

Execution Version

# Facilities Agreement

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Her Majesty the Queen in right of New Zealand acting by  
and through the Minister of Finance (the **Crown**)

Each entity named in Part A of schedule 1 (each a  
**Borrower**)

Each entity named in Part B of schedule 1 (each a  
**Guarantor**)

MinterEllisonRuddWatts

LAWYERS

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# Facilities Agreement

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# Details

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Date 2010

## Parties

Name **Her Majesty the Queen in right of New Zealand**  
Short name **the Crown**  
Notice details 1 The Terrace  
Wellington  
Facsimile (04) 472 3792  
Attention Secretary to the Treasury

Name **Each entity named in Part A of schedule 1**  
Short name each a **Borrower**  
Notice details As set out in schedule 1

Name **Each entity named in Part B of schedule 1**  
Short name each a **Guarantor**  
Notice details As set out in schedule 1

## Background

At the Borrowers' request, the Crown has agreed to make available to the Borrowers (on a joint and several basis) a loan up to a maximum amount of \$175,000,000, on the terms and subject to the conditions set out in this document.

# Facilities details

## Part A – Facility A

Description	An on-demand loan facility.
Purpose	To repay in full all Prior Charge Debts (other than the Contingent Prior Charge Debts).
Facility Limit	\$145,000,000 or such larger amount which the Crown and the Obligors agree, plus interest capitalised under clause 4.4.
Availability Period	The period from Financial Close to the earlier of: <ul style="list-style-type: none"> <li>(a) the date the Receivers retire as receivers of the Obligors; and</li> <li>(b) the date on which the Facility Limit is cancelled in full or permanently reduced to zero in accordance with this document.</li> </ul>
Draw restrictions	None, provided that the principal amount of a Draw must not exceed the Available Facility at the time the Draw is made.
Termination Date	The earlier of: <ul style="list-style-type: none"> <li>(a) the date on which the Receivers have realised all Charged Assets; and</li> <li>(b) the date two Business Days after the date the Crown demands repayment in writing.</li> </ul>
Interest Periods	Three months, or any other period required under this document or to which the Crown agrees.
Interest Rate	The aggregate of the Base Rate and the Margin.
Margin	Five per cent. per year.

**Part B – Facility B**

Description	An on-demand loan facility to SCF.
Purpose	To repay in full all Contingent Prior Charge Debts.
Facility Limit	\$30,000,000 or such larger amount which the Crown and the Obligors agree, plus interest capitalised under clause 4.4.
Availability Period	The period from Financial Close to the earlier of: <ul style="list-style-type: none"> <li>(a) the date the Receivers retire as receivers of SCF; and</li> <li>(b) the date on which the Facility Limit is cancelled in full or permanently reduced to zero in accordance with this document.</li> </ul>
Draw restrictions	None, provided that the principal amount of a Draw must not exceed the Available Facility at the time the Draw is made.
Termination Date	The earlier of: <ul style="list-style-type: none"> <li>(a) the date on which the Receivers have realised all Charged Assets; and</li> <li>(b) the date two Business Days after the date the Crown demands repayment in writing.</li> </ul>
Interest Periods	Three months, or any other period required under this document or to which the Crown agrees.
Interest Rate	The aggregate of the Base Rate and the Margin.
Margin	Five per cent. per year.

# Agreed terms

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## 1. Defined terms and interpretation

### 1.1 Defined terms

In this document:

**Advisory Committee** means the committee constituted under and in accordance with clause 7;

**Availability Period**, in respect of a Facility, means the availability period specified in the relevant part of the Facility Details;

**Available Facility**, in respect of a Facility, means, at any time, the Facility Limit applicable to that Facility less the Outstanding Amount of that Facility at that time;

**Base Rate**, in respect of a Facility, means, for a period, the rate per annum equal to the Official Cash Rate, as determined from time to time by the Reserve Bank of New Zealand;

**Borrowers** means the entities named in Part A of schedule 1 together with any entity which becomes a "Borrower" pursuant to clause 1.6, and **Borrower** means any one of them;

**Business Day** means a week day on which banks are open for general banking business in Wellington;

**Charged Assets** has the meaning set out in the Debenture Trust Deed;

**Companies Act** means the *Companies Act 1993*;

**Contingent Prior Charge Debts** means the contingent debt incurred by the Obligors pursuant to a guarantee of Southbury Corporation Limited's obligation to redeem convertible notes issued by Southbury Corporation Limited;

**Crown** means Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance;

**Crown Guarantee** means each of:

- (a) the deed of guarantee dated 19 November 2008;
- (b) the deed of guarantee dated 11 December 2009; and
- (c) the deed of guarantee dated 1 April 2010,

in each case between the Crown and South Canterbury Finance Limited;

**Debenture Trust Deed** means the debenture trust deed, among other things, between the Trustee and SCF, dated 12 April 1976 (as amended and/or amended and restated from time to time);

**Draw** means a provision of financial accommodation under a Facility;

**Draw Date** means a date on which a Draw is made or is to be made;

**Draw Notice** means a notice in the form in schedule 1 requesting the relevant Draw and given in accordance with clause 3.1(b);

**Facility** means each facility described in the Facility Details;

**Facility Details** means the section headed "Facility Details" at the start of this document;

**Facility Limit**, in respect of a Facility, means the facility limit specified in the relevant part of the Facility Details, as reduced, cancelled or varied in accordance with this document;

**Finance Document** means:

- (a) this document;
- (b) each Draw Notice;
- (c) each Security Document;
- (d) the Deed of Priority;
- (e) a document that SCF (for itself and on behalf of each other Obligor) and the Crown agree is a "Finance Document"; and
- (f) a document or undertaking entered into or given under or in connection with, or for the purpose of amending, supplementing or novating, any document referred to in a paragraph above;

**Financial Close** means the date on which all conditions precedent referred to in clause 3.1(a) have been satisfied and/or waived by the Crown;

**Guarantor** means each entity named in Part B of schedule 1;

**Interest Payment Date**, in respect of a Facility, means, in relation to an Interest Period, the last day of that Interest Period (being a Quarter End Date), subject to adjustment in accordance with clause 4.2;

**Interest Period**, in respect of a Facility, means, in relation to a Draw under a Facility, a period determined under clause 4 in respect of that Draw;

**Interest Rate**, in respect of a Facility, means the interest rate specified in the relevant part of the Facility Details;

**Margin**, in respect of a Facility, means the margin specified in the relevant part of the Facility Details;

**Money Owning** means all money and amounts (in any currency) that each Borrower is or may become liable at any time (presently, prospectively or contingently, whether alone or not and in any capacity) to pay to or for the account of the Crown (whether alone or not and in any capacity) under or in connection with a Finance Document, and includes money and amounts:

- (a) in the nature of principal, interest, fees, costs, charges, expenses, duties, indemnities, guarantee obligations or damages;
- (b) whether arising or contemplated before or after the date of this document or as a result of the assignment (with or without the Obligor's consent) of any debt, liability or Finance Document; and
- (c) which a person would be liable to pay for but for an Insolvency Event in respect of that person;

**Nomination** means the notice of nomination issued by the Crown nominating the Trustee as a "Nominated Beneficiary" and as a "Creditor" for the purposes of each Crown Guarantee in respect of all "Securities" (as defined in the Debenture Trust Deed) issued by South Canterbury Finance Limited under or subject to the Debenture Trust Deed other than any such "Securities" held by the Crown;

**Obligor** means each Borrower and each Guarantor;



**Outstanding Amount** means the aggregate principal amount of all then outstanding Draws under the Facility;

**PLA** means the *Property Law Act 2007*;

**PPSA** means the *Personal Property Securities Act 1999*;

**Prepayment Notice** means a notice substantially in the form of schedule 4 giving notice of the prepayment of some or all Money Owing and given in accordance with clause 5.2;

**Prior Charge** means a Security Interest over all Charged Assets which takes effect as a "Prior Charge" for the purposes of the Debenture Trust Deed;

**Prior Charge Debts** means all indebtedness owed by a Borrower secured by a Prior Charge, other than indebtedness under a Finance Document;

**Quarter End Date** means each of 30 March, 30 June, 30 September and 31 December;

**Receivers** means Kerryn Mark Downey and William Guy Black of Auckland;

**Register** has the meaning set out in the Debenture Trust Deed;

**SCF** means South Canterbury Finance Limited (in receivership);

**Security Document** means:

- (a) the general security and guarantee deed granted by each Obligor in favour of the Crown, dated on or about the date of this document; and
- (b) each document that SCF (for itself and each Guarantor) and the Crown agree is a "Security Document";

**Security Interest** means:

- (a) any mortgage, charge, encumbrance, lien, pledge, finance lease, sale (or lease) and lease-back, sale and repurchase, assignment by way of security, title or retention arrangement or similar interest imposed by statute, or other arrangement of any nature having similar economic effect to any of the foregoing; and
- (b) any present or future right or interest in personal property that is a security interest for the purposes of the PPSA (other than such a security interest referred to in section 17(1)(b) of the PPSA and not included in paragraph (a) of this definition);

**Tax** means any tax, levy, duty, rate, impost or other charge or withholding of a similar nature (including stamp duty, GST and transaction taxes and duties) imposed, levied or assessed by a government agency, and any related penalty, fine, fee or interest;

**Termination Date** means the earlier of:

- (a) the termination date for the Facility specified in the Facility Details; and
- (b) any date on which all the Money Owing becomes due and payable under this document; and

**Trustee** means Trustees Executors Limited, in its capacity as trustee under the Debenture Trust Deed.

## 1.2 References

Unless the context requires otherwise, a reference in this document to:

- (a) **\$** means the lawful currency of New Zealand;
- (b) an **agreement** includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
- (c) **costs** incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and Taxes incurred by that person;
- (d) **indebtedness** includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money;
- (e) **including** and similar expressions do not imply limitation;
- (f) a **person** includes an individual, body corporate, association of persons (whether corporate or not), trust, state, agency of state and any other entity (in each case, whether or not having separate legal personality); and
- (g) **rights** includes authorities, consents, discretions, remedies, powers and causes of action.

## 1.3 Interpretation

In this document:

- (a) headings are for reference only and do not affect interpretation;
- (b) reference to **clauses** and **schedules** are to those in this document, and a reference to this document includes any schedule and annexure;
- (c) reference to a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
- (d) a **party** to any document includes that person's successors and permitted assigns;
- (e) reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (f) any undertaking, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (g) the singular includes the plural and *vice versa*, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (h) reference to any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- (i) reference to legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
- (j) unless stated otherwise, anything (other than making a payment) required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;
- (k) reference to time is to New Zealand time unless stated otherwise; and
- (l) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting.

## 1.4 More than one Borrower

In this document:

- (a) a reference to **Borrower** is a reference to each Borrower severally as well as to all Borrowers jointly;
- (b) this document binds all Borrowers jointly and each Borrower severally; and
- (c) where any Money Owed comprises indebtedness of one Borrower alone or of some, but not all, of the Borrowers (**principal indebtedness**), then each Borrower is nevertheless jointly and severally liable for, and in relation to, that principal indebtedness.

## 1.5 Obligor's agent

- (a) Each Obligor (other than SCF) by its execution of this document irrevocably authorises SCF on its behalf to give all notices, instructions and other communications under or in connection with the Finance Documents and to make any agreements, undertakings, settlements or waivers capable of being given or made by any Obligor or to agree or execute any amendments to any Finance Document, in each case notwithstanding that they may affect that Obligor without, in any case, further reference to or the consent of that Obligor.
- (b) Every notice, instruction or other communication, agreement, undertaking, settlement or waiver given or made by SCF under or in connection with the Finance Documents will be binding for all purposes on all other Obligors as if the other Obligors had expressly concurred with it.
- (c) In the event of any inconsistency between any notice, instruction or other communication of SCF and that of any other Obligor, the Crown will be taken to have received only the notice, instruction or other communication of SCF.

## 1.6 Additional Borrower

If the Crown and the Obligors agree in writing, an Obligor which is not a "Borrower" as at the date of this documents may become a "Borrower" under this document (an **Additional Borrower**) with effect on and from the date agreed between the Crown and the Obligors (the **Effective Date**). On and from the Effective date, the Crown and each Obligor agrees and acknowledges that the Additional Borrower will have all the rights and obligations as a "Borrower" under this document.

# 2. Facility Availability and Draws

## 2.1 Availability

Subject to the other provisions in this document, the Crown agrees to make available to the Borrowers each Facility during the applicable Availability Period. The maximum aggregate principal amount available at any time in relation to each Facility is the Available Facility applicable to that Facility at that time.

## 2.2 Purpose

A Borrower must apply all amounts borrowed by it under each Facility for the purpose specified in the relevant part of the Facility Details or any other purpose approved in writing by the Crown. The Crown is not bound to monitor or verify the application of any amount borrowed pursuant to this document.

### 2.3 Reduction of unused Facility Limit – end of Availability Period

The Facility Limit of each Facility will reduce permanently to the amount of the Outstanding Amount at 5:00 p.m. on the last Business Day of the applicable Availability Period.

## 3. Obtaining and using Draws

### 3.1 Conditions precedent to each Draw

The Crown's obligation to provide each Draw is subject to the conditions precedent that:

- (a) in the case of the first Draw, the Crown:
  - (i) has received each item specified in schedule 2 in form and substance satisfactory to it, by the time and date specified for each item in schedule 2; and
  - (ii) has conducted a review of all Prior Charge Debts and received, in form and substance satisfactory to it, by 11:00 a.m. one Business Day before the requested first Draw Date, any reports on those Prior Charge Debts it has requested;
- (b) the Crown has received a Draw Notice for the Draw by 11:00 a.m. one Business Day before the requested Draw Date;
- (c)
  - (i) the Draw Date is a Business Day during the Availability Period;
  - (ii) the Draw is for an amount which, when aggregated with the amount of all other Draws to be made on the relevant Draw Date, does not exceed the Available Facility; and
- (d) the Crown has received, in form and substance satisfactory to it, all other information and documents requested by the Crown in accordance with a Finance Document.

### 3.2 Waiver

The conditions precedent in this clause 3 are for the sole benefit of the Crown, and may only be waived by notice from the Crown to SCF.

### 3.3 Draw Notices

A Draw Notice is irrevocable and is effective on actual receipt by the Crown. A Borrower must not give a Draw Notice which conflicts with any Draw restriction specified in the Facility Details or which otherwise would breach a provision of this document.

## 4. Interest

### 4.1 Interest Rate

The Borrowers must pay (on a joint and several basis) interest on each Draw, in respect of each Interest Period for that Draw, at the Interest Rate.

### 4.2 Interest Periods

Each Interest Period in relation to a Draw will be for a period specified in the Facility Details, and:

- (a) the duration of the first Interest Period will be for the period from and including the Draw Date until the next Quarter End Date;

- (b) the duration of each subsequent Interest Period will be three months from and including the preceding Interest Payment Date to and excluding the next Quarter End Date;
- (c) despite paragraph (b) above, an Interest Period which would otherwise end on a day which is not a Business Day will end on the immediately preceding Business Day; and
- (d) no Interest Period may extend beyond the Termination Date.

#### **4.3 Calculation and payment**

Interest in respect of each Interest Period will be calculated on the relevant Draw on the basis of the actual number of days elapsed and a 365-day year, will accrue from day to day and must, subject as otherwise provided in this document, be paid in arrears on the Interest Payment Date applicable to that Interest Period.

#### **4.4 Interest capitalisation**

On each Interest Payment Date, interest accrued and unpaid on that date will be capitalised and added to the Outstanding Amount of the relevant Facility and will itself bear interest at the Interest Rate on the basis that the amount of capitalised interest is deemed to be a Draw under this document.

### **5. Repayment and prepayment**

#### **5.1 Mandatory prepayment**

Each Borrower must promptly pay the proceeds from the realisation of the Charged Assets as and when those assets are realised in the order of application set out below:

- (a) first, to reimburse the Receivers for his or her expenses and remuneration;
- (b) secondly, to pay the claims of any person who has:
  - (i) a purchase money security interest over all or any part of the Borrower's accounts receivable and inventory, that has been perfected at the time specified in section 74 of the PPSA; and
  - (ii) a Security Interest over all or any part of the Borrower's accounts receivable and inventory, that has been perfected under the PPSA at the time of the Receiver's appointment and that arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation);
- (c) thirdly, to pay preferential claims to the extent and in the order of priority specified in schedule 7 (except clauses 1(1) and 2(1)(b)) of the Seventh Schedule to the Companies Act);
- (d) fourthly, to repay any amount secured by a Security Interest which the Receivers consider, acting reasonably, is required to be repaid prior to the Money Owing;
- (e) fifthly, to prepay any Money Owing; and
- (f) sixthly, to satisfy any outstanding obligations under the Debenture Trust Deed (having regard to the Crown's right of subrogation and indemnity following payment under the Crown Guarantees).

## 5.2 Restrictions

- (a) A Borrower must provide the Crown with a Prepayment Notice acceptable to the Crown in its absolute discretion no later than two Business Days prior to a prepayment in accordance with either clause 5.1 or clause 5.4.
- (b) At the time of any prepayment under clause 5.1(d), the Borrower must pay to the Crown any interest accrued on the amount prepaid.
- (c) Any amounts so prepaid will not be capable of being re-advanced.

## 5.3 Appropriation

- (a) The Crown may appropriate all amounts received by it, and any amounts which are held by it, for or to the account of an Obligor, in any order or manner the Crown determines (including as between principal, interest and other amounts owing to the Crown).
- (b) The Crown's rights under this clause apply despite any rule of law, any appropriation or purported appropriation made by an Obligor or any other person, or any other matter or circumstance.

## 5.4 Final repayment

On the Termination Date:

- (a) subject to clause 5.5, the Borrower must pay all of the Money Owing; and
- (b) the Facility Limit for each Facility will reduce permanently to zero.

## 5.5 Limitation of obligation to repay

Despite any other provision of this document, the Borrower will only be liable under clause 5.4 to repay the lesser of:

- (a) the Money Owing; and
- (b) the proceeds the Borrower receives upon realisation of all Charged Assets less the Receivers' expenses and remuneration, costs incurred in the sale of the Charged Assets and (to the extent not already paid) obligations referred to in clause 5.1.

## 6. Undertakings

- (a) Unless the Crown otherwise agrees in writing, each Borrower and the Receivers must:
  - (i) repay all Prior Charge Debts (other than Contingent Prior Charge Debts) in full no later than seven Business Days after the date of this document or such other date as the Crown may agree in writing;
  - (ii) repay all Contingent Prior Charge Debts in full no later than two Business Days after the relevant debt becomes payable by the relevant Borrower;
  - (iii) ensure that the Crown is provided with:
    - (A) no later than the last Business Day of each month following the date of this document, a copy of each Borrower's monthly management accounts, together with notes to those accounts; and
    - (B) promptly, a copy of each report sent to the Trustee and whatever other information the Crown requests from time to time about the business, operations, financial condition or state of affairs of the Borrower or the Charged Assets;

- (iv) at its own cost, promptly execute and deliver to the Crown all documents, and do anything else, that the Crown deems appropriate to secure to the Crown the full benefit of its rights under this document.
- (b) The Borrower and the Receivers may not, without first obtaining the Crown's written consent:
  - (i) other than each Security Interest which arises under a Finance Document or which is granted to the Trustee under the Debenture Trust Deed, create or permit to exist any Security Interest over the Charged Assets; or
  - (ii) borrow any money or incur any liabilities under the Debenture Trust Deed.

## 7. Advisory Committee

- (a) The Crown agrees to participate fully in an Advisory Committee to be established by the Receivers until the Termination Date in relation to the management of the Borrowers and the process of realising the Charged Assets and applying the realisation proceeds in accordance with the Debenture Trust Deed.
- (b) The purpose of the Advisory Committee will be for:
  - (i) the Receivers, from time to time, to brief the Crown on the process of realising the Charged Assets and applying the realisation proceeds in accordance with clause 20.11 of the Debenture Trust Deed; and
  - (ii) the Advisory Committee to offer advice to the Receivers on that realisation and application process.
- (c) The Advisory Committee will be comprised of the Receivers, a representative of the Trustee and two representatives of the Crown, together with any advisers which any such person considers appropriate.
- (d) The Advisory Committee will meet fortnightly, or at any other time the Crown otherwise requires (acting reasonably).
- (e) The Receivers will provide the members of the Advisory Committee with a written report summarising the matters to be raised by it when it briefs the Advisory Committee at the next meeting, together with any supporting material the Receivers consider appropriate, not less than two Business Days before each meeting.
- (f) At each meeting of the Advisory Committee, the Borrowers will brief the Advisory Committee on the process of realisation of Charged Assets and the application of those proceeds up to and including the relevant date and consult with the Advisory Committee on the process to be followed after that date.

## 8. Receivers

The Crown acknowledges and agrees that:

- (a) this document has been signed on behalf of each Obligor by one of the Receivers as joint and several receivers appointed to the Obligor;
- (b) other than solely to the extent necessary to ensure that the Receivers have a claim to the Charged Assets to repay the Money Owing, no personal liability is undertaken or incurred by the Receivers, their agents or employees, to the Crown or to any other person, whether in contract, tort or otherwise, in respect of any obligation undertaken by any Obligor

pursuant to this document or in relation to the subject matter of this document, or in relation to any statements, actions, representations, or other events leading up to the formation of this document, nor any claims arising consequent upon formation of this document;

- (c) if the Crown or any other party is entitled to exercise any rights of action in relation to this document, those rights will be exercised against the Obligors alone and not against the Receivers (or their agents or employees); and
- (d) the Crown will have no recourse to the Receivers personal assets, nor will it seek adjudication for bankruptcy of the Receivers, in respect of any liability, claim or judgment thereon under, pursuant to or in connection with this document.

## 9. Notices

### 9.1 Form of Notice

Each notice, demand, consent, approval or other communication (a **Notice**) under this document:

- (a) must be in writing, in English and signed by an authorised representative of the party; and
- (b) must be hand delivered or sent by prepaid post (or airmail if applicable) or facsimile to the recipient's address for notices specified in the "Details" section of this document (as varied by any Notice given by the recipient to the party).

### 9.2 Effective on receipt

A Notice given in accordance with this clause 9 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting; or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission (being counted as hours from 9:00 a.m. to 5:00 p.m. on a Business Day) the recipient informs the sender that it has not received the entire Notice),

but if the delivery, receipt or transmission is not on a Business Day or is after 5:00 p.m. (addressee's time) on a Business Day, the Notice is deemed to have been received at 9:00 a.m. (addressee's time) on the next Business Day.

### 9.3 Electronic communication

- (a) Any communication to be made between the parties under or in connection with this document that is required by clause 9 to be in writing may be made by electronic email or other electronic means, if:
  - (i) no party has notified the other that electronic email or other electronic communication is no longer an accepted form of communication in relation to this document; and
  - (ii) the parties:
    - (A) notify each other in writing of their electronic mail addresses and/or any other information required to enable the sending and receipt of information by that means; and



- (B) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the parties will be effective only when actually received in readable form, provided that any notice or communication received or deemed received after 5:00 p.m. on a Business Day or on a day which is not a Business Day will be deemed not to have been received until 9:00 a.m. on the next Business Day.

## 10. Communications

### 10.1 Authorised representatives and communications

Each Obligor irrevocably authorises the Crown to rely on a certificate by the Receivers as to the identity and signatures of its authorised representatives, and to rely on any notice or other document contemplated by any Finance Document which bears the purported signature (whether given by electronic communication, facsimile or otherwise) of its authorised representative. Each Obligor warrants that those persons have been authorised to give notices and communications under or in connection with the Finance Documents.

### 10.2 Validity of instructions

The Crown will not be under any obligation to enquire as to the validity of any telephone instructions or acceptance which it receives or to require any evidence as to the authenticity, validity or legality of any telephone advice received or as to the authority of the person given the telephone advice to act on behalf of an Obligor.

### 10.3 Authority to tape calls

Each Obligor acknowledges that the Crown may from time to time keep tape recordings of telephone conversations between the Crown and that Obligor, and consents to the recording of these telephone conversations. Each Obligor must ensure that all of its officers and employees are aware that their conversations with the Crown may be taped.

## 11. General

### 11.1 No implied waivers

- (a) Time is of the essence in any Finance Document, but no failure to exercise, or delay in exercising, a power operates as a waiver of that power. The single or partial exercise of a power does not prevent a further exercise of that or any other power. Unless expressly provided in a Finance Document, no power or Finance Document merges in, limits or excludes any other Power, Finance Document or judgment which the Crown (or anyone claiming through it) may have or obtain.
- (b) A consent or waiver by the Crown in relation to this document or any other Finance Document is effective only if in writing.
- (c) The Borrower will inform the Crown in writing of any requested consent or waiver of any provision of this document or a Finance Document.

### 11.2 Discretions

Except to the extent otherwise expressly provided, the Crown may act in its absolute and sole discretion when forming any opinion, exercising (or not exercising) any power, taking (or not taking) any action, giving or withholding consents or releases, dealing with any other matter, or imposing any terms in respect of any such matter.

### 11.3 Remedies cumulative

Powers under the Finance Document are cumulative and do not limit or exclude powers under law.

### 11.4 Partial invalidity

If at any time any provision of any Finance Document is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that provision shall be ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the validity or enforceability of the remainder of this document in any jurisdiction.

### 11.5 Amendment

No amendment to any Finance Document is effective unless it is made in writing and signed by or on behalf of each party to it.

### 11.6 Certificates

A certificate of the Crown as to any amount, fact or determination relevant to the rights or obligations of the Crown or any Obligor under a Finance Document is taken to be correct unless proved incorrect.

### 11.7 Exclusion of laws

To the extent permitted by law:

- (a) each Finance Document to which an Obligor is a party prevails to the extent of inconsistency with any law; and
- (b) any present or future legislation operating to reduce an Obligor's obligations under a Finance Document or the effectiveness of the powers is excluded.

### 11.8 Conflicts

In the event of a conflict between a provision of this document or any other Finance Document, the Crown may, in its absolute discretion, determine which provision will prevail.

### 11.9 Counterparts

This document may be executed in any number of counterparts. This has the same effect as if the signature on the counterparts were on a single copy of this document.

### 11.10 Delivery

For the purposes of section 9 of the PLA, and without limiting any other mode of delivery, this document will be delivered by each of the parties (each a **Delivering Party**) immediately on the earlier of:

- (a) physical delivery of an original of this document (or a counterpart of it), executed by the relevant Delivering Party, into the custody of each other party or the solicitors of each other party; and
- (b) transmission by the relevant Delivering Party or its solicitors (or any other person authorised in writing by the relevant Delivering Party) of a facsimile or scanned copy of an original of this document (or a counterpart of it), executed by the relevant Delivering Party, to each other party or the solicitors of each other party.

## 12. Governing law

This document is governed by and construed in accordance with the laws of New Zealand.

# Signing page

**EXECUTED AND DELIVERED** as a deed

**HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND** acting by and through Gabriel Makhlouf, **Deputy Chief Executive** acting under delegation from John Whitehead, **Secretary to the Treasury** for and on behalf of the **Minister of Finance** in the presence of:

\_\_\_\_\_  
Signature of Gabriel Makhlouf, Deputy Chief Executive

\_\_\_\_\_  
Signature of witness

Andre Anderson

\_\_\_\_\_  
Name of witness

Solicitor

\_\_\_\_\_  
Occupation of witness

Wellington

\_\_\_\_\_  
City/town of residence

Date: 31 August 2010

**SOUTH CANTERBURY FINANCE LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**BELFAST PARK LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**BRAEBROOK PROPERTIES LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**FACE FINANCE LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**FAIRFIELD FINANCE LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**FLEXILEASE LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**GALWAY PARK LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**HELICOPTER NOMINEES LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**HORNCHURCH LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**RENTAL CARS LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**SCFG SYSTEMS LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**SOPHIA INVESTMENTS LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**SOUTHBURY INSURANCE LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

**TYRONE ESTATES LIMITED (IN RECEIVERSHIP)** by its receivers and duly authorised agents:

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

\_\_\_\_\_  
Signature of receiver

\_\_\_\_\_  
Name of receiver

# Schedule 1 – Obligors

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## PART A - Borrowers

Name: South Canterbury Finance Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

Name: Belfast Park Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

Name: Braebrook Properties Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

Name: Tyrone Estates Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

## PART B - Guarantors

Name: Belfast Park Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

Name: Braebrook Properties Limited (in receivership)

Notice details: C/- McGrath Nicol  
Level 17, 34 Shortland Street  
PO Box 91644, Victoria Street West  
Auckland  
New Zealand

Name: Face Finance Limited (in receivership)

Notice details: C/- McGrath Nicol  
Level 17, 34 Shortland Street  
PO Box 91644, Victoria Street West  
Auckland  
New Zealand

Name: Fairfield Finance Limited (in receivership)

Notice details: C/- McGrath Nicol  
Level 17, 34 Shortland Street  
PO Box 91644, Victoria Street West  
Auckland  
New Zealand

Name: Flexi Lease Limited (in receivership)

Notice details: C/- McGrath Nicol  
Level 17, 34 Shortland Street  
PO Box 91644, Victoria Street West  
Auckland  
New Zealand

Name: Galway Park Limited (in receivership)

Notice details: C/- McGrath Nicol  
Level 17, 34 Shortland Street  
PO Box 91644, Victoria Street West  
Auckland  
New Zealand

Name: Helicopter Nominees Limited (in receivership)

Notice details: C/- McGrath Nicol  
Level 17, 34 Shortland Street  
PO Box 91644, Victoria Street West  
Auckland  
New Zealand



Name: Hornchurch Limited (in receivership)  
Notice details: C/- McGrath Nicol  
Level 17, 34 Shortland Street  
PO Box 91644, Victoria Street West  
Auckland  
New Zealand

Name: Rental Cars Limited (in receivership)  
Notice details: C/- McGrath Nicol  
Level 17, 34 Shortland Street  
PO Box 91644, Victoria Street West  
Auckland  
New Zealand

Name: SCFG Systems Limited (in receivership)  
Notice details: C/- McGrath Nicol  
Level 17, 34 Shortland Street  
PO Box 91644, Victoria Street West  
Auckland  
New Zealand

Name: Sophia Investments Limited (in receivership)  
Notice details: C/- McGrath Nicol  
Level 17, 34 Shortland Street  
PO Box 91644, Victoria Street West  
Auckland  
New Zealand

Name: Southbury Insurance Limited (in receivership)  
Notice details: C/- McGrath Nicol  
Level 17, 34 Shortland Street  
PO Box 91644, Victoria Street West  
Auckland  
New Zealand

Name: South Canterbury Finance Limited (in receivership)  
Notice details: C/- McGrath Nicol  
Level 17, 34 Shortland Street  
PO Box 91644, Victoria Street West  
Auckland  
New Zealand

Name: Tyrone Estates Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

## Schedule 2 – Conditions precedent items

The following is the list of items referred to in clause 3.1(a).

### Items to be provided to Crown:

Number	Item	Description	Form	Time and Date
1.	Finance Documents	Each Finance Document required by the Crown, properly executed by all parties to it (other than the Crown) and, where applicable in registrable form, together with all things (including documents) necessary to register the Finance Document where relevant.	<i>Original</i>	<i>11:00 a.m. one Business Day before the first Draw Date</i>
2.	Receivers' appointment	A copy of the notice of appointment of the Receivers to each Obligor.	<i>Original</i>	<i>11:00 a.m. one Business Day before the first Draw Date</i>
3.	Trustee consent	A copy of a written consent from the Trustee to: <ul style="list-style-type: none"> <li>(a) each Borrower borrowing money under this document;</li> <li>(b) the Guarantors guaranteeing each Borrower's obligations under this document under the Security Documents;</li> <li>(c) each Borrower applying each Draw for the relevant purpose of that Facility; and</li> <li>(d) each Obligor granting to the Crown the Security Interest under the Security Document and that Security Interest taking effect as a Prior Charge.</li> </ul>	<i>Original/ Certified copy</i>	<i>11:00 a.m. one Business Day before the first Draw Date</i>
4.	Trustee acceleration	A copy of a written notice from the Trustee to SCF declaring the whole of the "Stock Moneys" and "Deposit Moneys" (as defined in the Debenture Trust Deed) to be immediately due and payable.	<i>Original/ Certified copy</i>	<i>11:00 a.m. one Business Day before the first Draw Date</i>
5.	Trustee request	A copy of a written request from the Trustee to SCF under clause 5.2 of the Debenture Trust Deed requesting the Borrower to pay all "Principal Moneys" and interest to the Trustee.	<i>Original/ Certified copy</i>	<i>11:00 a.m. one Business Day before the first Draw Date</i>
6.	Deed of Undertaking and Acknowledgment	The deed of acknowledgment and undertaking required by the Crown properly executed by the Trustee.	<i>Original</i>	<i>11:00 a.m. one Business Day before the first Draw Date</i>

**Other items:**

<b>Item</b>	<b>Description</b>
Nomination	The Crown issuing the Nomination
Use of Drawing	The Crown being satisfied that the Drawing will be applied in repayment of the Prior Charge Debts.
PPSR registrations	Evidence of the registration of all financing statements that the Crown requires in connection with the Security, with the priority on the Personal Property Securities Register required by the Crown.
Other conditions	Such other matters as the Crown or the Crown's solicitors may reasonably require.

## Schedule 3 – Form of Draw Notice

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**To:** Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance

**From:** South Canterbury Finance Limited (in receivership)

**Draw Notice under Facilities Agreement dated [#] 2010**

Please provide \$[#] on [*date*]. The Draw will be repaid by us on the Termination Date and otherwise in accordance with the Facilities Agreement.

Please pay the proceeds of the Draw on our behalf to [*bank account, reference details*].

We confirm that as at the date of this Draw Notice:

- (a) this Draw is under Facility [#];
- (b) this Draw is for the sole purpose for which Facility [#] has been made available; and
- (c) all of the undertakings and covenants contained in the Facilities Agreement are being complied with.

Terms defined in the Facilities Agreement and not otherwise defined in this notice have the same meaning when used in this notice.

**DATED:**

**SIGNED** for and on behalf of  
**SOUTH CANTERBURY FINANCE  
LIMITED IN RECEIVERSHIP** by:

\_\_\_\_\_  
Signature of Receiver

\_\_\_\_\_  
Name of Receiver

# Schedule 4 – Form of Prepayment Notice

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**To:** Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance

**From:** [South Canterbury Finance Limited (in receivership)]

**Prepayment Notice under Facilities Agreement dated [#] 2010**

We notify you that we wish to make a prepayment under the Facilities Agreement in the amount of \$[#] on *[insert date]*;

We confirm that as at the date of this Prepayment Notice:

(a) the prepayment is to be made utilising the proceeds of the realisation of the following Charged Assets (**Proceeds**):

(i) *[describe assets and the Obligor which sold the assets]*

(b) the following deductions have been made from the Proceeds:

(i) *[insert deductions]*

Terms defined in the Facilities Agreement and not otherwise defined in this notice have the same meaning when used in this notice.

**DATED:**

**SIGNED** for and on behalf of  
**SOUTH CANTERBURY FINANCE  
 LIMITED IN RECEIVERSHIP** by:

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Signature of Receiver

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Name of Receiver