Lender is named as loss payee of all claims without any consent being required from an Obligor or any other insured person as a prerequisite to such payment; and

(f) notify the Lender promptly:

(i) of any insurance claim in excess of $5,000;

(ii) of the cancellation, variation of, lapse or non-renewal of any insurance policy; and

(iii) of anything which may materially prejudice the rights of an Obligor or the Lender under any policy.

28. Notice of Default, litigation or other material matters

Each Obligor will:

(a) supply to the Lender, promptly on becoming aware of them, full details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it which might, if adversely determined, result in a penalty, damages or compensation of more than $10,000 becoming payable by it; and

(b) notify the Lender of the occurrence of any event or circumstance which would be likely to Materially Increase the Lender's Risk, immediately on becoming aware of it (providing the Lender with full details of it and any action taken or proposed to be taken in relation to it).

29. Undertakings remain in force

The undertakings contained herein remain in force from the date of the Loan Agreement for so long as any amount is outstanding or capable of being lent under the Finance Documents.

Trustee and Limited Partnership provisions

30. Trustee representations and undertakings

(a) Where there is a Trust, the relevant Obligor represents to the Lender that:

(i) (**existence**) the Trust is duly constituted in accordance with all applicable laws;

(ii) (**Trust Deed**) the Trust's trust deed is the only document constituting the Trust and complies with all applicable laws and the copy of any trust deed provided to the Lender is a true, complete and up to date copy;

(iii) (**appointment**) it is a validly appointed trustee of the Trust and it has not resigned as trustee of the Trust, and no meeting has been called to remove it as a trustee of the Trust;

(iv) (**compliance with constituent document**) it has not breached and will not breach any of the terms and conditions of the Trust's trust deed;

(v) (**right of indemnity**):

(aa) it has the right to be indemnified out of, and a lien over, the assets of the Trust for all liabilities incurred by it under the Finance Documents in priority to the interests of the beneficiaries of the Trust;

(bb) the assets of the Trust are sufficient to satisfy this right of indemnity and all other obligations and liabilities in respect of which it has a right to be indemnified out of those assets; and

(cc) this right of indemnity has not been and will not be excluded or limited by the provisions of its trust deed or any other document or by any breach of such trust or by any rights of set-off or counter claim or otherwise, and the relevant trustee will not release or otherwise prejudice such right of indemnity;

(vi) (**no conflict**) its execution and performance of the Finance Documents to which it is a party and (in the case of the Borrower) the application of the Loan is in accordance with the terms of the Trust and any applicable investment policy of the Trust;

(vii) (**power and authority**) it has full and valid power and authority under the Trust to do all things required by the Finance Documents, and all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied to enter into each Finance Document to which it is a party and to carry out the transactions contemplated by those documents;

(viii) (**proper administration and benefit**) it is entering into each Finance Document to which it is a party as part of the due and proper administration, and for the benefit and the proper purposes, of the Trust and itself;

(ix) (**no resettlement**) no property of the Trust has been re-settled or set aside or transferred to any other trust; and

(x) (**no termination**) the Trust has not been terminated and no beneficiary is presently entitled to any of the assets of the Trust.

(b) Any Obligor that enters into a Finance Document as a trustee of a Trust undertakes to the Lender that it will:

(i) (**breaches of Trust**) not do anything, or permit or omit anything, which breaches the Trust or which might allow the Trust to be terminated or which might permit it to be removed as trustee of the Trust or which, in the Lender's reasonable opinion, may otherwise prejudicially affect the Lender's recourse against the property of the Trust;

(ii) (**resignation**) not resign or be removed as trustee of the Trust or appoint or allow a new or additional trustee of the Trust to be appointed without the Lender's prior written consent;

(iii) (**records**) maintain complete and correct records in relation to the Trust;

(iv) (**amendment**) not amend or revoke any of the terms of the Trust without the Lender's prior written consent;

(v) (**acquisitions**) not acquire property intended to be subject to the terms of the Trust other than in its name;

(vi) (**use or possession of property**) not permit a beneficiary of the Trust to use or possess the property of the Trust;

(vii) (**vesting date**) not exercise a power, or allow a power to be exercised, to change the vesting date of the Trust or provide for the Trust to be terminated early (and must notify the Lender of any event which might cause the capital of the Trust to vest or to be distributed to a beneficiary, as soon as it becomes aware of the event);

(viii) (**right of subrogation and indemnity**) ensure that:

(aa) it has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under each Finance Document to which it is a party;

(bb) there is no restriction or limitation on or derogation from its right of subrogation or indemnity (whether or not arising under the terms of the Trust); and

(cc) its lien over any property of the Trust at all times has priority over the rights of the beneficiaries of the Trust;

(ix) (**segregation**) not do anything which results in the assets of the Trust being mixed with other property;

(x) (**re-settle, set aside or transfer**) not re-settle, set aside or transfer any property of the Trust; and

(xi) (**security interest**) not create or allow to exist any Security Interest over its right of indemnity out of the assets of the Trust.

(xii) (**Finance Documents**) not do anything or permit anything to be done in relation to the trust which could materially restrict or impair its ability to observe its obligations under the Finance Documents it is party;

(aa) (**delegation**) not delegate any powers conferred upon it by law or under the Trust (other than as required by the Finance Documents); and

(bb) (**notices generally**) promptly give the Lender copies of all material documents and notices received by it from any beneficiary of the Trust or which it gives to a beneficiary of the Trust.

31. Trustee limitation on liability

The liability of any professional trustee shall be limited to the assets of the Trust, except in respect of any indebtedness which the Lender is unable to recover under any Finance Document or from the assets of the Trust as a result of any wilful or negligent breach of trust by the trustee, alone or

with others, any lack of capacity, power or authority of the trustee to enter into any Finance Document or to incur the indebtedness, or any wilful default or dishonesty of the trustee or if the trustee loses its right to be indemnified out of the assets of the Trust for any reason.

32. Limited partnership representations and undertakings

(a) Any Obligor that enters into a Finance Document as a limited partnership represents to the Lender that:

(i) (**other partners**) there are no partners other than the general partner and the limited partners referred to in its partnership agreement;

(ii) (**status**) it is a limited partnership registered under the Limited Partnership Act;

(iii) (**no termination or de- registration**) it has not been terminated or de-registered nor has any event occurred which could lead to its termination or de-registration;

(iv) (**compliance with law**) its partnership agreement complies with all applicable laws;

(v) (**compliance with partnership agreement**) to the best of its knowledge, each partner in the limited partnership has complied with its obligations and duties under its partnership agreement; and

(vi) (**capacity**) it is not entering into the Finance Documents as a trustee of any trust and does not hold any of the Secured Property as trustee of any trust.

(b) Any Obligor that enters into a Finance Document as a limited partnership undertakes to the Lender that:

(i) (**withdrawal or removal as general partner**) (in its capacity as general partner) it will not withdraw and is not otherwise removed as the general partner, without the Lender's prior written consent;

(ii) (**no additional general partner**) no other person is appointed as a general partner;

(iii) it will notify the Lender, with reasonable details, on becoming aware of any of the following:

(aa) (**limited partnership**) any proposed changes in the limited partners of the Obligor, the names and addresses of the limited partners of the Obligor, the capital commitments and capital contributions for each limited partner and the registered office and address for service of the Obligor, a copy of any such document that amends, supplements or replaces the partnership agreement or any change listed in this clause must be delivered to the Lender; and

(bb) (**partnership interest**) provide information concerning the identity and the respective partnership interest (as that term is defined in section 38 of the Limited Partnership Act) held by each partner (as may be requested by the Lender from time to time); and

(iv) it will not, without the Lender's prior written consent:

(aa) (**constituent documents**) change its partnership agreement or other constituent documents in any material way;

(bb) (**issue partnership interest**) issue partnership, capital or equity interest to

any person; or

(cc) (**alter terms of partnership interest**) alter or allow to be altered any term attaching to any of its own partnership interests, in a manner which would cancel or reduce the liability of any of its partners.

Events of Default and Consequences

33. Events of Default

Each of the following will constitute an Event of Default:

(a) (**non-payment**) an Obligor fails to pay any amount due under a Finance Document, or any other loan agreement entered into with the Lender. However, an Obligor will not be in default if the Obligor remedies the failure within 2 business days;

(b) (**breach of obligations**) an Obligor fails to perform or comply with any of its obligations under any Finance Document. However, no default will occur if such default is remedied within 30 Business Days after the earlier of the Lender giving notice to the relevant Obligor or that Obligor becoming aware of its failure to comply;

(c) (**breach of representation**) a representation or statement by an Obligor in or in connection with any Finance Document is not true and accurate, or is or proves to have been untrue or inaccurate when made or repeated or deemed to have been made or repeated. However, in the absence of deception on the part of an Obligor, it will be a default only if the issue with the information is likely to Materially Increase the Lender's Risk;

(d) (**Insolvency Event**) an Insolvency Event occurs in relation to an Obligor.

(e) (**cross-default**)

(i) any indebtedness in an amount exceeding $10,000 of any Obligor is not paid when due, or becomes due, or capable of being declared due, before its stated maturity (other than where permitted by its terms); or

(ii) an event of default, cancellation event or termination event (however described) occurs under any Finance Document;

(f) (**withdrawal of Authorisation**) any Authorisation at any time necessary in connection with any Finance Document, or its implementation or performance, expires or is revoked, cancelled, withdrawn or modified in a manner unacceptable to the Lender, or otherwise ceases to remain in full force and effect and is not replaced by an Authorisation having substantially the same effect;

(g) (**illegality and invalidity**)

(i) it is or will become unlawful for an Obligor or the Lender to perform or comply with any of its obligations under any Finance Document; or

(ii) any provision of any Finance Document ceases to have effect in whole or in part (other than by performance or as permitted by its terms), or becomes wholly or partly void, voidable, illegal, invalid or unenforceable (other than by reason only of a party waiving any of its rights). However, it will not be a default if the absence of the provision will not

Materially Increase the Lender's Risk;

(h) (**cost overrun**) the Borrower fails to fund any cost overrun incurred in relation to any Development;

(i) (**practical completion**) practical completion is not achieved by the date 60 days after the date of anticipated practical completion of the Development notified (and reasonably approved by the Lender) by the Quantity Surveyor;

(j) (**change of control**) a change in control occurs in relation to the Borrower or any corporate Obligor, or in relation to any subsidiary of the Borrower or any corporate Obligor, without the Lender's prior written consent; and

(k) (**Material Adverse Effect**) any event or series of events, whether related or not, occurs, or any circumstances arise or exist, which is likely to Materially Increase the Lender's Risk.

(l) (**financial ratios**) any Loan to Value Ratio, interest coverage ratio, or other financial ratios (howsoever defined) specified in the Loan Agreement is not met at any time.

(m) (**Contract Default**) where the Borrower is undertaking a Development, a Contract Default (as defined in the Tripartite Deed) occurs.

34. Consequences of Event of Default

On and at any time after the occurrence of an Event of Default which is continuing the Lender may:

(a) by written notice to the Borrower declare that all or part of the Amount Outstanding be immediately due and payable, whereupon it shall become immediately due and payable; and

(b) charge interest at the Default Interest Rate on the Amount Outstanding.

Indemnities

35. Indemnities

The Borrower indemnifies the Lender against, and must pay to the Lender on demand, any Loss sustained or incurred by the Lender as a result of:

(a) the Loan not being made for any reason, including by reason of non- fulfilment of any condition precedent in any Finance Document;

(b) any amount payable by the Borrower under any Finance Document not being paid when due;

(c) the occurrence or continuance of any Event of Default;

(d) the receipt or recovery by the Lender of all or any part of any amount payable under any Finance Document (by prepayment or acceleration or otherwise) otherwise than on the due date relating to such amount;

(e) any liability under any Environmental Law, or non-compliance by the Borrower with any requirement or obligation of any nature in respect of any activity or undertaking carried out or performed on or from the Secured Property;

(f) any costs, losses, expenses or liabilities incurred by the Lender in enforcing the indemnity under the Tripartite Deed where the Borrower is undertaking a Development.

The Obligors are not required to pay the Lender any amount under this clause to the extent the Loss arises from any fraud, negligence or wilful misconduct by the Lender, the Lender's officers, employees, contractors or agents or any receivers appointed by the Lender over any property, which is subject to security;

General Provisions

36. No waiver

(a) Time is of the essence in any Finance Document, but no failure to exercise, or delay in exercising, any right or Power operates as a waiver of that Power. The single or partial exercise of a Power does not prevent a further exercise of that or any other Power. Unless expressly provided in a Finance Document, no Power or Finance Document merges in, limits or excludes any other Power, Finance Document or judgment which the Lender (or anyone claiming through it) may have or obtain.

(b) A consent or waiver by the Lender in relation to the Loan Agreement or any other Finance Document is effective only if in writing.

37. Survival of indemnities

(a) Each obligation and indemnity in the Loan Agreement is:

(i) unconditional and irrevocable; and

(ii) a continuing and separate obligation which will survive termination, release or discharge of the Loan Agreement or any other Finance Document and payment of the entire Amount Outstanding.

(b) The Lender need not incur an expense or make a payment before enforcing an indemnity or reimbursement obligation in this Loan Agreement.

38. Set-off

To the extent permitted by law, no Obligor has any right to set-off amounts owed by that Obligor under any Finance Document.

39. Costs

The Borrower shall promptly pay to the Lender following demand in writing an amount equal to all reasonable costs, losses, expenses and other liabilities (including legal expenses and goods and services and similar taxes thereon) incurred or sustained by the Lender in connection with the entering into, exercise, enforcement or preservation, or the attempted exercise, enforcement or preservation, of any right under the Loan Agreement, or in suing for or recovering any sum due under the Loan Agreement.

40. Notices and Communications

(a) Each notice or other communication under the Loan Agreement or any other Finance Documents will be made in writing and sent by email, personal delivery or by post to the addressee at the email or postal address, and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to

the other party. The email and postal address and relevant person or office holder of each party is set out under its name in the Loan Agreement Summary.

(b) No communication will be effective until received. A communication to the Borrower is, however, deemed to be received:

(i) in the case of a letter, on the third Business Day after posting (or on the seventh Business Day after the date of posting if posted to or from a place outside of New Zealand); and

(ii) in the case of an email transmission, on the Business Day on which it is despatched or, if despatched after 5.00 p.m. (in the place of receipt) on a Business Day or on a non- business day, on the next Business Day after the date of despatch.

41. Partial invalidity

If at any time a provision of the Loan Agreement or any other Finance Documents is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that provision shall be ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the validity or enforceability of the remainder of the Loan Agreement or any other Finance Documents in any jurisdiction.

42. Amendment

No amendment to the Loan Agreement or any other Finance Documents is effective unless it is in writing and signed by or on behalf of each party to it.

43. Assignment

(a) (**by the Obligors**) The Obligors may not assign, transfer or otherwise deal with any of their rights or obligations under the Loan Agreement or any other Finance Document without the Lender's prior written consent.

(b) (**by the Lender**) The Lender may:

(i) assign, transfer, novate or otherwise deal with its rights, interests and obligations under the Loan Agreement or any other Finance Document without the consent of, or notice to, the Borrower or any other Obligor; and

(ii) disclose to each proposed party to such assignment, transfer, novation or other dealing any information the Lender considers appropriate about the Borrower and any Obligor, the Finance Documents, and any transaction in connection with any of them.

44. Illegality and market change

If by reason of:

(a) the introduction of or any change in any law or any change in the interpretation or application thereof, by any government agency in each case after the date of the Loan Agreement;

(b) compliance by the Lender with any directive made after the date of the Loan Agreement; or

(c) any other circumstances affecting the New Zealand domestic funding market or the availability of finance to lending institutions in New Zealand,

it becomes impossible or illegal for the Lender, to make available or maintain or fund all or any part of the Loan, or otherwise to give effect to any Finance Document, the Lender may, by notice to the Borrower, cancel the Loan, where on the date on which the Lender stipulates (which may not be earlier than five Business Days before the date which it reasonably determines is the date on which the illegality or impossibility takes effect):

(d) the Loan will be reduced permanently to zero; and

(e) the Borrower must prepay the Loan to the Lender and pay the Amount Outstanding to the Lender.

45. Counterparts

The Loan Agreement and any Finance Documents may each be executed in any number of counterparts. Each counterpart constitutes an original of the Loan Agreement, all of which together constitute one instrument. A party who has executed a counterpart of the Loan Agreement may exchange it with another party by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of the Loan Agreement. Furthermore, where a party executes the Loan Agreement by having it signed by more than one person, those persons may sign the same or different signature pages, either or both of which signature pages may be delivered by email transmission.

46. Conflict

If there is any conflict between the provisions of these General Terms and Conditions and any other Finance Document, then these General Terms and Conditions will prevail, provided that, to the extent of any inconsistency between these General Terms and Conditions and the terms of the Tripartite Deed (where the Borrower is undertaking a Development) relating to the specific rights and obligations of the Land Owner, step-in rights, novation rights or the Contract, the Tripartite Deed will prevail.

47. Governing law

The Loan Agreement shall be governed by and construed in accordance with the laws of New Zealand.

Interpretation

In this document:

(a) headings are for reference only and do not affect interpretation;

(b) unless stated otherwise, reference to clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;

(c) reference to a document or agreement includes that document or agreement as novated, altered, amended, supplemented, ratified or replaced or as acceded to by any party from time to time, except, in each case, to the extent prohibited by a Finance Document;

(d) a party to any document includes that person's successors and permitted assigns;

(e) any undertaking, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

(f) if the Lender reasonably considers that an amount paid by an Obligor under a Finance

Document is capable of being avoided or otherwise set aside on the liquidation of an Obligor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of the Finance Documents;

(g) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;

(h) reference to anything includes any part of it and a reference to a group of things or persons includes each thing or person in that group;

(i) reference to law or a provision of law includes any consolidation, amendment, re-enactment or replacement and only refers to that law to the extent it is applicable and in effect at that time;

(j) reference to an accounting term is to be interpreted according to Accounting Standards, principles and practice applying by law or otherwise which are generally accepted in New Zealand, unless that accounting term is given another meaning in this document;

(k) unless stated otherwise, anything required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;

(l) reference to time is to New Zealand time unless stated otherwise; and

(m) where a word or expression is defined in this document, other parts of speech and grammatical terms of that word have corresponding meanings;

References

In this document:

(a) **$** means the lawful currency of New Zealand;

(b) an **agreement** includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;

(c) **asset** and **property** each include any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the asset or property;

(d) **costs** include all commissions, charges, expenses (including legal fees on a solicitor and own client basis) and Taxes incurred by that person;

(e) a **directive** includes a present and future directive, regulation and requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive is intended to cover);

(f) the **dissolution** of a person also includes the winding-up, termination, de-registration, liquidation or bankruptcy of that person or any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, carries on business or has assets;

(g) **financial accommodation** means financial accommodation of any nature and includes the provision of guarantees and obligations to support any party;

(h) **financial statements** include statements of financial position, financial performance, movements in equity and cash flows, and the notes relating thereto;

(i) a **government agency** means any government or governmental, semi- governmental,

administrative, public, regulatory or judicial entity, body, department, commission, agency or authority;

(j) **guarantee** means a guarantee, indemnity, letter of credit or similar instrument, legally binding letter of comfort or other obligation of any kind:

(A) to provide funds (whether by the payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services or otherwise) or to provide a Security Interest for the payment or discharge of;

(B) to indemnify or otherwise compensate any person

against or for the consequences of default in the payment of; or

(C) to be responsible for,

an obligation or monetary liability of another person or the assumption of any responsibility or obligation in respect of the solvency or financial condition of another person, and includes an obligation to redeem or purchase share capital of another person incurred in connection with the purchase of that share capital by another person, or the granting of any Security Interest in relation to that share capital;

(k) a **holding company** of a person means each other person in respect of which that first person is a subsidiary;

(l) **including** and similar expressions do not imply limitation;

(m) **indebtedness** includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money;

(n) a **law** includes common or customary law and any constitution, decree, judgement, legislation, order, ordinance, regulation, directive, by- law, the rules of any stock exchange, treaty or other legislative measure, in each case in any jurisdiction whatever and **lawful** and **unlawful** shall be construed accordingly;

(o) a **person** includes an individual, body corporate, partnership, limited partnership, association of persons (whether corporate or not), trust, state, agency of state and any other entity (in each case, whether or not having separate legal personality);

(p) **subsidiary** means, in relation to a person:

(A) a subsidiary, within the meaning of sections 5 to 8 of the Companies Act, of that person; and

(B) any other person whose financial statements are required to be consolidated with the financial statements of that person in accordance with Accounting Standards or this document.

In addition, and without limiting paragraph (A) or (B), a person is a subsidiary of another person if it is controlled by that other person; and

(q) a Default or an Event of Review **subsists** or **continues** until either remedied to the Lender's reasonable satisfaction or waived by the Lender in writing in accordance with the Finance Documents.

Definitions

Accounting Standards means accounting standards, principles and practice applying by law or otherwise which are generally accepted in New Zealand.

AIL means approved issuer levy payable under Part 6B of the *Stamp and Cheque Duties Act 1971*.

Amount Outstanding means, at any time, the principal, interest (including default interest), credit fees and charges and all other moneys payable by the Borrower to the Lender under a Finance Document.

Authorisation means any consent, authorisation, registration, filing, agreement, notarisation, certificate, permit, licence, approval, authority or exemption of, from or required by, a government agency or required by law. Where intervention or action of a government agency within a specified period would fully or partly prohibit or restrict something by law, **Authorisation** includes the expiry of that period without that intervention or action.

Business Day means a day of the week (other than Saturday or Sunday) in which banks in Auckland are ordinarily open for business.

Business Variable Rate means, on any day, the "business variable rate" which is published at 11:00am on that day on the Lender's website, or if such rate (or the Lender's website) is not available at that time, then the "business variable rate" published immediately prior to such unavailability.

Companies Act means the *Companies Act 1993.*

Contract has the meaning given to it in the Tripartite Deed.

Debt means any and all indebtedness and monetary liabilities (in any currency) that is or may become liable at any time (whether alone or not or in any capacity) of the Borrower.

Deposit means any deposit payable under a Sale Contract.

Development means the undertaking, carrying out and completion of the construction development to be undertaken by the Borrower on the Property.

Environmental Law means a standard set by a government agency or a law relating to the environment, land or water use, noise, smell, pollution or contamination, toxic or hazardous substances, waste disposal or conservation (including the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996 and the Building Act 2004) and any consent, order or notice under any such law.

Event of Default means any of the events described in clause 33.

Finance Document means the Loan Agreement, the Mortgage, the Tripartite Deed (if the Borrower is undertaking a Development), any general security agreement granted by the Borrower in favour of the Lender, any assignment security granted by the Borrower in favour of the Lender, any other security required by the Lender and any document the parties agree is a Finance Document.

General Terms and Conditions means this document.

GST means goods and services tax chargeable in accordance with the GST Act.

GST Act means the *Goods and Services Tax Act 1985*.

Guarantee means each guarantee and indemnity granted by the Guarantor or Guarantors, as the case may be, in relation to the obligations of the Borrower under the Finance Documents.

Guaranteed Indebtedness means the due and punctual payment and delivery by the Obligors of all indebtedness (present and future and of whatever nature) and other monetary obligations owed by the Obligors (whether alone or with any other person) to the Lender on any account whatever.

Guaranteed Obligations means the due observance and punctual performance by the Obligors of all obligations of any nature (present and future, expressed or implied) of the Obligors to or for the benefit of the Lender, other than an obligation to pay the Guaranteed Indebtedness.

Income Tax Act means the *Income Tax Act 2007.*

Insolvency Event means, in relation to a person, any of the following:

(a) (**inability to pay debts**) that person is or is presumed under any legislation unable or admits inability to pay its Debts as they fall due, suspends making payments on any of its Debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

(b) (**distress or judgement**) a distress, attachment or other execution for a sum exceeding $1,000 is levied or enforced on, or commenced against, any assets of that person and is not discharged or stayed within 14 Business Days, or a judgment for a sum exceeding $1,000 is obtained against that person and is not satisfied, discharged or stayed within 14 Business Days;

(c) **(at risk)** that person is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, or a statutory manager is appointed or any step is taken with a view to any such appointment in respect of it under the Corporations (Investigation and Management) Act 1989;

(d) (**legal proceedings**) any corporate action, legal proceedings or other procedure or formal step is taken without the Lender's prior written consent in relation to:

(i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, bankruptcy or reorganisation (whether by way of voluntary arrangement, scheme of arrangement or otherwise) of that person;

(ii) a composition, assignment or arrangement with any creditor of that person;

(iii) the appointment of a liquidator, receiver, administrator, administrative receiver, statutory manager, controller or managing controller, trustee or other similar officer in respect that person or any of its assets;

(iv) enforcement of any Security Interests over any assets in an amount exceeding $10,000 of that person; or

(v) any equivalent procedure or formal step is taken under the laws of any jurisdiction, unless (except in the case of paragraph (iii) above) the legal proceedings are, or other procedure or formal step is:

(aa) being taken or carried out by a person other than that person; and

(bb) being challenged by that person; and

(cc) discharged within 14 Business Days.

Interest Payment Date means the First Interest Payment Date specified in the Loan Schedule and each date occurring thereafter at the end of each Interest Payment Interval specified in the Loan Schedule.

Land Owner means the vendor under the Contract in connection with the Development.

Lender means Squirrel P2P Trustee Limited.

Limited Partnership Act means the Limited Partnership Act 2008.

Loan means, at any time, the loan from the Lender to the Borrower in the amount of the Loan Limit specified in the Loan Schedule, as reduced, cancelled or varied in accordance with the Loan Agreement, at that time.

Loan Agreement means the Loan Agreement Summary and these General Terms and Conditions.

Loan Agreement Summary means the document of that name entered into between the Obligors and the Lender, incorporating these General Terms and Conditions.

Loan Schedule means the table with that title in the Loan Agreement Summary.

Loss means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred and includes loss of margin and loss of profit.

Materially Increase the Lender's Risk means increasing the risk that one of the following happens:

(a) an Obligor might not be able to pay all or part of the Amount Outstanding;

(b) the Collateral becomes 'at risk' (within the meaning set out in section 109 of the PPSA);

(c) an Obligor's business is no longer viable; or

(d) the Lender might not be able to fully recover from the Secured Property everything owed by the Obligors under this Loan Agreement or any Finance Document.

Mortgage means the mortgage over the Property as specified in the Security Details section of the Loan Agreement Summary.

NRWT has the meaning given in the Income Tax Act.

Obligor means each Borrower and Guarantor specified in the Loan Agreement Summary.

Power means any right, power, discretion or remedy of the Lender under any Finance Document or applicable law.

PPSA means the *Personal Property Securities Act 1999*.

Principal Amount means any principal advanced (including any capitalised interest or fees) under the Loan.

Property means the property specified in the 'Security Details' section of the Loan Agreement Summary.

Qualifying Sale Contract means a Sale Contract approved by the Lender in substance and form as a "Qualifying Sale Contract".

Quantity Surveyor means the quantity surveyor specified in the Loan Schedule, or another quantity surveyor that has been approved in writing by the Lender.

RWT has the meaning given in the Income Tax Act.

Sale Contract means any agreement for sale and purchase, including underwrite agreements, of lots, units, townhouses, apartments, offices or other interests in the Property, along with any amendments (in form and substance approved by the Lender) to such agreements.

Secured Property means the Property subject to Security.

Security means:

(a) the Mortgage; and

(b) each other present or future Security Interest, Guarantee or other document or agreement created or entered into as security (directly or indirectly) for the payment of any money owing to the Lender by an Obligor or the performance of any obligation in favour of the Lender under a Finance Document.

Security Interest means**:**

(a) a mortgage, pledge, charge, lien, assignment, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and- repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and

(b) a "security interest" as defined in the PPSA.

Sunset Date means the sunset date specified in the Loan Schedule, or (if applicable), the sunset date specified in a Sale Contract.

Tax means any tax, levy, duty, rate, impost or other charge or withholding of a similar nature (including stamp duty, GST and transaction taxes and duties) imposed, levied, chargeable or assessed by a government agency, and any related penalty, fine, fee or interest.

Tripartite Deed means in relation to the Development, the tripartite deed entered into by the Borrower, Lender and the Land Owner.

Trust means any trust where an Obligor is the trustee of a trust entering into a Finance Document.