



Term Loan Agreement

Luminate Finance Limited

"Insert borrower name"

"Insert guarantor's name, if any"

SAMPLE

Consumer Credit Contract and Regulated Financial Advice

You are protected by responsible lending laws. Because of these protections, the recommendations given to you about this term loan agreement are not regulated financial advice.

This means that duties and requirements imposed on people who give financial advice do not apply to these recommendations. This includes a duty to comply with a code of conduct and a requirement to be licensed.

Luminate Finance Limited

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THIS AGREEMENT is made the _____ day of _____

2026

PARTIES

Luminate Finance Limited (company number 4525499)
("Luminate")

"Insert borrower name" **"[NOTE - if a company]"** (company number [insert])
("Borrower")

"Insert guarantor – if any"
("Guarantor")

BACKGROUND

- A. Luminate, at the request of the Borrower and the Guarantor (if any), has agreed to advance to the Borrower a loan on the terms and conditions contained in this Agreement.

FIRST SCHEDULE – LOAN TERMS

Name of Borrower and address for all Notices and service under Agreement:	"Borrower's name" "insert address"
Email address of Borrower:	"insert email address" The Borrower consents to receiving electronic disclosure under the Credit Contracts and Consumer Finance Act 2003 and Luminate may provide Notices to the above email address.
Name of Guarantor and address for all notices and service under this Agreement:	Name "insert address"
Email address of Guarantor:	"insert email address"
Loan/Maximum Amount of the Loan:	A term loan of \$"insert amount" (Facility Limit) to be made available to the Borrower in a single tranche on the Commencement Date.
Commencement Date:	The date upon which the Borrower makes a drawing of the Loan in accordance with this Agreement.
Availability Date:	"insert date" , or such later date as Luminate may specify in writing.
Expiry Date:	The date which is "[number written in word form]" ([number]) months from the Commencement Date.
Loan Purpose:	"[Insert purpose]"
Interest Period:	Monthly
Interest Rate:	insert % per annum fixed for the term of the Loan
Default Rate:	insert % per annum – being insert % per annum above the Interest Rate.
Loan Establishment Fee:	\$insert , to be deducted from the Loan on the Commencement Date or otherwise paid by you as required by Luminate.

Fees and Costs:	<p>You agree that the following fees and costs are payable by you:</p> <ol style="list-style-type: none"> 1. Loan Establishment Fee: \$"insert amount" ; 2. Loan Administration Fee: This fee will be charged automatically and will be added on to the principal sum on the monthly anniversary of the drawdown date - \$25.00 per month; 3. Lender's Site Inspection Fee: This fee applies to construction loans where Luminate checks on the progress of the build throughout the term of the loan - \$250.00 per site visit within Auckland. Price for inspections outside of Auckland shall be advised by Luminate at the time of inspection; 4. Lender's Recovery Costs: Luminate will charge the Borrower any third-party costs relating to the Borrower's loan should the loan be in default for more than 60 days (e.g. Legal fees, property valuations, court fees); 5. Prepayment Administration Fee: This fee will be added on to the loan principal at the time of full repayment if the loan is repaid early - \$250.00 (and is in addition to the early repayment costs set out in the Agreement); and 6. Security Registration Fees: This fee, which includes legal and registration fees, will be added on to the loan principal at the time of full repayment - These are estimated to be: <ol style="list-style-type: none"> a. Financing statement - \$16.50 per registration (incl GST) b. PPSR searches - \$2.30 per search (incl GST) c. Mortgage or Caveat registration - \$500 + GST and Disbursements per registration. d. Discharge of mortgage or release of caveat - \$500 + GST and Disbursements per registration. <p>Note that the figure quoted for the mortgage/caveat registration and discharge is a base fee, is an indication only and is subject to change. Costs will vary according to the legal attendances required (e.g. gathering AML information from the borrower, multiple registrations). Unless specified, all amounts in this agreement are exclusive of GST.</p>
Interest Calculation and Payment Dates:	Interest will be calculated on a daily basis at the Interest Rate from the Commencement Date and will be due for payment on each monthly anniversary of the Commencement Date.
Continuing Disclosure Statements:	Luminate will provide statements of the Loan account every [LFL to insert statement frequency here]
Repayment date:	Full repayment of all interest and principal is to be made on or before the Expiry Date.
Early Repayment Costs:	You may repay the principal sum in full at any time without notice. The amount payable by you on full repayment will be calculated in accordance with clause 5 and will include a reasonable estimate of our loss on full repayment, calculated in accordance with the statutory procedure prescribed by the Credit Contracts and Consumer Finance Regulations 2004 (as amended from time to time).
Maximum LVR:	"insert if using"
Property:	The land and property at \"address\" which is contained in Record of Title \"insert title identifier\" .
Permitted First Mortgage:	\"[Include if there is already a mortgage registered on the property]\" Mortgage "mortgage number" registered to bank over the Property.

Securities:	<p>"[Include those that apply]"</p> <ol style="list-style-type: none"> 1. A [first/second] registered all obligations mortgage over the Property with a priority sum of \$insert plus interest "remove if caveat not being registered" [secured by Caveat]. 2. An unlimited guarantee from the Guarantor. 3. An all obligations first ranking General Security Agreement over the present and after acquired property of the Borrower "remove if not registering GSA over guarantor" [and Guarantor].
Letter of Offer:	The letter of offer dated "insert date" forms part of this contract.
Independent Trustee (refer clause 21.17):	"Insert trustee name or N/A" .
Conditions Precedent:	<p>Prior to drawdown, Luminate must receive the following which must be satisfactory to Luminate in all respects;</p> <ol style="list-style-type: none"> (a) Customer due diligence forms, certified passports or driver licence for all beneficial owners or those with control, proof of address, source of wealth and any other information that Luminate requires to comply with its obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; (b) Copies of the records of title for the Property together with any relevant registered interests; (c) Confirmation of the first mortgage loan balance; (d) Trust deed and/or constitutional documents for the Borrower and each Guarantor; (e) Previous twelve (12) months of loan statements for any existing lending of the Borrower and any Guarantors; (f) Signed Finance Documents; (g) GST declaration confirming the GST treatment of the Property; (h) Evidence that the Property is insured for its full replacement cost and Luminate's interest has been noted on the insurance policy and such policy has been pre-paid for at least six months; (i) A registered valuation of the Property addressed to Luminate which is dated no more than three months prior to the Drawdown Date; and <p>Further conditions precedents may be required at the request of Luminate.</p>
Special conditions:	"Insert any special conditions"

AGREEMENT

1 Interpretation

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

“**Agreement**” means this Agreement as amended from time to time.

“**Availability Date**” has the meaning set out in the First Schedule.

“**Business Day**” means any day other than a Saturday, Sunday or a public holiday in Auckland.

“**Caveat**” means the caveat lodged on the Property granted as security by the Borrower in favour of Luminare as security for the Moneys Owed.

“**Charge**” means any mortgage, charge, encumbrance, lien, pledge, hypothecation, financial lease, deferred purchase, sale and re-purchase, sale and leaseback, title retention or any other arrangement (however described) which in effect is, or has the commercial effect of, a security interest.

“**Collateral**” means any personal property of the Borrower and/or the Guarantor which is the subject of a security interest under this Agreement or any Security Document. As at the date of this Agreement, there is no Collateral as no Obligor has granted a security interest in personal property to Luminare.

“**Commencement Date**” has the meaning given to it in the First Schedule.

“**Default Rate**” means the Default Rate specified in the First Schedule.

“**Drawdown Date**” means the date upon which the Borrower draws down the Loan in accordance with this Agreement.

“**Drawing**” means the drawing of the Loan by the Borrower in accordance with this Agreement.

“**Event of Default**” means any of the events specified as such in clause 11.1 of this Agreement.

“**Expiry Date**” means the date specified in the First Schedule, or such other date as may be agreed in writing by the Borrower and Luminare, subject to Luminare's right to require payment at an earlier date under the terms of this Agreement.

“**Finance Documents**” means:

- (a) this Agreement;
- (b) any of the Securities;
- (c) any other document or agreement which Luminare specifies in writing is a Finance Document;
- (d) any document or agreement that is entered into under any of the above;
- (e) any document or agreement that amends, supplements, replaces or novates any of the above; and

- (f) any undertaking in writing by or to a party or its lawyers that is given under or relates to any of the above.

“General Partner” means, in relation to a Limited Partnership, each general partner for the time being of that Limited Partnership.

“Limited Partner” means, in relation to a Limited Partnership, each limited partner for the time being of that Limited Partnership.

“Limited Partnership” means a limited partnership registered under the Limited Partnerships Act 2008, and is the party identified as such in this Agreement.

“Limited Partnership Agreement” means, in relation to each Limited Partnership that is a party to this Agreement, the agreement governing the terms of the Limited Partnership.

“Independent Trustee” means the person(s) named as Independent Trustee in the First Schedule.

“Interest Payment Date” means the last day of each Interest Period during the term of this Agreement.

“Interest Period” shall mean a period recorded as the Interest Period in the First Schedule (or such other period as agreed in writing between the Borrower and Luminate) provided that:

- (a) the first Interest Period shall commence on the Drawdown Date and shall end on the last day of that Interest Period;
- (b) each subsequent Interest Period shall commence on the day following the last day of the preceding Interest Period;
- (c) any Interest Period that would otherwise extend beyond the Expiry Date shall be of such duration that it shall end on the Expiry Date.

“Interest Rate” means the rate that is recorded as the Interest Rate in the First Schedule.

“Letter of Offer” means Luminate’s letter of offer to the Borrower as described in the First Schedule.

“Loan” means the loan of the sum recorded in the First Schedule to be made by Luminate to the Borrower in accordance with the terms and conditions of this Agreement.

“Loan Establishment Fee” means an application fee of the amount set out in the First Schedule.

“LVR” means the loan to value ratio which is the ratio of A : B (expressed as a percentage) where:

- (a) A is the Moneys Owed; and
- (b) B is the ‘as is’ value of the Property (excluding GST) as set out in the most recent valuation provided to and accepted by Luminate or Luminate’s agent.

“Material Adverse Effect” means something which has material adverse effect on the Borrower’s financial condition or operations or its ability to perform and comply with its obligations under this Agreement or any of the Security Documents.

“Maximum LVR” has the meaning given in the First Schedule.

“Moneys Owed” means all principal, interest, capitalised interest, default interest, fees, costs, expenses, charges, indebtedness and other moneys of whatever nature owed or payable by the Borrower to Luminare under this Agreement or any Finance Document.

“Mortgage” means the registered mortgage over the Property granted by the Borrower and/or the Guarantor in favour of Luminare as security for the Moneys Owed, and includes the terms in The Law Association Mortgage Memorandum (all obligations) 2018/4326.

“Obligor” means the Borrower and the Guarantor and each of them. Where there is no Guarantor, the terms “Obligor” and “Borrower” may be used interchangeably.

“Permitted Security Interests” means:

- (a) each Security;
- (b) the Permitted First Mortgage (if any);
- (c) a security interest (as defined in section 17(1)(a) of the PPSA) in relation to personal property that is created or provided for by:
 - (ii) a transfer of an account receivable or chattel paper;
 - (iii) a lease for a term of more than one year; or
 - (iv) a commercial consignment,
that does not secure payment or performance of an obligation or is otherwise agreed in writing by Luminare.

“Personal Information” has the meaning given to that term in the Privacy Act 2020.

“Property” means the Property recorded as the property in the First Schedule.

“PPSA” means the Personal Property Securities Act 1999.

“Purpose” means the Loan purpose described in the First Schedule.

“Security Documents” means the agreements, securities and other documents granted in favour of or obtained by Luminare which secure the Moneys Owed, including but not limited to the Mortgage and other securities listed in the First Schedule.

“Trust” means, where the Borrower or the Guarantor comprise the Trustees of a trust, the party identified as such in this Agreement.

“Trust Assets” means, in relation to a Trust, the property of the Trust from time to time (if applicable).

“Trust Deed” means, in relation to a Trust, the deed of trust establishing the Trust and as varied from time to time.

“Trustee” means, in relation to a Trust, each of the trustees named as parties to this Agreement together with each other trustee for the time being of the Trust and where more than one trustee, means each of them severally and all of them jointly.

1.2 **References:** In this Agreement, unless the context otherwise requires:

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

“**indebtedness**” includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal, surety or otherwise) for the payment or repayment of money;

“**laws**” means all applicable statutes (including all regulations thereunder), regulations, by-law, order in Council, judgement and decrees, and includes common or customary law, of any relevant jurisdiction and any other measure which has the force of law and includes any environmental law and building law;

“**month**” means calendar month;

“**or**” includes “**and/or**”;

“**person**” includes any individual, firm, company, corporation, partnership, joint venture, association, trust, state or agency of state, in each case whether or not having separate legal personality;

“**week**” means calendar week;

“**written**” and “**in writing**” includes all means of reproducing words in a visible form, and includes reproduction by facsimile or electronic transmission.

1.3 **General:** Unless otherwise stated or the context otherwise requires:

1.3.1 headings are inserted for reference only and shall be ignored in construing this Agreement. References to clauses are references to clauses in this Agreement;

1.3.2 words importing one gender include the other gender and words importing the singular include the plural and vice versa;

1.3.3 references to a document are references to that document as varied, amended or novated from time to time;

1.3.4 references to a statute, regulation, order, bylaw or other legislation are references to that statute, regulation, order, bylaw or other legislation as amended, consolidated, re-enacted, substituted or extended from time to time. References to a statute includes a reference to all regulations as may be passed under that statute; and

1.3.5 references to a party in this Agreement includes the representatives, successors and permitted assigns of that party.

1.4 **Joint and Several:** If any of the terms “Borrower”, “Guarantor” or “Obligor” in this Agreement refers to two or more parties, then those terms shall mean and include throughout this Agreement all those parties and each of them and shall so far as the context admits be construed in the singular as well as the plural. All covenants, agreement, undertakings and warranties in this Agreement whether expressed or implied on the part of the parties referred to by that term shall be deemed to be joint and several.

- 1.5 **PPSA:** The terms “accessions”, “financing change statement”, “financing statement”, “personal property”, “security interest” and “verification statement” have the meanings given to them in, or in the context of, the PPSA.

2 Loan

- 2.1 **Grant of Loan:** Luminare agrees to advance the Loan to the Borrower on the terms and subject to the conditions of this Agreement.

- 2.2 **Purpose:** The Loan shall only be used by the Borrower for the Purpose, or such other purpose previously notified in writing to, and accepted in writing by, Luminare. The Borrower shall not utilise the Loan for any other purpose without obtaining the prior written consent of Luminare.

- 2.3 **Availability of Drawings:** Subject to the conditions precedent in clause 3 having been satisfied, the Borrower may draw down the Loan from the Availability Date. If the Loan is not drawn down within 30 days of the issue of this loan documentation Luminare may, at its sole discretion, elect to withdraw the availability of the Loan facility. Luminare may at its entire discretion extend the Availability Date by five (5) Business Days.

3 Conditions Precedent

- 3.1 **Items Lender to Receive:** Luminare shall not be obliged to make the Loan available to the Borrower under this Agreement unless Luminare has received in a form satisfactory to Luminare confirmation of all matters provided in the First Schedule under the heading 'Conditions Precedent' as well as any 'Special Conditions' contained in the First Schedule.

- 3.2 **Conditions Precedent to Drawdown of Loan:** Luminare shall not be obliged to make a Drawing available to the Borrower:

3.2.1 if an Event of Default has occurred on or before the Drawdown Date, or will occur as a result of making available the Loan; and

3.2.2 until Luminare is satisfied that no event has occurred or circumstances have arisen which in the opinion of Luminare may have a Material Adverse Effect on the Borrower or the Guarantor.

4 Interest and Fees

- 4.1 **Payment of Interest:** The Borrower shall pay to Luminare on each Interest Payment Date interest in arrears at the Interest Rate on the Moneys Owed during the applicable Interest Period which shall be calculated by Luminare.

- 4.2 **Calculation of Interest:** Interest, including default interest, shall accrue and be calculated on a daily basis by multiplying the unpaid balance at the end of each day by a daily interest rate, and shall be calculated on the basis of days elapsed in a three hundred and sixty-five (365) day year.

- 4.3 **Default Interest on Overdue Moneys:** If the Borrower does not make a payment to Luminare when due to be paid under this Agreement, default interest accrues daily on the amount unpaid at the Default Rate from the date the payment was due until the date the default is remedied. The default will not be remedied until Luminare has been paid the amount of the payment in default plus the amount of default interest that has accrued on the payment in default. This obligation to pay interest at the Default Rate shall arise without the need for a notice or demand however Luminare shall promptly notify the Borrower in writing so that the Borrower has the opportunity to remediate the non-payment.

- 4.4 **Loan Establishment Fee:** The Borrower must pay the Loan Establishment Fee to Luminare on the Availability Date. The Loan Establishment Fee shall be payable regardless of whether the Loan proceeds or is drawn down.
- 4.5 **Allocation of Payments:** Unless expressly provided for elsewhere in this Agreement Luminare may apply amounts paid by an Obligor, at Luminare's sole discretion, towards:
- 4.5.1 paying any part of the Moneys Owed as Luminare chooses (such as, by way of example only, first in payment of interest, then Fees then the Loan); and
 - 4.5.2 satisfaction of that Obligor's obligations under the Finance Documents in the manner it sees fit.

5 Repayment, Prepayment and Variations

- 5.1 **Final Repayment:** The Borrower shall repay in full to Luminare on the Expiry Date the Moneys Owed then outstanding.
- 5.2 **Early Prepayment:** The Borrower may only voluntarily prepay the Moneys Owed in whole (but not in part) by notifying Luminare on or before the fifth Business Day before the prepayment is to take effect (or any lesser period agreed to by Luminare). Once given, the notice is irrevocable, and the Borrower is obliged to prepay in accordance with the notice to repay:
- 5.2.1 The principal sum then outstanding;
 - 5.2.2 All interest owing up to (and including) the date of repayment;
 - 5.2.3 Luminare's administration costs in respect of the early repayment and discharge and other fees payable relating to the discharge of the Securities; and
 - 5.2.4 The amount of the reasonable estimate of Luminare's loss arising from the full repayment.
- 5.3 **Part Prepayment:** Luminare can decline to accept any part prepayment by the Borrower in its own discretion. If Luminare does elect to accept a prepayment in part, the amount will be applied in the following order towards:
- 5.3.1 Interest owing to the date of prepayment;
 - 5.3.2 Administrative costs incurred by Luminare in accepting a part prepayment;
 - 5.3.3 The amount of Luminare's reasonable estimate of its loss arising from the part prepayment; then
 - 5.3.4 Reduction of the principal sum owing.
- 5.4 **Calculation of Luminare's loss:** The reasonable estimate of Luminare's loss on full or part repayment (if a part payment is accepted by Luminare) will be determined in accordance with the formula set out in regulation 9 of the Credit Contracts and Consumer Finance Regulations 2004 (as amended from time to time).
- 5.5 **Variation of Loan:** In the event of Luminare agreeing to increase its funding, renew the term of the loan, revise or vary any term of the loan at the request of the Borrower, the Borrower shall pay to Luminare such fees as Luminare may determine will adequately compensate Luminare in giving consideration to and consenting to the variation. For the avoidance of doubt, the Borrower will be given the opportunity to agree to any such fees prior to any variation of the loan taking effect. If Luminare and

the Borrower agree to the terms of the variation, then the Loan shall be deemed extended for such further period, or varied on such other terms as the parties agree and otherwise on the terms set out in this Agreement.

6 Securities

- 6.1 **Provision of Security:** The Obligor covenants with Luminare to provide or procure the provision of the securities listed in the First Schedule.

7 Representations and Warranties

- 7.1 **Representations and Warranties:** The Obligor represents and warrants to and for the benefit of Luminare as follows:
- 7.1.1 **Status:** The Obligor has the capacity to enter into, exercise its rights, perform and comply with its obligations under and engage in the transactions contemplated by any Finance Document to which it is a party and those documents are legal and valid obligations, binding on the Borrower in accordance with their terms;
- 7.1.2 **Purpose:** The Loan and any product resulting from the Loan will be used only for the Purpose;
- 7.1.3 **No Default:** No Event of Default has occurred or might occur as a result of making the Loan and the Obligor is not in breach of or in default under any agreement which is binding on it to an extent or in a manner which could have a Material Adverse Effect;
- 7.1.4 **No arrears:** There are no arrears of local authority rates, water rates or insurance premiums in respect of the Property;
- 7.1.5 **Disclosure:** All information provided by the Borrower to Luminare at any time in connection with the Finance Documents to which it is a party was true and accurate in all material respects on the date it was provided and there are no facts or circumstances which have not been disclosed to Luminare which would make that information untrue, inaccurate, incomplete, or misleading;
- 7.1.6 **Existing Charges:** Except as otherwise permitted under this Agreement or approved in writing by Luminare, no Charge of any nature exists on or over the Property or the Collateral;
- 7.1.7 **Solvency:** The Obligor is able to pay the Obligor's debts when due and the Obligor is not aware of any steps or legal proceedings being taken or threatened against the Obligor for the Obligor's bankruptcy, administration (whether voluntary or otherwise), liquidation or winding up;
- 7.1.8 **Goods and Services Tax ("GST"):** The Obligor warrants that it will not claim GST pursuant to the Goods & Services Tax Act 1985 on the Property, unless the Obligor has provided Luminare with written confirmation, prior to acceptance of the loan offer by the Obligor, that a claim has been made in respect of the Property. The Obligor acknowledges and agrees the Moneys Owed shall become immediately due and payable should any GST be claimed in respect of the Property. The Obligor further acknowledges that in the event of the Moneys Owed falling due pursuant to this clause interest shall be payable at the Default Rate plus five percent (5%) per annum from the date of any GST claimed.

- 7.2 **Trustee representations:** Where the Obligor comprises the Trustees of a Trust, each Trustee makes and gives personally and as Trustee of the Trust the representations and warranties in this clause 7 and also represents that:
- 7.2.1 the Trustees comprise all the trustees of the Trust and are validly appointed;
 - 7.2.2 the Trust has not been terminated, nor has any event for the vesting of Trust Assets occurred;
 - 7.2.3 no amendments have been made to the Trust Deed that have not been disclosed in writing to, and accepted by, Luminate;
 - 7.2.4 no Trust Assets have been:
 - (a) resettled, set aside or transferred to any other trust or person; or
 - (b) mixed with, or acceded to, property which is not Trust property;
 - 7.2.5 no powers conferred on the Trustees by the Trust Deed have been delegated; and
 - 7.2.6 each Trustee is entitled to be indemnified out of the Trust Assets in full and Luminate is entitled to be subrogated to that right (in each case without restriction, limitation, set-off or counterclaim) in respect of the obligations under the Finance Documents to which it is a party.
- 7.3 **Limited Partnership representations:** Where an Obligor is a Limited Partnership, each General Partner of that Limited Partnership makes and gives the representations and warranties in this clause 7 in its capacity as General Partner of the Limited Partnership and also represents that:
- 7.3.1 it is empowered by the Limited Partnership Agreement to enter into and comply with the Relevant Documents to which it is a party in its capacity as General Partner of that Limited Partnership and to do so for the benefit of and for the purposes of that Limited Partnership and has taken all necessary action to authorise the Limited Partnership's entry into the Finance Documents to which it is a party and the performance of all its obligations thereunder;
 - 7.3.2 details of each General Partner and each Limited Partner of the Limited Partnership have been disclosed to Luminate;
 - 7.3.3 each General Partner and Limited Partner of the Limited Partnership has been validly appointed.
 - 7.3.4 the Limited Partnership has not been terminated;
 - 7.3.5 no step has been taken to remove the General Partner;
 - 7.3.6 no amendments have been made to the Limited Partnership Agreement that have not been disclosed in writing to, and accepted by Luminate; and
 - 7.3.7 no powers conferred on the General Partner by the Limited Partnership Agreement have been delegated.
- 7.4 **Repetition:** The representations and warranties contained in this clause 7 are deemed to be repeated, correct and complied with in all respects on the date of this Agreement, on the date of the Drawing and on each date upon which any payment is due under this Agreement, as if given on that date by reference to the facts and circumstances then prevailing.

8 Undertakings

8.1 **General Undertakings:** The Obligor undertakes to Luminare that it shall:

- 8.1.1 **Events of Default:** Notify Luminare of the occurrence of any Event of Default or potential Event of Default immediately upon becoming aware of it;
- 8.1.2 **Litigation:** Promptly deliver to Luminare details of any litigation, arbitration or administrative proceeding which has or could give rise to a Material Adverse Effect;
- 8.1.3 **Compliance with Laws:** Promptly comply with all laws non-compliance with which might impose any charge of any nature on its business or its assets or have a Material Adverse Effect on it including the compliance with any applicable environmental laws and building laws in respect of the Property or Collateral;
- 8.1.4 **Pay Taxes:** File all tax returns as required by law, and pay and discharge all taxes when due, except only to the extent that such taxes are being contested in good faith by appropriate proceedings;
- 8.1.5 **Insurance:** As long as any Moneys Owed remain outstanding:
- (a) insure and keep insured with an insurer approved by Luminare all insurable assets of the Borrower and the Guarantor that are subject to a security interest in favour of Luminare against all risks as it is prudent to insure against, including (without limitation) loss or damage by fire, earthquake or natural disaster damage (as defined in the Earthquake Commission Act 1993) for full replacement value. The interest of Luminare must be noted on the policy as the appropriately ranking chargeholder. All moneys received by virtue of any such policy shall be applied, at the option of Luminare, either in or towards making good the relevant loss or damage, or in or towards payment of all or any of the Moneys Owed, notwithstanding that the time or times for payment may not have arrived;
 - (b) provide Luminare with particulars of all such insurances and duly and punctually pay all premiums and sums of money necessary to keep those insurances current, and, if required by Luminare, to deliver to Luminare the receipts for those payments.

8.2 **Trustees' undertakings:** Where an Obligor comprises the Trustees of a Trust, each Trustee also undertakes personally and as Trustee of the Trust to:

- 8.2.1 comply with and perform its obligations under the Trust Deed, under contract and at law, the non-compliance with which might have a Material Adverse Effect;
- 8.2.2 not, without the prior written consent of Luminare:
- (a) allow any variation to the terms of the relevant Trust Deed that might have a Material Adverse Effect;
 - (b) retire or do anything that would cause or enable its removal as a Trustee of the Trust;
 - (c) allow the Trust to be determined or new trustees or a new manager to be appointed;

- (d) allow the release or prejudice of the Trustee's rights of indemnity against the Trust Assets or the beneficiaries or Luminare's rights of subrogation to such indemnities.

8.2.3 Without affecting Luminare's rights under the Finance Documents, if a new trustee is to be appointed as trustee of the Trust, each Trustee undertakes to use its best endeavours to ensure that the new trustee signs such documents as Luminare may require.

8.3 **Limited Partnership undertakings:** Where an Obligor is a Limited Partnership, each General Partner of that Limited Partnership also undertakes to:

8.3.1 comply with and perform its obligations under the Limited Partnership Agreement, under contract and at law, the non-compliance with which might have a Material Adverse Effect;

8.3.2 not allow delegation by the General Partner or a Limited Partner of their powers and authorities under the Limited Partnership Agreement to any person;

8.3.3 not, without the prior written consent of Luminare:

- (a) allow any variation to the terms of the Limited Partnership Agreement that might have a Material Adverse Effect;

- (b) allow the capital of the Limited Partnership to be distributed to or on behalf of the General Partners and/or Limited Partners;

- (c) do anything that would cause the removal, retirement or replacement of the General Partner, as general partner of the Limited Partnership; or

- (d) allow the Limited Partnership to be determined or (to the extent of its powers) new partners to be appointed.

8.4 **Negative Pledge:** The Obligor undertakes to Luminare that it will not:

8.4.1 Borrow any additional funds during the period of the loan advance from the first mortgagee or other lender against the security of the Permitted First Mortgage registered over the Property and it acknowledges that to do so would be considered a breach of this Agreement; or

8.4.2 Sign any mortgage (registered or unregistered) or enter into any agreement to mortgage over the Property;

without the prior written consent of Luminare.

8.5 **Other negative undertakings:** Each Obligor undertakes that it will not except with the prior written consent of Luminare:

8.5.1 create or permit to subsist any security interest, including any mortgage, over any of its assets except any created or permitted by this Agreement;

8.5.2 sell, transfer or otherwise dispose of any of its assets, except for value in the ordinary course of business;

8.5.3 make any loan or provide any financial assistance to any director, shareholder or associated or related person or, except in the ordinary course of business, lend or advance moneys to any other person;

- 8.5.4 enter into any other transaction with, or for the benefit of, a related person except on arms' length commercial terms;
- 8.5.5 do or permit or suffer to be done or omitted anything which might prejudicially affect the Finance Documents or any other transaction document in relation to the Property;
- 8.5.6 lease, enter into an agreement to lease, or grant rights of occupation in relation to any part of the Property;
- 8.5.7 enter into or make any proposal for a compromise, except on terms previously approved by Luminare in writing.

9 Financial covenants

- 9.1 **Loan to Value Ratio:** The Borrower must ensure that at all times from the date of this Agreement until the Termination Date, the LVR does not exceed the Maximum LVR (if applicable).
- 9.2 **Failure to comply:** If at any time the Borrower fails to comply with clause 9.1, the Borrower shall, within 10 Business Days of the earlier of becoming aware of such breach or Luminare giving notice to the Borrower of a breach, make such prepayments as are necessary to ensure, from the date of prepayment, compliance with the LVR, or take such other action as is agreed with Luminare. Failure to remedy a breach of clause 9.1, in accordance with and in the time specified in this clause 9.2 shall immediately constitute an Event of Default.

10 Reporting covenants

- 10.1 **Financial statements:** Each Obligor shall within four months of the Borrower's balance date, deliver to Luminare annual financial statements that give a true and fair view of its financial position, and results of operations, as at, and for the period ending on, the date of the financial statements.
- 10.2 **Other information:** Each Obligor shall provide any other information that may be requested by Luminare from time to time.

11 Events of Default

- 11.1 **Events of Default:** An Event of Default shall occur if:
 - 11.1.1 **Non-Payment:** An Obligor fails to pay any amount due under this Agreement on its due date;
 - 11.1.2 **Breach by the Obligor of Other Obligations:** An Obligor commits any breach of or omits to observe or perform any of its obligations or undertakings under any Finance Document on its due date;
 - 11.1.3 **Misrepresentations:** Any representation or warranty made, deemed to be made or repeated by an Obligor in or pursuant to any Finance Document is or was untrue or incorrect in any material respect when made, deemed to be made, or repeated;
 - 11.1.4 **Insolvency:** An Obligor:
 - (a) commits an act of bankruptcy (as that term is defined in sections 16-28 of the Insolvency Act 2006); or
 - (b) becomes insolvent; or

- (c) is unable to pay an Obligor's debts when due; or
- (d) has a receiver, trustee, manager, administrator or similar officer is appointed in respect of an Obligor or any of its property; or
- (e) makes a general assignment, compromise or an arrangement or composition with or for the benefit of any of the Obligor's creditors or general moratorium on the payment of indebtedness; or
- (f) stops or threatens to stop any payment or payments generally.

11.1.5 **Material Adverse Effect:** Any other event or series of events, whether related or not, occurs or circumstances arise or exist which in the reasonable opinion of Luminare may have a Material Adverse Effect on the Obligor or its ability or willingness to perform or comply with all or any of its obligations under any Finance Document;

11.1.6 **Abandonment:** The Obligor abandons the Property to the extent that Luminare considers in its sole discretion that the Property value is being, or may be, adversely affected, or in the event of a development loan, the development of the Property is not being progressed appropriately, as Luminare may in its sole discretion reasonably consider, or in accordance with schedules provided to Luminare, notwithstanding weather and other unforeseen circumstances;

11.1.7 **Cease to carry of business:** The Borrower ceases or threatens to cease to carry on its business, or, if an Obligor is a company, any step is taken or proposal made to dissolve or amalgamate the Obligor;

11.1.8 **Insurance:** Any insurance policy in relation to the Property is cancelled without the prior written consent of Luminare;

11.1.9 **Illegality:** It becomes illegal for an Obligor or any other person to comply with its obligations under this Agreement or any of the Securities, or all or any part of any such document becomes invalid or unenforceable;

11.1.10 **Change in control / liquidation:** If the Borrower or Guarantor is other than a natural person:

- (a) a material change occurs in the control, ownership or management of the Borrower or Guarantor without the prior written consent of Luminare; or
- (b) an order is made requiring the Borrower or Guarantor or any of its subsidiaries to pay any debts of another entity; or
- (c) an order is made, resolution passed or other step taken by a person for the liquidation of the Borrower or Guarantor, except for the purpose of and followed by a reconstruction or reorganisation (not involving or arising out of insolvency) on terms approved by Luminare before that step is taken; or
- (d) any step is taken, or recommendation made, to appoint a statutory manager under the Corporations (Investigation and Management) Act 1989 in respect of the Borrower or Guarantor or any of its subsidiaries; or

- (e) any step is taken by the shareholders of the Borrower or Guarantor to adopt a constitution or alter the constitution of the Borrower in a manner that could, in the opinion of Luminare, adversely affect the interests of Luminare;

11.1.11 **Security interest enforceable:** A security interest in property of an Obligor becomes enforceable; or

11.1.12 **Financial position:** If the financial position of an Obligor shall deteriorate materially from that disclosed in any previous financial statements or bank statements of the relevant Obligor disclosed to Luminare.

11.2 **Termination on event of default:** If an Event of Default occurs Luminare may, at any time thereafter by notice in writing to the Borrower:

11.2.1 declare its obligations under this Agreement to be terminated, and declare the Loan, all interest due on the Loan and all other amounts payable under this Agreement to be immediately due and payable; or

11.2.2 obtain judgment and enforce the judgment against the Borrower for all of the moneys owing or if the amount realised from the exercise of any of Luminare's rights and powers in any security interest is not sufficient to pay the moneys owing in full, the amount of such deficiency.

11.3 **Enforcement on event of default:** If an Event of Default occurs all charges and other security interests created by the Finance Documents will become immediately enforceable (without notice to, or the consent of, any Obligor).

11.4 **Securities:** In the event that any security (including the Securities) executed by any Obligor in favour of Luminare is expressed to be collateral to any other security then both of those securities will be read and construed together so that a default under one of the Securities will be deemed to be default under all the other securities and Luminare may pursue its remedies and exercise its powers under the securities separately or under more than one of the securities at the same time.

11.5 **Delay:** Luminare's rights under this Agreement will not be affected by any delay in exercising those rights. Luminare may only be held to have acquiesced in or waived any matter in relation to this clause if and to the extent that the acquiescence or waiver is expressed in writing.

12 Taxes

12.1 **Gross-Up:** If the Obligor is required by law to make any deduction or withholding from any amount paid or payable by it under any Finance Document (including but not limited to any payment under this clause 12.1) or Luminare is required by law to make any payment on account of tax (other than tax on the overall net income of Luminare) or otherwise, on or in relation to any amount received or receivable by it under any Finance Document then:

12.1.1 the Obligor shall ensure that any such deduction or withholding does not exceed the legal minimum and shall pay any such tax or other amount required to be deducted or withheld to the relevant taxation or other authority before the date on which penalties accrue due to the non-payment;

12.1.2 the Obligor shall deliver to Luminare, within thirty (30) days after each deduction or withholding is required by law to be made, a receipt issued by the applicable taxation or other authority evidencing that such deduction or withholding has been made.

13 Set-Off

- 13.1 **Set-Off:** The Obligor irrevocably authorises Luminare (without prior notice or demand) and despite any settlement of account or other matter at any time after the occurrence of an Event of Default to:
- 13.1.1 set-off against any debt or liability of Luminare to the Obligor, all or part of the Moneys Owed; and
 - 13.1.2 apply all or any part of any credit balance (whether or not then due) to which the Obligor is at any time beneficially entitled on any account (including accounts in the name of Luminare or accounts in the name of the Obligor alone or jointly with others) in any currency with Luminare (any such credit balance in this clause called "a credit balance") in or towards satisfaction of any sum due from or liabilities of any nature of the Obligor to Luminare under any Finance Document, and to accelerate the date for payment of any deposit for this purpose.

14 Attorney

- 14.1 **Lender as Attorney:** The Obligor irrevocably appoints Luminare and every manager, officer or duly appointed agent for the time being of Luminare severally the lawful attorney of the Obligor in the Obligor's name and on the Obligor's behalf at any time and in such manner as Luminare in its absolute discretion shall think fit, to take all steps and proceedings and to do all acts, matters and things as Luminare shall think proper to:
- 14.1.1 remedy any default or breach of the terms and provisions of any Finance Document by the Obligor;
 - 14.1.2 exercise any of the rights, powers and remedies of Luminare contained in any Finance Document;
 - 14.1.3 execute any deed, instrument or document necessary for Luminare to perfect its title to any of the assets charged or intended to be charged by the Security Documents as required for the purpose of this clause;

and Luminare as attorney shall have power from time to time to appoint a substitute or substitutes and to remove that substitute or those substitutes at its pleasure and the Obligor agrees to ratify and confirm whatever Luminare or its substitutes may lawfully do or cause to be done by virtue of this clause.

15 Indemnities

- 15.1 The Obligor indemnifies, and agrees to save harmless, Luminare from and against all losses, claims, demands, liabilities, payments, charges and expenses which may be made against or incurred by Luminare arising from or relating to any Finance Document or the exercise by Luminare of any rights, powers or remedies under any Finance Document and further from and against any losses, costs or expenses which Luminare sustains or incurs from any reason or cause whatever and as a consequence of, but not limited to:
- 15.1.1 the occurrence of any Event of Default; or
 - 15.1.2 any action taken under or in relation to the PPSA, including any registration, or a response to a change demand or a request under section 177 of the PPSA; or
 - 15.1.3 the repayment of the Moneys Owed otherwise than in accordance with the terms of this Agreement; or

15.1.4 the unwinding or repayment of any fixed rate funding obtained by Luminare to fund the Loan; or

15.1.5 any action by Luminare in the enforcement of or protection of its rights or remedies under any Finance Document.

16 Further Assurance

16.1 **Further Assurance:** The Obligor shall when required by Luminare at the Borrower's cost make, execute, do and perform all such further assurances, instruments, acts or things as Luminare may from time to time reasonably require to:

16.1.1 perfect this Agreement or any security granted by the Security Documents; or

16.1.2 perfect Luminare's title or interest to the assets and properties charged or encumbered or intended to be charged or encumbered by the Security Documents; or

16.1.3 vest or enable Luminare to vest the assets or properties charged or encumbered by the Security Documents in itself or its nominees or any purchaser as permitted by the terms of any Finance Document.

17 Payments

17.1 **Time for Payment:** All payments to be made to Luminare under any Finance Document shall, except to the extent otherwise provided in any relevant Security Documents, be made by automatic payment authority in cleared funds prior to 4.00pm on the day on which payment is due and shall be made to the bank account nominated by Luminare in writing. If Luminare fails to nominate a bank account then payment shall be made to the address of Luminare to which notices are to be served under this Agreement. Payments received after 4.00pm shall be deemed to have been received on the following Business Day. Any costs associated with any other method of payment will be for the account of the Borrower.

17.2 **Non-Business Day:** If any sum becomes due for payment under any Finance Document on a day which is not a Business Day then that payment shall be made on the following Business Day, unless that day falls in another month, in which case that payment shall be made on the preceding Business Day, and interest adjusted accordingly.

17.3 **No Counterclaim:** All payments to Luminare under any Finance Document shall be made by the Borrower without set-off, counterclaim, condition or qualification and free and clear of, and without any, deduction or withholding except to the extent that this Agreement may otherwise provide.

17.4 **Application of Moneys:** Luminare may apply any payment by the Borrower, or other funds received by Luminare in reduction of the liabilities of the Borrower under any Finance Document, to the repayment of the principal, interest, fees or any other amount due under any Finance Document in the order and manner as Luminare may determine in its discretion from time to time.

18 Notices

18.1 **Form and Delivery of Notice:** All notices, requests, demands or other communications to or upon the parties in connection with any Finance Document ("**Notice**") must be in writing, in English, and addressed to the party to whom it is to be sent. Notices will be deemed to be validly given if:

18.1.1 personally delivered or delivered by tracked courier;

18.1.2 sent by prepaid post; or

18.1.3 sent by email,

to the physical address, postal address, or email address of the relevant party set out in the First Schedule or to such other physical address, postal address, or email address as the relevant party may designate by written notice given to all the other parties.

18.2 **Time of service** - Notices given under this Deed will be deemed to have been received:

18.2.1 if personally delivered or delivered by tracked courier, at the time of delivery;

18.2.2 if sent by prepaid post, on the fifth Business Day following the date of posting;

18.2.3 if sent by email, on the date and at the time specified in the email transmission which was not returned as undeliverable or as containing any error.

18.3 **Delivery outside business hours** - If the delivery or transmission of any notice given under this Deed is on a day which is not a Business Day, or occurs after 5.00 p.m. (local time) on any Business Day, the notice will be deemed to be received on the next following day which is a Business Day.

19 Privacy of Information

19.1 **General authorisation:** The Obligor authorises Luminare to collect and hold information (including Personal Information) concerning the Obligor however gathered from any other person and to process, use or disclose any information (including Personal Information) it holds concerning the Obligor (now or in the future) in connection with the usual business functions and activities of Luminare or any person that is associated with Luminare, and (in each case) for any directly related purposes.

19.2 **Disclosure:** In addition and without limitation to clause 19.1:

19.2.1 The Obligor irrevocably authorises Luminare and its lawyers and/or accountants to disclose and discuss its financial statements, financial affairs and matters relating to Luminare's security at any time throughout the term, or any extended term, of the Loan:

- (a) with any guarantor of any indebtedness or other obligation of the Borrower to Luminare; and
- (b) with the Inland Revenue Department ("IRD") and for the IRD to provide to Luminare any information regarding the Obligor upon request by Luminare.

19.2.2 The Obligor irrevocably authorises and directs its accountants, lawyers, credit reference agencies, previous and current employers, and any providers of credit to the Borrower or any Guarantor and any advisor or party who has knowledge or information relating to the affairs of the Obligor to provide to Luminare any and all information regarding the Obligor (or where the Obligor is a company, the Obligor's subsidiary) upon request by Luminare.

19.3 **No Obligation:** For the avoidance of doubt, nothing in this clause 19 shall oblige Luminare to provide any information (including Personal Information) concerning the financial statements, financial affairs (including, without limitation, details of any

indebtedness) or any other matter concerning the Borrower to a guarantor or any other person.

20 PPSA

- 20.1 **Notice and waiver:** Without limitation to any other provisions of this Agreement, each Obligor that has granted Luminate a security interest that secures the Money Owed (in full or in part):
- 20.1.1 **Change of Name:** will give Luminate not less than 14 days' prior written notice of any proposed change in the Obligor's name (such notice to be given to an officer of Luminate responsible for the relationship with the Borrower);
 - 20.1.2 **Care of Collateral:** will keep insured and in good working order, and take care of all Collateral;
 - 20.1.3 **Preservation of Collateral:** will not dispose of, lend, part with possession of, or grant to any other person a security interest in the Collateral;
 - 20.1.4 **Verification Statement:** waives its right to receive a verification statement in respect of any financing statement or financing change statement registered by Luminate in respect of the Collateral;
 - 20.1.5 **Copies of Security Interests:** agrees to supply Luminate, within two (2) Business Days of Luminate's written request, with copies of all security interests registered over the Collateral, and authorises Luminate as its agent to request information from any secured party relating to any security interest which is held in the Collateral; and
 - 20.1.6 **Reasonable Costs:** agrees to pay Luminate's reasonable costs, including legal costs on a solicitor-client basis, associated with the discharge or amendment of any financing statement registered by Luminate, whether or not the change was initiated by the Obligor.
- 20.2 **Security over Collateral:** Each Obligor agrees to maintain the Collateral at the address listed in the First Schedule and undertakes not to remove the Collateral except with the written consent of Luminate.
- 20.3 **Repossession of Collateral:** Each Obligor and Luminate agree that, to the extent permitted by law and in respect of any Finance Document, if the Borrower is in default of this Agreement, if any Obligor removes the Collateral from the address listed in the First Schedule without Luminate's written consent, or if Luminate reasonably believes that the Collateral is at risk, Luminate may enter into any premises where the Collateral may be stored, using such reasonable force as is necessary, and take repossession of the Collateral, at the cost of the Obligor, and the Obligor will indemnify Luminate against all costs incurred in doing so.
- 20.4 **Part 9:** Each Obligor and Luminate agree that, to the extent permitted by law and in respect of any Finance Document the Obligor and Luminate contract out of the Obligor's rights to:
- 20.4.1 receive notice of Luminate's proposal to retain any Collateral under section 120(2) of the PPSA;
 - 20.4.2 object to Luminate's proposal to retain any Collateral under section 121 of the PPSA;
 - 20.4.3 not have goods damaged when Luminate removes an accession under section 125 of the PPSA;

- 20.4.4 receive notice of the removal of an accession under section 129 of the PPSA;
- 20.4.5 apply to the court for an order concerning the removal of an accession under section 131 of the PPSA;
- 20.4.6 redeem any Collateral under section 132 of the PPSA.

Where Luminate has rights in addition to Part 9 of the PPSA, those rights shall continue to apply.

21 General Provisions

21.1 **Cost and Expenses:** The Borrower shall pay to Luminate on demand the amount of all reasonable costs, charges and expenses (including legal fees and disbursements calculated on a solicitor and own client basis) incurred by Luminate in connection with:

21.1.1 the amendment, discharge or release of any Finance Document, or the grant of any consent or waiver which Luminate may give, or any negotiations or requests by an Obligor in connection with those matters;

21.1.2 the preservation, enforcement or attempted or intended enforcement of Luminate's rights or remedies under the Finance Documents or any of them.

21.2 **Reliance on Representations:** The Borrower acknowledges that Luminate has been induced to enter into this Agreement in reliance on the representations and warranties made by the Borrower in clause 6 of this Agreement.

21.3 **No Representation by Luminate:** The Borrower acknowledges that Luminate has not at any time made any representation to the Borrower as to whether the Loan or any product resulting from the Loan is fit for a particular purpose or is of such nature and quality that it can be expected to achieve a particular purpose.

21.4 **No Liability:**

21.4.1 Where the Loan has been made available under this Agreement for business purposes only, the provisions of the Consumer Guarantees Act 1993 are excluded to the fullest extent permitted by law, the provisions of Part 9 of the PPSA will apply to this Agreement subject to clause 20 of this Agreement, and Luminate shall not be liable to any Obligor in any way whatsoever for any indirect or consequential loss or damages.

21.4.2 To the greatest extent permitted by law, Luminate will not be liable to the Borrower for loss or damage of any kind however that loss or damage is caused or arises. This exclusion of liability includes, but is not limited to, costs, consequential loss, loss of profits, damage caused by or arising from delays, negligence (including a failure to do something which should have been done or to prevent something from happening).

21.4.3 Without in any way limiting the above, Luminate will not be liable to the Borrower for any losses caused by events beyond Luminate's reasonable control.

21.5 **Provide Valuation:** The Borrower shall at its own cost, when requested by Luminate, including an extension under clause 5.5 hereof, provide to Luminate a current valuation of the Property addressed to Luminate, undertaken by a registered valuer previously approved by Luminate. If the Borrower fails to comply with this clause then Luminate shall be entitled to instruct registered valuers to carry out such valuations as it requires. The Borrower shall also provide to Luminate on request a

current valuation of the Collateral undertaken by a valuer, the valuation to be carried out to Luminare's entire satisfaction.

- 21.6 **Site Visit:** Luminare may undertake a site visit of the Property at its discretion and upon giving notice to the Borrower. A site visit fee shall be payable by the Borrower at Luminare's discretion.
- 21.7 **Non-Waiver:** No failure to delay by Luminare in exercising or single or partial exercise of a right, power, discretion, remedy or privilege in connection with any Finance Document shall operate as a waiver of that right, power, discretion or remedy. No course of dealing between the Borrower and Luminare shall operate as a waiver of any right, power, discretion, remedy or privilege of Luminare.
- 21.8 **Remedies Cumulative:** The rights, powers and remedies provided in the Finance Documents are cumulative and are not exclusive of any rights, powers or remedies provided by law or pursuant to any other agreement or securities granted either before or after the date of this Agreement.
- 21.9 **Survival of Provisions:** The agreements, undertakings, representations and indemnities of the Borrower in the Finance Documents or any of them will survive the termination or expiry of this Agreement, the release or discharge by Luminare of the Security Documents and the repayment of the Moneys Owed.
- 21.10 **Partial Invalidity:** Each of the provisions of this Agreement is severable and distinct from the others. If at any time one or more of those provisions is or becomes invalid, illegal or unenforceable, then the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.
- 21.11 **Conflicts:** Where any conflict or inconsistency shall arise between any of the terms, conditions and provisions, whether express or implied, of this Agreement and those of any Security Document, the terms, conditions and provisions of this Agreement shall prevail unless otherwise determined by notice in writing to the Borrower by Luminare.
- 21.12 **Amendment:** This Agreement shall not be amended or varied except in writing signed by the Borrower and Luminare.
- 21.13 **Time of the Essence:** Except as otherwise provided in this Agreement, time is of the essence with respect to any of the Borrower's obligations to pay money under the Finance Documents or any of them.
- 21.14 **Assignment:** This Agreement is binding upon and will inure for the benefit of the parties and their respective successors and permitted assigns. The Borrower shall not assign or transfer any of their respective rights or obligations under any of the Finance Documents except with the prior consent in writing of Luminare. Luminare may assign all or part of its rights and benefits under any of the Finance Documents without the consent of the Borrower. Luminare may disclose on a confidential basis to a potential assignee or any other person with whom it may wish to enter into contractual relations in connection with the Finance Documents such information about the Borrower as may have been made available to Luminare.
- 21.15 **Certificate Conclusive:** Where any provision of a Finance Document provides that Luminare may certify or determine an amount or rate payable by the Borrower, a certificate by Luminare or a manager, director or secretary or other officer of Luminare as to that amount or rate or a notice containing information shall, in the absence of manifest error or fraud, be conclusive and binding on the Borrower.
- 21.16 **Entire Agreement:** The Finance Documents contain all the terms of the agreement between the parties and supersede all prior discussions and arrangements in relation to the subject of this Agreement.

- 21.17 **Trustee's Limitation of Liability:** Notwithstanding anything else contained or implied in this Agreement, the Independent Trustee enters into and executes this Agreement in their capacity as trustee only and not in any personal capacity and with the intent that their liability under this Agreement shall be limited to the assets of the relevant trust from time to time, except in the case where they are in breach of trust or have acted dishonestly or have breached their obligations to the beneficiaries of the trust causing their right of indemnity under the trust to be lost.
- 21.18 **Counterparts:** This Agreement may be executed and exchanged in any number of counterparts (including scanned email copies) each of which is to be deemed to be an original, but all of which together are to constitute a binding and enforceable agreement between the parties.

22 Guarantee

22.1 Each Guarantor hereby unconditionally and irrevocably guarantees to Luminare the due and punctual payment by the Borrower of the Moneys Owed and the due observance and performance of the Borrower of all its obligations owed to Luminare under a Finance Document or otherwise. Each Guarantor hereby agrees that:

22.1.1 **Payment:** Each Guarantor agrees to pay the Moneys Owed immediately on demand from Luminare as if it were the principal debtor, and not merely a surety, if:

- (a) any other Obligor does not pay the Moneys Owed on time and in accordance with the Finance Documents;
- (b) an obligation an Obligor would otherwise have to pay the Moneys Owed is found to be void, voidable or unenforceable; or
- (c) an Ipso Facto Event occurs.

An "**Ipso Facto Event**" means the Borrower or another Obligor becomes insolvent or any process which under any law with a similar purpose may give rise to a stay on, or prevention of, the exercise of contractual rights.

- (d) A demand may be made at any time and from time to time and whether or not Luminare has made demand on the Borrower or any other Obligor.

22.1.2 **Liability not Prejudiced:** The liability of the Guarantor under this Agreement shall not be abrogated, prejudiced or affected by any of the following:

- (a) the granting of time, credit or any indulgence or other concession to the Borrower or to any other guarantor by Luminare or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any securities or of any of the rights of Luminare against the Borrower or by anything done or omitted or neglected to be done by Luminare in exercise of the authorities, powers and discretions vested in it by this Agreement or any Finance Document or by any other matter, dealing or thing which but for this provision might operate to abrogate, prejudice or affect the guarantee in this clause 22;
- (b) the liquidation, insolvency, death or bankruptcy of the Borrower or any other guarantor of the Borrower;

- (c) any security interest held or taken by Luminate under this Agreement or any Finance Document being void, defective or unenforceable on any ground whatsoever;
- (d) failure by the Borrower or the Guarantor to provide any security which ought to be provided under or pursuant to this Agreement or the release thereof;
- (e) any alteration, modification, variation or addition to any Finance Document.

22.1.3 **Additional to Other Security:** The guarantee in this clause 22 shall be in addition to and not in substitution for or collateral to any other security or right which Luminate may have under or by virtue of any Finance Document or any other agreement and in particular shall be independent of any other security recorded in a Security Document.

22.1.4 **Continuing Guarantee:** The guarantee in this clause 22 is a continuing guarantee and shall remain in full force and effect until the Moneys Owed have been paid in full.

22.1.5 **Lender's Discretion:** Luminate may determine from time to time whether it shall enforce or refrain from enforcing the guarantee in this clause 22 or any other guarantee and may from time to time make any arrangement or compromise with the Borrower or Guarantor which Luminate may think expedient.

22.1.6 **No Subrogation:** Until the Loan and all other moneys payable by the Guarantor under any Finance Document have been fully paid or satisfied and Luminate is of the reasonable opinion that payments made in respect of the Loan will not be set aside under any insolvency provision the Guarantor shall not:

- (a) be entitled to be subrogated to the position of Luminate or to claim the benefit of any security now or in the future held by Luminate for payment of the Loan; or
- (b) exercise any rights (including rights of set-off) or claim any amounts by way of contribution or indemnity from any other surety and/or the Borrower.

22.2 **Borrower insolvency:** In the event of the insolvency of the Borrower the following provisions shall apply:

22.2.1 the Guarantor will not prove in such insolvency with Luminate or realise any security without the prior written consent of Luminate;

22.2.2 the Guarantor, if required by Luminate in writing, immediately will prove in any such insolvency owed for all indebtedness to the Guarantor and, in such event, will not exercise or attempt to exercise any right of set-off against or realise any security taken from the Borrower;

22.2.3 moneys recovered by the Guarantor from any such insolvency shall be received and held in trust for Luminate to the extent of the unsatisfied liability of the Guarantor under this Agreement;

22.2.4 the Guarantor authorises Luminate to prove for all moneys which the Guarantor has paid pursuant to this Agreement and to retain and to carry to a suspense account and appropriate at the discretion of Luminate any amount received (including amounts from the realisation of any security) until

Luminate shall have received payment in full of the Moneys Owed together with any accrued interest and any other payment due hereunder.

- 22.3 **No Competition:** In the event of the bankruptcy of the Borrower, the Guarantor will not prove in such bankruptcy in competition with Luminate and hereby authorises Luminate to prove for all moneys which any Guarantor has paid hereunder or are otherwise owing to Luminate and have not been paid to it by the Borrower and to retain and to carry to a suspense account and appropriate at the discretion of Luminate the amount received until Luminate shall have received one hundred cents in the dollar in respect of the Moneys Owed and any accrued interest and any other payment due hereunder.
- 22.4 **Reinstatement:** If any payment made to Luminate by or on behalf of the Borrower be avoided by law such payment shall be deemed not to have discharged or affected the liability of the Guarantor under this Agreement and in that event Luminate and the Guarantor shall be restored to the position in which each would have been and be entitled to exercise all the rights which each would have had if such payment had not been made.
- 22.5 **Deferred Priority:** The Guarantor shall in respect of any sums paid by it hereunder and in respect of any other rights which may accrue howsoever to it in respect of any sum so paid rank and be entitled to enforce the same only after all Moneys Owed shall have been duly paid and satisfied.
- 22.6 **Borrower:** Although as between the Guarantor and the Borrower, the liability of the Guarantor to Luminate may be that of surety only nevertheless as between the Guarantor and Luminate the liability of the Guarantor shall be deemed to be the liability of borrower and such liability shall not be affected or diminished by any of the matters hereinbefore mentioned or by any other act, indulgence or omission which but for this clause 22.6 would have operated to release the Guarantor wholly or partly from its liability hereunder to Luminate.
- 22.7 **Indemnity:** If the whole or any part of the Moneys Owed is or may be for any reason irrecoverable from the Borrower and all or part of such moneys are not recoverable from the Guarantor by Luminate by virtue of the guarantee herein contained, then and in each such case:
- 22.7.1 the Guarantor as a separate and additional liability under the guarantee in this clause 22 agrees to indemnify Luminate in respect of such moneys;
- 22.7.2 the Guarantor as a borrower agrees to pay Luminate when demanded a sum equal to the amount of such moneys; and
- 22.7.3 for the purpose of this indemnity, the guarantee in this clause 22 shall be construed as if such moneys were recoverable.
- 22.8 **Security:** In support of its guarantee obligations under this Agreement the Guarantor agrees that the Loan has been made available by Luminate is in part at the request of the Guarantor and agrees to grant to Luminate the Security Documents (if any) as security for the payment of the Moneys Owed and the due observance and performance by the Borrower of all of its obligations under this Agreement.
- 22.9 **Lender as Attorney:** The Guarantor irrevocably appoints Luminate and every manager, officer or duly appointed agent for the time being of Luminate severally the lawful attorney of the Guarantor in the Guarantor's name and on the Guarantor's behalf at any time and in such manner as Luminate in its absolute discretion shall think fit, to take all steps and proceedings and to do all acts, matters and things as Luminate shall think proper to:

- 22.9.1 remedy any default or breach of the terms and provisions of any Finance Document by the Guarantor;
- 22.9.2 exercise any of the rights, powers and remedies of Luminate contained in any Finance Document;
- 22.9.3 execute any deed, instrument or document necessary for Luminate to perfect its title to any of the assets charged or intended to be charged by the Security Documents as required for the purpose of this clause;

and Luminate as attorney shall have power from time to time to appoint a substitute or substitutes and to remove that substitute or those substitutes at its pleasure and the Guarantor agrees to ratify and confirm whatever Luminate or its substitutes may lawfully do or cause to be done by virtue of this clause.

- 22.10 **Costs:** The Guarantor agrees to indemnify Luminate for all costs and expenses (including legal expenses) incurred by Luminate in or in connection with the preservation and/or enforcement of Luminate's rights under the guarantee in this clause 22 and in suing for or attempting to sue for or recovering any sum due to Luminate hereunder.

SAMPLE

SIGNATURES

Signed by
Luminate Finance Limited)
) _____
) Director

Signed by
"Borrower's name")
) _____

Signed by
"Borrower's name")
) _____

Signed by
"Guarantor's name")
) _____

Signed by
"Guarantor's name")
) _____

[Note – if the borrower and/or guarantor are a company, replace the signing block with the below block]

Signed by)
"[Company name]" Limited) _____
) Director Director

