



PROPERTY FINANCE COMMITTED CASH ADVANCES FACILITY AGREEMENT

DATED 13 June

2016

PARTIES

1. ASB BANK LIMITED (the "Bank")
2. 650 GREAT SOUTH ROAD LIMITED (the "Borrower")
3. NEIL JAMES TUFFIN, MARK GEOFFREY HUGHSON AND BRUCE CHARLES ELLIS
(together the "Guarantor")

BACKGROUND

The Bank, at the request of the Guarantor, has agreed to make a NZ\$15,105,000 cash advance facility available to the Borrower on the terms and subject to the conditions contained in this Agreement and the Terms.

IT IS AGREED:

1. INTERPRETATION

- 1.1 **Definitions:** Unless the context requires otherwise or to the extent otherwise defined in this Agreement, terms defined in the Terms shall have the same meaning when used in this Agreement and:

"**Agreement**" means this Agreement and the schedules;

"**Availability Period**" means the period commencing on the date of this Agreement and ending on the Expiry Date;

"**Available Facility**" means, on any date, the Facility Limit less the Outstanding Amount on such date;

"**Bill Rate**" means the Bank's bank bill bid rate (rounded upwards to two decimal places) as determined by the Bank in its sole discretion for bank accepted bills of exchange of a similar tenor to the Interest Period of the relevant Drawing;

"**Commencement Date**" means the date of the first Drawing under the Facility;

"**Derivative Facility**" means any interest rate hedging facility provided by the Bank to the Borrower pursuant to a Financial Markets and International Master Agreement between the Bank and the Borrower and any confirmation or contract entered into or executed by the parties thereafter;

"**Drawdown Notice**" means the notice requesting the making of a Drawing substantially in the form set out in schedule 1;

"**Expiry Date**" means the date falling 24 months after the Commencement Date;

"**Facility**" means the New Zealand Dollar cash advance facility made available to the Borrower pursuant to this Agreement;

"**Facility Limit**" means NZ\$15,105,000 as the same may be varied in accordance with this Agreement;

"**Interest Payment Date**" means the last day of each calendar month;

"**Interest Period**" means, in relation to a Drawing, each period by reference to which interest thereon is calculated and payable, as selected by the Borrower by notice to the Bank in accordance with clause 6;

"**Investors**" means subscribers of B Shares in the Borrower under the Offer;

"**Lease**" means each lease of all or any part or parts of the Property;

"**Margin**" means 1.40% per annum;

"**Margin Term**" means 24 months from the Commencement Date;

"**NRA Lease**" means the lease to Northern Regional Alliance Limited;

"**Offer**" means the offer of up to 386 parcels of B Shares in the Borrower;

"**Property**" means the property situated at 650 Great South Road, Ellerslie, Auckland being the land comprised and described in Certificate of Title NA108C/559 (North Auckland Registry);

"**Related Facility**" means the commercial term loan Facility of \$3,500,000 to be provided by the Bank to the Borrower;

"**Repayment Date**" means, in relation to a Drawing, the last day of its Interest Period; and

"**Terms**" means the Bank's Property Finance General Terms and Conditions PFU 03/10.

- 1.2 **Incorporation of Terms:** The terms and conditions specified in the Terms apply to this Agreement as if set out in full herein.

2. THE FACILITY

- 2.1 **Grant of Facility:** The Bank agrees to make the Facility available to the Borrower on the terms and subject to the conditions of this Agreement.

- 2.2 **Purpose:** The proceeds of the Facility shall be used by the Borrower to purchase the Property.

- 2.3 **Cancellation:** The Borrower may cancel the Facility Limit, up to an amount not exceeding the amount of the Available Facility at the time of cancellation, in whole or in part (and if in part in integral multiples of NZ\$100,000 on giving 5 Business Days irrevocable notice to the Bank. Any amount so cancelled shall not be capable of being reinstated.

- 2.4 **Annual Review:** The Facility is subject to annual review by the Bank. The Borrower agrees to provide the Bank with such information as the Bank may reasonably require to enable the Bank to carry out an annual internal review to ensure that there has been no adverse change in the Borrower's creditworthiness, including, but not limited to, the Borrower's latest annual financial statements (prepared in accordance with NZGAAP), updated tenancy schedules for the Property, updated valuations, details of all outgoing/operating expenditure, projected capital expenditure and such other financial information as required by the Bank.

3. FEES

- 3.1 **PPSR Registration Fee:** On the Drawdown Date the Borrower shall pay to the Bank a non-refundable fee of NZ\$45 for the registration of security interests on the Personal Property Securities Register.

- 3.2 **Alterations to Fees:** The Bank may in its absolute discretion alter the amount or calculation of any fee payable in relation to the Facility from time to time. The Bank shall advise the Borrower of any such alteration in accordance with its obligations at law and under the Code of Banking Practice.

4. CONDITIONS PRECEDENT

- 4.1 **Conditions Precedent:** The Facility shall not be available unless and until the Bank confirms that the requirements of clause 2 of the Terms have been met and the Bank has received (in form and substance satisfactory to the Bank or its legal advisers) the following:
- (a) All Transaction Documents duly executed by all parties to them (other than the Bank).
 - (b) All documentation and information necessary to register any Security Documents or notice of them at the appropriate registry with the priority required by the Bank.
 - (c) All such releases of security interests over the assets of any Obligor that are required by the Bank.
 - (d) A directors' certificate in the Bank's form from two directors or the sole director of the Borrower in relation to each Transaction Document to which the Borrower is a party.
 - (e) A Solicitor's Certificate from the Bank's legal advisers.
 - (f) Evidence that the Bank's insurance requirements have been met (including full replacement, loss of rental income for not less than 12 months and adequate public risk cover, with the Bank's interest noted on the policies).
 - (g) Payment of all fees and expenses then due and payable under any Transaction Document (including the Bank's legal fees).
 - (h) Copies of all consents required by the Bank.
 - (i) Copies of the current compliance schedule, building warrant of fitness and, if applicable, fire sprinkler inspection certificate for all buildings forming part of the Property for which a compliance schedule has been issued in terms of the Building Act 2004.
 - (j) A current valuation for the Property prepared by a valuer acceptable to the Bank and which complies with the Bank's valuation requirements including that it must be addressed to the Bank and contain a current market value not less than \$31,800,000 and a mortgage recommendation.
 - (k) Copies of all Leases evidencing the current tenancy of the Property.
 - (l) A report from the Bank's legal advisers on the Leases confirming such matters as required by the Bank.
 - (m) A letter from a party acceptable to the Bank certifying that:
 - (i) the Investors are not otherwise related parties to the transaction, unless otherwise agreed by the Bank;
 - (ii) no one Investor holds more than 15% of the B Shares in the Borrower; and
 - (iii) the Offer is compliant with all current laws and legal requirements and regulations, including (without limitation) the Financial Markets Conduct Act 2013 and Financial Markets Conduct Regulations 2014.
 - (n) A fully signed copy of the agreement for sale and purchase of the Property.
 - (o) A report from the Bank's solicitors on any vendor underwrite obligations, acceptable to the Bank in all respects.
 - (p) Acceptable confirmation from the Borrower's solicitors that the \$200,000 of retention funds are held in their trust account pending resolution of the NRA Lease by the vendor and that they will not release the retention funds without the Bank's prior written consent. Such NRA Lease is to be acceptable to the Bank in all respects.

- (q) Acceptable confirmation that the rental abatement to The Health Alliance Limited has been paid by the vendor prior to settlement.
- (r) Acceptable confirmation that the obligations relating to the fitout under the NRA Lease have been fully paid, or an undertaking from the vendor that any remaining costs under the fitout agreement are the responsibility of the vendor, and are not passed on to the Borrower as purchaser.
- (s) Any other conditions precedent notified by the Bank or its legal advisers to the Borrower or the Borrower's legal advisers.

5. DRAWINGS

- 5.1 **Availability:** Subject to clause 4, the Bank will make the full amount of the Facility available to the Borrower in one lump sum on the Commencement Date by way of Drawings if:
- (a) **Drawdown Notice:** the Bank has received a Drawdown Notice for it (which shall be irrevocable and binding on the Borrower) no later than two Business Days before the proposed Drawdown Date;
 - (b) **During Availability Period:** the Drawdown Date is a Business Day during the Availability Period. The first Drawdown Date must occur on or before 15 June 2016 (unless otherwise agreed by the Bank in writing);
 - (c) **Maturity:** the last day of the Interest Period in relation to the Drawing is a Business Day falling on or before the Expiry Date; and
 - (d) **Not Exceed Facility Limit:** the making of the Drawing together with any other Drawing to be made available on the proposed Drawdown Date will not cause the Outstanding Amount to exceed the Facility Limit on such date.
- 5.2 **Failure to submit Drawdown Notice:** Where a Drawing is due to be repaid on its Repayment Date and the Borrower fails to submit a Drawdown Notice requesting a Drawing to refinance the maturing Drawing then, unless the Bank requires otherwise, the Borrower shall be deemed to have requested the making of a Drawing on that Repayment Date in the same principal amount as the maturing Drawing with an Interest Period equal in duration to the previous Drawing or such lesser period as will end on the Expiry Date. The Borrower irrevocably authorises the Bank to apply the proceeds of such new Drawing in repayment of the maturing Drawing.

6. INTEREST

- 6.1 **Interest Period:** The Borrower will select the Interest Period of each Drawing in the relevant Drawdown Notice. The duration of each Interest Period shall be for a period of 30 days or such other period as the Bank may agree.
- 6.2 **Interest Payment:** On each Interest Payment Date relating to each Drawing, the Borrower shall pay the unpaid interest accrued on the relevant Drawing during the Interest Period ending on that date at the applicable rate of interest for that Interest Period.
- 6.3 **Interest Rate:** The rate of interest payable under clause 6.2 will be the rate determined by the Bank on the Drawdown Date to be:
- (e) **Bill Rate:** if the term of the Interest Period is such to enable the Bank to calculate a corresponding Bill Rate, the sum of that Bill Rate for that Interest Period and the Margin. The Margin may be reviewed by the Bank at any time at its sole discretion and shall be adjusted accordingly at the Bank's sole discretion except when a Margin Term applies; and
 - (f) **Alternate Period:** in any other case, the annual rate of interest determined by the Bank to be applicable to such Interest Period.
- 6.4 **Calculation:** Interest will accrue daily at the interest rate determined in accordance with clause 6.3 and will be calculated on the basis of a year of 365 days and the actual number of days elapsed.

- 6.5 **Margin Term:** The Margin shall be fixed for the duration of the Margin Term which, unless otherwise specified, will commence from the initial Drawing of the Facility. At the expiry of the Margin Term, unless a further margin term is agreed, the Margin shall be reviewable in accordance with clause 6.3.
- 6.6 **Notice:** The Bank will notify the Borrower of the rate of interest determined under clause 6.3 (but any failure by it to so notify the Borrower will not relieve the Borrower of its obligation to pay interest).
- 6.7 **Default Interest:** The default interest rate for the purposes of this Agreement and clause 8.6 of the Terms is 22.5% per annum.

7. REPAYMENT/PREPAYMENT

- 7.1 **Repayments:** The Borrower shall repay each Drawing by no later than 11.00 am on the last day of its Interest Period. No later than 11.00 am on the Expiry Date, the Borrower shall pay or repay to the Bank any Outstanding Moneys which are then unpaid.
- 7.2 **Prepayment in Certain Events:** If an alternative basis is not agreed with the Bank within the 30 day period referred to in clause 7.3 of the Terms, then, upon giving the Bank not less than 5 Business Days' notice in writing of the date of prepayment and cancellation (which notice shall be irrevocable), the Borrower may, without prejudice to clause 8.2 of the Terms but otherwise without premium or penalty prepay all (but not part only) of the Outstanding Moneys and cancel the Available Facility. Any amount so prepaid may not be reborrowed under this Agreement.
- 7.3 **Early Repayment:** The Borrower shall be entitled at any time and from time to time, to repay early all or part of any Drawing on giving at least 5 Business Days' notice in writing of the date and amount of the repayment. Any early repayment may require the Borrower to indemnify the Bank in relation to costs sustained or incurred by the Bank as contemplated in clause 8.1 of the Terms and any amount repaid may not be re-borrowed under this Agreement.
- 7.4 **Effect of Notice:** The delivery of a notice by the Borrower under this clause 7 shall oblige the Borrower to make the prepayment on the date specified in such notice and is irrevocable.
- 7.5 **General:** The Borrower shall not repay or prepay all or any part of the Outstanding Amount except at the times and in the manner expressly provided for in this Agreement.

8. ADDITIONAL UNDERTAKINGS

- 8.1 **Undertakings:** In addition to those undertakings specified in the Terms, each Obligor undertakes to the Bank that it will:

- (a) not remove, demolish or structurally alter any buildings or any other improvements on the Property, which would reduce its value, without the Bank's prior written consent.
- (b) in respect of Leases:
- (i) not agree or permit any material amendment or variation to be made to any Leases or surrender of any Leases without the Bank's prior consent.
 - (ii) immediately advise the Bank of the termination of any Lease.
 - (iii) provide the Bank with executed copies of any new Leases or amendments to existing Leases within 15 days of such coming into effect.

If any Lease is terminated early, the Bank may apply any monies payable by a tenant under any termination clause in the Lease, towards permanent repayment of the Outstanding Moneys.

- (c) cause all rental income from all Leases to be banked directly into its account with the Bank.
- (d) provide the Bank, at its cost, with an updated valuation report prepared by a valuer acceptable to the Bank and which complies with the Bank's valuation requirements for Property upon the Bank's request. Provided that there has been no breach of any

Transaction Document, the Bank shall not make any request for an updated valuation more often than every two years.

- (e) maintain and provide the Bank with copies of each new building warrant of fitness, compliance schedule and, if applicable, each new fire sprinkler inspection certificate within 30 days after the due date for issuing of the same for all buildings forming part of the Property for which a compliance schedule has been issued in terms of the Building Act 2004. When requested by the Bank, the Borrower must provide to the Bank a copy of the current compliance schedule and all other relative certificates issued by a licensed building practitioner which evidence the inspection, maintenance and reporting procedures stated in the compliance schedule have been fully complied with.
- (f) maintain full replacement insurance, loss of rental income insurance for not less than 12 months and adequate public risk insurance for all properties charged to the Bank with the Bank's interest as mortgagee noted in all policies, and provide evidence of the same to the Bank upon request.
- (g) not agree to a change of the manager of the Borrower or the Property manager without the Bank's prior written consent.
- (h) provide to the Bank the Borrower's annual financial statements, prepared in accordance with GAAP, within 180 days of the Borrower's balance date.
- (i) ensure that, if the Outstanding Moneys under the Related Facility are not repaid in full within 3 months of the Commencement Date, it will not make any Distributions until the Outstanding Moneys under the Related Facility have been repaid in full.
- (j) ensure that accumulated funds of \$250,000 per annum are held separately by the Bank on deposit for the duration of the Facility which cannot be accessed by the Borrower and acknowledges and agrees that the Bank may hold a progressive lien over such funds for the duration of the Facility.

8.2 **Derivative Facility:** The Borrower agrees, in relation to the Derivative Facility, that:

- (a) the Derivative Facility may only be used for hedging interest rate exposures under Facilities provided by the Bank and not for any speculative purposes;
- (b) if the Facility is repaid and all of the Bank's security is released, all outstanding exposure and interest rate swaps under the Derivative Facility must be either closed out, or settled, using alternative security satisfactory in all respects to the Bank;
- (c) the expiry date of any interest rate swap under the Derivative Facility is not to exceed the Expiry Date, without the prior written consent of the Bank and, to the extent that any interest rate swap is entered into after the Expiry Date, it may be terminated by the Bank at any time; and
- (d) no interest rate swap will be closed out or settled prior to its scheduled termination date without the prior written consent of the Bank.

9. FINANCIAL UNDERTAKINGS

9.1 **Financial Undertakings:** The Borrower undertakes to the Bank that it will and will ensure that each Group Member will comply with the reporting undertakings in clause 4.3 of the Terms and with the following additional financial undertakings:

- (a) **Interest Coverage Ratio:** the Interest Coverage Ratio shall be not less than:
 - (i) 2.00:1 at all times until the date falling 3 months after the Commencement Date; and
 - (ii) 2.50:1 at all times thereafter; and
- (b) **Loan to Value Ratio:** the Loan to Value Ratio shall not exceed:
 - (i) 59% at all times until the date falling 3 months after the Commencement Date; and

- (ii) 50% at all times thereafter.

9.2 **Loan to Value Covenant:** In the event of non-compliance with the undertaking contained in clause 9.1(b), then the Bank may give notice to the Borrower and require the Borrower to, within 30 days of notice, prepay such amount as the Bank considers necessary and/or, at the sole discretion of the Bank, provide such other additional security acceptable to the Bank to ensure that the Borrower complies with such undertaking.

9.3 **Interest Coverage Covenant:** If at any time the Bank determines that the Borrower is not in compliance with the Interest Coverage Ratio under clause 9.1(a), the Bank will (without limiting any other rights the Bank may have) have the right to review, amend the terms of, or cancel the Facility (and any other facility the Borrower has with the Bank) and require immediate repayment of the Outstanding Money (at the Bank's sole discretion).

For the purposes of this clause 9:

"Facility Limits" means on any date, the aggregate of the facility limits applying to all Facilities (including this Facility and the Related Facility, but excluding any Derivative Facility) as at that date.

"Interest Coverage Ratio" means, on any date, the ratio of Net Rentals to Interest Expense.

"Interest Expense" means, on any date, projected interest costs to be incurred by the Borrower to the Bank during the next 12 months (assuming that this Facility is fully drawn and that the Related Facility will be drawn to the extent that it is currently drawn on that date for the applicable period) as determined by the Bank.

"Loan to Value Ratio" means, on any date, the ratio of the greater of the Outstanding Money under all Facilities (including this Facility and the Related Facility, but excluding any Derivative Facility) and the Facility Limits to Property Values (expressed as a percentage) on that date.

"Net Rentals" means the aggregate of all annual rent and contributions to outgoings and operating expenses (exclusive of GST) payable by each tenant under each Lease (except to the extent that any tenant is in default under a Lease) less the aggregate of all amounts payable by the Borrower (exclusive of GST) in respect of or towards operating expenses and any other outgoings, howsoever arising in relation to the Property (including management fees and, if applicable, ground rent), calculated on a continuous rolling basis in respect of the following 12 month period as determined by the Bank.

"Property Values" means, on any date, the current market value of the Property as evidenced by the most recent valuation of the Property held by the Bank from a valuer approved by the Bank.

10. EVENTS OF REVIEW

10.1 **Events of Review:** An Event of Review shall have occurred if at any time and for any reason any of the following events occurs:

- (a) a change in either the manager of the Borrower or the Property manager occurs.

11. SECURITY DOCUMENTS

11.1 **Security Documents:** The following agreements or documents are Security Documents for the purposes of this Agreement and the Terms:

- (a) The first registered mortgage over the Property.
- (b) Limited deeds of guarantee and indemnity from Neil James Tuffin, Mark Geoffrey Hughson and Bruce Charles Ellis in relation to the obligations of the Borrower to the Bank.
- (c) General security deed creating and providing for security interests over all present and after acquired assets of the Borrower (with priority over all other security interests in personal property except as permitted by the deed).

(d) Deed of Assignment of Leases from the Borrower.

11.2 **Mortgage:** The Borrower, as the registered proprietor (or upon becoming the registered proprietor immediately after settlement of this Facility) of the property to be mortgaged to the Bank and described in clause 11.1 above ("**Security Property**"), agrees to:

(a) charge all its right, title and interest in the Security Property to secure the due payment of the Outstanding Money; and

(b) upon request execute a valid and registerable mortgage instrument in favour of the Bank over the Security Property.

11.3 **Power of Attorney:** The Borrower, as the registered proprietor (or upon becoming the registered proprietor) of the Security Property, irrevocably appoints the Bank as its attorney on its behalf, in its name and at its expense to complete and execute a mortgage instrument in favour of the Bank over the Security Property (including the Authority and Instruction form) and all deeds, agreements and other documents and do all other acts and things the Bank may consider necessary or expedient to secure the due payment of the Outstanding Money.

EXECUTION



29 June 2018

The Directors
Maat Consulting Limited
C/- Neil Tuffin
Via Email: ntuffin@maat.co.nz

Attention: The Directors

Dear Neil

AMENDMENT TO CASH ADVANCE FACILITY AGREEMENT

1. We refer to the cash advance facility agreement dated 13 June 2016 (the **Facility Agreement**) between ASB Bank Limited (the **Bank**) and 650 Great South Road Limited (the **Borrower**), as amended from time to time. All capitalised terms used in this letter agreement and not otherwise defined shall have the meaning given to them in the Facility Agreement.
2. Under the terms of the Facility Agreement, the Expiry Date is currently 15 June 2018.
3. At the Borrower's request, and subject to the Borrower agreeing to the terms contained herein by signing and returning this letter to the Bank at the address set out below, the Bank has agreed to extend the Expiry Date on the terms and conditions contained in this letter.
4. Accordingly, from the Effective Date, the Facility Agreement is amended as follows:
 - a) The definition of Expiry Date in Clause 1.1 of the Facility Agreement is deleted and replaced with the following:

“**Expiry Date**” means 1 December 2018”.
 - b) The definition of Margin in Clause 1.1 of the Facility Agreement is deleted and replaced with the following:

“**Margin**” means 1.90% per annum”.
5. For the purposes of this letter agreement “**Effective Date**” means the date the Bank notifies the Borrower that the Bank has received, in form and substance satisfactory to it, the acknowledgement to this letter agreement signed on behalf of the Borrower.
6. With effect from the Effective Date, references in the Facility Agreement to “this Facility Agreement” are to be construed as references to the Facility Agreement as amended by this letter.
7. The Borrower acknowledges and agrees that:
 - (a) the representations and warranties given by it in the Facility Agreement are deemed repeated on the Effective Date, as if references to “the Transaction Documents” were to this letter agreement;

- (b) no Event of Default has occurred and is continuing;
 - (c) the accumulated funds of \$250,000 will continue to be held separately by the Bank on deposit for the duration of the Facility;
 - (d) except as amended by this letter agreement, all terms and conditions of the Facility Agreement and each other Transaction Document remain in full force and effect; and
 - (e) for the purposes of the Facility Agreement, this letter agreement is a Transaction Document.
8. This letter agreement is governed by and is to be construed in accordance with New Zealand law.
9. Please acknowledge your agreement to the terms of this letter agreement by signing and returning this letter agreement to us.

Yours faithfully
ASB Bank Limited



Robert Macmillan
 Relationship Manager

THE BORROWER ACKNOWLEDGES AND AGREES TO THE TERMS OF THIS LETTER AGREEMENT

The Borrower

Signed for and on behalf of 650 GREAT SOUTH ROAD LIMITED by:


 Director

Neil Tiffin
 Print Name


 Director

Mark Hughson
 Print Name

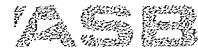
Witness:


 Signature of witness

Anna Robyn Hughes
 Full name of witness

Receptionist
 Occupation of witness

Raponga
 Address of witness



22 June 2021

The Directors
650 Great South Road Limited
PO Box 301848
Albany, Auckland 0752

ASB Bank Limited
PO Box 35, Shortland Street
Auckland 1140, New Zealand
Telephone +64 9 377 8930
Freephone 0800 803 804
CX10087 Auckland DX Sort
asb.co.nz

Attention: Directors

A member of the
Commonwealth Bank
of Australia Group

AMENDMENT TO EXTENDABLE COMMITTED CASH ADVANCES FACILITY AGREEMENT

1. We refer to the Committed Cash Advances Facility agreement dated 13 June 2016 (the **Facility Agreement**) between ASB Bank Limited (the **Bank**) and 650 Great South Road Limited (the **Borrower**), as amended or supplemented from time to time and the General Terms & Conditions referred to therein (the **Terms**). All capitalised terms used in this letter agreement and not otherwise defined shall have the meaning given to them in the Facility Agreement and/or the Terms (as applicable).
2. Under the terms of the Facility Agreement, the Facility Limit is currently NZ\$15,105,000.
3. At the Borrower's request, and subject to the Borrower agreeing to the terms contained herein by signing and returning this letter to the Bank at the address set out below, the Bank has agreed to extend the Expiry Date on the terms and conditions contained in this letter.
4. Accordingly, from the Effective Date, the Facility Agreement is amended as follows:
 - (a) The definition of Expiry Date in Clause 1.1 of the Facility Agreement is deleted and replaced with the following:

“Expiry Date” means 31 May 2022”.
 - (b) The definition of Margin in Clause 1.1 of the Facility Agreement is deleted and replaced with the following:

“Margin” means 2.75% per annum”.
 - (c) A new clause 7.6 is to be inserted into the Facility Agreement:

“Repayment of Principal: The Borrower will make monthly principal repayments of \$30,000. Such amounts may not be reborrowed under this Agreement.”
5. For the purposes of this letter “Effective Date” means the date the Bank notifies the Borrower that the Bank has received, in form and substance satisfactory to it:
 - (a) The acknowledgement to this letter signed by the Borrower;
6. With effect from the Effective Date, references in the Facility Agreement to “this Facility Agreement” are to be construed as references to the Facility Agreement as amended by this letter.


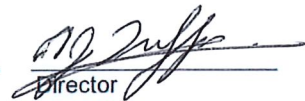
ASB4170230/5

THE BORROWER ACKNOWLEDGES AND AGREES TO THE TERMS OF THIS LETTER AGREEMENT

EXECUTION

THE BORROWER

SIGNED for and on behalf of
650 Great South Road Limited
in the presence of

) 
) _____ Director
) 
_____ Director

Witness signature

Full name

Address

Occupation

Notes on execution by a Company:

1. Full name of the company must be inserted in the execution block.
2. If company has two or more Directors, two Directors must sign. Their signatures do not need to be witnessed.
2. If company has only one Director, that Director must sign and his/her signature must be witnessed.
3. If signed by duly authorised attorneys, certificates of non-revocation of power of attorney must be provided.

Notes on execution by a Trust or Partnership:

1. All trustees/partners must sign. All signatures must be witnessed. If there are insufficient signature blocks please insert additional signature blocks by hand.
2. Individual's name must be entered in place provided in execution block and the name of the relevant Trust or Partnership must also be included. For example, "John Smith as trustee of the Smith Family Trust" or "John Smith as partner in the Smith Partnership"

Notes on execution by individual:

1. Individual's name must be entered in place provided in execution block. Signatures must be witnessed.

Notes on execution by other entities:

1. Please amend the execution block as necessary to reflect execution requirements.



12 May 2023

650 Great South Road Limited
PO Box 301848
Albany
Auckland 0752

ASB Bank Limited
PO Box 35, Shortland Street
Auckland 1140, New Zealand
Telephone +64 9 377 8930
Freephone 0800 803 804
CX10087 Auckland DX Sort
asb.co.nz

A member of the
Commonwealth Bank
of Australia Group

Attention: Directors

AMENDMENT TO EXTENDABLE COMMITTED CASH ADVANCES FACILITY AGREEMENT

1. We refer to the Committed Cash Advances Facility agreement dated 13 June 2016 (the **Facility Agreement**) between ASB Bank Limited (the **Bank**) and 650 Great South Road Limited (the **Borrower**), as amended or supplemented from time to time and the General Terms & Conditions referred to therein (the **Terms**). All capitalised terms used in this letter agreement and not otherwise defined shall have the meaning given to them in the Facility Agreement and/or the Terms (as applicable).
2. Under the terms of the Facility Agreement, the Facility Limit is currently NZ\$14,445,000.
3. At the Borrower's request, and subject to the Borrower agreeing to the terms contained herein by signing and returning this letter to the Bank at the address set out below, the Bank has agreed to extend the Expiry Date on the terms and conditions contained in this letter.
4. Accordingly, from the Effective Date, the Facility Agreement is amended as follows:
 - (a) The definition of Expiry Date in Clause 1.1 of the Facility Agreement is deleted and replaced with the following:

""Expiry Date" means 30 November 2023".
 - (b) The monthly principal repayments specified in clause 7.6 are to be suspended until 30 November 2023.
 - (c) Clause 9.1(a) of the Facility Agreement is deleted and replaced with the following:

""Interest Coverage Ratio" the Interest Coverage Ratio shall be not less than 1.5 times by 30 November 2023".
5. For the purposes of this letter "Effective Date" means the date the Bank notifies the Borrower that the Bank has received, in form and substance satisfactory to it:
 - (a) The acknowledgement to this letter signed by the Borrower;
6. With effect from the Effective Date, references in the Facility Agreement to "this Facility Agreement" are to be construed as references to the Facility Agreement as amended by this letter.

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7. The Borrower acknowledges and agrees that:
- (a) no Event of Default or Event of Review has occurred and is continuing.
 - (b) except as amended by this letter agreement, all terms and conditions of the Facility Agreement, the Terms and each other Transaction Document remain in full force and effect.
8. The parties agree that this letter shall constitute a "Transaction Document" for the purposes of the Facility Agreement.
9. This letter agreement is governed by and is to be construed in accordance with New Zealand law.

Please acknowledge your agreement to the terms of this letter agreement by signing and returning this letter agreement to us.

Yours sincerely



Robert Macmillan
Property Finance Manager
ASB Property Finance

THE BORROWER ACKNOWLEDGES AND AGREES TO THE TERMS OF THIS LETTER AGREEMENT

EXECUTION

THE BORROWER

SIGNED for and on behalf of
650 Great South Road Limited
in the presence of

)
)
) Director


Director

Witness signature

Full name

Address

Occupation

Notes on execution by a Company:

1. Full name of the company must be inserted in the execution block.
2. If company has two or more Directors, two Directors **must** sign. Their signatures do not need to be witnessed.
2. If company has only one Director, that Director **must** sign and his/her signature must be witnessed.
3. If signed by duly authorised attorneys, certificates of non-revocation of power of attorney must be provided.

Notes on execution by a Trust or Partnership:

1. All trustees/partners **must** sign. All signatures must be witnessed. If there are insufficient signature blocks please insert additional signature blocks by hand.
2. Individual's name must be entered in place provided in execution block and the name of the relevant Trust or Partnership must also be included. For example, "John Smith as trustee of the Smith Family Trust" or "John Smith as partner in the Smith Partnership"

Notes on execution by individual:

1. Individual's name must be entered in place provided in execution block. Signatures must be witnessed.

Notes on execution by other entities:

1. Please amend the execution block as necessary to reflect execution requirements.

27 November 2023

650 Great South Road Limited
PO Box 301848
Albany
Auckland 0752



ASB Bank Limited
PO Box 35, Shortland Street
Auckland 1140, New Zealand
Telephone +64 9 377 8930
Freephone 0800 803 804
CX10087 Auckland DX Sort
asb.co.nz

A member of the
Commonwealth Bank
of Australia Group

Attention: Directors

AMENDMENT TO EXTENDABLE COMMITTED CASH ADVANCES FACILITY AGREEMENT

1. We refer to the Committed Cash Advances Facility agreement dated 13 June 2016 (the **Facility Agreement**) between ASB Bank Limited (the **Bank**) and 650 Great South Road Limited (the **Borrower**), as amended or supplemented from time to time and the General Terms & Conditions referred to therein (the **Terms**). All capitalised terms used in this letter agreement and not otherwise defined shall have the meaning given to them in the Facility Agreement and/or the Terms (as applicable).
2. Under the terms of the Facility Agreement, the Facility Limit is currently NZ\$14,445,000.
3. At the Borrower's request, and subject to the Borrower agreeing to the terms contained herein by signing and returning this letter to the Bank at the address set out below, the Bank has agreed to extend the Expiry Date on the terms and conditions contained in this letter.
4. Accordingly, from the Effective Date, the Facility Agreement is amended as follows:
 - (a) The definitions of Expiry Date and Margin in Clause 1.1 of the Facility Agreement are deleted and replaced with the following:

“Expiry Date” means 28 February 2024”;

“Margin” means 2.85%”.
 - (b) Clause 9.1(a) of the Facility Agreement is deleted and replaced with the following:

“Interest Coverage Ratio” the Interest Coverage Ratio shall be not less than 1.5 times by 28 February 2024”.
5. For the purposes of this letter “Effective Date” means the date the Bank notifies the Borrower that the Bank has received, in form and substance satisfactory to it:
 - (a) The acknowledgement to this letter signed by the Borrower;
 - (b) A copy of the executed variation of the deed of lease between 650 Great South Road Limited and the Ministry of Health.

ASB4170230/5

6. With effect from the Effective Date, references in the Facility Agreement to “this Facility Agreement” are to be construed as references to the Facility Agreement as amended by this letter.
7. The Borrower acknowledges and agrees that:
 - (a) no Event of Default or Event of Review has occurred and is continuing.
 - (b) except as amended by this letter agreement, all terms and conditions of the Facility Agreement, the Terms and each other Transaction Document remain in full force and effect.
8. The parties agree that this letter shall constitute a “Transaction Document” for the purposes of the Facility Agreement.
9. This letter agreement is governed by and is to be construed in accordance with New Zealand law.

Please acknowledge your agreement to the terms of this letter agreement by signing and returning this letter agreement to us.

Yours sincerely



Robert Macmillan
Property Finance Senior Manager
ASB Property Finance

19 November 2024

650 Great South Road Limited
PO Box 301848
Albany
Auckland 0752



ASB Bank Limited
PO Box 35, Shortland Street
Auckland 1140, New Zealand
Telephone +64 9 377 8930
Freephone 0800 803 804
CX10087 Auckland DX Sort
asb.co.nz

A member of the
Commonwealth Bank
of Australia Group

Attention: Directors

AMENDMENT TO EXTENDABLE COMMITTED CASH ADVANCES FACILITY AGREEMENT

1. We refer to the Committed Cash Advances Facility agreement dated 13 June 2016 (the **Facility Agreement**) between ASB Bank Limited (the **Bank**) and 650 Great South Road Limited (the **Borrower**), as amended or supplemented from time to time and the General Terms & Conditions referred to therein (the **Terms**). All capitalised terms used in this letter agreement and not otherwise defined shall have the meaning given to them in the Facility Agreement and/or the Terms (as applicable).
2. Under the terms of the Facility Agreement, the Facility Limit is currently NZ\$14,445,000.
3. At the Borrower's request, and subject to the Borrower agreeing to the terms contained herein by signing and returning this letter to the Bank at the address set out below, the Bank has agreed to amend the facility agreement on the terms and conditions contained in this letter.
4. Accordingly, from the Effective Date, the Facility Agreement is amended as follows:
 - (a) Clause 9.1 (b) of the facility is deleted and replace with the following:
"**Loan to Value Ratio**; the loan to value ratio shall not exceed 52.5% at all times"
 - (a) Clause 9.3 "**Loan to Value Ratio**" of the Facility Agreement is deleted and replaced with the following:
"**Loan to Value Ratio**" means on any date, the ratio of the greater of the Outstanding Money under all Facilities (including this Facility and the Facility provided by Property Improvements Limited, but excluding and Derivative Facility) and the Facility Limits to Property Values (expressed as a percentage) on that date."
2. For the purposes of this letter "Effective Date" means the date the Bank notifies the Borrower that the Bank has received, in form and substance satisfactory to it:
 - (a) The acknowledgement to this letter signed by the Borrower;
3. With effect from the Effective Date, references in the Facility Agreement to "this Facility Agreement" are to be construed as references to the Facility Agreement as amended by this letter.
4. The Borrower acknowledges and agrees that:
 - (a) no Event of Default or Event of Review has occurred and is continuing.

ASB4170230/5

(b) except as amended by this letter agreement, all terms and conditions of the Facility Agreement, the Terms and each other Transaction Document remain in full force and effect.

5. The parties agree that this letter shall constitute a "Transaction Document" for the purposes of the Facility Agreement.

6. This letter agreement is governed by and is to be construed in accordance with New Zealand law.

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Yours sincerely



Robert Macmillan
Property Finance Senior Manager
ASB Property Finance

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EXECUTION

THE BORROWER

SIGNED for and on behalf of
650 Great South Road Limited
in the presence of

) 
) _____
) Director



Director

Witness signature

Full name

Address

Occupation

Notes on execution by a Company:

1. Full name of the company must be inserted in the execution block.
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**PROPERTY FINANCE
GENERAL TERMS AND CONDITIONS**

Reference Number: PFU 03/10

These General Terms and Conditions apply to all Facilities provided by the Bank to the Borrower and are deemed to be incorporated into each Facility Agreement as if set out therein in full.

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- 1. Interpretation**
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- 3. Representations and Warranties**
- 4. Undertakings**
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- 9. Payments**
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- 12. Calculations and Evidence**
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- 14. Notices**
- 15. Costs and Expenses**
- 16. Disclosure**
- 17. Trusts**
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- 19. Governing Law**

1. INTERPRETATION

1.1 **Definitions:** In these Terms, unless the context otherwise requires:

"Borrower" means the person described as such in a Facility Agreement;

"Bill Rate" has the meaning given to it in the relevant Facility Agreement;

"Business Day" means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland and Wellington;

"Derivative Product" means:

- (a) any transaction which is a transaction between the parties providing for the purchase of one currency with another currency for settlement on an agreed date;
- (b) any derivatives transaction which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, cap transaction, floor transaction, collar transaction, currency swap, currency option, credit derivative transaction, repurchase transaction or securities lending transaction;
- (c) any combination of (a) and (b) above; and
- (d) any other transaction the parties agree is a Derivative Product for the purposes of these Terms.

"Distribution" has the meaning given to that term by section 2 of the Companies Act 1993;

"Drawdown Date" means the day on which a Drawing is made or is to be made;

"Drawing" means each drawing or other accommodation made by or provided to or to be made by or provided to or at the request of the Borrower under a Facility;

"Environmental Obligation" means any obligation relating to the occupation or use of land or the use of assets, development, pollution, waste disposal, toxic and hazardous substances or conservation of natural or cultural resources, whether or not arising pursuant to any law (including the Resource Management Act 1991 and the Building Act 2004) or pursuant to any contract or arrangement with a governmental agency;

"Event of Default" means any of the events specified in clause 5 and clause 17.1(c) of these Terms or as specified in any Facility Agreement and any other event or circumstance which, with the giving of notice, lapse of time or fulfilment of any other requirement, would constitute such an event;

"Event of Review" means any of the events (if any) specified as events of review in any Facility Agreement;

"Facilities" means each facility for financial accommodation which the Bank provides or has agreed to provide to the Borrower and a reference to a **"Facility"** means the relevant facility as the context may require;

"Facility Agreement" means any agreement in writing signed by the Borrower relating to a Facility;

"Group Member" means:

- (a) the Borrower;
- (b) any subsidiary of the Borrower; and
- (c) any person of which the Borrower is a subsidiary;

"Guarantor" means any person described as such in any Transaction Document;

"Limited Liability Trustee" means any person specified as such in any Transaction Document;

"Market Disruption Event" means in respect of a Drawing:

- (a) (if applicable) at or about 11.00 am on the first day of the relevant interest period either the Reuters monitor screen page BKBM (or its successor page) or the Reuters monitor screen for bank accepted bills (as the context requires) is unavailable for any reason or if fewer than three registered bank suppliers a rate to the Bank to determine the Bill Rate for the relevant interest period; or
- (b) before the close of business in Auckland on the first day of the relevant interest period, the Bank notifies the Borrower that, by reason of matters affecting the wholesale capital or funding markets, the cost to it of obtaining funding of such Drawing from such source or sources as it may have selected is or would be in excess of the applicable Bill Rate.

"NZ GAAP" means generally accepted accounting practice as defined in section 8 of the Financial Reporting Act 1993;

"New Zealand Dollars" and **"NZ\$"** means the lawful currency of New Zealand;

"Obligors" means the Borrower, the Guarantor and each other person (other than the Bank) that is party to a Transaction Document and **"Obligor"** means any of them;

"Outstanding Amount" means, on any date and in relation to a Facility, the aggregate of all outstanding Drawings under that Facility on such date;

"Outstanding Money" means, on any date and in relation to a Facility, the aggregate of all Outstanding Amounts and all other money payable by the Borrower to the Bank under the Facility and outstanding at such time including accrued interest (including default interest), fees, indemnities, costs and expenses;

"Permitted Disposal" means any disposal of assets:

- (a) in the ordinary course of ordinary business on normal commercial terms for fair value; or
- (b) to the Borrower or a Guarantor; or
- (c) with the prior written consent of the Bank or as permitted by any Transaction Document;

"Permitted Security Interest" means any security interest that is:

- (a) permitted by any Transaction Document; or
- (b) created in favour of the Bank; or
- (c) created in favour of any other person with the prior written consent of the Bank; or
- (d) in respect of goods taken by a seller of those goods as part of an ordinary trading transaction and which is created in the ordinary course of business on arm's length commercial terms and for proper value and which is discharged within 90 days of the supply of those goods; or
- (e) a lien arising by operation of law; or
- (f) a netting or set-off arrangement entered into in the ordinary course of a person's banking arrangements for the purpose of netting debit and credit balances;

"Security Document" means each agreement and document specified as a "Security Document" in any Facility Agreement and each other document that the Borrower and the Bank agree shall be a "Security Document" for the purposes of these Terms;

"Terms" means these general terms and conditions which also includes any schedules; and

"Transaction Documents" mean these Terms, each Facility Agreement, each Security Document, each agreement relating to the provision of accommodation by the Bank and each other agreement, guarantee or deed, present or future, required by or relating to a Facility.

1.2 **Interpretation:** In these Terms, unless the context otherwise requires:

the provision or making available of "**accommodation**" includes the making of a loan, the discounting of bills, the provision of a letter of credit facility, the provision of overdraft accommodation on current account or the provision of any other banking or financial services or accommodation;

an "**agreement**" includes a contract, deed, licence, franchise, undertaking or other document (in each case, oral and written) and includes that agreement as modified, supplemented, novated or substituted from time to time;

"**assets**" includes the whole and any part of the relevant person's business, undertaking, property, revenues and rights (in each case, present and future), and reference to an asset includes any legal or equitable interest in it;

"**borrowed money**" means all indebtedness for or in respect of money borrowed or raised (whether or not for cash consideration) by whatever means (including acceptances, deposits, discounting, factoring, finance leasing, hire purchase, sale and repurchase/leaseback and any form of "off-balance sheet" financing) or for the deferred purchase price of assets or services (other than for goods and services obtained on normal commercial terms in the ordinary course of trading) and includes:

- (a) all amounts raised by the issuance of redeemable preference shares; and
- (b) any amounts actually or contingently payable under or in respect of any Derivative Product if such product is or was to be terminated or a settlement amount is or was to become payable at the relevant time;

a "**consent**" includes an approval, authorisation, exemption, filing, licence, clearing, order, permit, recording or registration;

one person being "**controlled**" by another means that that other person (whether directly or indirectly and by any means):

- (a) has the power to appoint or remove the majority of the members of the governing body of that person; or
- (b) otherwise controls or has the power to control the affairs and policies of that person; or
- (c) is in a position to derive the whole or a substantial part of the benefit of the existence or activities of that person,

and "**control**" shall be construed accordingly;

a "**directive**" includes a present or future order, regulation, request, notification or requirement of governmental agency (in each case whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive relates or is addressed);

a "**disposal**" of an asset includes any sale, assignment, exchange, transfer, loan, lease, concession, waiver, compromise, dealing with, release, parting with possession, the grant of an option in respect of it or the payment of money (including a dividend) and an agreement for any such disposal, but excludes the creation of a security interest (and references to "**dispose**" are to be construed accordingly);

the "**dissolution**" of a person includes the winding-up, liquidation, removal from the relevant register or bankruptcy of that person or an equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, has carried on business or has assets;

"**governmental agency**" includes any state or government and any governmental, semi-governmental, judicial, statutory, monetary, accounting or regulatory entity, authority, body or agency or any person charged with the administration of any law or directive;

a "**guarantee**" includes any guarantee, indemnity, letter of credit, performance bond, acceptance or endorsement of a negotiable instrument or legally enforceable undertaking or obligation to be responsible for any obligation (whether or not it involves the payment of money) or indebtedness or

otherwise to be responsible for the solvency or financial condition of another person;

"indebtedness" includes any obligation (whether present or future, actual or contingent, secured or unsecured, and whether incurred alone, jointly and severally, as principal, surety or otherwise) relating to the payment or repayment of money;

something having a **"material adverse effect"** on a person is a reference to it having a material adverse effect on that person's commercial or financial prospects or on its ability to comply with its obligations under a Transaction Document, or, as the context may require, on the Bank's ability to recover any amount payable by any Obligor under any Transaction Document or to enforce performance of that person's obligations under the Transaction Documents and includes without limitation any event which is deemed as one which has a material adverse effect under any Transaction Document, and references to **"material adverse change"** shall be construed accordingly;

"month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; or
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month;

indebtedness which is payable **"on demand"** is due and payable on the date on which demand is made (or, if a later date is specified in the demand, on that date);

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

a **"related company"** of any person means a related company of such person within the meaning of the Companies Act 1993;

a **"security interest"** includes a mortgage, pledge, charge, encumbrance, lien, hypothecation, encumbrance, deferred purchase, title retention or other security arrangement of any kind, the practical effect of which is to secure a creditor and in the case of personal property includes any arrangement which falls within the definition of a "security interest" in section 17(1)(a) of the Personal Property Securities Act 1999;

a **"subsidiary"** of any person means:

- (a) a subsidiary of such person within the meaning of the Companies Act 1993; and
- (b) any other person to be treated as a subsidiary in accordance with NZ GAAP; and

"tax(es)" includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature or whatever called (including interest, penalties, fines and charges in respect of taxes) imposed, levied, collected, withheld or assessed by any governmental agency, on whomsoever imposed, levied, collected, withheld or assessed.

1.3 **Miscellaneous:** In these Terms, unless the context otherwise requires:

if more than one person is named as the **Borrower**, each reference to the Borrower is a reference to each Borrower separately and to all Borrowers together;

if more than one person is named as the **Guarantor**, each reference to the Guarantor is a reference to each Guarantor separately and to all Guarantors together;

references to **clauses** and **schedules** are references to clauses of and schedules to these Terms;

derivatives of any defined word or term shall have a corresponding meaning;

a **gender** includes each other gender and a reference to "its" includes a reference to "his" or "her"

as the context requires;

the **headings** to clauses shall be ignored in construing these Terms;

the word **including** and other similar words do not imply any limitation;

a reference to any **legislation** is a reference to that legislation as from time to time amended, re-enacted or substituted, includes regulations, orders-in-council and other instruments from time to time issued or made under, that legislation and, unless otherwise stated, is a reference to New Zealand legislation;

a **party** to any Transaction Document includes its successors and permitted assignees and transferees;

the **singular** includes the **plural** and vice versa; and

a reference to a **time of day** is to New Zealand time.

2. AVAILABILITY AND REPAYMENT

2.1 **Availability of Accommodation:** The Bank is not obliged to provide accommodation under a Facility if:

- (a) **Conditions Precedent:** any conditions precedent to the provision of the accommodation have not been fulfilled in all respects to the satisfaction of the Bank including without limitation the provision of all documents and information specified in those conditions;
- (b) **Event of Default:** an Event of Default has occurred, or is likely to occur as a result of the accommodation being provided;
- (c) **Representations:** any representation, warranty or statement made in or in connection with a Facility or a Transaction Document is untrue, inaccurate or misleading in any material respect;
- (d) **Material Adverse Change:** a material adverse change has occurred in relation to any Obligor;
- (e) **Illegality:** it is unlawful or contrary to any directive to make the accommodation available; or
- (f) **Unusual Circumstances:** any of the events specified in clause 7.1 has occurred or is likely to occur as a result of making the accommodation available.

2.2 **Purpose:** The Borrower shall use each Facility for the purpose (if any) set out in the relevant Facility Agreement.

2.3 **Repayment:** Unless otherwise specified in any Transaction Document, all indebtedness of the Borrower to the Bank is payable on demand (which demand may be made by the Bank at any time at its absolute discretion).

3. REPRESENTATIONS AND WARRANTIES

3.1 **Representations and Warranties:** In addition to any representations and warranties specified in any Transaction Document, each Obligor represents and warrants to the Bank that:

- (a) **Status:** if it is a company, it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) **Power:** it has power and authority to own its assets and to carry on its business as it is now being conducted or contemplated and to enter into, exercise its rights and perform and comply with its obligations under the Transaction Documents to which it is a party;
- (c) **Binding Obligations:** its obligations under the Transaction Documents to which it is a party are legal, valid, binding and enforceable against it (subject to any law affecting creditors' rights generally);

- (d) **No Contravention:** its entry into, exercise of its rights and performance of and compliance with its obligations under the Transaction Documents to which it is a party do not and will not contravene any law to which it is subject, any of its constitutive documents or any agreement to which it or any Group Member is a party or which is binding on any of their assets;
- (e) **Authorisations:** it has taken all necessary corporate, trustee and other relevant action (including the obtaining of consents and other requirements) required to be taken to authorise the entry into and performance of, and compliance with, its obligations under the Transaction Documents to which it is a party and such authorisations and consents are in full force and effect;
- (f) **No Event of Default:** other than as disclosed to the Bank and accepted in writing, no Event of Default has occurred and is continuing;
- (g) **Breach of Obligations:** it is not in breach of or default under any agreement which is binding on it or its assets which might have a material adverse effect on it;
- (h) **Information:** all information provided by it to the Bank in connection with any Transaction Document was true, accurate and complete in all material respects and not misleading when provided to the Bank, and there are no facts or circumstances which have not been disclosed to the Bank which would make that information untrue, inaccurate, incomplete or misleading;
- (i) **No Security Interest:** no security interests exist over or affect, nor is there any agreement to give or permit to exist any security interest over or affecting, any of its assets, except for any Permitted Security Interest;
- (j) **No Litigation:** other than as disclosed to and accepted by the Bank in writing, no litigation, arbitration, claim or administrative proceeding of or before any court, arbitrator, tribunal or governmental agency is current, pending or (to the best of its knowledge and belief) threatened against it or any Group Member;
- (k) **No Indebtedness:** other than indebtedness disclosed to and approved by the Bank in writing, it and each Group Member has, and will have on each Drawdown Date, no indebtedness for borrowed money to any person other than the Bank;
- (l) **Accounts:** its latest financial statements (and, if it has subsidiaries, its latest consolidated financial statements) as delivered to the Bank:
 - (i) were prepared in accordance with NZ GAAP and have been prepared, reported on and approved in accordance with all applicable laws;
 - (ii) give a true and fair view of its financial position and performance and, in the case of the consolidated financial statements, the consolidated financial position and performance of it and its subsidiaries as at the date and for the period to which they relate; and
 - (iii) include a true and complete copy of any auditors' report (if such report is prepared),
 and there has been no material adverse change in its financial condition or that of any Group Member since that date;
- (m) **Solvency:** it and each Group Member is able to pay its debts as they become due in the normal course of business;
- (n) **Bankruptcy:** if an individual, it is not and has never been adjudicated bankrupt;
- (o) **No Dissolution:** it has not:
 - (i) taken any corporate action nor have any other steps been taken, orders made or legal proceedings started or (to the best of its knowledge and belief) threatened against it or any Group Member for its dissolution or reorganisation or for the appointment of a receiver, statutory manager, inspector, trustee, administrator or similar officer of it or its assets; or
 - (ii) been declared at risk pursuant to the Corporations (Investigation and Management)

Act 1989; or

- (iii) made nor does it intend to make any assignment, arrangement or composition for the benefit of its creditors generally nor has any moratorium been agreed or declared in respect of or affecting all or any material part of its indebtedness;
 - (p) **Execution will not Create Security:** the execution and delivery of the Transaction Documents to which it is a party and the exercise of its rights and the performance of its obligations under them do not and will not result in the existence of nor oblige it to create any security interest over all or any of its assets save in favour of the Bank; and
 - (q) **Security Documents:** each Security Document is (or will be on the initial Drawdown Date under a Facility) effective security, with the priority contemplated by such Security Document and it is not aware of any act, matter, thing or circumstance by reason of which any party thereto may not be able to comply with its obligations under that Security Document.
- 3.2 **Representations and Warranties Continuing:** The representations and warranties in clause 3.1 will be deemed to be repeated by each Obligor on each Drawdown Date so long as any Facility is made available to the Borrower or any Obligor is indebted to the Bank, by reference to the facts and circumstances then existing.
- 3.3 **Reliance:** Each Obligor acknowledges that the Bank has been induced to enter into the Transaction Documents and to make each Facility available in reliance on the representations and warranties set out in clause 3.1.

4. UNDERTAKINGS

- 4.1 **General Undertakings:** In addition to any undertakings specified in any Transaction Document, each Obligor undertakes to the Bank that it will:
- (a) **Comply with Laws:** duly and promptly comply with all laws and directives applicable to it, the non-compliance with which might have a material adverse effect on it;
 - (b) **Transaction Documents:** duly and promptly perform and comply with its obligations under the Transaction Documents to which it is a party and the transactions contemplated by them;
 - (c) **Consents:** obtain, maintain in full force and effect and comply with all consents which are required in relation to its continuing business and to enable it or any other Obligor to lawfully enter into, exercise its rights and perform and comply with its obligations under the Transaction Documents to which it is a party and to ensure that those obligations are legal, valid, binding and enforceable in accordance with their respective terms;
 - (d) **Environmental:**
 - (i) institute and at all times maintain and comply with proper procedures which are adequate to monitor compliance with its Environmental Obligations, and environmental directives and consents;
 - (ii) obtain, maintain in full force and effect and comply, with all consents and other material requirements in relation to its Environmental Obligations and any environmental directives, which may be necessary or desirable in respect of the land, buildings, water or other property or assets owned, occupied or otherwise used by it or any Group Member;
 - (iii) notify the Bank of any actual or potential environmental liability, encumbrance, judgment, claim, order, obligation, penalty, fine, loss, cost or expense of any nature which might have a material adverse effect on any Obligor and provide the Bank with full details of all action taken or proposed to be taken in relation to such liability; and
 - (iv) provide the Bank on request, at the Obligor's sole cost, with environmental audits and reports in respect of its assets, in a form and from an independent consultant acceptable to the Bank;
 - (e) **Notify Events of Default:** notify the Bank of the occurrence of any Event of Default, Event of Review or any event or circumstance which may have a material adverse effect on it,

immediately upon becoming aware of it (providing the Bank with full details of it and any action taken or proposed to be taken in relation to it);

- (f) **Proceedings:** promptly deliver to the Bank written details of any current, pending or threatened litigation, arbitration, dispute or administrative or other proceeding or claim in relation to it which, had it been current, pending or threatened as of the date of these Terms, would have rendered the warranty in clause 3.1(j) incorrect;
- (g) **Carry on Business:** carry on and conduct its business in an efficient, prudent and business-like manner and according to the best current commercial practice appropriate to that business;
- (h) **Insurance:** ensure that it and each Group Member:
 - (i) **Maintain insurance:**
 - (A) insures and keeps insured all its assets of an insurable nature which are customarily insured against loss or damage by fire, earthquake and war damage, and other risks normally insured against by persons carrying on the same class of business as that carried on by it (and any other risks which the Bank may from time to time reasonably require) for their full replacement and reinstatement value (but if not insurable for replacement and reinstatement value, for their full insurable value); and
 - (B) takes out and maintains such other insurance against liability on account of injury or damage suffered by the public and against such other risks as it is prudent in accordance with best commercial practice to insure against or as may be required under any Transaction Document including without limitation, loss of profits insurance for a period of not less than 12 months and loss of rental income and outgoings insurance for a period of not less than 12 months, in each case with reputable insurers approved by the Bank in the name of the Bank and the Borrower for their respective rights and interests (and, if requested by the Bank, ensure that the Bank is named as co-insured for its interest on all policies for such insurances) with all payments on account of loss or otherwise to be made to, or to the order of, the Bank;
 - (ii) **Application of Moneys:** applies money recoverable under any insurance claim at the direction of the Bank (subject however to the rights of the holder of any Permitted Security Interest) either in or towards rebuilding, repairing, restoring or replacing the relevant asset or meeting the liability insured against or, after the occurrence of an Event of Default, in reduction of the Outstanding Money;
 - (iii) **Payment of Premiums:** promptly pays all premiums and does all other things necessary to maintain the insurances required by this clause; and
 - (iv) **Insurance Certificate:** at such times as the Bank may reasonably require, provides to the Bank a certificate from an insurer, as approved by the Bank, confirming that it is complying with its insurance obligations under this clause 4.1(h) (and, if not, stating any exceptions) and produces all cover notes, insurance policies and the renewal receipts for such insurances and any other details relating to that insurance as the Bank may request;
- (i) **Taxes:** duly and promptly comply with all tax laws in all jurisdictions in which it is subject to taxation and pay all taxes due and payable by it before the date on which penalties become payable;
- (j) **Inspection:** upon reasonable notice from the Bank, permit the Bank and persons appointed by it to inspect its premises, books, documents and records;
- (k) **Change of Balance Date:** notify the Bank of any change of, or intention to change, its annual balance date for accounting purposes;
- (l) **Ranking of Obligations:** ensure that its payment obligations under the Transaction Documents rank and will rank at least pari passu in point of priority with all its other

indebtedness (actual and contingent) except for indebtedness preferred solely by operation of law and except for indebtedness permitted to be secured by a Permitted Security Interest;

- (m) **Risk Management:** establish, implement and maintain interest rate and other financial risk management policies approved by the Bank and in relation to Derivative Products, only enter into and maintain interest rate swaps unless otherwise agreed with the Bank provided that such interest rate swaps:
 - (i) are to be used solely to manage the Borrower's interest rate risk; and
 - (ii) may not be used for speculative purposes; and
- (n) **Corporate Status:** if it is a company, do all things necessary to maintain its corporate existence and not change its place of incorporation or place of domicile for taxation purposes.

4.2 **Negative Undertakings:** In addition to any undertakings specified in any Transaction Document, each Obligor undertakes to the Bank that it will not, and will ensure that each other Group Member will not, without the prior written consent of the Bank:

- (a) **Negative Pledge:** create or permit to exist any security interest over the whole or any part of its assets other than a Permitted Security Interest; or
- (b) **Provide Accommodation:** lend or otherwise provide any other financial accommodation to, give any guarantee in respect of, or otherwise assume, the indebtedness or the obligations of any person including, for the avoidance of doubt, any joint venture between a Group Member and any other person; or
- (c) **Provide Services:** provide services to or accept services from a person other than for proper value and on reasonable commercial terms; or
- (d) **Change of Business:** make a material change in the nature or scope of its business as it is presently conducted; or
- (e) **Disposals:** either by a single transaction or series of transactions, whether related or not and whether voluntary or involuntary and whether one at a time or over a period of time, dispose of all or any material part of its assets other than a Permitted Disposal; or
- (f) **Indebtedness:** incur any indebtedness for borrowed money other than indebtedness under or permitted by any Transaction Document; or
- (g) **Amalgamation:** if a company, amalgamate or make any proposal to amalgamate with any company; or
- (h) **Distribution:** if a company, subject to the provisions of each Facility Agreement (from time to time), make any Distribution; or
- (i) **Major Transactions:** if a company, enter into a major transaction (as defined in section 129 of the Companies Act 1993); or
- (j) **Subsidiaries:** if a company,
 - (i) create or acquire any subsidiaries; or
 - (ii) dispose of any shares in any subsidiary; or
- (k) **Acquisition of Shares:** purchase or subscribe for shares in another company; or
- (l) **Shares:** if a company,
 - (i) acquire, redeem or issue any of its own shares; or
 - (ii) give financial assistance for the purpose of, or in connection with, the purchase of shares issued or to be issued by it or by its holding company, whether directly or indirectly; or

- (iii) cancel, limit or reduce the liability of a shareholder to it in relation to a share held by that shareholder; or
 - (m) **Call Up Capital:** call up or allow to be called up or paid or receive in advance of calls any uncalled or unpaid capital, nor apply the same when paid to any purpose other than in or towards payment of the Outstanding Money; or
 - (n) **Modify Ability to Call Up:** pass or allow to be passed any resolution declaring or providing that any portion of its capital for the time being not already called up will not be called up or will only be called up on the occurrence of a particular event or in any other way limiting, qualifying or modifying its ability to call up or obtain payment of any capital; or
 - (o) **Change in Control:** allow a change in control or proposed change in control in relation to it; or
 - (p) **Related Party Transactions:** enter into any transaction with any Group Member or any subsidiary of any Group Member except for value in the ordinary course of business on an arm's length basis and on normal commercial terms.
- 4.3 **Reporting Undertakings:** In addition to any undertaking specified in any Transaction Document, the Borrower undertakes to the Bank that it will:
- (a) **Financial and Other Information:** as soon as available and in any event:
 - (i) **Annual Accounts:** within 90 days after the end of each of its financial years or such other period as may have been agreed to in writing by the Bank, deliver to the Bank the financial statements of the Borrower and (if applicable) the consolidated financial statements of the group of companies in respect of which the Borrower is a Group Member, in respect of that financial year, each duly audited (unless the Bank agrees in writing that such financial statements need not be audited);
 - (ii) **Interim Accounts:** within such period as may be specified by the Bank after the end of each of the financial periods specified by the Bank, deliver to the Bank the financial statements of the Borrower for the relevant period and (if applicable) the consolidated financial statements of the group of companies in respect of which the Borrower is a Group Member, in respect of the same periods;
 - (iii) **Other Information:** within 7 days of the Bank's request, deliver to the Bank any other information relating to the business affairs, financial condition or operations of the Borrower or any Group Member or its compliance with loan covenants or other obligations under a Facility which the Bank may, from time to time, reasonably request, at the cost of the Borrower, including without limitation in relation to any property the subject of a security interest held by the Bank, a current tenancy schedule, details of outgoings and operating expenses, and details of projected capital spending.

5. EVENTS OF DEFAULT

- 5.1 **Events of Default:** An Event of Default shall have occurred if at any time and for any reason, whether or not within the control of a party, any of the following events occur:
- (a) **Non-Payment:** any Obligor fails to pay any amount payable under a Transaction Document at the time and in the manner specified in that Transaction Document; or
 - (b) **Breach of Certain Undertakings:** any Obligor fails to perform or comply with any of its obligations under clauses 2.2, 4.1(e), 4.2 or 17.1(b); or
 - (c) **Other Breaches:** any Obligor fails to perform or comply with any of its obligations or undertakings under any Transaction Document (other than those referred to in clauses (a) and (b) above) and the failure to comply, if capable of remedy, is not remedied to the Bank's satisfaction within 10 Business Days after that Obligor first becomes aware of that failure; or
 - (d) **Misrepresentation:** any representation, warranty or statement made or deemed to have been made by or on behalf of any Obligor in, or in connection with, any Transaction

Document is or proves to have been untrue, inaccurate or incorrect in any material respect when made or repeated; or

- (e) **Dissolution:** an application is made, a resolution is passed or proposed in a notice of meeting, any corporate action is taken or any legal proceeding is issued (other than a vexatious or frivolous proceeding) for the dissolution or reorganisation of any Obligor or Group Member, except for the purpose of, and followed by, an amalgamation or solvent reconstruction on terms previously approved in writing by the Bank; or
- (f) **Receiver:** an encumbrancer takes possession of all or any material part of the assets of any Obligor or Group Member or a receiver, inspector, trustee, receiver and manager, administrator or other similar official is appointed or any application for such appointment is made in respect of any Obligor or Group Member or the whole or any part of its assets; or
- (g) **Distress or Execution:** any distress, attachment, execution, judgment or other legal process is levied, issued, obtained or enforced against the assets of any Obligor or Group Member, and is not discharged, satisfied or stayed within 10 days or contested in good faith by the taking of proper proceedings; or
- (h) **Bankruptcy:** any Obligor that is an individual commits an act of bankruptcy or is declared bankrupt; or
- (i) **Analogous Events:** any event occurs which, under the law of any relevant jurisdiction, has an analogous or substantially similar effect to any event mentioned in sub-clauses (e), (f), (g) or (h) above; or
- (j) **Insolvency:** any Obligor:
 - (i) is insolvent or unable to pay its indebtedness as it falls due; or
 - (ii) suspends, stops or threatens to suspend or stop payment of a material part of its indebtedness; or
 - (iii) commences negotiations or takes any proceedings with a view to the general deferral, readjustment or rescheduling of its indebtedness or a material part of its indebtedness; or
 - (iv) makes, or proposes to make, any assignment, arrangement or composition for the benefit of its creditors generally or a moratorium is agreed or declared in respect of or affecting all or any material part of its indebtedness; or
- (k) **Statutory Management:** any Obligor or Group Member is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989 or any step is taken to appoint or with a view to appoint a statutory manager or any recommendation is made to appoint a statutory manager by the Securities Commissions under the Corporations (Investigation and Management) Act 1989 in respect of any Obligor or Group Member; or
- (l) **Cross Default:** any indebtedness of any Obligor or Group Member is not paid when due or becomes due, or capable of being declared due, before it would otherwise have been due; or
- (m) **Security Interest:** any security interest over any asset or assets of any Obligor or any Group Member becomes enforceable; or
- (n) **Invalidity:** it is or will become unlawful for any Obligor to perform any of its obligations under any Transaction Document to which it is a party or any Transaction Document becomes or is claimed to be invalid or unenforceable in whole or in part or is claimed to have effect otherwise than in accordance with its terms or is withdrawn or revoked by the applicable Obligor; or
- (o) **Consents:** any material consent of whatever nature necessary in relation to any Transaction Document or to its validity and enforceability or to the business of any Obligor or Group Member is repealed, revoked or terminated or expires or is modified or amended or conditions are attached to it in a manner unacceptable to the Bank; or
- (p) **Change in Control:** (except with the prior written consent of the Bank) there is any change

in the composition of the legal or beneficial shareholding or effective control of any Obligor from that disclosed in writing to the Bank on or prior to the date of these Terms; or

- (q) **Cease Business:** (except with the prior written consent of the Bank) any Obligor or Group Member ceases or suspends or threatens to cease or suspend all or a material part of its business or operations; or
- (r) **Unable to perform:** any circumstances arise which give reasonable grounds in the opinion of the Bank for belief that any Obligor may not (or may not be able to) perform or comply with any of its obligations under any Transaction Documents or any Obligor that is an individual, dies or becomes insane or becomes in any way legally incapacitated; or
- (s) **Material Adverse Change:** in the opinion of the Bank, a material adverse change occurs in relation to any Obligor or Group Member; or
- (t) **Minority Buy-Out Rights:** (except with the prior written consent of the Bank) any Obligor or Group Member being a company, agrees to purchase all or any of the shares of a shareholder following receipt by that Obligor or Group Member of a notice by that shareholder pursuant to section 111(1) of the Companies Act 1993; or
- (u) **Transaction Documents:** an event of default or termination event (however described) occurs under any Transaction Document.
- (v) **Unresolved Event of Review:** an Event of Review occurs in respect of which the Bank does not agree a basis for continuing the provision of Facilities, as set out in clause 6.

5.2 **Consequences:** At the time of or at any time after the occurrence of an Event of Default and without prejudice to any other remedies the Bank may have, the Bank may, in its absolute discretion, by notice to the Borrower do all or any of the following:

- (a) **Cancel Facility:** cancel each or any Facility with immediate effect whereupon the obligations of the Bank to the Borrower under that Facility or those Facilities shall cease;
- (b) **Accelerate Outstanding Moneys:** declare all or any part of the Outstanding Moneys to be due and payable either immediately or at such later date as the Bank may specify whereupon the Outstanding Moneys will become so due and payable;
- (c) **Exercise Rights:** exercise all or any of its rights under any Transaction Document and at law;
- (d) **Derivative Products:** close out or cancel any outstanding contract relating to any Derivatives Product then provided by the Bank to any Obligor.

6. EVENTS OF REVIEW

6.1 **Events of Review:** Upon notification of an Event of Review, the Bank shall have 60 days to review its position (the "**Review Period**"). Unless otherwise specified in a Facility Agreement, during the Review Period, the Borrower and the Bank may negotiate to find a basis on which the Facilities or any of them can continue to be provided by the Bank. If no such basis can be agreed between the Bank and the Borrower prior to the expiry of the Review Period, an Event of Default shall be deemed to have occurred and the Bank shall be entitled to exercise all the rights and remedies set out in clause 5.2.

7. CHANGE IN CIRCUMSTANCES

7.1 **Illegality:** If, at any time and for any reason, the Bank determines that it is or may become unlawful or contrary to any directive for the Bank to provide all or part of a Facility, or allow all or part of any Outstanding Money to remain outstanding, to receive interest or to comply with any of its obligations or exercise any of its rights under any Transaction Document, then the Bank will not be obliged to provide or to continue to provide that Facility. In any such case, the Bank may, in its absolute discretion, at any time, by notice to the Borrower:

- (a) **Cancel Facility:** cancel any Facility; and/or
- (b) **Accelerate Outstanding Money:** declare all or any part of the Outstanding Money to be due

and payable either immediately or at such later date as the Bank may specify and the Borrower shall, on such date, repay such Outstanding Money.

7.2 **Increased Costs:** If, as a direct result of the introduction of, or a change in, any law or directive or a change in its interpretation, application or administration by any governmental agency the Bank determines that:

- (a) **Cost Increased:** the cost to the Bank of making available, funding or continuing to provide a Facility or performing any of its obligations or exercising any of its rights under any Transaction Document is increased (other than by reason of a change in the tax on overall net income of the Bank); or
- (b) **Return Reduced:** any amount payable to the Bank or the effective return to the Bank under any Transaction Document is reduced (other than by reason of a change in the tax on overall net income of the Bank); or
- (c) **Payment Required:** the Bank makes any payment (except on account of tax on overall net income of the Bank) or forgoes any interest or other return on or calculated by reference to any sum received or receivable by it under any Transaction Document,

then and in any such case, the Borrower shall indemnify and keep indemnified the Bank against that increased cost, reduction, payment or forgone interest or other return and shall from time to time upon demand pay to the Bank the amount certified by the Bank to be necessary to so indemnify it.

7.3 **Market Disruption:**

(a) **Change in Market Conditions and Others:**

- (i) In the circumstances described in paragraph (ii) below, the Bank may in its discretion at any time (in addition to its rights under clause 7.2) by notice to the Borrower (subject to clause 7.4) suspend or terminate, in whole or in part and for such period and upon such terms and conditions as the Bank may reasonably determine, its obligations in respect of any or all Facilities (including its obligation to make Drawings available, irrespective of whether or not the Borrower has requested a Drawing) and may require payment of the Outstanding Moneys on the date specified by the Bank.
- (ii) The circumstances referred to in paragraph (i) above are if, in the reasonable opinion of the Bank, such action is necessary as a result of any change in national or international monetary, financial, political or economic conditions (including, without limitation, central bank requirements) or currency exchange rates or exchange controls or in the overall availability of funds in any interbank or capital market which has materially adversely affected or would be likely to so affect the ability of the Bank to make, fund or continue to provide any Facility or to exercise its rights or perform its obligations under any Transaction Document.

(b) **Market Disruption Events:** If a Market Disruption Event occurs in relation to a Drawing under a Facility where the Drawing bears interest by reference to a Bill Rate in relation to any interest period then, notwithstanding anything to the contrary contained in the relevant Facility Agreement, the rate of interest on the Drawing for its interest period shall be the rate per annum which is the sum of:

- (i) the relevant margin specified in the Facility Agreement; and
- (ii) the rate notified to the Borrower by the Bank as soon as practicable, and in any event before interest is due to be paid in respect of that interest period, to be that which expresses as a percentage rate per annum the cost to the Bank of funding the Drawing from whatever source or sources it may reasonably select.

7.4 **Negotiation:** Without affecting the Obligors' obligations to make any payments under clause 7.2 or clause 7.3, if notice is given to the Borrower under clause 7.1 or clause 7.3(a) or a Market Disruption Event occurs, the Borrower and the Bank will, if the Borrower shall so request, for a period of 30 days (or such longer period as the Bank may agree) discuss in good faith whether there are any mutually satisfactory alternative means by which the Facility or Facilities might be made or continued or by which interest on Drawings might be determined (in each case not

involving the Bank incurring any increased cost or liability or receiving a reduced return) which would avoid or minimise the circumstances giving rise to such a notice.

- 7.5 **Force Majeure:** The Bank will not be liable for any failure to perform or comply with its obligations under any Transaction Document resulting directly or indirectly from any action or inaction of a governmental agency, strike or other labour disturbance (whether of its employees, officers or otherwise) or other cause which is beyond its control.

8. INDEMNITIES AND DEFAULT INTEREST

- 8.1 **General Indemnities:** Each Obligor will on demand indemnify and hold the Bank harmless against any cost, loss, expense, claim, action, suit, judgment, damages, penalty, obligation or liability (including loss of profit and costs and losses incurred in liquidating or redeploying deposits or other funds acquired or arranged in connection with any Facility or any part thereof) (all “costs”) sustained or incurred by the Bank directly or indirectly as a result of:

- (a) **Accommodation Not Provided:** any accommodation under any Facility not being provided on the intended Drawdown Date (other than by reason of the negligence or wilful default of the Bank);
- (b) **Payment Other than on Due Date:** any amount payable to the Bank by any Obligor (including at its election) under any Transaction Document not being paid when due whether by prepayment, acceleration or otherwise, but, so far as is appropriate, credit shall be given for any default interest paid under clause 8.5; or
- (c) **Event of Default:** the occurrence or continuation of any other Event of Default,

by payment to the Bank of the amount the Bank certifies is required to indemnify it for all such costs.

- 8.2 **Environmental Indemnity:** Without limiting any other indemnities on its part, each Obligor will indemnify and hold the Bank harmless against all costs (as defined in clause 8.1) which the Bank may sustain or incur directly or indirectly as a result of:

- (a) non-compliance with any Environmental Obligation by any Obligor or any of their respective subsidiaries;
- (b) any obligation under any such Environmental Obligation or directive being imposed on the Bank; and/or
- (c) the Bank doing (or instructing any persons to do) any act to ensure compliance with any such Environmental Obligation or to avoid, mitigate or remedy any actual or likely adverse effect upon the environment caused by or on behalf of any Obligor and any of their respective subsidiaries.

- 8.3 **Currency Indemnity:** If any amount due by an Obligor under a Transaction Document or under a suit, action or proceeding has to be converted from the currency (the “**first currency**”) in which it is payable into another currency (the “**second currency**”) for the purpose of:

- (a) **Claim or Proof:** making of filing a claim or proof against an Obligor; or
- (b) **Order of Judgment:** obtaining or enforcing an order or judgment;

then that Obligor shall indemnify and hold the Bank harmless against all costs (as defined in clause 8.1) which the Bank may sustain or incur directly or indirectly in any form whatsoever as a result of any discrepancy between:

- (i) the rate of exchange used for that purpose to convert the amount in question from the first currency into the second currency; and
- (ii) the rate of exchange at which the Bank may in the ordinary course of business purchase the first currency with the second currency upon receipt (or as soon as is reasonably practicable thereafter) of the amount paid to it in satisfaction, in whole or in part, of that claim, proof, order or judgment,

by payment on demand by the bank of the amount (and in such currency) as the bank may stipulate as being required to so indemnify it.

- 8.4 **Facsimile indemnity:** The Borrower shall indemnify the Bank in respect of all costs (as defined in clause 8.1) it or they may sustain or incur by reason of acting or otherwise relying on any facsimile machine transmission made by any Obligor under any Facility which appears to the reasonable satisfaction of the Bank to have been made by any Obligor and the contents of any such transmission as received shall be conclusive evidence that the request, instructions or notice therein contained has been made or given by the relevant Obligor.
- 8.5 **Default Interest:** Notwithstanding any other provision of this clause 8, if the Bank does not receive, when due, any amount payable to it by any Obligor under any Transaction Document, then that Obligor shall pay interest on that overdue amount on a daily basis calculated from its due date to the date of its actual receipt by the Bank (both before and after judgment) compounded and payable at intervals selected by the Bank at its discretion. This obligation to pay default interest shall arise without the need for a notice or demand. The rate of default interest will be the rate specified in the relevant Facility Agreement or if no such rate is specified, the amount determined by the Bank from time to time.

9. PAYMENTS

- 9.1 **Currency:** Unless otherwise specified in any Transaction Document, the New Zealand Dollar is the currency of account and payment for each amount at any time due under any Transaction Document.
- 9.2 **Mode of Payments:** Each payment to the Bank under any Transaction Document is to be made at the time specified in the relevant Transaction Document or, if no time is specified, during normal banking hours, in each such case on the due date, in immediately available freely transferable cleared funds and to the bank account which the Bank specifies from time to time. Amounts due and payable by the Borrower will be debited from the ASB Bank Limited account nominated by the Borrower for the purpose. If the Borrower does not nominate an account, the Bank may, at any time, debit from any account of the Borrower with the Bank any amounts due and payable by the Borrower.
- 9.3 **Business Days:** Subject to the provisions of each Facility Agreement, if any payment is due to be made under any Transaction Document on a day which is not a Business Day, that payment shall be made on the next succeeding Business Day and any interest will be adjusted accordingly.
- 9.4 **Payments to be Free and Clear:** Each payment by any Obligor to the Bank under any Transaction Document shall be unconditional and free and clear of any restriction, and shall be in full, without any deduction or withholding whatsoever (whether in respect of tax, set-off, counterclaim, charges or otherwise) unless such deduction or withholding is required by law.
- 9.5 **Reinstatement:** If any payment to the Bank under any Transaction Document is avoided by law, the relevant Obligor's obligation to have made such payment will be deemed not to have been affected or discharged and each Obligor shall on demand indemnify the Bank against any costs, claim, loss, expense or liability (together with any taxes thereon) sustained or incurred by the Bank as a result of it being required for any reason (including any dissolution law) to refund all or part of any amount received or recovered by it in respect of such payment and in any event pay to the Bank on demand the amount so refunded by it. The Bank and each Obligor will, in any such case, be deemed to be restored to the position in which each would have been, and will be entitled to exercise the rights they respectively would have had, if that payment had not been made.

10. SET-OFF

- 10.1 **Set-Off:** Each Obligor irrevocably authorises the Bank to apply (without prior notice or demand) any credit balance (whether or not due and payable) to which that Obligor is entitled on any account (in any currency) of such Obligor and at any of the Bank's offices, in or towards satisfaction of any indebtedness then due and payable by such Obligor to the Bank but unpaid.
- 10.2 **Contingent Liabilities:** If, at any time after the occurrence of an Event of Default and while it is continuing, an amount is contingently owing to the Bank or an amount owing is not quantified, the Bank may retain and withhold repayment of any such credit balance of any Obligor with the Bank

and the payment of interest or other moneys in relation thereto pending that amount becoming due and/or being quantified. The Bank may set-off against such credit balance the maximum liability which may at any time be or become owing to the Bank by any Obligor and in each case without prior notice or demand.

10.3 **Bank's Rights:** For the foregoing purposes, the Bank:

- (a) **Break Term Deposits:** is authorised to break any term deposit;
- (b) **Purchase Currencies:** may use all or any part of any credit balance to buy such other currencies as it considers may be necessary or desirable to effect the application; and
- (c) **Without Prejudice:** need not exercise its rights under this clause, which are without prejudice and in addition to any other rights of the Bank under any Transaction Document and any right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by law, contract or otherwise).

10.4 **No Security:** The Bank's rights under this clause are contractual rights affecting the terms upon which any credit balance of any Obligor is held and the creation of those rights does not constitute the creation of a security interest in that credit balance.

11. TAXES

11.1 **Gross up:** If:

- (a) **Obligor:** any Obligor is required by law to make any deduction or withholding from any amount paid or payable by it to the Bank under any Transaction Document; or
- (b) **Bank:** the Bank is required by law to make any deduction, withholding, or payment on, or calculated by reference to, any amount received or receivable by it under a Transaction Document for or on account of tax (except on account of tax on overall net income of the Bank) or otherwise,

then the amount payable by the relevant Obligor in respect of which such deduction, withholding or payment is required to be made will be increased to the extent necessary to ensure that, after the making of such deduction, withholding or payment, the Bank receives and retains (free from any liability in respect of any such deduction, withholding or payment) a net amount equal to the amount which it would have received and so retained had no such deduction, withholding or payment been required to be made.

11.2 **Payment:** Each such Obligor will:

- (a) **Notice:** notify the Bank immediately it is required to make any deduction or withholding;
- (b) **Minimum Amount:** ensure that such deduction or withholding does not exceed the legal minimum; and
- (c) **Punctual Payment:** pay the amount required to be deducted or withheld to the applicable taxation or other authority before the date on which penalties become payable.

11.3 **Tax Receipts:** The Borrower will deliver to the Bank promptly, upon receipt, a copy of the receipt issued by the applicable taxation or other authority or other evidence satisfactory to the Bank evidencing that such deduction or withholding has been made.

11.4 **Negotiation:** If a payment is required to be made pursuant to clause 11.1 then, without limiting the Borrower's obligations under these Terms, the Bank and the Borrower will consult in good faith for a period of 30 days (or such longer period as the Bank may agree) with a view to determining whether there are any mutually satisfactory alternative means by which the Facility or Facilities might be made or continued (not involving the Bank in any increased cost or liability or reduced return) which would mitigate or avoid the circumstances giving rise to such a payment.

11.5 **Certificate Of Exemption:** The Bank confirms to the Borrower that it holds a certificate of exemption in respect of interest issued under section NF9 of the Income Tax Act 2004 and agrees to notify the Borrower promptly if it ceases to hold such a certificate.

12. CALCULATIONS AND EVIDENCE

12.1 **Basis of Calculation:** Unless otherwise specified in any Transaction Document, all interest payable under any Transaction Document will be calculated on the basis of the number of days elapsed and a 365 day year.

12.2 **Maintain Account:** The Bank will maintain, in accordance with its usual practice, an account evidencing the amounts from time to time lent by and owing to it under each Facility.

12.3 **Prima Facie Evidence:** A certificate by the Bank as to:

(a) **Amounts:** any amount, interest rate or exchange rate payable under any Transaction Document or any entry made in any account maintained by the Bank will (in the absence of manifest error) be prima facie evidence of such amount, rate or entry; and

(b) **Other Facts:** any other fact relating to any Facility or Transaction Document which might reasonably be expected to be within the Bank's knowledge will be prima facie evidence of such facts,

for all purposes including for any legal action or proceedings.

13. ASSIGNMENT

13.1 **The Bank:** The Bank may at any time assign all or part of its rights or transfer all or any of its obligations under any Transaction Document to any person without the consent of the Borrower or any other Obligor. Each assignee or transferee shall have the same rights against each Obligor under each relevant Transaction Document (or the relevant portion of those rights if it is the assignee or transferee of part only) as if it were the Bank.

13.2 **Disclosure of Information:** The Bank may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with a Transaction Document are contemplated, any information about any Obligor whether or not that information was obtained in confidence and whether or not that information is publicly available.

13.3 **The Obligors:** No Obligor may assign any of its rights or transfer any of its obligations under any Transaction Document without the prior written consent of the Bank.

14. NOTICES

14.1 **Addresses and References:** Each notice or other communication (each a "**communication**") to be made, given or delivered under these Terms or a Transaction Document is to be in writing and sent by facsimile, personal delivery or post (or by international courier if to another country), to the addressee (for the attention of the person (if any) designated for that purpose) at the postal address or the facsimile number in the case of:

(a) any Obligor as set out in the execution pages of the Facility Agreement (or as otherwise specified in a Transaction Document); and

(b) in the case of the Bank (unless otherwise specified in a Transaction Document):

Postal Address:

Level 14, ASB Bank Centre
135 Albert Street
PO Box 35
AUCKLAND 1015

Fax No: +649 369 4069

Attention: Property Finance Manager

14.2 **Deemed Delivery:** A communication under these Terms or a Transaction Document will be effective, subject to clause 14.1:

- (a) **Personal Delivery:** in the case of personal delivery, when delivered;
- (b) **Post:** if posted by mail or delivered to a document exchange, on the third Business Day in the place of receipt (or fifth Business Day if sent to another country) after posting or delivery to the document exchange; and
- (c) **Facsimile:** in the case of a facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile number of the recipient designated for the purpose of these Terms,

provided that any communication received or deemed to have been received after 5pm or on a day which is not a working day in the place to which it is delivered, posted or sent shall be deemed not to have been received until the next working day in that place.

15. COSTS AND EXPENSES

15.1 **All Costs:** Whether or not any Facility is made available, the Borrower shall pay all costs and expenses of whatever nature (including all legal expenses) and any taxes incurred thereon sustained or incurred by the Bank in connection with:

- (a) **Transaction Documents:** the arrangement, preparation, negotiation and entry into each Transaction Document, and each other transaction required or contemplated by any Transaction Document;
- (b) **Amendments:** each amendment or supplement to or waiver of a Transaction Document or any other transaction required or contemplated by any Transaction Document; and
- (c) **Enforcement:** the exercise, protection or enforcement of, the Bank's rights under any Transaction Document or another transaction required or contemplated by any Transaction Document,

in each case on demand and on a full indemnity basis.

15.2 **Taxes:** Whether or not any Facility is made available, the Borrower shall pay promptly any stamp or similar duty and any tax (including GST) and registration fees to which any Transaction Document or any payment made or to be made under any Transaction Document is or may at any time be subject and will indemnify and hold the Bank harmless against any direct or indirect liability resulting from any failure to pay any such duty, tax or fee when due.

16. DISCLOSURE

16.1 Each Obligor authorises the Bank to disclose and discuss its financial statements and financial affairs and those of any Group Member and any other Obligor at any time with:

- (a) **Advisors:** the applicable Obligor's and the Bank's accountants, auditors, legal and financial advisors;
- (b) **Guarantors:** any other guarantor of any indebtedness or other obligation of the Borrower to the Bank; and
- (c) **Related Entities:** any of the Bank's parent, subsidiaries or related companies.

Nothing in this clause shall oblige the Bank to provide any information concerning any Obligor to any person.

17. TRUSTS

17.1 **Trusts:** If any Obligor is entering into any Transaction Document as a trustee of a trust (the "Trust"):

- (a) **Representations and warranties:** it represents and warrants to the Bank that:

- (i) the Trust is properly constituted and validly existing;
 - (ii) it is empowered by the trust deed relating to the Trust (the "**Trust Deed**") to execute the Transaction Documents to which it is a party and to do all things required under the Transaction Documents and there are no restrictions or conditions upon it doing so and all necessary meetings have been held and all necessary resolutions have been passed as required by the Trust Deed in order to render the Transaction Documents fully binding on it;
 - (iii) no amendments have been made to the Trust Deed except as disclosed in writing to the Bank prior to the execution of these Terms;
 - (iv) the Trust has not been terminated nor has any vesting date been determined under the provisions of the Trust Deed;
 - (v) there are no restrictions (in the Trust Deed or otherwise) on its rights to be indemnified out of the Trust;
 - (vi) it is not in default under the Trust Deed;
 - (vii) its entry into the Transaction Documents to which it is a party is in the interests of the beneficiaries of the Trust; and
 - (viii) it has not resigned as a trustee of the Trust or received any notice or information of the revocation by any means whatsoever of its appointment as trustee;
- (b) **Undertakings:** it undertakes to the Bank that it will not, without the prior written consent of the Bank (such consent not to be unreasonably withheld) permit:
- (i) the Trust Deed to be amended or varied;
 - (ii) the Trust to be determined or (to the extent of its powers) a new trustee or trustees to be appointed; or
 - (iii) all or any part of the capital of the Trust to be distributed to or on behalf of the beneficiaries of the Trust; and
- (c) **Events of Default:** it shall be an Event of Default if any of the following occur without the prior written consent of the Bank:
- (i) it ceases to be a trustee of the Trust;
 - (ii) a resolution is passed by the trustees or the beneficiary or beneficiaries of the Trust, or any other action is taken, to wind up the Trust; or
 - (iii) the Trust Deed is amended or varied.

17.2 **Representation and Warranties Continuing:** The representations and warranties in clause 17.1(a) will be deemed repeated by the relevant Obligor on each Drawdown Date so long as any Facility is made available to the Borrower or any Obligor is indebted to the Bank, by reference to the facts and circumstances then existing.

17.3 **Limited Liability Trustee:** If any Obligor is specified as a Limited Liability Trustee for the purposes of any Transaction Document, the liability of that Obligor shall be limited to the assets from time to time under its control as trustee of the Trust, except in respect of any indebtedness which the Bank is unable to recover under any Transaction Document or from the assets of the Trust as a result of any wilful or negligent breach of trust by that Limited Liability Trustee, alone or with others, any lack of capacity, power or authority of that Limited Liability Trustee to enter into any Transaction Document or to incur the indebtedness, or any wilful default or dishonesty of that Limited Liability Trustee or that Limited Liability Trustee loses his or her right to be indemnified out of the assets of the trust for any reason.

18. MISCELLANEOUS

18.1 **Cumulative Rights:** The rights of the Bank under the Transaction Documents are cumulative, may

be exercised as often as it considers appropriate and are in addition to any other contractual rights it may have against any Obligor and its rights provided by law.

- 18.2 **Amendments:** No amendment to a Transaction Document will be effective unless it is in writing signed by all the parties to that Transaction Document.
- 18.3 **Partial Invalidity:** The illegality, invalidity or unenforceability of a provision of a Transaction Document under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.
- 18.4 **Joint and Several Obligations:** Where any Obligor consists of more than one person, the obligations of that Obligor under each Transaction Document to which it is a party shall be both joint and several.
- 18.5 **Partnership:** Where an Obligor has entered into a Facility Agreement as a partnership, the Obligor acknowledges that;
- (a) distinct from its joint liability as a partner, it has separate personal liability for all the obligations of the partnership so that the Bank may have recourse to its personal assets on the same basis as any other personal creditor; and
 - (b) the Bank will be notified immediately upon the appointment of each new partner and the retirement or death of any partner.
- 18.6 **Waivers and Consents:** No waiver by the Bank of its rights under a Transaction Document will be effective unless it is in writing signed by the Bank. Any consent under any Transaction Document must also be in writing signed by the Bank. Any such waiver or consent may be given subject to any conditions the Bank deems appropriate and shall be effective only in the instance and for the purpose for which it was given.
- 18.7 **No Implied Waivers:** No failure to exercise, and no delay in exercising, any right under a Transaction Document will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right.
- 18.8 **Time of Essence:** Time is of the essence for the performance by each Obligor of its obligations under each Transaction Document to which it is a party.
- 18.9 **Conflicts:** If there is any conflict between the provisions of these Terms and any other Transaction Document then the Bank will in its absolute discretion determine which is to prevail.
- 18.10 **Survival of Covenants:** The payment and indemnity obligations of each Obligor under these Terms, including, without limitation, under clauses 8, 9 and 15, shall be separate and independent obligations giving rise to independent causes of action and will survive the termination of any Facility and payment of all other indebtedness under any Transaction Document.
- 18.11 **Counterparts:** These Terms and any Facility Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute these Terms or any Facility Agreement by signing any such counterpart.

19. GOVERNING LAW

- 19.1 **Governing Law:** Each Transaction Document is governed by and shall be construed in accordance with New Zealand law.
- 19.2 **Jurisdiction:**
- (a) **In New Zealand:** Each Obligor irrevocably and unconditionally agrees that the courts of New Zealand shall have jurisdiction to hear and determine each suit, action or proceeding and to settle disputes which may arise out of or in connection with any Transaction Document and for those purposes irrevocably submits to the jurisdiction of those courts.
 - (b) **Other Jurisdictions:** This submission to jurisdiction does not (and is not to be construed to) limit the rights of the Bank to take any suit, action or proceedings against any Obligor in

another court of competent jurisdiction nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings in another jurisdiction, whether concurrently or not.

- (c) **Service in New Zealand:** Each Obligor consents to service of process in any manner permitted by law and each Obligor who is incorporated in a jurisdiction outside New Zealand hereby appoints the Borrower at the registered office of the Borrower as its agent for the service of process for the purpose of any legal proceedings arising out of or in connection with any Transaction Document.