

TERM LOAN AGREEMENT

MAGSONS HARDWARE LIMITED

CENTRAL ASSETS INVESTMENT LIMITED



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THIS AGREEMENT is made the 18th day of November 2019

BETWEEN **MAGSONS HARDWARE LIMITED** (company number 413641) (the "Borrower")
AND **CENTRAL ASSETS INVESTMENT LIMITED** (company number 7807457) (the "Lender")

INTRODUCTION

A The Lender has agreed to make a loan facility available to the Borrower upon the terms and conditions of this Agreement.

AGREEMENT:

1 DEFINITIONS AND INTERPRETATION

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

"Act" means the Companies Act 1993.

"Advance" means an advance of the Loan made, or where the context requires, to be made, under this Agreement.

"Agreement" means this Agreement the attached schedules and any amendments hereto.

"Business Day" means a day (other than a Saturday or a Sunday) on which registered banks (as defined in the Reserve Bank of New Zealand Act 1989) are open for general banking business in Auckland.

"Collateral" means the Borrower's stock and plant, fixtures, fittings and equipment funded, or to be funded, by Advances.

"Default Interest Rate" means 12.50% per annum.

"Development" means the construction of a store for the Borrower to trade as "Nido" in the superstore being constructed by the Borrower on the Land.

"Event of Default" means any of the events described in clause 8.1.

"Everest" means Everest Central Investment Limited.

"Expenses" means costs, sums, fees, duties, Taxes (including GST, and any fines, interest and penalties), legal fees (including as between solicitor and own client), including (without limitation) in respect of the negotiation, preparation, execution and registration and enforcement or attempting to enforce any Transaction Document, registration fees, interest, premiums, penalties, break costs, loss of profit or margin, levies, payments, rates, rentals, charges, outgoing, expenses, liabilities, claims and other financial obligations, in each case whether direct or indirect.

"Facility" means the loan facility evidenced by this Agreement.

"Final Repayment Date" means the second anniversary of the date the first Advance is made under this Agreement.

"GAAP" means New Zealand generally accepted accounting practice applicable to the relevant party at such time.

"Guarantee" means any guarantee, indemnity, letter of credit, legally binding letter of comfort or suretyship. It includes any obligation or irrevocable offer to be responsible for a debt or for the insolvency or financial condition of another person. It also includes any other obligation or irrevocable offer to pay a debt or to purchase a debt, to provide funds for the payment or discharge of a debt (whether by the advance of money, the purchase of or subscription for shares, stock or other interests issued by another person, the purchase of assets or services, or otherwise), or to indemnify against the consequences of default in the payment of a debt.

"Interest Payment Date" means the second to last Business Day in a calendar month.

"Land" means the land at 156-160 Central Park Drive, Waitakere City, Auckland.

"Lease" includes a lease, heads of agreement, tenancy, licence or other right to occupy, possess or use any real, personal or intellectual property.

"Loan" means the amount of \$6,250,000 made available by the Lender to the Borrower under this Agreement. Where the context so requires **"Loan"** means the relevant amount of principal outstanding at the relevant time.

"Magsons" means Magsons Investments Limited;

"Material Adverse Effect" in relation to a person includes a material adverse effect:

- (a) on that person's financial condition or business or assets; or
- (b) on the consolidated financial condition or business of that person and that person's Subsidiaries (if any); or
- (c) on that person's ability to perform and comply with that person's obligations under a Transaction Document,

and **"Material Adverse Change"** shall be construed accordingly.

"Ordinary Interest Rate" means 10.00% per annum or, if reviewed by the Lender under clause 4.2, the ordinary interest rate following such review.

"Outstanding Moneys" means, at any time, the aggregate of all Advances outstanding and all other moneys payable by the Borrower under this Agreement including unpaid interest, fees, costs and other expenses at the relevant time.

"Potential Event of Default" means any event which with the giving of notice or the lapse of time or the satisfaction of any other condition could constitute an Event of Default.

"Security" or **"Securities"** includes all present and future securities, mortgages of land, general security agreements or general security deeds, Guarantees, indemnities, undertakings and assurances by the Borrower to the Lender, or by any other person in respect of the Borrower's liabilities and obligations to the Lender.

"Security Interest" includes a mortgage, charge, pledge, lien, assignment by way of security, hypothecation, encumbrance or other security interest (including within the meaning of the Personal Property Securities Act 1999) given or arising in respect of any present or future assets and any arrangement the effect of which is to prefer any creditor over unsecured creditors, and any deferred purchase, title retention, finance lease, sale and repurchase or sale and leaseback arrangement or contractual right of set-off, but does not include:

- (a) any lien or encumbrance arising solely by operation of law; or

(b) any title retention arrangement,

which in either case was created in the ordinary course of the Borrower's business and will be discharged within 30 days of its creation.

"Solvency Test" has the meaning in Section 4 of the Act.

"Subsidiaries" has the meaning given to it in the Financial Reporting Act 1993.

"Tax" or **"Taxes"** includes:

- (a) any tax, levy, impost, customs duty, excise duty, due, rates, charge, fee, deduction or withholding of any nature imposed, levied, collected, withheld or assessed by any person; and
- (b) all costs, charges, interest, penalties, fines and expenses in respect of any of them.

"Transaction Document" means this Agreement, each document evidencing or creating a Security and a Deed of Priority between the Lender, the Borrower and Everest.

1.2 **Interpretation**

In this Agreement, unless the context requires otherwise:

- (a) **"assets"** of any person is to be construed as a reference to the whole or any part of that person's present and future undertaking, property, assets or revenues including that person's uncalled capital and called but unpaid capital.
- (b) a **"contract"** also includes any deed, agreement, instrument, arrangement, understanding or commitment whether or not in writing.
- (c) **"indebtedness"** includes any obligation relating to payment of money, whether present or future, actual, prospective or contingent, secured or unsecured, joint or several, as principal or surety or otherwise.
- (d) **"law"** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute, treaty or other legislative measure in each case of any jurisdiction whatever.
- (e) **"upon demand"** means upon demand in writing signed by the Lender, or on behalf of the Lender by any officer, employee, solicitor or agent of the Lender.

1.3 **Conflict:** If any provision of any Transaction Document conflicts with any provision of any other Transaction Document or other document or arrangement between the Lender and the Borrower, the Lender shall determine (in its discretion) which provision is to prevail in respect of any particular conflict.

1.4 **Defined Expressions:** Expressions defined in clause 1 and the main body of this Agreement bear the defined meaning in the whole of this Agreement including the recitals and Schedules.

1.5 **Plural and Singular:** Words importing the singular include the plural and vice versa.

1.6 **Negative Obligations:** Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

1.7 **Gender:** Words importing one gender include all genders.

1.8 **Whole or Part:** A reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.

1.9 **Person:** A reference to a "person" includes an individual, company, body corporate, association of persons (whether corporate or not), trust, state or agency of a state or other entity, in each case whether or not having separate legal personality.

1.10 **Headings:** Headings are to be ignored in construing this Agreement.

1.11 **Parties:** References to parties are references to parties to this Agreement, and include reference to their successors (including by virtue of any amalgamation or other reconstruction) and permitted transferees and assignees.

1.12 **Clauses and Schedules:** References to clauses and Schedules are references to such as they appear in this Agreement.

1.13 **Examples:** No example or instance shall limit whatever else may be included.

1.14 **Money:** References to money are to New Zealand currency.

1.15 **Legislation:** References to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

1.16 **Business Day Convention:** Where any date which is specified in, or determined pursuant to the terms of, this Agreement (including, without limitation, an Interest Payment Date) would otherwise fall on a day that is not a Business Day, that date will be adjusted so that it will be the first following day that is a Business Day, unless that day falls in the next calendar month, in which case that date will be adjusted so that it will be the first preceding day that is a Business Day.

2 DRAWDOWN OF THE LOAN

2.1 **Drawdown:** The Lender shall make the Loan available to the Borrower if:

- (a) **Conditions Precedent:** All of the conditions precedent in Schedule 1 have been satisfied by the Borrower, or waived in writing by the Lender.
- (b) **Business Day:** The proposed drawdown date is a Business Day.
- (c) **Notice:** The Lender has received no less than two Business Days notice of the proposed drawdown date.
- (d) **No Event of Default:** No Event of Default or Potential Event of Default has occurred or is continuing, or would occur as a result of the draw down of the Loan.
- (e) **Statements Correct:** No representation, warranty or statement (whether or not in writing) made by or on behalf of the Borrower to the Lender in any Transaction Document or in relation to the Loan or the drawdown is untrue, inaccurate or misleading in any respect.
- (f) **Funding:** The Lender has received sufficient funding from its shareholders and that the funding is available to the Lender for making the Loan available.
- (g) **Purpose:** The Lender is satisfied the Borrower will apply the Loan for the purpose of reimbursing the Borrower for payments made by the Borrower to the suppliers of the Collateral for the purpose of the Borrower's business on the Land.
- (h) **Budgets:** For each Advance, the Lender is satisfied with the Borrower's budgets to show that:

- (i) interest on the Loan can be made on each Interest Payment Date; and
- (ii) the Loan and outstanding interest on the Loan can be fully paid on the Final Repayment Date,

in each case from the Borrower's surplus cash from Borrowers trading activities at the Nido store at 156 – 160 Central Park Drive, Waitakere City, Auckland.

- (i) **Other:** For each Advance the Lender has received such other documents and/or evidence (including invoices and payments by the Borrower for the relevant Collateral as requested by the Lender and a physical inspection of the relevant Collateral) as the Lender may require for the purpose set out in paragraph (g) immediately above and to ensure that the Lender has security over the relevant Collateral as a first ranking security to the satisfaction of the Lender (subject only to a second ranking security in favour of Everest governed by the Deed of Priority that is a Transaction Document) in its absolute discretion (including as to security value).

2.2 **Lender's Obligation To Make The Loan:** If clause 2.1 has been complied with the Lender shall, at the option of the Lender:

- (a) pay an Advance to a bank account nominated in writing by the Borrower; or
- (b) pay an Advance to the supplier of the relevant Collateral being funded with the relevant Advance.

2.3 **Availability Date:** Notwithstanding any other provision in this Agreement, if the first Advance has not been made by 31 December 2019 the Lender's obligation to make the Loan available shall be at an end. If the Lender does not make the loan available due to this clause applying the Borrower must still pay the Lender's fees, costs and expenses the Borrower has agreed to pay under clause 13.6, except for the offeror's fee.

2.4 **Commitment Fee:** From the time the Lender has received sufficient money to fund the relevant Advance the Borrower shall pay the Lender a commitment fee equal to 10% per annum on the relevant amount until the Advance is made. The commitment fee is payable whether or not the Borrower has satisfied the conditions precedent for a drawing of the relevant Advance. The commitment fee shall be paid by the Borrower as such times as the Lender may demand from time to time.

3 REPAYMENT

3.1 **Repayment:**

The Loan shall be due and payable:

- (a) On the Final Repayment Date; or
- (b) Upon the occurrence of an Event of Default and whether or not the Lender has given notice to the Borrower requiring repayment,

whichever is the earlier. The Borrower must repay the Loan, unpaid interest and all other money outstanding under a Transaction Document on the date the Loan is due and payable under this clause.

3.2 **No Prepayment:** The Borrower may not prepay the Loan, or any part of the Loan, before the Final Repayment Date.

4 INTEREST

4.1 **Payment:** The Borrower shall pay interest on each Advance at the Ordinary Interest Rate (subject to clause 5.2). Such interest shall be calculated daily (and upon the basis of a 365 day year) from (and including) the date upon which the relevant Advance is made (or deemed to be made) or from (and including) the date the relevant amount became outstanding, to (and including) the end of the each calendar month. Interest for a calendar month shall be paid on the Interest Payment Date that falls in the relevant calendar month (and with payment for a broken period if an Advance is made part way through a calendar month) and on the date the Loan is repaid under clause 3.1.

5 INTEREST ON OVERDUE PAYMENTS

5.1 **Default Rate:** If the Borrower fails to make any payment due under clause 3 or 4 on the required date, or fails to make any other payment under any Transaction Document or in respect of the Loan on the required date, then the Ordinary Interest Rate shall increase to the Default Interest Rate, calculated daily from the date on which the payment was due under clause 3 or 4 (as applicable) and terminating on the date on which the failure to comply is remedied and the Lender is paid all such default interest and Expenses incurred or suffered in respect of obtaining a remedy for such failure to comply.

6 REPRESENTATIONS AND WARRANTIES

6.1 The Borrower represents and warrants to the Lender, except where otherwise agreed in writing by the Lender, as follows:

- (a) **Status:** It is incorporated and duly existing under the laws of New Zealand.
- (b) **Valid Obligations:** Its obligations under the Transaction Documents are legal, valid, binding and enforceable in accordance with their respective terms, subject to equitable principles and insolvency laws of general application.
- (c) **Power and Authority:** It has the corporate power to enter into and perform its obligations under the Transaction Documents and has taken all corporate action necessary to authorise its entry into execution, delivery and performance of the Transaction Documents.
- (d) **No Breach:** Its entry into, and the exercise of its rights and performance of and compliance with its obligations under, the Transaction Documents, do not and will not:
 - (i) contravene any law to which it is subject; or
 - (ii) contravene any of the documents constituting it; or
 - (iii) exceed any limitation on, or constitute an abuse of, the powers of its directors or officers; or
 - (iv) contravene any agreement to which it is a party or which is binding on any of its assets.
- (e) **Indebtedness:** Other than as disclosed to and accepted in writing by the Lender, it is not in default under:
 - (i) any agreement relating to indebtedness for borrowed money; or any Guarantee; or
 - (ii) any other agreement to an extent or in a manner which has or could have a Material Adverse Effect.
- (f) **Solvency Test:** It satisfies the Solvency Test.

- (g) **No Security:** No Security Interest exists over or affects, nor is there any agreement to give or permit to exist any Security Interest over or affecting, any assets of the Borrower.
- (h) **Financial Statements:** Its latest financial statements (and, if it has Subsidiaries, its latest group financial statements) as delivered to the Lender:
 - (i) were prepared in accordance with GAAP; and
 - (ii) give a true and fair view of its financial position and the consolidated financial position of it and its Subsidiaries as at the date and for the period to which they relate.
- (i) **Material Adverse Effect:** Other than as disclosed to and accepted in writing by the Lender, there has been no change that would have a Material Adverse Effect since the last date as at which any of the financial statements referred to in the preceding paragraph were made up.
- (j) **Litigation:** No litigation, arbitration or administrative proceeding is current or pending or, to its knowledge, threatened that has or could have a Material Adverse Effect, or could limit or restrict the Lender's ability to exercise or enforce its rights under any Transaction Document.
- (k) **Lender's Information:**
 - (i) All information provided by it to the Lender in connection with the Transaction Documents was true in all material respects as at the date when that information was provided and, in respect of information provided prior to the date of this Agreement, remains so at the such date; and
 - (ii) There are no facts or circumstances that have not been disclosed to the Lender that would make that information untrue or misleading in any material respect.
- (l) **No Default:** No Event of Default or Potential Event of Default has occurred and is continuing or would occur as a result of the Lender making the Loan available.
- (m) **Transaction Documents:** Each representation and warranty made by it in the Transaction Documents is true in all material respects.
- (n) **Tax Returns and Payments:** It has filed all tax returns which are required to be filed and has paid all Taxes shown to be due and payable on those returns or on any assessments made against it or any of its property by a government agency (other than where liability is contested in good faith and adequate reserves have been set aside to meet such liability).
- (o) **Consents:** Everything required by law to be done (including obtaining any necessary consents) to enable the lawful entry into, exercise of its rights and performance of its obligations under each Transaction Document, and to ensure that the Transaction Documents and those obligations are legally valid, binding and enforceable has been done.
- (p) **Ownership:** As at the date of execution of any Security to which it is expressed to be a party it will have good title to, and be the sole legal and beneficial owner of, all the assets described in that Security, free of any Security Interest (other than in favour of the Lender or as disclosed to, and accepted by, the Lender in writing).
- (q) **Pari Passu Ranking:** Its payment obligations under the Transaction Documents rank, by virtue of the Securities, in priority of the claims of its other creditors, except for creditors whose obligations mandatorily preferred by law.

6.2 Representations and Warranties Continuing

Each of the representations and warranties in clause 6.1 shall survive execution of this Agreement and the advancing of the Loan and will be deemed to be repeated on the date the Loan is advanced and each date interest is payable under this Agreement by reference to the facts and circumstances then existing, except that each reference to financial statements is to be construed as a reference to the latest available financial statements of the relevant person.

6.3 Reliance on Representations

The Borrower acknowledges that the Lender has been induced to enter into this Agreement and will be induced to make the Loan available in reliance on the representations and warranties in clause 6.1.

7 COVENANTS

7.1 Borrower's Covenants

The Borrower covenants that, except where the Lender gives its prior written consent otherwise, the Borrower shall, during the continuance of this Agreement:

- (a) **Comply with Laws:** Comply with all applicable laws in respect of any of the Borrower's assets.
- (b) **Insurance:** Maintain at all times insurance with reputable insurers acceptable to the Lender for all the Borrower's assets for full replacement value covering all risks against which the Borrower is prudent to insure and all such other risks as the Lender may from time to time require, and pay all premiums due in respect of such policies when they fall due for payment, and ensure the Lender's interest is accurately noted on each such policy.
- (c) **Maintain Property and Carry On Business:** Maintain and preserve all assets subject to any Security and, subject to the terms of any Security, not dispose of all or any part of the Borrower's assets except in the ordinary course of business and for full commercial value and shall carry on business in a prudent and proper manner and according to standards of commercial practice appropriate to the Borrower's businesses, property and assets.
- (d) **Notice of Event of Default:** Notify the Lender forthwith in writing upon the occurrence of an Event of Default or Potential Event of Default, and provide a detailed statement of steps being taken to remedy such.
- (e) **No Prejudicial Act:** Not do any thing, or suffer anything to be done, or suffer any circumstance to arise or continue, which could give rise to an Event of Default or otherwise prejudice the Lender's rights, interest or position under any Transaction Document or in respect of the Facility.
- (f) **Consents:** Do all things in order to obtain, maintain, renew and preserve in full force and effect (and not dispose of) all consents required by the Borrower to enter into any Transaction Document or which are required or desirable for the business the Borrower conducts or proposes to conduct or in respect of any of the Borrower's assets, and duly and punctually comply with all conditions and stipulations in those consents and promptly forward copies of such to the Lender if requested by the Borrower.
- (g) **Perform Obligations:** Perform all of the Borrower's obligations under each Transaction Document.
- (h) **Further Assurance:**

- (i) Promptly at the Borrower's own cost execute and deliver to the Lender all transfers, assignments, deeds and other agreements, and do all acts in addition to and in respect of each Transaction Document, as in the opinion of the Lender may be necessary or desirable to assure or secure to the Lender the full benefit of each Transaction Document; in particular, if the Lender has a Security over personal property the Borrower shall sign any documents and do any other thing to ensure that the Lender has perfected security interests under the Personal Property Securities Act 1999 and in the priority required by the Lender.
- (ii) If requested by the Lender, immediately procure from any person the Lender considers relevant to its security position any agreements and waivers which the Lender requires.
- (i) **Negative Pledge:** Not create or permit to subsist any Security Interest over any of the Borrower's assets other than in favour of the Lender.
- (j) **Amalgamation:** Not propose or be a party to any amalgamation under the Act or amend or propose any amendment to the Borrower's constitution which in the Lender's opinion would or might materially and detrimentally affect any of the Lender's rights under this Agreement or any of the Securities.
- (k) **Change in Circumstances:** Inform the Lender in writing of any Material Adverse Effect or Material Adverse Change of the Borrower or any tenant under a Lease that may materially affect the Borrower's ability to meet its obligations under this Agreement. On receipt of such advice the Lender may confer with the Borrower in good faith with a view to determining what action (if any) should be taken to protect its interests. Nothing in this clause shall prejudicially affect the Lender's rights under a Security.
- (l) **Financial Information:** No later than 10 Business Days after the end of each month the Borrower must deliver to the Lender its management accounts for the relevant month.
- (m) **Budgets:** Following a request by the Lender, the Borrower must deliver to the Lender:
 - (i) an up-to-date budget for the Lender to consider under clause 2.1 (h); and
 - (ii) such other information as the Lender may require for the Lender to assess the trading results and financial position of the Borrower.
- (n) **Security Ratio:** The Borrower must ensure that at all times the Outstanding Moneys:
 - (i) in respect of Advances used by the Borrower to pay for Collateral that is the Borrower's stock for its trading activities on the Land do not exceed 63.67% of the cost of the relevant Collateral as determined by the Lender in its absolute discretion;
 - (ii) in respect of Advances used by the Borrower to pay for Collateral that is the Borrower's plant, fixtures, fittings and equipment located on the Land do not exceed 35.63% of the cost of the relevant Collateral as determined by the Lender it is absolute discretion.

8 EVENTS OF DEFAULT

8.1 Default

Each of the following shall be an event of default:

- (a) **Failure to Comply:** The Borrower fails to pay any amount (whether principal, interest or otherwise) due under any Transaction Document or fails to comply with any other term, obligation, undertaking, covenant or term contained in any Transaction Document.
- (b) **Default Under Security:** Any event of default or enforcement event (however described) occurs or arises under any Transaction Document.
- (c) **Representations:** Any representation, warranty, covenant or statement (whether or not in writing) made by or on behalf of the Borrower in any Transaction Document or otherwise in relation to or for the purposes of the Facility is or becomes incorrect, inaccurate or misleading when made or deemed to be made or repeated.
- (d) **Insolvency:** Except where otherwise previously consented to in writing by the Lender, a resolution is proposed or passed, or any order is made or sought, for the liquidation of the Borrower or Magsons; or any step is taken for the removal of the Borrower or Magsons from the register of companies under the Act; or the Borrower or Magsons is, or is deemed under the Act to be, unable to pay its debts; or the Borrower or Magsons proposes, seeks or makes any moratorium, compromise or assignment or other arrangement for the benefit, or in respect, of its creditors generally or any of them or stops or threatens to stop payment of any indebtedness; or the Borrower or Magsons commits any act of bankruptcy or is the subject of any order placing the whole or any part of its assets under the control of any other person or an order is made against the Borrower or Magsons requiring it to contribute to payment of the debts of any other person.
- (e) **Appointment:** A receiver, receiver and manager or manager, trustee, statutory inspector or investigator, statutory manager, liquidator, interim liquidator, assignee or any similar person is appointed (or the appointment thereof is requested by the Borrower or Magsons) in respect of, or any distraint or legal process is levied against, respectively, the Borrower or Magsons or any of their respective assets, or any step is taken or proposed by any person for such.
- (f) **Judgment/Enforcement:** Any judgment against the Borrower or Magsons is not paid or otherwise settled within two Business Days of such judgment, or any holder of a Security Interest granted by the Borrower or Magsons enforces, or takes any step to enforce, the Security Interest.
- (g) **Cessation Of Business/Disposal Of Assets:** The Borrower or Magsons ceases or threatens to cease to carry on all or a substantial part of its business, or disposes of or threatens to dispose of a substantial part of its assets or any asset becomes susceptible to forfeiture, or is seized or otherwise confiscated or compulsorily acquired for inadequate consideration (as determined by the Lender in its discretion) or the Borrower or Magsons resolves or agrees to do or permit any such thing.
- (h) **Material Adverse Change:** A Material Adverse Change occurs in respect of the Borrower.
- (i) **Enforceability:** Any provision of any Transaction Document shall for any reason be invalid, illegal, unlawful or unenforceable, or any consent or approval in respect of any Transaction Document shall cease, or the Borrower (if a natural person) shall so allege or the Borrower shall die or shall, or shall seek to, discontinue the Borrower's liability to the Lender under any guarantee or indemnity.
- (j) **Control:** There shall be, or be proposed, any change in the effective ownership, management or control of the Borrower or Magsons without the prior written consent of the Lender.
- (k) **Commencement of Trading:** The Borrower does not commence trading on the Land:

- (i) on a "soft opening" basis no later than 20 Business Days after 31 February 2020; or
- (ii) on a full trading basis no later than 20 Business Days after 31 March 2020.

(I) **Pearlfisher:** The loan by Pearlfisher Trustee Limited to Everest of \$25,075,000 (or any replacement or substituted loan) for Everest to carry out the Development has become enforceable by Pearlfisher Trustee Limited or any security held by Pearlfisher Trustee Limited for such loan has become enforceable.

8.2 **Consequences of an Event of Default:** Upon the occurrence of an Event of Default the Loan and all outstanding interest shall become immediately due and payable in accordance with clause 3.1.

9 WITHHOLDINGS AND TAXES

9.1 **No Deductions:** All payments to be made by the Borrower under any Transaction Document shall be made by no later than 3.00 pm on the due date in immediately available, freely transferable funds in a manner and to the account specified by the Lender from time to time, free of any withholding or deduction (whether by set-off, counterclaim or otherwise or in respect of Taxes) unless the Borrower is compelled by law to deduct or withhold the same. In such case the Borrower shall gross up the relevant payment to the Lender, so that after any such withholding or deduction the Lender receives the full amount which would otherwise have been received had the deduction or withholding not been made.

9.2 **Taxes:** If the Lender is at any time required to pay any Tax, or to make any deduction or withholding, in respect of amounts received by it under any Transaction Document or amounts raised by it to fund the Loan, the Borrower shall pay to the Lender forthwith upon demand the amount of such Tax, deduction or withholding.

9.3 **Certificate of Exemption:** The Lender shall apply to the Inland Revenue Department for a certificate of exemption in respect of resident withholding tax on the interest payments under this Agreement.

10 AMENDMENT AND WAIVER

10.1 **Amendment:** This Agreement may be amended only by agreement in writing between the Lender and the Borrower.

10.2 **Waiver:** No failure, forbearance or delay by the Lender in exercising any right, power or privilege (together, "rights") under any Transaction Document shall operate as a waiver thereof or prejudice any other or further exercise by the Lender of any rights, whether arising under law or under any Transaction Document. The Lender's rights are cumulative and not exclusive of any rights provided by law. The Lender shall not be liable for any loss or other Expense incurred by the Borrower in relation to the manner in which the Lender exercises, fails to exercise, delays, or attempts or purports to exercise its rights.

11 ASSIGNMENT

11.1 **Borrower:** The Borrower shall not assign or otherwise transfer all or any of its rights, benefits or obligations under any Transaction Document.

11.2 **The Lender:** The Lender may at any time assign or otherwise transfer to any one or more persons all or any part of its rights and obligations under any Transaction Document. The Borrower irrevocably consents to any novation by the Lender of its obligations under any Transaction Document and shall enter into such documents as the Lender may require for such purpose. Upon such transfer or assignment every assignee or transferee (of such rights and obligations) and the Borrower will assume obligations toward each other and acquire rights against each other which are identical to the rights and obligations assumed or transferred to such assignee or transferee.

12 NON-MERGER

12.1 **No Merger:** The terms of this Agreement shall not merge on either the execution of this Agreement or any drawdown of the Loan, but shall remain fully enforceable notwithstanding any rule of law to the contrary. The Transaction Documents constitute the entire agreement between the parties in relation to the transactions contemplated by this Agreement and, subject to clause 1.3, supersedes all prior agreements and understandings.

13 MISCELLANEOUS

13.1 **Time of Essence:** Except where otherwise expressly provided in any Transaction Document, time shall be of the essence of any obligations of the Borrower under each Transaction Document.

13.2 **Consumer Guarantees Act:** The Borrower acknowledges that the Facility, and each Transaction Document, is entered into by it for the purposes of a business and, to the extent permitted by the Consumer Guarantees Act 1993, the obligations and liabilities of the Lender under that Act are excluded.

13.3 **Contracts Privity:** Any benefit expressed in any Transaction Document to be conferred on a person who is not a party to that Transaction Document is intended to be enforceable at the suit of that person, but the consent of that person shall not be required to any variation or discharge of that benefit or that Transaction Document.

13.4 **Remedies Not Exclusive:** The Lender's rights, powers, privileges and remedies under any Transaction Document are cumulative and not exclusive of any rights, powers, privileges or remedies provided by law.

13.5 **Partial Invalidity:** If any provision in any Transaction Document is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

13.6 **Costs and Expenses:** The Borrower must pay all the Lender's fees, costs and expenses incurred by the Lender for the preparation, negotiation, execution and enforcement of this Agreement. The costs include solicitor and client costs of the Lender on a solicitor/client basis. All payments under this clause must be made by the Borrower on demand from the Lender.

14 NOTICES

14.1 **Procedure for Delivery:** Any letter, notice, demand, consent, approval or other communication (in this clause 14 called a "communication") to be given or made under any Transaction Document shall be in writing and may be given or made by facsimile, post or delivery, at the facsimile number or address of the recipient and marked for the attention of the person (if any) designated for that purpose by the relevant party to the other or others from time to time.

14.2 **Deemed Delivery:** Communications are effective only upon receipt, however communications to the Borrower are deemed to be received:

- (a) **Delivery:** When delivered to the Borrower at its address below;
18 Stathnaver Crescent, Lynfield
- (b) **Post:** In the case of a letter given by post, at 9.00am, on the third Business Day after posting to the Borrower at its address above.
- (c) **Facsimile:** In the case of a facsimile, when despatched to the facsimile number designated by the Borrower for that purpose, and the receipt by the Lender of a

confirmation from the sending machine that the facsimile has been sent in its entirety shall be conclusive evidence of receipt.

Provided that a communication received or deemed received after 5.00 pm on a Business Day, or on a day which is not a Business Day, shall be deemed not to have been received until 9.00 am on the next Business Day.

14.3 **Signature:** Any communication to be given or made by the Lender to the Borrower under any Transaction Document shall be sufficient if it is signed by the Lender or on behalf of the Lender by any officer, employee, solicitor or agent of the Lender.

14.4 **Authenticity of Notices:** Where any communication is given or appears to be given by the Borrower to the Lender, the Lender shall have no obligation to make any enquiry or require any evidence as to the authenticity, validity or legality of any such communication, notwithstanding that the communication may subsequently be proven not to be authorised or not to have been signed or given by the person who appears to have signed or given it. The Lender is entitled to rely on any communication given under this clause where it appears that the communication has been signed by a director or an authorised signatory of the Borrower.

15 POWER OF ATTORNEY

15.1 **Appointments:** The Borrower hereby irrevocably and unconditionally appoints the Lender, and any officer or manager of the Lender, and the Lender's assignees or transferees, severally to be the Borrower's attorney and in its name and as its agent and at its expense in all things to do everything which the Borrower has undertaken or agreed to do under any of the provisions of any Transaction Document and has failed to do so.

16 COUNTERPARTS

This Agreement may be signed in any number of counterparts, all of which when taken together will constitute one and the same instrument. Any party may enter into this Agreement by executing (including by way of facsimile or PDF version) any such counterpart.

**SIGNED for and on behalf of
MAGSONS HARDWARE LIMITED**

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)
)



Director

Director



**SIGNED for and on behalf of
CENTRAL ASSETS INVESTMENT
LIMITED**

)
)
)



Director



Director

SCHEDULE 1

CONDITIONS PRECEDENT

The obligations of the Lender under this Agreement are subject to the condition precedent that it shall have received, in form and substance satisfactory to it:

- 1 **Transaction Documents:** This Agreement and the Securities duly executed and, where registrable, in registrable form together with all documents, approvals and consents to enable them to be registered with the priority intended by the Lender.
- 2 **Registration on Personal Property Securities Register:** If applicable, evidence of registration of every financing statement in respect of the Securities.
- 3 **Fees:** The Borrower has paid to the Lender all the Lender's fees, costs and expenses in relation to raising funding for the Loan (including for the Product Disclosure Statement that the Lender issued for the funding) and the negotiation and preparation of the Transaction Documents.
- 4 **Other Conditions:** The satisfaction, in the Lender's discretion, of any other conditions (including legal opinions and solicitors' certificates from the Borrower's solicitors) specified by the Lender from time to time.

These conditions precedent are solely for the benefit of the Lender, and the Lender may waive any of them in writing.