

MAGNA TRUST COMPANY LIMITED

Trustee

[NAME]

Borrower

[NAME]

Guarantor

TERM LOAN AGREEMENT

2. Guarantee

2.1 Guarantee

The Guarantor hereby unconditionally and irrevocably guarantees to the Trustee the performance of and compliance by the Borrower of its obligations to the Trustee and indemnifies the Trustee in accordance with the provisions set out in Schedule One.

3. Conditions Precedent

3.1 Conditions Precedent

The Trustee shall not be obliged to make the Loan available to the Borrower under this Agreement unless:

Items Trustee to receive

- (a) the Trustee has received, not later than three (3) Business Days before the Drawdown Date or such other date as the Trustee may in its discretion approve, and being satisfied with the following:
 - (i) an original copy of this Agreement and the Security Documents;
 - (ii) evidence satisfactory to the Trustee that the Borrower's and Guarantor's insurance obligations under the Security Documents and this Agreement have been complied with;
 - (iii) satisfaction of all conditions precedent as required by the Trustee to provide and perfect the Loan and the security;
 - (iv) a Land Information Memorandum regarding the Property [if the Property is being purchased OR is a non-residential property OR if requested by Magna];
 - (v) written confirmation from [name of valuer] (addressed to the Trustee) that the valuation dated [date] in respect of the property at [address] may be relied on as at [date of instructions] or any subsequent date provided it is a date no later than the Drawdown Date;
 - (vi) written confirmation of full fire and general insurance cover (including earthquake cover) as required by the Trustee with the interest of the Trustee noted as interested party;
 - (vii) a copy of the deed of trust for the [name of trust] and all subsequent variations;
 - (viii) evidence of the repayment(s) required by clause 1.4;
 - (ix) the unlimited guarantee of [name of guarantor] for all the obligations of the Borrower;

Disclosure

- (b) if this Agreement is an agreement for which there are disclosure requirements for the purposes of sections 17 and 25 of the Consumer Credit Contracts and Finance Act 2003 and/or section 423 of the Financial Markets Conduct Act 2013, all those disclosure requirements are fulfilled in accordance with those Acts. For the purposes of sections 17 and 25 of the Consumer Credit Contracts and Finance Act 2003, disclosure will be treated as fulfilled on the day on which a relevant disclosure statement is emailed to each relevant party or otherwise sent to each relevant party by electronic communication (within the meaning of section 35 of the Consumer Credit Contracts and Finance Act 2003);

Title and LIM

- (c) there being no interests that are adverse to the title to any of the Property;
- (d) there being no adverse information contained in any Land Information Memorandum regarding any of the Property (as applicable) [if a LIM is not a condition precedent].

3.2 Form of Security Documents

The documents and other items referred to in clause 3.1(a) above shall be in a form satisfactory in all respects to the Trustee and where applicable duly executed by all relevant parties in registrable form.

4. Interest

4.1 Payment of Interest

The Borrower shall pay to the Trustee on each Interest Payment Date interest in arrears at the Interest Rate on the Moneys Owed for the time being outstanding during the preceding Interest Period.

4.2 Interest Periods

In this Agreement the term **Interest Period** shall mean a period of one (1) month provided that:

- (a) the first Interest Period shall commence on the first Drawdown Date and end 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) if any Interest Period would otherwise end on a day which is not a Business Day then that Interest Period shall be extended to the next succeeding day which is a Business Day unless the result of such extension would be to carry the Interest Period over into another month in which event that Interest Period shall end on the immediately preceding Business Day; and

- (d) any Interest Period that would otherwise extend beyond the Expiry Date shall be of such duration that it shall end on the Expiry Date.

4.3 Calculation of Interest

Interest shall accrue and be calculated on a daily basis (on the basis of days elapsed and a three hundred and sixty five (365) day year) and shall be capitalised (at the option of the Trustee) if not paid on the due date (and on capitalisation, such interest shall form part of the Moneys Owed and shall bear interest at the Interest Rate).

4.4 Certificate of Trustee Conclusive

The certificate of the Trustee as to the rate or amount of interest payable pursuant to this Agreement shall be conclusive and binding upon the Borrower and Guarantor except in the case of manifest error or fraud.

4.5 Default Interest

- (a) The Borrower shall pay to the Trustee 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 by more than 7 days, such interest to:

- (i) accrue after as well as before judgment and up to and including the date of actual payment;
- (ii) compound on a monthly basis.

If the Borrower does not comply with the terms of this Agreement relating to payments due under this Agreement then the Interest Rate may be increased at the Trustee's discretion to the Default Interest Rate on the Moneys Owed. Such interest shall be calculated from the date of the default and terminate on the date the failure to comply has been remedied.

- (b) If the Borrower does not comply with the terms of this Agreement other than terms relating to payment of money and that failure is not remedied on or before the 14th day after the date on which compliance was due, then the Interest Rate may be increased at the Trustee's discretion to the Default Interest Rate on the Moneys Owed calculated from the date of the default and terminating on the date the failure to comply has been remedied.

4.6 Interest Rate Review

Without prejudice to any other provision of this Agreement, during the term of this Agreement the Trustee may by 14 days' prior notice in writing to the Borrower (at its discretion) review the Interest Rate and any margin forming part of that rate. The notice to the Borrower shall specify the new rate payable, the date it is effective from and the amounts of the new instalments then payable under this Agreement.

5. Total amounts payable

5.1 Total amounts payable

- (a) Subject to sub-clause (b), the total amount of payments to be made under this Agreement is [\$], calculated as follows:

Loan	\$
Total interest payable on the basis of the Interest Rate and the term of the Loan at the date of this Agreement	\$
Total amount of payments to be made under this Agreement	\$

- (b) The amount calculated in clause 5.1(a) is based on the Interest Rate and on an assumption that the Interest Rate will not vary over the term of the Loan but is in any event subject to this Agreement.

6. Repayment and Prepayment

6.1 Final Repayment

[Subject to clause 6.2 (if second option is selected)], the Borrower shall repay in full to the Trustee on the Expiry Date the Moneys Owed then outstanding.

6.2 Early Repayment Adjustment

- (a) The Borrower may repay to the Trustee the whole (but not part) of the Loan at any time [following the Earliest Repayment Date (delete if inapplicable)], provided that the Borrower shall also pay to the Trustee at the date of that early repayment (**Repayment Date**) all Moneys Owed as at the Repayment Date. The amount repaid may not be redrawn. [THIS IS THE DEFAULT]

- (b) The Loan may not be repaid (either in whole or in part) any earlier than the Earliest Repayment Date [only applicable if there is an Earliest Repayment Date].

OR – second option (notice / break fee option):

- (a) The Borrower may give the Trustee not less than [] months written notice of a date that is earlier than the Expiry Date [but not earlier than the Earliest Repayment Date (delete if inapplicable)] on which the Borrower intends to repay the whole (but not part) of the Loan (**Repayment Date**). The Borrower shall repay in full to the Trustee on the Repayment Date the Moneys Owed then outstanding. The amount repaid may not be redrawn. The Repayment Date shall in any event be subject to the Trustee's right to require payment at an earlier date under the terms of this Agreement.
- (b) The Borrower may (without notice) repay to the Trustee the whole (but not part) of the Loan at any time:

- (i) that is earlier than the Earliest Repayment Date, provided that the Borrower shall also pay to the Trustee at the date of that early repayment (**Repayment Date**) the aggregate of:
 - (A) all Moneys Owed as at the Repayment Date; and
 - (B) [] months worth of interest at the Interest Rate on the Moneys Owed as at the Repayment Date; or
- (ii) following the Earliest Repayment Date and before the Expiry Date, provided that the Borrower shall also pay to the Trustee at the date of that early repayment (**Repayment Date**) all Moneys Owed as at the Repayment Date.

The amount repaid may not be redrawn.

- (c) The Loan may not be repaid (either in whole or in part) any earlier than the Earliest Repayment Date.

7. Payments by the Borrower

7.1 Payments by the Borrower

The Borrower shall authorise the Trustee at all times to debit any amount due under this Agreement from a New Zealand bank account. The Borrower shall take all steps to update and maintain such authority so that all debits will be honoured.

8. Review of terms and conditions

8.1 Review of terms and conditions

Without prejudice to any other provision of this Agreement, the Trustee may at any time (including prior to the first Drawdown Date):

- (a) alter the number, frequency, amount or payment date of any payment to be made, or the intervals at which interest is charged, under this Agreement; or
- (b) vary any floating interest rate applicable to the Borrower; or
- (c) agree to increase the principal amount of the Loan; or
- (d) following a request from the Borrower extend the term of the Loan; or
- (e) following a request from the Borrower vary any other provision of this Agreement.

Any alteration, variation or increase will be recorded in a review letter from the Trustee to the Borrower.

9. Review of unfair contract terms

9.1 Review of unfair contract term

If any provision of this Agreement (other than this clause) is declared an unfair contract term pursuant to section 46I of the Fair Trading Act 1986, the Trustee may at any time after that declaration notify the Borrower of its proposed amendment so that such provision (as amended) will:

- (a) comply with the terms (if any) of the decision of the court that made the declaration (**Terms**); and
- (b) cease (in the opinion of the Trustee) to be an unfair contract term,

(First Trustee's Notice).

If the Borrower notifies the Trustee within 30 Business Days after service of the First Trustee's Notice that the Borrower (acting reasonably) does not agree with the Trustee's proposed amendment (**Borrower's Notice**), then the Trustee may, at its discretion, give notice at any time thereafter requiring the Trustee and Borrower to promptly enter into good faith negotiations to agree an amendment to the relevant provision so that the provision (as amended) will comply with the Terms and cease to be an unfair contract term (**Second Trustee's Notice**). If the Trustee and Borrower are unable to agree an amendment within 20 Business Days of the Second Trustee's Notice, either the Trustee or the Borrower may at any time thereafter give notice to the other requiring the matter be settled by arbitration. If the Borrower fails to give a Borrower's Notice (time being of the essence), the Borrower shall be deemed to have accepted the amendment proposed in the First Trustee's Notice. Any amendment agreed, determined or deemed accepted pursuant to this clause shall be promptly recorded in a deed.

10. Disclosure

10.1 Disclosure

The Trustee will make available to the Borrower statements relating to the Loan in an online format. Each statement:

- (a) will be in electronic form and available to the Borrower at all reasonable times;
- (b) will be a record of all transactions relating to the Loan since the previous statement.

There shall be no obligation on the Trustee to provide the Borrower with printed statements.

10.2 Consent to electronic disclosure

The Borrower consents to any legal requirement for the Trustee to give information in writing to the Borrower, including any disclosure required by the Credit Contracts and Consumer Finance Act 2003, being satisfied by that information being available as set out above and given in electronic form by electronic means.

11. Covenants

11.1 Representations and Warranties

The Borrower and the Guarantor each represents, warrants and undertakes to the Trustee as follows:

Powers

- (a) each of them has the power to enter into, perform and comply with their respective rights and obligations under this Agreement and the Security Documents, and such are legal and valid obligations, binding on them in accordance with their terms, and (if a company) is duly incorporated in New Zealand;

Information and Representations

- (b) all information and representations given to the Trustee or any other party in connection with the Loan and/or this Agreement is true, accurate and not misleading;

No Default

- (c) no Event of Default has occurred or will occur as a result of making the Loan and neither of them is in breach of or in default under any agreement which is binding on them to an extent or in a manner which could have a Material Adverse Effect;

Existing Charges

- (d) except as otherwise permitted under this Agreement or approved in writing by the Trustee, no charge of any nature exists on or over the assets the subject of the Security Documents;

Accounts

- (e) their respective accounts and the accounts of their subsidiaries (if any) (including the profit and loss accounts, balance sheets and any statements of position) as most recently delivered to the Trustee prior to the date of or pursuant to the terms of this Agreement give a true and fair view of their respective financial condition and operations as at the date of those accounts and for the financial period then ended;

Solvency

- (f) neither they nor any of their subsidiaries (if any) are insolvent nor have they or any of their subsidiaries (if any) taken any action nor are they aware of any steps or legal proceedings being taken or threatened against either of them or any of their subsidiaries for their dissolution, liquidation, or for the appointment of a receiver, receiver and manager, statutory manager, trustee or similar officer;

Repetition

- (g) the representations and warranties contained above will be correct and complied within all respects on the date of this Agreement and on each date upon which any payment is due under this Agreement, as if given on that date by reference to the facts and circumstances then prevailing.

11.2 General Undertakings

The Borrower and the Guarantor each undertakes to the Trustee that it shall:

Events of Default

- (a) notify the Trustee of the occurrence of any Potential Event of Default or Event of Default immediately upon becoming aware of it;

Maintain Consents

- (b) maintain and keep in full force and effect all consents required to enable it to perform or comply with its obligations under this Agreement and the Security Documents;

Compliance with Laws

- (c) promptly comply with all laws non-compliance with which might impose any charge of any nature on its assets or have a Material Adverse Effect on it, 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 and adequate reserves are set aside for their payment;

Inspection

- (d) permit the Trustee or any authorised officer of the Trustee, upon reasonable notice and at reasonable intervals during normal business hours, to inspect its premises, books, documents and records;

Litigation

- (e) promptly deliver to the Trustee details of any litigation, arbitration or administrative proceeding which has or could give rise to a Material Adverse Effect;

Provide Security

- (f) to secure the obligations of the Borrower and the Guarantor in respect of the Moneys Owed, enter into, execute and deliver the Security Documents to the Trustee in a form satisfactory to the Trustee and with the priority required by the Trustee;

Financial Information

- (g) provide to the Trustee all financial information in relation to it and its business as reasonably requested by the Trustee during the term of this Agreement, including:

- (i) the annual and half yearly accounts of the Borrower and Guarantor (as applicable), audited if requested by the Trustee and otherwise completed in accordance with generally accepted accounting principles consistently applied in New Zealand;
- (ii) statements of position of any individual Borrower or Guarantor;

Insurance

- (h) so long as any Moneys Owed remain outstanding:
 - (i) (subject to sub-clause (ii)) insure and keep insured in the name of the Trustee and the Borrower or the Guarantor (as applicable) with an insurer approved by the Trustee all insurable property that is subject to the Security Documents; and
 - (ii) ensure that each applicable body corporate insures and keeps insured all insurable property that is subject to the Security Documents and is a stratum estate,

against all risks as it is prudent (in accordance with best commercial practice) to insure against and normally covered by a comprehensive policy (including without limitation earthquake and war damage) for the full replacement value (or if replacement value is not available, then for a sum approved by the Trustee in the Trustee's sole and absolute discretion but in any event no less than the valuation for insurance purposes applicable from time to time and no less than the amount of the Loan plus two years of interest and costs). If any insurable property subject to the Security Documents is a stratum estate, a mortgage redemption policy under section 137 of the Unit Titles Act 2010 must also be effected and maintained in respect of the Loan so long as any Moneys Owed remain outstanding. All moneys received by virtue of any such policy shall be applied, at the option of the Trustee, either in or towards making good the loss or damage with respect to which such moneys shall have been paid, 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. The Trustee shall be provided with particulars of all such insurances by them and they shall duly and punctually pay all premiums and sums of money necessary to maintain the currency of those insurances, and, if required by the Trustee, shall deliver to the Trustee the receipt for those payments;

- (i) immediately on the first Drawdown Date and, thereafter, immediately on each insurance policy renewal and/or insurance policy inception, give notice to each applicable insurer in the form required in Schedule Two;

Interparty Loans

- (j) not make any loan or advance to any Associated Person except on terms and conditions approved by the Trustee in its discretion nor vary or amend the terms and conditions so approved; and

Negative Pledge

- (k) not incur or agree to incur any indebtedness of any nature or grant or agree to grant any guarantee or security interest without the prior written consent of the Trustee.

11.3 Trustee Representation and Covenants

Each party that enters this Agreement (as a Borrower or Guarantor) as a trustee of a trust represents, warrants and covenants to the Trustee as follows:

- (a) it has taken all necessary action to authorise the execution of this Agreement;
- (b) the trust of which it is trustee is duly constituted and validly existing under the laws of New Zealand;
- (c) the deed of trust together with other documents or deeds constituting the trust of which it is trustee are true and up to date copies;
- (d) it is entering into this Agreement as part of the due and proper administration of the trust of which it is trustee;
- (e) all rights of indemnity which it has or will have from time to time against the trust assets or the beneficiaries of the trust of which it is trustee have not been and will not be excluded or limited by the provisions of such trust or by any breach of such trust or by any rights or set-off or counter-claim or otherwise, and it will not release or otherwise prejudice such rights of indemnity;
- (f) it has not and will not commit a breach of the terms and conditions of the deed of trust of which it is a trustee;
- (g) it will not resign as trustee of any trust without a successor being appointed to its position of trustee and will ensure that any successor to its position of trustee will execute any document as the Trustee may require to ensure that this Agreement is binding on such successor;
- (h) it will not amend the deed of trust for the trust of which it is trustee or do or allow or omit to do anything to be done which in the Trustee's opinion may prejudicially affect the Trustee's recourse against the assets of such trust.

12. Anti-Money Laundering and Countering Financing of Terrorism

12.1 Provision of information

The Borrower and the Guarantor shall promptly provide all information requested and reasonably required for the purposes of the Trustee's and the Lender's compliance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (or equivalent legislation in other jurisdictions) (**AML / CTF Compliance**).

12.2 Consent to disclosure

The Borrower and the Guarantor consent to the Trustee disclosing any information or documents the Trustee holds from time to time concerning the Borrower, the Guarantor or any of their Associated Persons for the purposes of AML / CTF Compliance.

13. Events of Default

13.1 Meaning of “Event of Default”

An Event of Default shall occur if:

Non-Payment

- (a) the Borrower fails to pay any amount or sum due under this Agreement on its due date (or within two (2) Business Days of its due date where non-payment on its due date has arisen solely by reason of a bank, technical, computer or similar error outside the control of the Borrower); or

Breach by the Borrower of Other Obligations

- (b) the Borrower commits any breach of or omits to observe or perform any of its obligations or undertakings under this Agreement or the Security Documents or any of them on its due date; or

Receiver

- (c) an encumbrancer takes possession or a liquidator, provisional liquidator, statutory manager, trustee, receiver, receiver and manager, inspector appointed under any companies or securities legislation, or similar officer, or official, is appointed in respect of the whole or any part of the assets of the Borrower; or

Corporations (Investigations and Management Act) 1989

- (d) any step is taken to appoint, or with a view to appointing, a statutory manager (including the making of any recommendation in such regard by the Securities Commission) under the Corporations (Investigations and Management) Act 1989 in respect of the Borrower or the Borrower is declared at risk pursuant to the provisions of that Act; or

Order for Liquidation

- (e) an application or an order is made or an effective resolution is passed for the dissolution or liquidation of the Borrower, or the Borrower shall convene a meeting for the purposes of making, or proposes to enter into, any arrangement or composition for the benefit of its creditors; or

Cross-Default

- (f) any other indebtedness for borrowed money of the Borrower is not paid when due or 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; or

Distress

- (g) a distress, attachment, execution or other legal process is levied or enforced upon or sued out against any of the assets of the Borrower and is not discharged or stayed within seven (7) days; or

Insolvency

- (h) the Borrower is unable to pay its debts when due, or is deemed to be unable to pay its debts when due, or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors or general moratorium on the payment of indebtedness or stops or threatens to stop any payment or payments generally or a judgment of any court against the Borrower shall remain unsatisfied for more than seven (7) days; or

Cessation of Business

- (i) the Borrower (if in trade) shall cease or threaten to cease carrying on all or any material part of its business or operations; or

Reduction of Capital

- (j) the Borrower reduces or takes any action to reduce its capital; or

Enforcement of Security

- (k) any present or future security or charge over or in respect of any of the assets of the Borrower becomes enforceable or is enforced or if any floating charge over such assets crystallises or becomes fixed or specific; or

Withdrawal of Consent

- (l) any consent, required by the Borrower to authorise, or required by the Borrower in connection with, the execution, validity, enforceability or admissibility in evidence of this Agreement or the Security Documents or any of them or the performance by the Borrower of its obligations under this Agreement or the Security Documents or any of them is not granted or is revoked or terminated or expires and is not renewed or otherwise ceases to be in full force and effect; or

Invalidity

- (m) any provision of this Agreement or the Security Documents or any of them ceases to have effect in whole or in part in any material respect, otherwise than in accordance with its terms, or is or becomes void, voidable, illegal, invalid or unenforceable in whole or in part (other than by reason only of a party waiving any of its rights) or of limited force and effect or the performance of any such provision becomes illegal; or

Material Adverse Effect

- (n) any other event or series of events, whether related or not, occurs or circumstances arise or exist which in the reasonable opinion of the Trustee may have a Material Adverse Effect on the Borrower; or

Change in Business or Ownership

- (o) at any time without the prior written consent of the Trustee the Borrower materially changes the nature of its business from that being conducted at the date of this Agreement or there is any change in the beneficial ownership of the share capital or control of the Borrower.

Guarantor

An Event of Default shall also occur if any event should occur which if the references in sub-clauses (a) to (o) above (both inclusive) to the Borrower were replaced with the word "Guarantor" would constitute an Event of Default.

13.2 Remedies on Default

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

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

13.3 Repayment of prior mortgages

If the Borrower and/or Guarantor commits, or is in, default under any mortgage over the Property having priority over the Trustee (**Prior Mortgage**) and such default remains unremedied 14 days after notice from the Trustee, the Trustee at its sole discretion may elect to repay in full the Prior Mortgage, with such repayment amount constituting a drawing under this Agreement (whether or not this exceeds the Loan amount) and when drawn shall form part of the Moneys Owed. The Borrower and the Guarantor irrevocably authorise the Trustee to repay the Prior Mortgage under the terms of this clause.

14. Status and liability of the Trustee

14.1 Trustee as bare trustee

The Trustee enters into this Agreement as bare trustee for the benefit of the Lender and not in its personal capacity or any other capacity. The Trustee holds all rights and powers vested in it under or in connection with this Agreement and the Security Documents as trustee for the Lender in accordance with the Lender's interests, on and subject to the terms of the Trustee's appointment by the Lender.

14.2 No liability

To the extent permitted by law, all liability of:

- (a) the Trustee;
- (b) any Associated Person of the Trustee; and
- (c) the Trustee's employees, directors, officers, agents and contractors,

(**Liability Group**) under or in connection with this Agreement and/or the Security Documents is excluded.

14.3 Limitation of liability

Without prejudice to the above, the aggregate liability of the Liability Group under or in connection with this Agreement is limited to the net assets from time to time under the Trustee's control as bare trustee for the Lender and in any event shall not exceed \$10,000 in aggregate.

14.4 Exclusion of Consumer Guarantees Act 1993 and Fair Trading Act 1986

(a) Exclusion of Consumer Guarantees Act 1993

To the extent permitted by section 43(2) of the Consumer Guarantees Act 1993, the parties agree that the Consumer Guarantees Act 1993 shall not apply to this Agreement.

(b) Exclusion of Fair Trading Act 1986

To the extent permitted by section 5D(1) of the Fair Trading Act 1986, the parties agree that sections 9, 12A, 13 and 14(1) shall not apply to this Agreement.

14.5 Appointment of a Loan Manager

The Trustee may from time to time appoint a third party to manage the Loan on its behalf. If a loan manager has been appointed then the Trustee authorises the loan manager to, and the Borrower and Guarantor accept that the loan manager may on behalf of the Trustee:

Monitor payments

- (a) monitor all payment obligations under this Agreement;

Payment arrears

- (b) take appropriate steps in respect of any payment arrears;

Event of Default

- (c) take appropriate recovery action if there is an Event of Default;

Enforce security

- (d) enforce all or any of the Security Documents.

14.6 Replacement of a Loan Manager

The Trustee may replace the loan manager at any time for any reason.

14.7 The Lender

- (a) The legal relationship under this Agreement is held by the Trustee for the benefit of the Lender.
- (b) The Trustee is the trustee for the Lender.

- (c) Neither the Borrower nor the Guarantor is entitled to any information about the Lender.
- (d) Neither the Borrower nor the Guarantor will be advised if there is any change in the Lender (for example, if a Lender sells its beneficial interest in the Loan). Any such change will not affect any of the rights and obligations under this Agreement.

15. Set-Off

The Borrower and the Guarantor each irrevocably authorises the Trustee (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 set-off against any debt or liability of the Trustee to the Borrower or the Guarantor any part of the Moneys Owed, and to apply any credit balance (**Credit Balance**) to which the Borrower or the Guarantor is at any time beneficially entitled (whether in the name of the Trustee or the Borrower or the Guarantor alone or jointly or otherwise) in satisfaction of any debt or liability of the Borrower or the Guarantor to the Trustee under this Agreement or the Security Documents, and to break any deposit for this purpose, and if any amount is contingently due or is not quantified, to retain and withhold repayment of all or any part of any Credit Balance pending such amount becoming due or quantified or set off all or any part of any Credit Balance up to the maximum liability which may at any time be or become owing by the Borrower or the Guarantor to the Trustee or partly the one and partly the other as determined by the Trustee in its sole discretion.

16. Attorney

16.1 Trustee as Attorney

The Borrower and the Guarantor each irrevocably appoints the Trustee and every director, officer or duly appointed agent for the time being of the Trustee severally the lawful attorney (**Attorney**) of the Borrower and the Guarantor in the Borrower's and the Guarantor's names and on the Borrower's and the Guarantor's behalves at any time from time to time and in such manner as the Attorney in its absolute discretion shall think fit, to take all steps and proceedings and to do all acts, matters and things as the Attorney shall think proper to:

- (a) remedy any default or breach of the terms and provisions of this Agreement or any of the Security Documents by the Borrower and the Guarantor;
- (b) exercise any of the rights, powers and remedies of the Attorney contained in this Agreement or the Security Documents;
- (c) execute any deed, instrument or document necessary for the Attorney 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 Attorney as attorney shall have power from time to time to appoint a substitute or substitutes and to remove that substitute or those substitutes at its pleasure and the Borrower and the Guarantor agree to ratify and confirm whatever the Attorney or its substitutes may lawfully do or cause to be done by virtue of this clause.

16.2 Exercise of Rights

The powers conferred on the Attorney pursuant to this Agreement shall only arise after the occurrence of an Event of Default or Potential Event of Default.

17. Indemnities

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

- (a) the occurrence of any Event of Default; or
- (b) any action or non-action by the Trustee in the enforcement of or protection of its rights or remedies under this Agreement or the Security Documents; or
- (c) the operation of any statute, by-law or regulation affecting this Agreement or any Security Document.

18. Further Assurance

18.1 Further assurance

The Borrower and the Guarantor shall when required by the Trustee at the cost of the Borrower and the Guarantor make, execute, do and perform all such further assurances, instruments, acts or things as the Trustee may from time to time reasonably require to:

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

18.2 Registration

Where any Security Document is held by the Trustee as an unregistered security, the Trustee can at any time require registration of that security.

19. Payments

19.1 Time for Payment

All payments to be made to the Trustee under this Agreement or the Security Documents or any of them shall be made without set off, counterclaim or deduction (other than as this Agreement may provide) and prior to 3.00pm on the day on which payment is due and shall be made to a bank account nominated by the Trustee in writing, or if the Trustee fails to nominate a bank account then payment shall be made to the address of the Trustee 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.

19.2 Business Days

If any sum becomes due for payment under this Agreement or the Security Documents or any of them on a day which is not a Business Day then that payment shall be made on the following Business Day, unless that day falls in another month, in which case that payment shall be made on the preceding Business Day, and interest adjusted accordingly.

19.3 Discharge of Obligation to Pay

Notwithstanding the provision of any receipt by the Trustee, the obligation of the Borrower and the Guarantor to make a payment under this Agreement and the Security Documents or any of them shall only be discharged when the Trustee is satisfied that the person making the payment was solvent at the time the payment was made or on the expiry of the period during which any payment made to the Trustee under this Agreement and the Security Documents or any of them may be avoided or voidable.

19.4 Application of Moneys

The Trustee may apply any payment received by the Trustee in reduction of the liabilities of the Borrower or the Guarantor under this Agreement or any Security Document, to the repayment of the principal, interest, or any other amount due under this Agreement or any Security Document in the order and manner as the Trustee may determine from time to time.

19.5 Currency Indemnity

If, under any law, whether as a result of, or of the enforcement of, a judgment or order of a court or tribunal in any jurisdiction against the Borrower or the Guarantor or the dissolution or bankruptcy of the Borrower or the Guarantor or for any other reason, any payment under or in connection with this Agreement is made, recovered or received in a currency (**Other Currency**) than that in which it is due (**Required Currency**) then, to the extent that the payment (when converted at the rate of exchange on the date of payment or, in the case of a dissolution or bankruptcy, the latest date for the determination of liabilities permitted by law or, in each case, if it is not practicable for the Trustee to make that conversion on that date, at the rate of exchange as soon afterwards as it is practicable for it do so) actually received by the Trustee falls short of the amount due under this Agreement, the Borrower and the Guarantor shall each indemnify the Trustee against the amount of the shortfall. For the purposes of this clause **rate of exchange** means the rate at which the Trustee is able on the relevant

date to purchase the Required Currency with the Other Currency and shall take into account any premium and any of the costs of exchange.

20. Changes in Circumstances and Taxes

20.1 Change of Law

Without prejudice to any other provision of this Agreement, if the Trustee shall certify to the Borrower that by reason of:

- (a) after the date of this Agreement, the introduction of or change in (including any change in interpretation of) any applicable law, regulation or directive or a change by any governmental or other regulatory authority charged with the administration or issuance or in any requirement of that law, regulation or directive; or
- (b) the imposition of any tax (other than tax on overall net income); or
- (c) compliance by the Trustee with any directive from or regulation by any applicable fiscal or monetary authority including the Financial Markets Authority and any replacement or successor regulatory authority or other regulatory authority; or
- (d) any other circumstances materially affecting the New Zealand domestic funding market or the availability to lending institutions in New Zealand of finance including war, riot, civil commotion, strike, lockout or act of God,

the Trustee is unable or it is impracticable to fund or maintain the Loan then the Trustee may, at its discretion by 30 days' prior notice in writing to the Borrower, terminate the Trustee's obligations under this Agreement, upon which the Loan shall be cancelled and the Borrower shall on the expiry of that period repay the Moneys Owed.

20.2 Taxes

If the Borrower is required by law to make any deduction or withholding from any amount paid or payable by it under this Agreement or the Security Documents or the Trustee is required by law to make any payment on account of tax (other than tax on the overall net income of the Trustee) or otherwise, on or in relation to any amount paid or payable to it under this Agreement or the Security Documents then:

- (a) the Borrower shall ensure that any such deduction or withholding does not exceed the legal minimum and shall pay any such tax or other amount required to be deducted or withheld to the relevant taxation or other authority before the date on which penalties accrue due to non-payment;
- (b) the amount payable by the Borrower in respect of which such deduction, withholding or payment is required to be made shall be increased to the extent necessary to ensure that the Trustee receives and retains a net amount equivalent to that which the Trustee would have received and retained had no such deduction, withholding or payment been made; and

- (c) the Borrower shall deliver to the Trustee, 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.

21. Notices

21.1 Form and Delivery of Notice

All notices, requests, demands or other communications to or upon the parties in connection with this Agreement and the Security Documents or any of them shall be:

- (a) given or made in writing;
- (b) signed by a director, officer or other authorised person of the party giving such notice, or by a solicitor acting on behalf of such party; and
- (c) served upon or delivered to the recipient personally, or sent by post or facsimile to the recipient at the address specified below:

To the Trustee: C/- K3 Legal Limited
PO Box 2137
AUCKLAND 1140

Attention: Helen Edwards

To the Borrower:

To the Guarantor:

or if the recipient, by not less than seven (7) days' notice in writing, notifies the other parties to this Agreement of another address, or facsimile number, then to that address, or facsimile number, or if the recipient is no longer at the specified address, then to the last known address of the recipient.

21.2 Receipt of Notice

A notice, request, demand or other communication shall be deemed to have been received:

- (a) in the case of personal delivery on a Business Day, on the date of that delivery;
- (b) in the case of a letter posted by mail, on the second Business Day after posting; and

- (c) in the case of a facsimile sent on a Business Day, during normal business hours in the place of receipt, upon the facsimile machine from which the facsimile was sent producing a transmission report which evidences that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purposes of this clause, or if transmission is after normal business hours in the place of receipt, it shall be deemed to be received on the commencement of the next following Business Day.

22. General Provisions

22.1 No merger

The obligations, undertakings, representations and warranties of the Borrower and the Guarantor under this Agreement shall not merge with the obligations, undertakings, representations and warranties of the Borrower or the Guarantor under the Security Documents.

22.2 Disputes

The Trustee is a member of the Financial Services Complaints Limited disputes resolution scheme. The Borrower and/or Guarantor may refer any dispute relating this Agreement to that dispute resolution service (whose determination shall be final and binding on the parties), details of which are available at www.fscl.org.nz.

22.3 Time of the essence

Time shall be deemed to be of the essence in relation to any matter or thing required to be done by the Borrower or Guarantor including but without limitation the payment of any money or the performance of any obligation under this Agreement.

22.4 Costs and Expenses

In addition to the Legal Fee, the Borrower shall pay to the Trustee on demand the amount of all reasonable costs, charges and expenses (including legal fees and disbursements calculated on a solicitor and own client basis and including bank fees) incurred or charged by the Trustee in connection with:

- (a) the administration (including administration costs in respect of any default by the Borrower) of this Agreement and the Security Documents;
- (b) the amendment, discharge or release of this Agreement and the Security Documents or any of them, or the grant of any consent or waiver which the Trustee may give, or any negotiations in connection with those matters; and
- (c) the preservation or enforcement, or attempted or intended enforcement of the Trustee's rights or remedies under this Agreement and the Security Documents or any of them.

22.5 Non-Waiver

No failure or delay by the Trustee in exercising, or single or partial exercise, of any right, power, discretion, remedy or privilege in connection with this Agreement or the Security Documents shall operate as a waiver of that right, power, discretion or

remedy. No course of dealing between the Borrower or the Guarantor and the Trustee shall operate as a waiver of any right, power, discretion, remedy or privilege of the Trustee.

22.6 Remedies Cumulative

The rights, powers and remedies provided in this Agreement and the Security Documents are cumulative and are not exclusive of any rights, powers or remedies provided by law or pursuant to any other agreements or securities granted either before or after the date of this Agreement.

22.7 Survival

The indemnities of the Borrower and Guarantor in this Agreement and the Security Documents or any of them, any obligation of confidentiality under this Agreement and any other term which by its nature is intended to survive will survive the termination or expiry of this Agreement, the release or discharge by the Trustee of the Security Documents and the repayment of the Moneys Owed.

22.8 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 for any reason whatsoever (including as a result of any declaration pursuant to section 461 of the Fair Trading Act 1986), then the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

22.9 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 Trustee.

22.10 Assignment

This Agreement is binding upon and will enure for the benefit of the parties and their respective successors and permitted assigns. Neither the Borrower nor the Guarantor shall assign or transfer any of their respective rights or obligations under this Agreement or the Security Documents except with the prior consent in writing of the Trustee. The Trustee may assign all or part of its rights and benefits under this Agreement and Security Documents without the consent of the Borrower or the Guarantor.

22.11 Authorised Signatories

The Borrower acknowledges and agrees that the Trustee shall be entitled to rely on any notice, document and other instrument signed by any director of the Borrower or any other person that the Borrower by written notice to the Trustee has notified as an authorised signatory or by any person that is otherwise held out by the Borrower as authorised to sign for and bind the Borrower, and any notice, document or instrument so signed by or for the Borrower shall be fully binding on the Borrower.

22.12 Valuation

If requested by the Trustee, the Borrower shall provide to the Trustee from time to time at the Borrower's cost a valuation, prepared by a registered valuer approved by the Trustee, of the assets the subject of the Security Documents, including the Property, such valuation to include a valuation of the assets for insurance purposes. If the Borrower fails to comply with this clause then the Trustee shall be entitled to obtain such valuations as it may reasonably require from time to time, and the Borrower shall pay the costs of obtaining those valuations promptly on request by the Trustee.

22.13 Confidentiality

The details of this Agreement and the Loan are for the sole information of the Borrower and the Guarantor and their legal/financial advisers, and are not to be divulged to any other party without the prior written consent of the Trustee.

22.14 Privacy Act 1993

The Borrower and the Guarantor each consents to the Trustee obtaining such information and making such enquiries about either of them from any source, including credit reference agencies and companies related to the Trustee, in relation to the Loan and disclosing information about either of them to credit reference agencies, companies related to the Trustee, the Lender, assignees or anyone who is considering becoming an assignee. A person has the right to access personal information (within the meaning of the Privacy Act 1993) held by the Trustee and request correction of any errors in that information.

22.15 Governing Law

This Agreement shall be governed by and construed in accordance with New Zealand law.

22.16 Counterparts

- (a) This Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (b) A party may enter into this Agreement by signing any counterpart.
- (c) The parties acknowledge that this Agreement may be executed on the basis of an exchange of facsimile copies and confirm that their respective execution of this Agreement by such means shall be a valid and sufficient execution. The parties acknowledge that any execution of this Agreement by facsimile shall be followed by execution of the engrossments of this Agreement.

23. Interpretations and Definitions

23.1 Definitions

In this Agreement, unless the context otherwise requires:

Associated Person	has the meaning given to the term in section 12 of the Financial Markets Conduct Act 2013.
Business Day	means a day upon which the majority of registered banks (as defined in the Reserve Bank of New Zealand Act 1989) are generally open for business in Auckland, New Zealand.
Default Interest Rate	means with respect to each Interest Period a rate which is 5% per annum.
Drawdown Date	means the drawdown date or dates requested by the Borrower and agreed to by the Trustee for a drawing of the Loan.
Earliest Repayment Date	means the expiration of [<i>words and figures</i>] months following the first Drawdown Date [DELETE IF INAPPLICABLE].
Expiry Date	<p>means the expiration of [<i>words and figures</i>] months from the first Drawdown Date, subject to the Trustee's right to require payment at an earlier date under the terms of this Agreement.</p> <p>OR – if there is to be an extension mechanism for the Trustee:</p> <p>means the expiration of [<i>words and figures</i>] months from the first Drawdown Date (Original Expiry Date) subject to the Trustee's rights to (a) require payment at an earlier date under the terms of this Agreement and (b) extend (or agree a requested extension to) the Expiry Date by a further [<i>words and figures</i>] months from the Original Expiry Date subject to the parties agreeing an Interest Rate to apply for the duration of the extended period.</p>
GST	means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985.
Interest Payment Date	means the last day of each Interest Period during the term of this Agreement.
Interest Rate	means the rate being []% per annum.
Legal Fee	means [<i>words</i>] (\$[<i>figures</i>]) including GST, expenses and disbursements in connection with the Loan and preparing and entering into this Agreement and the Security Documents.
Lender	means the party or parties for whom the Trustee acts from time to time as trustee in connection with (but without limitation) the Loan and the security (or securities) effected by the Security Documents.

Material Adverse Effect	means something which has a material adverse effect on the Borrower's or the Guarantor's financial condition or the Borrower's or the Guarantor's ability to perform and comply with their respective obligations under this Agreement or any of the Security Documents.
Moneys Owed	means all moneys of whatever nature owed or payable by the Borrower to the Trustee under this Agreement or the Security Documents.
Potential Event of Default	means any event or circumstance which, if it continued after the giving of any notice or the expiry of any grace period, would or may become an Event of Default.
Property	means any real estate or other property of any type (real or otherwise) that is the subject of the Security Documents.
Security Documents	means the documents and securities at any time granted by any party in favour of the Trustee, or obtained by the Trustee at any time, which secure the Moneys Owed including, but not limited to, the following securities: <ul style="list-style-type: none"> (a) a first registered mortgage (in the form required by the Trustee) over the property situated at [address], being an estate of [insert estate] that is legally described as [legal description] and being all the land contained in Computer Freehold Register Identifier [insert title ref and update register if required]; (b) a first ranking general security (in the form required by the Trustee) over all present and after acquired property belonging to the Borrower and the Guarantor; (c) all other present and future security at any time granted by the Borrower, Guarantor or third party that secures the payment of the Moneys Owed and the performance of the obligations under this Agreement and the Security Documents.

23.2 References

In this Agreement, unless the context otherwise requires:

assets of any person includes all present and future assets, undertakings, revenues (including any right to receive revenues), rights, benefits, choses in action, and if applicable, uncalled capital;

consent includes an approval, authorisation, permission, exemption, filing, recording, registration or other act of similar effect including any of the foregoing by or with a governmental agency;

one person being **controlled** by another means that other person (whether directly or indirectly and whether by ownership of share capital, the ability to exercise voting power, control or otherwise) has the power to appoint or remove the majority of the members of the governing body of that person or otherwise controls or has the power to control the affairs of that person and **control** shall be construed accordingly;

the **dissolution** of a person also includes the liquidation or bankruptcy of that person or the equivalent procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, carries on business or has assets;

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

laws means all applicable statutes, regulations, by-laws, orders in council, judgments 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;

person includes any individual, company, corporation, partnership, joint venture, association, trust, state or agency of state, whether or not having separate legal personality;

tax includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called, imposed or levied by any governmental agency, together with any interest, penalty, charge, fee or other amount imposed or made on or in respect of any of the foregoing, and "taxation" shall be construed accordingly; and

written and **in writing** includes all means of reproducing words in a tangible and permanently visible form, and includes reproduction by facsimile.

23.3 General

Unless otherwise stated or the context otherwise requires, this Agreement shall be construed as follows:

- (a) headings are inserted for reference only and shall be ignored in construing this Agreement. References to clauses are references to clauses in this Agreement;
- (b) words importing one gender include the other genders and words importing the singular include the plural and vice versa;
- (c) references to a document are references to that document as amended, novated or substituted from time to time;
- (d) references to a statute, regulation, order, by-law or other legislation are references to that statute, regulation, order, by-law or other legislation as amended, consolidated, re-enacted, substituted or extended from time to

time. References to a statute includes a reference to all regulations as may be passed under that statute; and

- (e) references to a party in this Agreement include the representatives, successors and permitted assigns of that party.

23.4 Negative Obligations

Any obligation under this Agreement not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.

23.5 Joint and Several Liability

Where the Borrower or Guarantor, as defined, includes more than one person, each person shall be jointly and severally liable under this Agreement as Borrower or Guarantor (as the case may be).

SIGNED by)
MAGNA TRUST COMPANY LIMITED as)
the Trustee)
by two of its directors or an authorised)
signatory in the presence of:)

*signature (director / authorised signatory
(delete one))*

Witness's signature:

name of signatory:

Witness's name:

Occupation:

*signature (director / authorised signatory
(delete one))*

Address:

name of signatory:

[Insert attestation provisions for the Borrower as appropriate.]

EXECUTED by the Guarantor as a deed

[Insert attestation provisions for the Guarantor as appropriate.]

SCHEDULE ONE
Guarantee (clause 2.1)

- (a) The Guarantor hereby unconditionally and irrevocably guarantees to the Trustee the due performance of and compliance by the Borrower of its obligations to the Trustee in this Agreement.
- (b) The Guarantor unconditionally and irrevocably undertakes that if, for any reason, the Borrower does not pay when due any guaranteed indebtedness, the Guarantor will pay the guaranteed indebtedness immediately on demand. The **guaranteed indebtedness** means all indebtedness of the Borrower arising under this Agreement.
- (c) Notwithstanding anything contained in this Agreement or any other document, should the guaranteed indebtedness or any part of it not be recoverable by the Trustee from the Guarantor, or any obligation of the Borrower under this Agreement not be enforceable against the Guarantor:

- (i) whether by reason of:

- (A) any legal or other limitation, disability or incapacity of or affecting any party; or

- (B) the Borrower or Guarantor ceasing to be legally liable to pay or perform any obligation under this Agreement or any part thereof by reason of any law relating to insolvency, liquidation or otherwise; or

- (C) any law, judgment or order of any court postponing or reducing or otherwise affecting payment or performance of any obligation under this Agreement or any part thereof; or

- (D) any other fact or circumstance whatsoever; or

- (ii) whether or not any transaction relating to the obligations under this Agreement has been declared void from the beginning or has been subsequently avoided; or

- (iii) whether or not any matter or fact having or causing a Material Adverse Effect has been or ought to have been within the knowledge of the Trustee,

then the Guarantor, as a separate and additional liability under this Agreement, indemnifies the Trustee in respect of the obligations of the Borrower under this Agreement in respect of any loss suffered by the Trustee directly or indirectly as a result of any failure by the Borrower to perform any of the obligations under this Agreement, and the Guarantor as a principal debtor shall pay to the Trustee on demand, and in the manner specified in such demand, a sum equal to the amount of the obligations under this Agreement or such part thereof and the terms of this Agreement shall (with all necessary modifications) apply as far as possible to this indemnity.

- (d) Without prejudice to the Borrower's obligations, the Guarantor is liable under this Agreement as a sole and principal debtor and not merely as a surety. The Guarantor's obligations under this Agreement:

- (i) are by way of continuing security, notwithstanding intermediate payments, settlement of accounts or payments or any other matter or thing whatsoever;

- (ii) are in addition to, are not to be merged in and are without prejudice to, any security interest, guarantee, indemnity or other agreement, whenever in existence, in favour of any person, whether from the Guarantor or otherwise;
 - (iii) are to remain in full force and effect until the execution by the Trustee of an unconditional discharge of the obligations of the Guarantor under this Agreement.
- (e) If, in the opinion of the Trustee:
- (i) the Borrower has paid and performed and complied with all its obligations under this Agreement; and
 - (ii) the Trustee is under no obligation to make available any further credit, advance or facility under any relevant document in respect of any of the Borrower's obligations under this Agreement; and
 - (iii) the Guarantor has discharged all its obligations pursuant to this guarantee; and
 - (iv) there is no reasonable possibility that all or any portion of the guaranteed indebtedness received or recovered by the Trustee from the Guarantor or any other person will or may have to be refunded or repaid under any applicable law (including, without limitation, any law relating to preferences or insolvency),

the Trustee will, at the request and cost of the Guarantor, execute a discharge of the obligations of the Guarantor under this guarantee. Any discharge or any composition or arrangement which the Guarantor may effect with the Trustee will be deemed to be made subject to the condition that it will be void if a payment or security interest which the Trustee may previously have received or may later receive from the Guarantor or another person in respect of any obligation under this Agreement is set aside under applicable law or proves to have been, for whatever reason, invalid. In that case:

- (v) that payment or security interest will be deemed not to have discharged or affected the obligation of the Guarantor in respect of which that payment or security interest was made, given or received; and
- (vi) the Trustee and the Guarantor will be deemed to be restored 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 or security interest had not been made or given.

SCHEDULE TWO
Notice to insurer(s) (clause 11.2(i))

DATE: _____

TO: _____ [*insert name of insurer*] (**you**)

[*INSERT PROPERTY ADDRESS*] – INSURANCE POLICY [*INSERT POLICY NUMBER*]

1. [*Insert name of property owner(s)*] (**insured party**) own(s) the property at [*insert property address(es)*] (**property**).
2. The property is insured with you. The policy number is [*insert policy number*].
3. The property is mortgaged to Magna Trust Company Limited.
4. The insured party is contractually obliged to Magna Trust Company Limited to keep the property insured.
5. Magna Trust Company Limited and/or its agents may contact you from time to time requesting details of the policy including requesting confirmation that the policy remains current and all premiums have been paid. The insured party irrevocably authorises you to correspond fully with Magna Trust Company Limited and/or its agents in this respect.
6. Additionally, this is notice to you that the insured party has irrevocably appointed Magna Trust Company Limited and its agents the attorney for the insured party to take all steps and to do all acts, matters and things Magna Trust Company Limited thinks proper to remedy any default or breach of contract between the insured party and Magna Trust Company Limited.
7. Please file this correspondence with your policy records.

SIGNED at _____ this _____ day of _____

Signature of all insured parties:

