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**IN FAVOUR OF
KOOKMIN BANK**

[**LOAN AGREEMENT**]

BETWEEN: KOOKMIN BANK
 LEVEL 16
 88 SHORTLAND STREET
 AUCKLAND
 (the “**Bank**”)

AND []
 (the “**Borrower**”)

IT IS AGREED:

1. **AGREEMENT**

1.1 **Agreement to Lend and Repay**

The Bank agrees to make the Loan available to the Borrower on the terms and conditions of this agreement. The Borrower agrees to repay the Loan, pay interest on the Loan, pay all other amounts required to be paid under or in connection with this agreement, and comply with all its other obligations under this agreement, in each case on the terms and conditions of this agreement.

1.2 **Construction**

In this agreement, unless the context otherwise requires:

this agreement means this agreement comprising the Standard Terms and Conditions, and the Schedules

a party to this agreement includes that party’s successors, executors and administrators and permitted assignees and transferees

if more than one person is named as the Borrower and/or Guarantor then, unless the context otherwise requires, reference to the Borrower and/or Guarantor is a reference to each of them separately and to all of them together and each of them is jointly and severally liable for all the obligations of the Borrower and/or Guarantor under this agreement

all references to \$ or money are a reference to New Zealand dollars unless otherwise specified

the singular includes the plural and the converse

a gender includes all genders

headings, italics and bold text are for convenience only and do not affect interpretation.

1.3 **Interpretation**

In this agreement, unless the context otherwise requires:

Bank Document means this agreement, each Security Document and each other agreement or document to which the Borrower and/or one or more Guarantors has or is to have (or is intended to have) payment and/or other obligations to the Bank

Business Day means any day other than Saturday, Sunday or a public holiday in Auckland, New Zealand

Default Event means an event of default specified in clause 4.2 of the Standard Terms and Conditions, or an event which, with the giving of notice, lapse of time or satisfaction of any condition, or any combination of them, would constitute such an event

Default Interest Rate means the default interest rate specified in Item 6 of Schedule 1

Fixed Interest Period means the fixed interest period specified in Item 8 of Schedule 1

Insolvency includes:

- (a) winding-up or dissolution, liquidation, interim liquidation, receivership, statutory management, the declaration to be a corporation at risk under the Corporations (Investigation and Management) Act 1989, administration, reconstruction or the commission of an act of insolvency within the meaning of the Insolvency Act 2006
- (b) striking-off or removal from the register under the Companies Act 1993, cancellation or suspension of registration, or the happening of any event on which the Borrower or a Guarantor is to terminate, under the legislation under which the Borrower or Guarantor is incorporated or was established or under its constitutive documents, the giving of a direction by the registrar under the relevant legislation prohibiting the Borrower or Guarantor from carrying on any activity, or the suspension of the powers of the officers of the Borrower or Guarantor, or the suspension of the constitution of the Borrower or Guarantor by that registrar
- (c) assignment for the benefit of creditors, or arrangement or compromise with creditor
- (d) any analogous event

Interest Rate means the interest rate specified in Item 5 of Schedule 1 or any varied rate as it may be varied in accordance with clause 2 of the Standard Terms and Conditions

Loan means the loan and/or other banking accommodation made or to be made available under this agreement in the amount specified in Item 1 of Schedule 1

Loan Establishment Fee means the loan establishment fee (if any) specified in Item 18 of Schedule 1

Property means the property specified in Item 13 of the Schedule over which security has been or is to be taken pursuant to any Security Document (and includes any property over which security is taken pursuant to any future Security Document)

Security Document means the document(s) specified in Item 14 of Schedule 1 and each other agreement or document under or pursuant to which the Borrower's indebtedness and/or other obligations to the Bank (whether or not together with any other indebtedness and/or obligations) are or are to be (or are intended to be) secured

Schedule means a schedule to this agreement

Special Conditions means the special terms and additional conditions specified in Item 19 of Schedule 1 which in relation to conditions are a condition precedent in accordance with Part A clause 1.1 of the Standard Terms and Conditions.

Standard Terms and Conditions means the section of this agreement headed "Standard Terms and Conditions" contained in Schedule 2.

DATED

2021

SIGNED

Bank

KOOKMIN BANK by:

Signature of authorised signatory

Signature of witness

Name of authorised signatory

Name of witness

Occupation of witness

City/town of residence

Borrower

Where the Borrower is one or more individuals then the signature of each individual must be witnessed:

Signed by the Borrower:

Signed in my presence:

Signature

Signature of Witness

Print Name

Name

Occupation

Address

SCHEDULE 1**Item 1 The Loan**

\$ []

Item 2 Type of Loan

1. Residential Term Loan
 2. Commercial Term Loan
 3. On demand
 4. Other _____
- If no option is selected then option 3 shall apply

Item 3 Purpose of Loan

1. Purchase of the Property specified in Item 13
2. Refinancing the Borrower's existing loans
3. Provide capital for the Borrower's business
4. Personal purposes
5. Other _____

Item 4 Term of Loan

[] months after the date the Loan is first drawn down by the Borrower (or such extended period as the Borrower and the Bank may agree in writing in accordance with clause 3.2 of the Standard Terms and Conditions)

Item 5 Interest Rate (at the date of this agreement)

[] % per annum **fixed/variable**

Item 6 Default Interest Rate

1.5 times above the Bank's fixed/variable interest rate payable as at the date of the default

Item 7 Interest and principal payable (at the date of this agreement)

Interest will accrue on a daily basis on all drawings outstanding under the Loan. Interest payments are payable monthly in arrears from the date the Loan is drawn down by the Borrower.

Item 8 Fixed Interest Period

[] months from the date the Loan is first drawn down by the Borrower

Item 9 Date for full repayment of Loan

The Loan will be repaid in full at the end of the term specified in Item 4

Item 10 Address

Bank's address	Borrower's address
Kookmin Bank, Auckland Branch Level 16, 88 Shortland Street Auckland P O Box 7506, Victoria Street West, Auckland	
Fax: + 649 366 6608	Phone number:

Item 11 Prepayment amount

Item 12 Prepayment administrative fee

Item 13 Property

Item 14 Security Documents

1. A registered first mortgage over the Property
2. An [unlimited] [limited] guarantee and indemnity from the Guarantor
3. A general security in respect of all of the Borrower's assets
4. Deed of Assignment by Way of Mortgage

Item 15 Insurance requirements

The insurance requirements specified in the Banks letter of instructions together with written confirmation from the insurer that the Bank's interest has been noted on the policy in the form required in the letter of instructions

Item 16 Trust details (if applicable)

Name of trust : []
Date of creation of trust: []
Names of current trustees: []

Item 17 Borrower's indebtedness

Item 18 Loan Establishment Fee

Item 19 Special Conditions

SCHEDULE 2
STANDARD TERMS AND CONDITIONS
for
LOAN AGREEMENT

PART A: LOAN TERMS

1. AVAILABILITY OF LOAN

- 1.1 The Bank will make the Loan available to the Borrower in accordance with clause 1.3 subject to the conditions precedent that the Bank must be satisfied that no Default Event has occurred and is continuing and must have received and found in form and substance satisfactory the following;
- (a) an original of this agreement signed by the Borrower and Guarantor (if any)
 - (b) an original of each Security Document specified in Item 14 of Schedule 1 signed by each party to it other than the Bank and certified as required by the Bank and, where necessary, duly registered
 - (c) a registered valuer's report on the Property (if any) addressed to the Bank
 - (d) evidence of the satisfaction of the Bank's insurance requirements specified in Item 15 of Schedule 1
 - (e) repayment of any indebtedness of the Borrower to the Bank specified in Item 17 of Schedule 1
 - (f) the Bank's solicitor's certificate
 - (g) for each Borrower or Guarantor which is a company, a certificate substantially in the form required by the Bank signed by a director of the company
 - (h) if the Borrower is a natural person and the Loan is to be used primarily for business or investment purposes (or for both purposes), a declaration to that effect (signed by the Borrower before it signs this agreement) in a separate document substantially in the form required by the Bank
 - (i) evidence of the satisfaction of the Special Conditions (if any);
 - (j) evidence of the satisfaction of any other Bank requirements notified to the Borrower relating to this agreement or any other Bank Document
 - (k) provided all the other conditions in this clause 1.1 are first satisfied, at least two Business Days' notice in writing of the date the Borrower wants to draw the Loan.
- 1.2 If the condition precedent in clause 1.1 is not satisfied or waived before the date 1 month after the date of this agreement, then the Bank may terminate this agreement whereupon the Bank will have no further liability to the Borrower. The Borrower agrees that notwithstanding the Bank's termination the Borrower shall remain liable to pay the Loan Establishment Fee.
- 1.3 The Bank will advance the Loan by applying it in payment of the Loan Establishment Fee and, as to the balance, to the Borrower or to the Borrower's solicitors for the purpose set out in Item 3 of Schedule 1. The Borrower may not utilise the Loan for any other purpose.
- 1.4 If the Borrower does not draw the entire Loan on the first drawdown date, it may subsequently draw the remaining amount of the Loan by a subsequent advance or advances provided that in each case the Bank is satisfied that no Default Event has occurred and is continuing and has received and found in form and substance satisfactory the information, notice and other items described in clauses 1.1(i) and (k).

2. INTEREST

- 2.1 The Interest Rate as at the time this agreement is prepared is specified in Item 5 of Schedule 1.
- 2.2 Subject to clause 1 of the Standard Terms and Conditions, the Borrower will pay the Bank interest at the Interest Rate from, at the times and in the amounts specified in Item 7 of Schedule 1. If a Fixed Interest Period is specified in Item 8 of Schedule 1 then the Borrower shall pay interest at that Fixed Interest Rate for that period. Following the expiry of the Fixed Interest Period the variable interest rate will apply as provided by clause 2.8(a), subject to clause 2.3.
- 2.3 The Borrower may request the Bank (and the Bank may agree at its discretion) to quote a fixed interest rate for a further period or periods beyond the Fixed Interest Period referred to in Item 8 of Schedule 1, provided that any such further fixed interest period must expire on or before that date specified in Item 9 of Schedule 1. If the Borrower and the Bank agree in writing, a fixed interest rate as so agreed between them will apply during that further fixed rate period or periods.
- 2.4 If any amount payable under this agreement is not paid at the time and in the manner specified, the Borrower will pay interest on the outstanding Loan principal at the Default Interest Rate. Default interest is to be calculated daily on the basis of a year of 365 days from the due date until the overdue amount is paid in full whether or not the Bank has obtained a court judgment or order against the Borrower in the meantime.
- 2.5 The Bank may compound or capitalise default interest in accordance with its own practices. By converting interest to principal the Bank will not be deemed to have made a further advance or loan to the Borrower.
- 2.6 The Interest Rate may be:
- (a) fixed and variable, or
 - (b) variable.
- 2.7 If during any monthly interest period:
- (a) the Loan principal outstanding under the Loan is less than the total Loan amount specified in Item 1 of Schedule 1 of this agreement, or
 - (b) the Interest Rate changes,
- then the monthly interest charge in respect of that period at the Interest Rate applicable to that period will be determined by applying the daily Interest Rate to the unpaid daily balances of Loan principal outstanding during that period (on the basis of a year of 365 days).
- 2.8 Interest Rates on amounts owed by or to the Bank are subject to market fluctuations and may be varied by the Bank at any time. If the Interest rate is:
- (a) fixed and variable, the Bank may change the Interest Rate applying at any time before the Loan is advanced and may change the interest rate applying at any time after the Fixed Interest Period (or any further fixed rate period agreed in writing between the Bank and the Borrower as referred to in clause 2.3) has expired,
 - (b) variable, the Bank may change the Interest Rate at any time.
- 2.9 The Bank will give the Borrower at least 14 days' prior written notice of any change of the Interest Rate either:
- (a) by giving the notice to the Borrower, or
 - (b) by sending the notice by post to the Borrower's place of residence last known to the Bank or to an address specified by the Borrower for this purpose.

3. REPAYMENT, EXTENSION OF TERM AND PREPAYMENT

3.1 The Borrower will repay the Loan on the date specified in Item 9 of Schedule 1. However, if the Loan is specified in Item 2 of Schedule 1 as being on demand, then the Bank may at its discretion at any time demand in writing repayment of the Loan and the Borrower must repay it on the date the Bank specifies in its notice of demand.

3.2 If the Borrower wishes to extend the term of the Loan as set out in Item 4 of Schedule 1, the Borrower may make a written request to the Bank and if the Bank agrees to an extension of the term the Bank will require the Borrower and Guarantor (if any) to enter into a deed confirming the extended term which shall then be deemed to be the term under Item 4 of Schedule 1, this agreement and all of the terms set out in this agreement shall continue to apply to the Loan.

3.3 If the Borrower wishes to prepay all or part of the Loan, the Borrower must give the Bank at least two Business Days' written notice of its intention to prepay. This notice is irrevocable and is to specify the amount of the prepayment.

3.4 On the date specified in the prepayment notice the Borrower must:

- (a) make the specified prepayment
- (b) pay all interest accrued and interest due on the amount being prepaid to that date
- (c) pay an administrative fee in the amount specified in Item 12 of Schedule 1 (if any), and
- (d) in the case of a prepayment during a Fixed Interest Period, pay an amount which represents the Bank's loss from the early repayment which the Bank calculates as:

The amount of the early repayment x (interest rate at the time loan is drawn down - interest rate at the time of repayment) x number of months remaining / 12 (subject to minimum charges listed below). If there are 15 days or more remaining in a month, the calculation will be based on a full month

The minimum charge amount is \$250 for individual residential home loan and \$500 for company/commercial loan.

3.5 Where only part of the Loan is prepaid, the prepayment amount must be an amount calculated in accordance with Item 11 of Schedule 1.

3.6 Where all of the Loan is prepaid, the Borrower must also pay all other amounts due under this agreement.

3.7 No amount prepaid under this clause will be available for re-borrowing.

3.8 The Bank may decline to accept any prepayment of all or part of the Loan made other than in accordance with this clause 3.

3.9 Each repayment and prepayment must be made in the currency in which the Loan was advanced.

4. ENFORCEMENT

4.1 If any of the Default Events specified in clause 4.2 occur:

- (a) the Bank may give the Borrower a notice demanding immediate repayment of the Loan and payment of the interest and other amounts payable under this agreement and the other Bank Documents and may exercise all of its other rights under this agreement or the other Bank Documents and at law, and
- (b) the Borrower must repay the Loan and pay all accrued interest and interest due and all other amounts due under this agreement and the Bank Documents at the time and in the manner specified in the Bank's notice of demand.

4.2 Each of the following events is a Default Event:

- (a) the Borrower fails to pay any amount due to the Bank (time being of the essence) under a Bank Document
- (b) the Borrower or a Guarantor fails to comply with an obligation (other than a payment obligation) under a Bank Document
- (c) any representation or warranty of the Borrower or a Guarantor made or deemed to be made in a Bank Document, or other information provided by or on behalf of the Borrower or a Guarantor to the Bank, is incorrect, untrue, misleading or deceptive in any material respect when made or deemed to be made
- (d) an amount the Borrower or Guarantor owes to someone else is not paid when due or becomes due or capable of being declared due and payable before its stated maturity, or any facility or obligation to provide loans or credit to the Borrower or a Guarantor is terminated early or suspended, or capable of being terminated or suspended early, or any security affecting the Property is enforced or becomes enforceable
- (e) the Borrower fails to comply with the Special Conditions
- (f) an authorisation that is necessary for the Borrower or a Guarantor to perform an obligation under this agreement or another Bank Document (or to make the Borrower's or a Guarantor's obligations under this agreement or another Bank Document enforceable) is cancelled or changed in a way that in the Bank's opinion has or could have a material adverse effect on the Borrower's or a Guarantor's ability to comply with that obligation or on the Bank's rights under this agreement or another Bank Document
- (g) an order or judgment requiring the Borrower or a Guarantor to pay an amount is not complied with within 7 days (unless, in good faith, the Borrower or the Guarantor appeals against the order or judgment)
- (h) a part of this agreement or another Bank Document is or becomes (or is claimed to be) illegal unenforceable, invalid or of limited force or effect or a party becomes (or claims to be) entitled to terminate, limit, cancel, rescind or avoid all or any part of any such document
- (i) it is or becomes (or is claimed to be) illegal or impossible for the Borrower or a Guarantor to comply with any or all of its obligations under this agreement or another Bank Document
- (j) it is or becomes (or is claimed to be) illegal or impossible for the Bank to fund or continue to make the Loan available to the Borrower
- (k) a Guarantor gives a notice terminating its obligations
- (l) the Borrower or a Guarantor dies or ceases to be of full legal capacity, or is unable to pay its debts or is deemed or presumed to be unable to pay its debts, or stops or threatens to stop or suspend payment of all or any class of its debts
- (m) any step is taken for the Insolvency of the Borrower or Guarantor or any of its assets
- (n) if the Borrower or Guarantor is a company, without the Bank's prior written consent:
 - the Borrower or a Guarantor has a creditor's committee, investigating accountant or person with similar powers appointed to investigate its affairs
 - any of the Borrower's or Guarantor's shares are transferred
 - the Borrower's or Guarantor's shareholders at the date of this agreement cease being the beneficial owners of all of its shares
 - a shareholder of the Borrower or Guarantor gives notice to the Borrower or Guarantor requiring it to repurchase that shareholder's shares pursuant to section 111 of the Companies Act 1993

- a proposal is made or a resolution is passed to amalgamate the Borrower or Guarantor with another company under the Companies Act 1993
 - an investigation into all or part of the affairs of the Borrower or Guarantor commences under companies legislation in circumstances material to its financial condition
 - a resolution is proposed in a notice of meeting so as to prevent or restrict the calling up of any unpaid capital of the Borrower or Guarantor
 - an order is made requiring the Borrower or Guarantor to pay or contribute to any debts of another company
- (o) all or any part of the Property is compulsorily acquired or any step is taken for its acquisition or possession by any holder of a security over the Property other than the Bank
- (p) any event or series of events (whether related or not) occurs which in the Bank's opinion has or could have a material adverse effect on the ability of the Borrower or a Guarantor to comply with its obligations under a Bank Document, on the security position (including in relation to a Guarantor's guarantee) of the Bank, and/or on the financial condition or business of the Borrower or a Guarantor.

5. PAYMENTS

- 5.1 All payments to be made by the Borrower to the Bank under this agreement or another Bank Document must be made only on a Business Day and by:
- (a) 4.30 pm on that day if the Loan is provided in New Zealand dollars
 - (b) 12.00 noon on that day if the Loan is provided in a currency other than New Zealand dollars.
- 5.2 If a payment falls due on a day that is not a Business Day, it must be made by the time specified in clause 5.1 on the immediately following Business Day.

6. SECURITY DOCUMENTS

- 6.1 All Security Documents will be first in priority unless otherwise agreed in writing by the Bank. All existing and future securities will also secure the Borrower's indebtedness to the Bank for all amounts owing under this agreement and the other Bank Document so that any default under this agreement, any other Bank Document or under any existing or future loan agreements or security documents shall be a default under all loan agreements and security documents held by the Bank (which may exercise its rights to recover all amounts owing to it by the Borrower under all loan agreements and security documents held by the Bank).

7. TRUSTEES' LIMITATION OF LIABILITY AND UNDERTAKING

- 7.1 If the Borrower or a Guarantor is a trust (or trustee(s) acting in relation to a trust), each Bank Document to which it is party will bind each trustee of that trust. Each trustee will also be bound personally unless that trustee is an independent trustee.

Each trustee confirms that he or she:

- (a) has the power to enter into this agreement and each other Bank Document either under the terms of the trust document or under the powers given to him or her by the Trustee Act 1956
- (b) has or will have properly signed each Bank Document in accordance with the terms of the trust, and
- (c) has a right of indemnity from the trust assets

and that the trust details in item 16 of Schedule 1 are correct.

The Bank may bring proceedings against a trustee for breach of warranty if any of the above warranties are incorrect.

The Bank's rights against a trustee will be limited only if the trustee is an independent trustee. In that case, the Bank will only be entitled to recover amounts from that trustee's personal assets if the Bank is not able to recover any amounts from the trust assets because any of the representations and warranties given by the trustee are incorrect. The Bank will only be entitled to recover from the trustee's personal assets the amount it would have recovered from the trust assets had those representations and warranties been correct.

Where a trustee is not an independent trustee, the Bank may seek to recover any amounts from that trustee's personal assets as well as from trust assets.

For the purposes of this clause, a trustee is an independent trustee unless that trustee has any right to or interest in any of the assets of the trust except in their capacity as trustee of the trust.

7.2 Where the Borrower or a Guarantor is a trust (or trustee(s) acting in relation to a trust), and in addition to their other obligations under the Bank Documents, the trustees will ensure that except to the extent that the Bank consents in writing:

- (a) the trust deed is not amended or revoked
- (b) no existing trustee is removed or retires as trustee of the trust
- (c) no new or additional trustee of the trust is appointed
- (d) the trustees duly and punctually comply with their obligations under the trust deed
- (e) no vesting date under the trust deed is determined during the term of this agreement
- (f) no restriction or limitation on the right of indemnity of any trustee of the trust is created.

PART B: GENERAL TERMS

1. DEDUCTIONS FROM PAYMENTS

1.1 The Borrower must not make any payment subject to any condition, restriction or claim it may have against the Bank. The Borrower may only make a withholding or deduction from money it pays to the Bank under this agreement or any other Bank Document if that withholding or deduction is required by law. If the law requires the Borrower to make a withholding or deduction then the following rules apply:

- (a) the Borrower must make sure that the withholding or deduction is for not more than the minimum amount required by that law
- (b) the Borrower must make sure that the withholding or deduction is paid to the relevant revenue or governmental agency by the due date for payment
- (c) the Borrower must send the Bank, within 30 days of the withholding or deduction, a receipt showing that the withholding or deduction has been paid to the relevant revenue or governmental agency, and
- (d) the Borrower must increase the amount it pays to the Bank so that the Bank receives the amount it would have received had there been no withholding or deduction.

1.2 If the law requires the Bank to make a deduction or withholding from any amount received or receivable by it under this agreement or any other Bank Document (including any sum received or receivable under this clause 1.2, and excluding any tax on its overall net income) then the Borrower must increase the amount it pays to the Bank so that the Bank receives the amount it would have received had there been no withholding or deduction.

1.3 If:

- (a) the Bank (or any person on its behalf) is required by law to make a deduction or withholding for, or on account of, tax or on any other account from an amount paid or payable to a person from whom it has borrowed or obtained moneys to enable it to fund the Loan or any other payment by it under this agreement or any other Bank Document, and
- (b) as a result the Bank is required to increase its payment, or makes an additional payment, to that person or to a taxation authority,

then the Borrower indemnifies the Bank against that increased or additional payment and must, on demand by the Bank, pay to the Bank the amount which, after receiving that amount and making that increased or additional payment, will place the Bank in the same position in which it would have been had no increased or additional payment been made.

2. CHANGE IN CIRCUMSTANCES

2.1 Increased costs

If as a result of:

- (a) the Bank complying with any law, or
- (b) any change in or introduction of any law or change in the interpretation or application of any law by any governmental agency or court which:
 - imposes, modifies or deems applicable any reserve, capital adequacy, prudential deposit, liquidity or similar requirement against assets of, or deposits with, any branch of the Bank
 - imposes on the Bank any other requirement with respect to this agreement or any other Bank Document, or
 - changes the risk weighting for capital adequacy purposes of the Loan

any of the following occur:

- (c) the cost to the Bank of making, funding or maintaining the Loan is increased, or
- (d) the moneys payable to the Bank or the effective return to the Bank under or in connection with this agreement is reduced, or
- (e) the Bank makes any payment or foregoes any interest or other return on, or calculated by reference to, any sum received or receivable by it under any Bank Document, or
- (f) the Bank is unable to obtain the rate of return on capital (including any notional return on capital calculated on a risk adjusted basis) which it would have received at the date of this agreement

then:

- (g) the Bank will use its reasonable efforts promptly to notify the Borrower in writing of those events, provided that failure to do so will not affect the Bank's rights under this clause; and
- (h) the Borrower must pay on demand, from time to time, for the account of the Bank, the amount certified by the Bank which will compensate the Bank for its increased cost, reduction, payment or foregone interest or other return.

2.2 The obligations of the Borrower under clause 2.1 will survive termination of the Loan and payment or repayment of all amounts outstanding under the Bank Documents.

3. INDEMNITY

3.1 The Borrower indemnifies the Bank upon demand against any loss, cost (including legal costs and disbursements on a solicitor and own client basis), expense, charge, damage, claim or liability which the Bank, may suffer or incur as a consequence of:

- (a) the occurrence of a Default Event
- (b) the exercise, contemplated exercise or attempted exercise of, or the failure to exercise, any power, right, authority, discretion or remedy under or in connection with any Bank Document
- (c) the receipt of any amount to be paid under any Bank Document on a date other than the due date
- (d) a Loan advance requested by the Borrower not being made for any reason (excluding default by the Bank) on the date notified by the Borrower to the Bank as the drawdown date.

3.2 Without limitation, but subject only to clause 3.4, the indemnity in clause 3.1 will extend to:

- (a) any losses, costs, penalties and expenses incurred by reason of the liquidation or re-employment of deposits or other funds acquired or contracted for by the bank (including loss of margin), and
- (b) any losses, costs, penalties and expenses which may be incurred by the Bank in:
 - terminating any options or forward rate agreements or interest or currency swap contracts entered into in connection with the Loan, or
 - in entering into any new contracts which it deems appropriate to protect the return it would otherwise have expected under this agreement.

3.3 If for any reason:

- (a) the Bank receives or recovers an amount under a Bank Document in a currency other than the currency in which it should have been paid and, after the Bank has converted that other currency to the correct currency there is not enough to pay off the full amount then due under the Bank Document, or
- (b) the Bank obtains any judgment or court order against the Borrower in a currency other than the currency in which the amounts outstanding are due, and the Bank incurs any loss from the conversion of any amount actually received by it from that other currency to the correct currency

then, as a separate and independent indemnity obligation, the Borrower must pay the Bank the full amount of any shortfall or of any such loss incurred by the Bank.

3.4 If this agreement is a consumer credit contract (as defined in the Credit Contracts and Consumer Finance Act 2003) then:

- (a) each default fee payable under this clause 3 must be reasonable
- (b) each fee or charge payable under this clause 3 in connection with a part prepayment of the Loan must not exceed a reasonable estimate of the Bank's loss arising from the part prepayment, and
- (c) each fee or charge payable on a full prepayment of the Loan must not exceed a reasonable estimate of the Bank's loss using a formula prescribed in regulation 9 or regulation 11 of the Credit Contracts and Consumer Finance Regulations 2004 (or any replacement regulations).

3.5 The indemnities in this clause 3 are unconditional and irrevocable and will survive termination of the Loan and payment of all amounts outstanding under the Bank Documents and the release of any security under the Security Documents and will not be discharged or impaired by any act, omission, matter or thing which might discharge them but for this provision.

4. SET OFF AND COMBINATION

4.1 If the Borrower has any money in any account with the Bank, then the Bank may use it to pay amounts the Borrower owes under this agreement (but need not do so). If the Borrower is in default, the Bank may use money which has not yet matured due and convert money in the account of the Borrower in foreign currencies. To the maximum extent allowed by law, the Borrower gives up any right to set off any amounts the Bank owes it against amounts owing under the Bank Documents.

4.2 If at any time an amount is contingently due from the Borrower or an amount due is not quantified, the Bank may retain and withhold repayment of any money in any account of the Borrower and the payment of interest or other moneys pending that amount becoming due and/or being quantified and may set off the maximum liability which may at any time be or become owing to the Bank by the Borrower and in each case without prior notice or demand.

4.3 Subject to any applicable Bank Document, where the Borrower has two or more accounts with the Bank:

- (a) the Bank may at any time combine any two or more of those accounts. It may do so without notice and whether or not it has allowed a set-off for a calculation of interest between any of those accounts
- (b) the Bank may at any time combine any two or more of those accounts even where one or more of the combined accounts are in different currencies and may effect currency exchanges appropriate to implement that combination, and
- (c) if the Bank combines two or more accounts, it may decline to pay cheques and it may otherwise act as if the combined accounts had always been one account.

4.4 The Bank's rights under this clause are contractual rights affecting the terms upon which a credit balance is held and the creation of those rights does not constitute the creation of a security interest in respect of that credit balance.

4.5 Any moneys which, pursuant to a Bank Document, are deposited at any time by the Borrower with the Bank (or withheld by the Bank from a payment to the Borrower and retained on deposit with it) will be held on the following basis:

- (a) each deposit and all rights of the Borrower relating to it must be incapable of assignment by the Borrower or of being the subject of a security interest except in favour of the Bank or with the prior written consent of the Bank, and
- (b) the Borrower will have no right to withdraw any moneys from a deposit until all obligations of the Borrower under the Bank Documents (present and future, direct and contingent) have been performed and complied with, except
 - for the purpose of complying with its obligations under the Bank Documents, or
 - with the prior written consent of the Bank.

4.6 Each amount deposited with the Bank under clause 4.5 will (unless otherwise agreed) bear interest calculated by reference to successive deposit periods of a duration agreed by the Bank and the Borrower (or, in the absence of agreement, as the Bank may nominate). The rate of interest applicable to a deposit period will be as agreed by the Bank and the Borrower (or, in the absence of agreement, as the Bank certifies as applicable to deposits of similar size and maturity placed with it by customers).

5. WARRANTIES AND UNDERTAKINGS

5.1 The Borrower represents and warrants to the Bank that:

- (a) where the Borrower is a company:
- it is incorporated under the laws of New Zealand, and
 - everything necessary has been done to make the Borrower's obligations under the Bank Documents enforceable against the Borrower and to enable the Borrower to perform its obligations thereunder
- (b) the Borrower is not in default under any agreement relating to the Borrower or the Borrower's assets
- (c) no legal proceedings have been commenced or threatened against the Borrower and the Borrower is not under investigation by any tax authority
- (d) all the information provided to the Bank by the Borrower in connection with this agreement is in all material respects true and correct and not misleading in any material respect
- (e) there is no information about the Borrower's affairs which, if disclosed to the Bank, might have or have had an adverse effect on the Bank's decision to make the Loan available to the Borrower, and
- (f) none of the Default Events in clause 4.2 of the Loan Terms has occurred and is continuing.

5.2 The Borrower acknowledges that its obligations to the Bank under this agreement are secured by this agreement and each Security Document.

5.3 The Borrower will be deemed to have repeated the representations and warranties in clause 5.1 on each day that a payment is required to be made under this agreement or any other Bank Document.

5.4 The Borrower and Guarantor each undertake to the Bank to:

- (a) advise the Bank in writing if it becomes aware of:
- the happening of any of any Default Event
 - anything happening which would make any of the representations and warranties in clause 5.1 untrue, incorrect or misleading
- (b) provide the Bank with such information about the Borrower's and each Guarantor's financial condition as the Bank may request.

5.5 The Guarantor represents and warrants to the Bank that it has read the terms of this agreement and had the opportunity to obtain independent legal advice in relation to its obligations under it.

6. NOTICES

6.1 Any notice, certificate or other correspondence in connection with this agreement, the Loan or any other Bank Document given, provided or sent by the Borrower or a Guarantor to the Bank shall unless otherwise notified by the Bank be addressed and sent to:

Kookmin Bank
 Level 16
 88 Shortland Street
 Auckland
 Fax number (09) 366 6608
 Attention Loan Officer

or to such other address as may from time to time be given by the Bank to the Borrower or the Guarantor for this purpose.

- 6.2 Any notice, certificate or other correspondence in connection with this agreement, the Loan and/or any other Bank Document to be given, provided or sent by the Bank to the Borrower or a Guarantor shall be sent to the Borrower's address or Guarantor's address, as the case may be, or to such other address as may from time to time be given by notice from the Borrower or Guarantor to the Bank.
- 6.3 Any such notice, certificate or other correspondence shall be deemed to have been duly given or sent, in the case of a communication by letter on the day after being posted by fastpost, correctly addressed and stamped or, if given by hand, when actually delivered by personal delivery to the addresses specified in this clause and in the case of a communication by facsimile when transmitted. Material transmitted by facsimile shall for all the purposes hereof be regarded as being in writing.
- 6.4 If more than one person is named as the Borrower or Guarantor, service on one of those persons is service on all of them.
7. **MISCELLANEOUS**
- 7.1 **Merger:** If an amount the Borrower must pay becomes merged in a court order, the Borrower must, as a separate obligation, pay interest on that amount from the date the amount became payable until it is paid. The rate of interest is the Interest Rate or the rate in the court order, whichever is higher. The interest is calculated daily and is payable on demand. If it is not paid on time it is immediately capitalised. This obligation is not affected by the court order.
- 7.2 **Consent:** The Bank may give or withhold a consent under this Bank Document at its discretion and may give consent on any conditions it likes.
- 7.3 **Evidence of Amount Secured:** A certificate signed by the Bank concerning the amount owing under any Bank Document or anything else arising out of it is conclusive evidence of what it states, except in the case of obvious error. The Borrower will not object to its admission in legal proceedings.
- 7.4 **Other Rights Not Affected:** The Bank's rights and remedies under each Bank Document are in addition to any other rights and remedies the Bank may have at law or under any other document the Borrower or a Guarantor may have signed.
- 7.5 **Extension of Obligations:** If this agreement imposes an obligation on the Borrower not to do something, the Borrower must make sure that no one else does it either. The Borrower must immediately do anything the Bank requests to bind the Borrower to this agreement or to protect the Bank's rights under it.
- 7.6 **No Representation:** Each of the Borrower and each Guarantor acknowledges that it did not sign any Bank Document because of any promise, representation or statement the Bank or any of its employees or agents made to it or any other person.
- 7.7 **Assignment:** The Bank may assign any of its rights under any Bank Document without getting the Borrower's consent. The Borrower may only assign the Borrower's rights under any Bank Document with the Bank's prior written consent which may be withheld or granted in its sole discretion.
- 7.8 **Waiver:** The fact that the Bank fails to do, or delays in doing, something the Bank is entitled to do under this agreement does not amount to a waiver of the Bank's right to do it. A waiver by the Bank is effective only if it is in writing.
- 7.9 **Variation:** This agreement can only be varied by the Parties to it agreeing in writing to do so.
- 7.10 **Completion of this Document:** The Borrower irrevocably authorises the Bank to date this agreement and each Security Document and to fill in any blanks in Schedule 1.
- 7.11 **Entire Agreement:** This agreement contains everything the Bank has agreed upon in relation to the matters it deals with. To the extent permitted by law, the Borrower cannot rely on an earlier document, or on anything said or done by the Bank (or any of the Bank's officers, agents or employees) before this agreement is signed by the Borrower.

- 7.12 **Responsibility to Make Enquiries and Obtain Legal Advice:** The Borrower and each Guarantor is responsible for obtaining legal advice from an independent solicitor and financial advice from an independent accountant or financial adviser before signing the Bank Documents. If it chooses not to obtain such advice, it absolves the Bank and its officers, advisers and employees from any and all liability and indemnifies them against all claims, suits, costs that may arise in connection with this agreement and each other Bank Document and/or it choosing not to obtain such advice.
- 7.13 **Governing Law:** This agreement shall be governed by and construed in accordance with the laws of New Zealand. The Borrower and each Guarantor submits to the non-exclusive jurisdiction of the courts of New Zealand.
- 7.14 **Partial Invalidity:** If, at any time, any provision of this agreement becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction then that provision shall be severed from this agreement and the legality, validity or enforceability of the remaining provisions of this agreement under the law of any jurisdiction shall not in any way be affected or impaired thereby.
- 7.15 **Joint and Several Obligations:** Where the Borrower and/or a Guarantor consist of more than one person, the obligations of the Borrower or the Guarantor (as applicable) shall be joint and several.
- 7.16 **Terms of this Agreement to Prevail:** To the extent the terms of this agreement or any other Bank Document and any previous correspondence relating to the Loan conflict, the terms of this agreement shall prevail.

PART C: ACKNOWLEDGMENT OF CONSUMER CREDIT CONTRACT

1. If this agreement is a consumer credit contract (as defined in the Credit Contracts and Consumer Finance Act 2003), the Borrower and the Guarantors acknowledge that:
- (a) this agreement contains all of the terms (other than terms implied by law) of the relevant consumer credit contract the Bank and the Borrower have entered into, and
 - (b) a copy of this agreement incorporating a completed key information disclosure statement, and a copy of each Security Document, has been received by them; and
 - (c) the right to cancel is that set out in the disclosure statement.

SCHEDULE 3

DISCLOSURE STATEMENT

IMPORTANT – The Bank is required to provide you with this disclosure statement under section 17 of the Credit Contracts and Consumer Finance Act 2003. This disclosure statement sets out the key information about your consumer credit contract. You should read it thoroughly. **If you do not understand anything in this disclosure statement, you should seek independent advice.** You should keep this disclosure statement and a copy of your consumer credit contract in a safe place. The law gives you a limited right to cancel the consumer credit contract. See the statement of right to cancel below and your consumer credit contract for full details of your right to cancel. **Note that strict time limits apply.**

FULL NAME AND ADDRESS OF CREDITOR This is the person providing you the credit

<p>You may send notices to creditor by:</p> <ul style="list-style-type: none"> • writing to the creditor at the creditor's postal address; or • sending a fax to the fax number specified. 	<p>Name: Kookmin Bank, Auckland Branch</p> <p>Physical address: Level 16, 88 Shortland Street, Auckland CBD, Auckland</p> <p>Postal address: PO Box 7506, Wellesley Street, Auckland</p> <p>Fax: (09) 366 6608</p>
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CREDIT DETAILS

Initial unpaid balance

This is the amount you owe as at the date of this statement (including any fees charged by the creditor).

[[XXX] Loan Establishment Fee]

[XXX]

Subsequent advance(s)

This amount (or these amounts) will be provided to you by the creditor on the date specified:

\$XXX on the date(s) requested by you in accordance with clause 1.1 (and, if applicable, clause 1.4 of Part A of the Standard Terms and Conditions)

Credit limit/Total advances

This is the total amount of all advances made or to be made to you

\$(XXX)

PAYMENTS You are required to make each payment of the amount specified and by the time specified

A single repayment of \$(XXX) on the date [XX] months after the date the Loan is advanced to you

INTEREST

Annual interest rate(s)

A: XXX% fixed for part of the term of the contract, being [XX] months

B: the creditor's [variable lending rate] which, as at the date of the contract, is [XXX]%

The annual interest rates are determined according to the applicable base rate (as disclosed on www.interest.co.nz from time to time) plus a margin of [XX]% for fixed rates and [XX]% for variable rates.

Total interest and principal charges: \$(XXX)

This is the monthly amount of the interest charges payable under the contract.

Note: In calculating this amount it may be assumed that:

- any annual interest rate disclosed will not vary over the term of the Loan
- any variable interest rate applicable over the period for which it applies is the same as the equivalent variable interest rate as at the date of this disclosure statement, and
- the Borrower will make payments at the times and in the amounts required by the contract.

Interest free period

[XXX] days [XXX] months [XXX] years. When interest will begin to accrue: [XXX].

Method of charging interest

Interest charges are calculated, and charged in arrears at the end of each month, by multiplying the total Loan amount specified in Item 1 of Schedule 1 of the contract by the annual interest rate and dividing the annual interest charge by 12.

If during any monthly interest period:

- the Loan principal outstanding under the Loan is less than the total Loan amount specified in Item 1 of Schedule 1 of the contract, or
- the applicable annual interest rate changes,

then the monthly interest charge in respect of that period will be determined by applying the daily interest rate to the unpaid daily balances of Loan principal outstanding during that period (on the basis of a year of 365 days).

CREDIT FEES AND CHARGES

The following credit fee(s) and charge(s) (which are not included in the initial unpaid balance) are, or may become, payable under, or in connection with, the contract.

Your credit contract may allow the creditor to vary this/these fee(s) and charge(s).

[XXX] – Loan Establishment Fee to be deducted by the creditor on the date of (and from the proceeds of) the first Loan advance
Administration costs and fees payable on full prepayment are disclosed under the full prepayment heading.

CONTINUING DISCLOSURE

The creditor may be required to provide you with regular statements. The statements will give you information about your account. Statements will be provided at least every 6 months.

WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS

Security interest

The creditor has an interest in the property listed below to secure performance of your obligations under the contract, or the payment of money payable under the contract, or both. **If you fail to meet your commitments under the contract, then to the extent of the security interest, the creditor may be entitled to repossess and sell this property.**

A first ranking all obligations mortgage in respect of [Property Address]

Default interest charges and default fees

In the event of a default in payment and while the default continues you must pay the default interest charges. In the event of a breach of the contract or on the enforcement of the contract, the default fees specified below are payable. Your credit contract may allow the creditor to vary these fees and charges.

Default interest is *1.5 times* above the creditors fixed lending rate payable after a payment default under the contract and while it is continuing, in respect of the outstanding Loan principal

Default fees: Default fees may become payable under the contract in the applicable circumstances set out in Part A of clause 4 of the Standard Terms and Conditions and in amounts determined in accordance with that clause

FULL PREPAYMENT

If you pay the unpaid balance in full before the final payment is due (**full prepayment**), you may be required to pay a fee or charge to compensate the creditor for any loss resulting from the full prepayment. The creditor may have suffered a loss if the creditor's current interest rate is lower than the interest rate applying to your original consumer credit contract. You may also have to pay the creditor's administrative costs relating to the full prepayment.

The amount you may have to pay to compensate the creditor for the loss is calculated using the formula prescribed in regulation 9 or regulation 11 of the Credit Contracts and Consumer Finance Regulations 2004.

Additional administrative costs/fees: \$[XXX], being the creditor's reasonable administration costs in connection with a full prepayment.

RIGHT TO CANCEL

You are entitled to cancel the consumer credit contract by giving notice to the creditor.

Time limits for cancellation

You must give notice that you intend to cancel the contract within 5 working days of this agreement.

You must give notice that you intend to cancel the contract within 5 working days of [*specify date document is given, emailed, or posted to the borrower*].

Saturdays, Sundays, and national public holidays are not counted as working days.

How to cancel

To cancel, you must give the creditor written notice that you intend to cancel the contract by—

- giving notice to the creditor or an employee or agent of the creditor; or
- posting the notice to the creditor or an agent of the creditor; or
- emailing the notice to the creditor's email address (if specified on the front of this disclosure statement); or
- sending the notice to the creditor's fax number (if specified on the front of this disclosure statement).

You must also return to the creditor any advance and any other property received by you under the contract.

What you may have to pay if you cancel

If you cancel the contract, the creditor can charge you –

- (a) the amount of any reasonable expenses the creditor had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc)
- (b) interest for the period from the day you received the advance until the day you repay the advance.

WHAT TO DO IF YOU SUFFER UNFORESEEN HARDSHIP

If you are unable reasonably to keep up your payments or other obligations because of illness, injury, loss of employment, the end of a relationship, or other reasonable cause, you may be able to apply to the creditor for a hardship variation.

To apply for a hardship variation, you need to:

- (c) make an application in writing; and
- (d) explain your reason(s) for the application; and
- (e) request one of the following:
 - an extension of the term of the contract (which will reduce the amount of each payment due under the contract); or
 - a postponement of the dates on which payments are due under the contract (specify the period for which you want this to apply); or
 - both of the above; and
- (f) give the application to the creditor.

Do this as soon as possible. If you leave it for too long, the creditor may not have to consider your application.

DISPUTE RESOLUTION

Name of dispute resolution scheme: **Financial Services Complaints Limited**

It is free to make a complaint to this independent dispute resolution scheme. This scheme can help you to resolve any disagreements you have with the creditor.

Contact details of dispute resolution scheme:

Phone: 0800 347 257

Website: <http://www.fscl.org.nz>

Business address: PO Box 5967, Wellington 6140

REGISTRATION ON FINANCIAL SERVICE PROVIDER REGISTER

Creditor registration name: Kookmin Bank

Registration number: FSP19261