

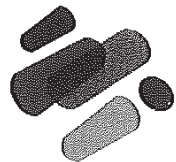
Deed of Option to Purchase

Grantor's Name: Midland HWY Pty Ltd (ACN 153 096 069)

Grantee's Name: SIMON DOUGLASS AND/OR NOMINEE

Lot No: 136 on proposed Plan of Subdivision PS604248N Midland Highway, Bagshot VIC 3551 ("Acacia Banks")

Clamenz
Evans Ellis
LAWYERS



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DSE:SXP

DEED OF OPTION TO PURCHASE

Date: 24 JUL 2012

Parties:

The party named in Item 2 of the First Schedule (hereinafter called the Grantor)

The party named in Item 3 of the First Schedule (hereinafter called the Grantee).

Recitals:

- A. The Grantor is entitled to be the owner of the Land pursuant to a contract of sale of real estate dated 18 October 2011, and beneficially entitled to transact over the Lot and enter into this Deed.
- B. The above contract of sale was nominated to the Grantor pursuant to a nomination dated 10 November 2011.
- C. The Grantee has requested the Grantor to grant to the Grantee an option to purchase the Lot. In consideration of the Grantee paying the Option Fee to the Grantor, the Grantor has agreed to grant to the Grantee an option to purchase the Lot.
- D. The parties enter into this Deed to record their common intentions in writing and the terms and conditions under which the Grantor grants to the Grantee an option to purchase the Lot.

Operative provisions:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

- (a) Unless a contrary intention appears, expressions and phrases used but not defined in this Deed have the same meaning as they have in the Attached Contract if they are defined.
- (b) In the Deed unless the contrary intention appears or such meaning is repugnant to the context the words or expressions used shall have the following meaning:
 - Adjusted Price** has the same meaning as ascribed to it under Clause 12.2
 - Authority** means an authority having jurisdiction over the Property (including its use, development and occupation) including any government, statutory body or corporation or service provider;
 - Business Day** means any day other than a Saturday, Sunday or bank holiday in Victoria;
 - Claim** means any claim, action, demand, proceeding, judgment, damage, loss (including consequential loss), charge, outgoing, payment, cost, expense or liability however incurred or suffered or brought or made or recovered against any person however arising (whether or not presently ascertained, immediate, future or contingent or in the nature of incidental, special, exemplary or consequential damages) including, but not limited to loss of profits or revenue, interference with business operations or loss of tenants, lenders, investors or buyers or inability to use the Land.
 - Contract of Sale** means the contract of sale of real estate attached to this Deed as the

Second Schedule;

Deed means this deed;

Development means the whole of the Land, building and improvements which are constructed or proposed to be constructed on the Land

Grantee's Solicitors means the Solicitors named in Item 5 of the First Schedule or such other Solicitors as may be nominated by the Grantee;

Grantor's Solicitors means the Solicitors named in Item 4 of the First Schedule or such other Solicitors as may be nominated by the Grantor;

GST means goods and services tax imposed under the *A New Tax System (Services and Services Tax) Act 1999* (Cth);

GST Amount, GST Recipient and GST Supplier have the meaning given in Clause 16.1;

Guarantee and Indemnity means the form of guarantee and indemnity set out in the Sixth Schedule;

Initial Instalment Date means the date set out in Item 8 (A) of the First Schedule

Initial Option Instalment Fee means the amount set out in Item 7 (A) of the First Schedule;

Land means the land described in Item 11 of the First Schedule;

Lead Generator means the representative named in Item 14 of the First Schedule;

Lot means the lot described at Item 12 of the First Schedule;

Month means a calendar month;

Nominee means a person nominated by the Grantee pursuant to this Deed;

Notice of Exercise of Option means a document in the form of the notice set out in the Third Schedule;

Notice of Nomination means a document in the form of the notice set out in the Fourth Schedule;

Option Fee means the option fee amount set out in Item 7 of the First Schedule;

Option Term means the period set out in Item 9 of the First Schedule plus any further Option Term pursuant to the Renewal provisions under Clause 4;

Percentage Increase means 2%.

Planning Approval means a planning permit issued by the Responsible Authority authorising the Development and use of the Land in accordance with the Proposed Plan of Subdivision and which does not contain any Unacceptable Conditions;

Price Adjustment Factor means the amount per square metre calculated as the Purchase Price in Item 13 of the First Schedule divided by the area of the Lot in square metres as shown on the Proposed Plan of Subdivision;

Proposed Plan of Subdivision means Proposed Plan of Subdivision No. PS 604248N;

Purchase Price means the purchase price set out in Item 13 of the First Schedule;

Responsible Authority has the meaning given in the Planning and Environment Act 1987 (Vic);

Second Instalment Date means the date set out in Item 8 (B) of the First Schedule;

Second Option Instalment Fee means the amount set out in Item 7 (B) of the First Schedule;

Section 32 Statement means a statement prepared in accordance with Section 32 of the *Sale of Land Act 1962 (Vic)*;

Third Instalment Date means the date set out in Item 8 (C) of the First Schedule;

Third Option Instalment Fee means the amount set out in Item 7 (C) of the First Schedule;

Unacceptable Conditions means conditions which:

- (i) are not usual for a development of the nature shown on the Proposed Plan of Subdivision;
- (ii) a prudent developer would regard as unreasonable; or
- (iii) could materially adversely affect the projected costs, revenue or program for completion of the development.

Variation has the same meaning as ascribed to it under Clause 11.2.

1.2 Interpretation

- (a) Unless a contrary intention appears:
 - (i) a reference to this deed or another instrument includes any variation or replacement of any of them; and
 - (ii) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
 - (iii) the singular includes the plural and vice versa; and
 - (iv) words implying a gender imply any gender; and
 - (v) words implying a natural person imply a firm, a body corporate, an unincorporated association or an authority; and
 - (vi) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns; and
 - (vii) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally; and
 - (viii) an agreement, representation or warranty on the part of 2 or more persons binds them jointly and severally; and
 - (ix) if a period of time is specified to start from a certain day or the day of an act or event, the period is to be calculated exclusive of that day; and
 - (x) a reference to a day is a reference to a period of time commencing at midnight and ending 24 hours later; and
 - (xi) a reference to time is a reference to Eastern Standard Time; and
 - (xii) a reference to any thing (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
 - (xiii) including is not a word of limitation.
- (b) Headings are inserted for convenience and do not affect the interpretation of this Deed.

2 COOLING-OFF PERIOD

2.1 The Grantee may end this Deed within five (5) clear Business Days after the day the Grantee signs this Deed by written notice to the Grantor's Solicitors.

2.2 If the Grantee ends this Deed pursuant to Clause 2.1, this Deed will be at an end and the Option Fee paid hereunder must be refunded to the Grantee less an administration fee in the amount of \$385.00 to be retained by the Grantor.

3 GRANT OF OPTION

In consideration of the Option Fee paid by the Grantee to the Grantor, the Grantor HEREBY GRANTS to the Grantee for the Option Term the Option to purchase the Lot from the Grantor for the Purchase Price and upon the terms and subject to the conditions set out in this Deed and the Contract of Sale.

4 RENEWAL OF OPTION TERM

If the Option has not been exercised during the period being not more than six (6) months before expiry of the Option Term, or any Further Option Term granted by the Grantor to the Grantee, the Grantee may by notice in writing to the Grantor request that the Option Term be renewed for a further Option Term of five (5) years which may be given or refused in the Grantor's absolute discretion. Any further Option Term granted by the Grantor pursuant to this Clause 4 will be on the same terms and conditions as are contained in this Deed and the Contract of Sale.

5 PAYMENT OF OPTION FEE

5.1 The Grantee must pay the Option Fee to the Grantor, or at the Grantor's direction to any other person, by bank cheque or such other payment method as permitted by the Grantor, as follows:

- (a) the Initial Option Instalment Fee, concurrently with the Grantee delivering to the Grantor this Deed executed by the Grantee;
- (b) the Second Option Instalment Fee by the Second Option Instalment Date;
- (c) the Third Option Instalment Fee by the Third Option Instalment Date.

5.2 Subject to Clause 1.2(b), the parties hereby acknowledge and agree that once paid each of the Initial Option Instalment Fee, the Second Option Instalment Fee and the Third Option Instalment Fee will become the absolute property of the Grantor. The Grantor shall be free to use such funds as it sees fit for any purpose whatsoever.

5.3 The Grantor may terminate this Deed by written notice to the Grantee if the Grantee fails to pay the Option Fee by such times and in the manner specified in Clause 5.1.

5.4 If this Deed is terminated due to the Grantee's default the Grantor shall be entitled to retain the Option Fee paid and will have no liability to the Grantee under this Deed.

5.5 The ending of this Deed does not affect the rights of the Grantor as a consequence of the Grantee's default.

6 EXERCISE OF OPTION

6.1 The Option shall be exercised by the Grantee at any time during the Option Exercise Period specified in Item 10 in the First Schedule by the Grantee delivering to the Grantor's Solicitor a completed and executed Notice of Exercise of Option in the form set out in the Third Schedule.

6.2 The Grantor shall deliver to the Grantee's Solicitor within five (5) Business Days after receiving the Grantee's Notice of Exercise of Option:

- (a) The Contract of Sale in duplicate with attached Section 32 Statement for the Lot.
- (b) The Contract of Sale shall be in the form of the Contract of Sale set out in the Second

Schedule, subject to any variations in accordance with Clause 8.2

- 6.3 Within five (5) Business Days of delivery of the Contract of Sale to the Grantee's Solicitor, the Grantee must execute and deliver to the Grantor's Solicitor:
- (a) both parts of the Contract of Sale with attached Section 32 Statement:
 - (i) completed with the full name and address of the Grantee or the Nominee, as the case may be; and
 - (ii) executed by the Grantee or the Nominee, as the case may be (including, where applicable, the completed guarantee in the Contract of Sale).
 - (b) a bank cheque or bank guarantee in the form required under the Contract of Sale, for the deposit payable under the Contract of Sale.
- 6.4 The Option is not validly exercised if all of the requirements in Clause 6.3 have not been complied with.
- 6.5 Where the Grantee or Nominee is a corporation which is not listed on the board of an Australian Stock Exchange, the Grantee or Nominee (as the case may be) must guarantee the performance of the Contract of Sale in the form annexed in the Contract of Sale and signed by each of the directors of the Grantee or the Nominee (as applicable).
- 6.6 Within ten (10) Business Days of delivery by the Grantee of all items in Clause 6.3 the Grantor shall deliver to the Grantee's Solicitor one fully executed part of the Contract of Sale with attached Section 32 Statement. The parties agree that the day of sale will be the date on which the Grantor signs the Contract of Sale.
- 6.7 Delivery of a fully executed part of the Contract of Sale from the Grantor to the Grantee's Solicitor shall constitute and be deemed to constitute a binding contract of sale of real estate for the Lot upon the terms and subject to the conditions in the Contract of Sale.

7 GRANTOR'S RIGHT OF CANCELLATION

- 7.1 If:
- (a) Planning Approval issued by the Relevant Authority contains Unacceptable Conditions; or
 - (b) any requirement imposed by any Authority (including the Registrar of Titles) in relation to the registration of the Proposed Plan of Subdivision is in the reasonable opinion of the Grantor too onerous to comply with,
- the Grantor may by notice in writing to the Grantee cancel the Option.
- 7.2 If the Option is cancelled pursuant to Clause 7.1 then the Grantor must refund the Option Fee to the Grantee within 120 days of the Grantor terminating the Option.

8 DELIVERY OF SECTION 32 STATEMENT

- 8.1 The Grantee acknowledges that before it executed this Deed it has received from the Grantor a Section 32 Statement duly executed by the Grantor, a copy of which is attached to the Contract of Sale in the Second Schedule.
- 8.2 The Grantee acknowledges that the Contract of Sale and Section 32 Statement delivered to the Grantee in accordance with Clause 6.2 may vary from the documents contained in the Second Schedule. The Grantor may at any time, in its sole and absolute discretion, amend, add to or vary the documents for the purpose of disclosing any matters affecting the Land and to comply with the provisions of all statutes and regulations. The Grantee must not make any Claim, objection, requisition or demand in respect of any amendment, addition or variation to the documents as

contemplated by this clause.

9 CAVEAT

9.1 The Grantee, and any person acting for and on behalf of the Grantee, must not lodge any caveat over the Land (or any part of it) prior to the Grantor becoming the registered proprietor of the Land, and then only after the first to occur of:

- (a) the registration of the Plan of Subdivision by the Registrar of Titles; and
- (b) subject to Clauses 9.2 and 9.4(c), the Grantor's default under this Deed.

9.2 The Grantee's right to lodge a caveat over the Land pursuant to Clause 9.1(b) is subject to the Grantee giving no less than 180 days prior written notice to the Grantor to remedy the default. If the Grantor fails to remedy the default within 180 days of receiving the Grantee's notice then the Grantee may, without affecting any other rights of the Grantee, lodge a caveat over the Land during the period of default. The Grantee must immediately withdraw the caveat upon the default being remedied by the Grantor.

9.3 Any caveat lodged over the Land pursuant to Clause 9.1 must be in the form of the caveat set out in the Fifth Schedule.

9.4 The Grantee hereby irrevocably appoints the Grantor as its lawful attorney for the purpose of withdrawing any caveat or signing a withdrawal of caveat:

- (a) which is lodged by or on behalf of the Grantee in breach of this Clause 9; or
- (b) which is not in the form of the caveat set out in the Fifth Schedule; or
- (c) if the Grantee is in breach of any of its several obligations under this Deed; or
- (d) if the Option ends or this Deed is terminated or ends in any way as contemplated by this Deed.

9.5 If the Grantee lodges a caveat in breach of Clause 9.1, or fails to remove a caveat in breach of Clause 9.2, the Grantee must pay the Grantor on demand the amount advised by the Grantor as the damages suffered by the Grantor.

10 PLANNING PERMIT APPROVAL AND PLAN OF SUBDIVISION

10.1 The Grantor must:

- (a) use its reasonable endeavours and do all such acts and things as are reasonably required to procure Planning Approval as soon as reasonably practicable; and
- (b) if obtained, notify the Grantee in writing of the Planning Approval.

10.2 The Grantor is not required to use the Option Fee (or any part thereof) to fund the Development, including without limitation to procure Planning Approval or to settle the Contract of Sale for the acquisition of the land.

10.3 The Option Exercise Period specified in Item 10 of the First Schedule will commence on the date that the Grantor gives written notice to the Grantee in accordance with Clause 10.1(b).

10.4 The Grantee agrees to cooperate with the Grantor and to do all such acts, matters and things and sign all documents, approvals and consents as may reasonably be required by the Grantor to enable the Grantor to procure Planning Approval and the registration of the Proposed Plan of Subdivision as soon as reasonably possible, including without limiting the generality or nature of such acts, matters and things granting consent for the Grantor to obtain finance for the costs associated with the registration of the Proposed Plan of Subdivision, completion of the Development and all associated works and professional fees and costs for the purposes of investigation and completion of the works required to enable registration of the Proposed Plan of

Subdivision.

- 10.5** In the event that the Grantee fails or refuses to give the said consent or do all such acts, matters and things described in this Clause 10, the Grantee hereby irrevocably appoints the Grantor as its lawful attorney to permit the Grantor to provide such consent and do all such acts, matters and things as required in this Clause 10.

11 AMENDMENTS TO PLAN OF SUBDIVISION

- 11.1** The Grantor reserves the right to make any amendments to:

- (a) the proposed Plan of Subdivision, the planning permit and any planning permit issued for the Development as may be required by:
 - (i) the Relevant Authority and any other Authority as a condition of it certifying the Plan of Subdivision;
 - (ii) the Registrar of Titles as a condition of the registration of the Plan of Subdivision; or
 - (iii) the Grantor in its absolute discretion.
- (b) the measurements, dimensions, area and location of the Lot and any land in the Plan of Subdivision.

- 11.2** The Grantee shall not be entitled to make any requisition, objection, Claim for compensation, withhold the Option Fee (or any part thereof) or end this Deed because of:

- (a) any variation in the measurements, dimensions and area of the Lot; and
- (b) any change to the numbering and location of the Lot on the Plan of Subdivision, (hereinafter referred to as **Variation**).

12 PRICE ADJUSTMENT

- 12.1** In the event of a Variation, the parties acknowledge and agree that the Purchase Price will be adjusted as follows:

- (a) If the Variation results in a an increase in the area of the Lot, the Purchase Price is to be increased by an amount equal to the increased area multiplied by the Price Adjustment Factor.
- (b) If the Variation results in a decrease in the area of the Lot, the Purchase Price is to be decreased by an amount equal to the decreased area multiplied by the Price Adjustment Factor.

- 12.2** The parties agree that the Purchase Price will be adjusted annually (or earlier where provided for under this Deed) utilising the following procedure:

- (a) On each Adjustment Date, the Purchase Price will be automatically increased by the Percentage Increase.
- (b) Following the first Adjustment Date, the parties agree that the base Purchase Price for each subsequent Adjustment Date will be the compounded Purchase Price arrived at under the previous Adjustment Date pursuant to clause 12.2(a).

(collectively referred to as the "**Adjusted Price**")

- 12.3 Notwithstanding any condition to the contrary in this Deed, the Grantee cannot and must not make any requisition, objection, Claim for compensation, withhold any part of the Option Fee or terminate this Deed in respect of any matter referred to in Clause 12.

13 GRANTOR'S OBLIGATIONS PENDING EXERCISE OF OPTION

- 13.1 The Grantee acknowledges and agrees that the Grantor may in its sole and absolute discretion and without any notice to or consent from the Grantee:

- (a) grant a mortgage, charge, lien, lease, licence or other encumbrance over the Land or any part of the Development;
- (b) use the funds derived from any mortgage, charge, lien, lease, licence or other encumbrance over the Land (or any part thereof) for any purpose whatsoever; and
- (c) execute any mortgage, charge or assignment and any other document, deed or instrument relating to this Deed, the Land and any land forming part of or affected by the Development.

- 13.2 The Grantee must not make any requisition, objection, Claim for compensation, withhold payment of the Option Fee or terminate this Deed because of any matter referred to in this Clause 13.

14 EFFECT OF NON-RENEWAL OR CANCELLATION OF THE OPTION TERM

- 14.1 If at the expiration of the Option Term:

- (a) the Grantee has not received written notice from the Grantor of Planning Approval; and
- (b) the Option Term has not been renewed in accordance with this Deed, the Option Fee shall be refunded to the Grantee within 120 days.

- 14.2 Notwithstanding any condition to the contrary in this Deed the Grantor may, in its sole and absolute discretion, terminate this Deed at any time during the first two (2) years of the Option Term in which event the Grantor must repay the Option Fee to the Grantee within 120 days of termination.

15 GRANTEE'S ACKNOWLEDGMENT

- 15.1 The Grantee acknowledges that:

- (a) the Grantor is entitled to be the registered owner of the Land pursuant to a nomination under a contract of sale of real estate dated 18 October 2011 (**Purchase Contract**) and is beneficially entitled to transact over the Lot and enter into this Deed; and
- (b) the Purchase Contract may not have settled prior to the parties entering into this Deed.

- 15.2 The Grantee shall not be entitled to make any requisitions or enquiries of the Grantor in respect of the Land or the Grantor's authority or power to enter into this Deed

- 15.3 In the event that the Purchase Contract is not completed for any reason whatsoever then this Deed will automatically come to an end in which event the Option Fee paid hereunder must be refunded to the Grantee within 120 days of the Purchase Contract ending and the Grantor will have no further liability to the Grantee under this Deed.

16 GST

- 16.1 If a party (GST Supplier) makes a supply to another party (GST Recipient) in connection with this Deed, the GST Recipient must pay the GST Supplier an amount equal to any GST payable by the GST Supplier in relation to that supply (GST Amount) unless the amount payable by the GST Recipient for that supply is already expressed to be inclusive of GST. Except where the relevant

supply is not a taxable supply or express provision is made to the contrary and subject to this Clause 16, the consideration for the supply payable by any party under this Deed represents the GST exclusive value of the supply

- 16.2** The GST Amount must be paid at the same time and in the same manner as making payment of any monetary consideration on which the GST is calculated. If the GST Amount is not calculated on monetary consideration, the GST Recipient must pay the GST Amount within seven (7) days of receipt of a written demand from the GST Supplier.
- 16.3** The GST Recipient's obligation to pay the GST Amount is conditional on the GST Supplier providing the GST Recipient with a tax invoice that complies with the relevant law.
- 16.4** The amount recoverable on account of GST under this Clause 16 will include any fines, penalties, interest and other charges incurred as a result of late payment or other default by the GST Recipient under this Deed.
- 16.5** If a party is required to pay, reimburse or indemnify another party for any cost, expense or other amount that the other party has incurred or will incur in connection with this Deed, that amount will be reduced by any part thereof for which the other party can claim an input tax credit.

17 GENERAL

17.1 Expenses

- (a) Each party shall pay and bear its own legal costs in relation to the negotiation, preparation and execution of this Deed.
- (b) The Grantee must:
- (i) pay all stamp duty and any related fines and penalties in respect of this Deed and each transaction effected by or made under this Deed;
 - (ii) pay all costs, charges or expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and solicitor and own client basis) incurred by the Grantor arising from or in connection with any default by the Grantee in performing the covenants contained in this Deed;
 - (iii) reimburse the Grantor on demand for, and indemnify the Grantor against all expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and solicitor and own client basis) incurred in connection with the Grantor exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this Deed, if the Grantee is in breach of the terms and conditions of this Deed.

17.2 Severability

If any term agreement or condition of this Deed or the application thereof to any person or any circumstances shall be or become illegal, invalid or unenforceable the same shall be severed and the remaining terms agreements and conditions shall not be affected.

17.3 Assurances

Each party must do or cause to be done all things necessary or desirable to give effect to, and must refrain from doing all things that would hinder performance of, this Deed.

17.4 Assignment

- (a) Subject to the Grantee not being in breach of any of its several obligations under this Deed, the Grantee may assign its rights under this Deed by delivering to the Grantor no later than ten (10) Business Days before the Option is exercised a completed Notice of Nomination of Option in the form set out in the Fourth Schedule. If the Grantee does assign its rights under this Clause, the Grantee and the Grantor at all times remain

personally, liable for the due performance of the Grantee's obligations under this Deed.

- (b) The Grantor will accept the Grantee's nomination subject to the Grantee's strict compliance with Clause 17.4(a). If the Grantee fails to strictly comply with Clause 17.4(a) then the Grantor may, in its sole and absolute discretion, terminate this Deed in which event the Option Fee will be forfeited to the Grantor absolutely.
- (c) The Grantor may assign its rights and obligations under this Deed provided that written notice of such assignment is given to the Grantee within ten (10) Business Days of the assignment. In the event that the Grantor notifies the Grantee of an assignment, at the Grantor's request the Grantee must enter into a deed of assignment (in a form acceptable to the Grantor) in respect of the assignee's rights, title and interest in this Deed. The Grantee must execute and return the deed of assignment to the Grantor (or to such other persons as the Grantee directs) within ten (10) Business Days of receipt.

17.5 Governing Laws

This Deed shall be governed by and construed in accordance with the law for the time being in force in the State of Victoria. The parties to this Deed agree to submit to the non-exclusive jurisdiction of the Courts of Victoria.

17.6 Successors of Grantor

This Deed shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

17.7 Counterparts

This Deed may be executed in any number of counterparts and all such counterparts taken together are taken to constitute one and the same instrument.

17.8 Attorneys

Wherever this Deed is executed by an attorney, the attorney hereby states by such execution that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this deed.

17.9 Variations

This Deed may not be changed or modified in any way subsequent to its execution except by writing duly executed by all relevant parties.

17.10 Representations

The Grantee represents and warrants to and covenants with the Grantor that it has full power to enter into and perform its obligations under this Deed and this Deed constitutes valid and binding obligations of the Grantee enforceable in accordance with its terms.

17.11 Invalidity

All provisions herein contained shall be construed so as not to be invalid, illegal or unenforceable in any respect but if any such provision on its true interpretation is illegal, invalid or unenforceable that provision may at the option of the Grantor be read down to such extent as may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character. In the event that any such provision or part of any such provision cannot be so read down such provision or part is taken to be void and severable and the remaining provisions of this Deed are not in any way to be affected or impaired by such provision or part being so taken.

17.12 Non Merger

Each representation warranty covenant and obligation under this Deed continues in full force and effect until the representation warranty covenant or obligation is satisfied or completed.

17.13 Contra Proferentem

In the interpretation of this Deed no rules of construction apply to the disadvantage of one party on the basis that that party put forward this deed or any part of it.

17.14 Notices

(a) Any notice, order, acceptance or other communication hereunder shall be in writing and signed and forwarded to the addresses specified herein or to such other addresses as may be substituted by written notice to the other party from the party wishing to alter its address.

(b) Such notice, order, acceptance or other communication shall be deemed to be given and served:

(i) where hand delivered, on the date of delivery;

(ii) where sent by ordinary prepaid post, two (2) Business Days after the time of posting;

(iii) where sent by facsimile,, at the time recorded on the sender's transmitting machine;

(iv) where sent by email, when the sender's computer indicates that the message has been received,

provided always that if the time of dispatch or delivery (as the case may be) is after 5.00,pm (local time) on a Business Day in the place to which the notice is sent, the notice shall be deemed to have been received at the commencement of business on the next such day in that place.

(c) A party receiving such notice must, where requested by the first party giving the notice, provide written acknowledgement of receipt of such notice confirming the date of receipt.

17.15 Time

Time is extended until the next Business Day if the time for performing any action or payment of monies under this Deed falls on a Saturday, Sunday or bank holiday in Victoria.

17.16 Representations, Warranties, Acknowledgements and Indemnities

(a) The Grantee warrants and covenants that:

(i) The Lead Generator is engaged to generate leads and may receive fees, commissions or payments from the Grantor; and

(ii) the Grantee is relying entirely upon its own enquiries with respect to:

(A) the fitness or suitability for any particular purpose of the Land;

(B) the Grantee's obligations and rights under this Deed; and

(C) any financial return the Grantee may make from the Land.

(b) The Grantee acknowledges and agrees that:

(i) It has the financial capacity to enter into this Deed and abide by the terms, conditions and stipulations contained therein;

(ii) notwithstanding the Grantor will pay fees, commissions or payments to the Lead Generator arising from lead generation referrals to it, the Lead Generator is not an employee of the Grantor;

(iii) the Grantee has not relied on any warranty or representation made by or any other conduct of the Grantor or any person on behalf of the Grantor, except as set out in this Deed or in legislation;

- (c) As a separate and additional liability, the Grantee indemnifies the Grantor and will keep the Grantor indemnified against any and all Claims which the Grantor may suffer, sustain or incur in connection with or relating to any liability, Claims, of any nature, howsoever arising made or incurred whether directly or indirectly on or subsequent to the Term of this Deed or from events or occurrences happening or arising on or subsequent to the Term of this Deed out of or in respect of any default or breach by the Grantee in the performance and observance of its obligations, acknowledgments, warranties or covenants contained or implied under this Clause 17.16 or in relation to the Land or any act, matter or thing occurring thereon.
- (d) The Grantee acknowledges that this is an essential term of this Deed and a breach of this Clause 17.16 will cause damage to the Grantor.

17.17 Entire Agreement

- (a) The Deed constitutes the entire agreement between the parties in relation to the subject matter.
- (b) Any promise, condition, representation, information or warranty relating to or leading up to this transaction which has been provided or made by, or on behalf of, the Grantor which is not set out or expressly referred to in this Deed, is expressly negated and withdrawn.
- (c) In the event of any inconsistency between the terms, conditions, obligations and liabilities of this Deed and any other related document, the terms and conditions of this Deed shall prevail.

17.18 Guarantee and Indemnity

If the Grantee is a corporation and not listed on any Australian Stock Exchange, it must ensure that two natural persons (or one natural person if the corporation only has one Director and that Director is also the sole shareholder) who are:

- (a) Over the age of 18 years; and
- (b) Directors and/or substantial shareholders of the Grantee,

execute simultaneously with this Deed the Guarantee and Indemnity as set out in the Sixth Schedule.

17.19 Grantee's Warranty

- (a) The Grantee warrants to the Grantor that it has received, or has had the opportunity to receive, independent advice from a legal practitioner before signing this Deed.
- (b) The Grantee acknowledges that before signing this Deed the Grantor has referred the Grantee to Summit Law Property & Business Lawyers Pty Ltd for legal advice in respect of the Grantee's rights and obligations under this Deed.

17.20 Confidentiality

- (a) The Grantee acknowledges that this Deed and all and any matters related to this Deed are strictly confidential and agrees not to disclose to any third party other than their respective legal and professional advisors the existence and contents of this Deed.
- (b) In breach of Clause 17.20(a) the Grantor may terminate this Deed in which event the Option Fee will be forfeited to the Grantor as the Grantor's absolute property, whether the Option Fee has been paid or not.
- (c) The Grantee acknowledges and agrees that the termination of this Deed pursuant to Clause 17.20(b) and the forfeit of the Option Fee to the Grantor is additional to any other remedy that the Grantor may have against the Grantee, including without limitation suing the Grantee for loss and damages incurred as a result of the Grantee's default.

SIGNING PAGE

EXECUTED as a Deed on

24 JUL 2012

2012

GRANTOR

EXECUTED by the said MIDLAND HWY PTY LTD ACN: 153 096 069
in accordance with Section 127(1) of the Corporations Act 2001:

Director/Secretary John Wood
Print Name John Wood
Date of signing: 24 JUL 2012

Director _____
Print Name _____
Date of Signing: / /

GRANTEE

EXECUTED by
in accordance with Section 127(1) of the Corporations Act 2001:

Director/Secretary _____
Print Name _____
Date of signing: / /

Director _____
Print Name _____
Date of Signing: / /

SIGNED, SEALED AND DELIVERED BY
THE SAID
SIMON DOUGLASS

IN THE PRESENCE OF:

X M. Mayes
Signature of Witness
Name of Witness Patricia M. Mayes
Address of Witness Department of Justice & Attorney-General
Lvl. 6, 154 Melbourne Street
South Brisbane QLD 4101
Phone: 1300 201 117

X Simon Douglass
Signature
Print Name SIMON DOUGLASS
Print Address 9 JONES ST, WESTCOURT QLD

Date of Signing: 28/06/2012

SIGNED, SEALED AND DELIVERED BY
THE SAID

IN THE PRESENCE OF:

Signature of Witness _____
Name of Witness _____
Address of Witness _____



Signature _____
Print Name _____
Print Address _____

Date of Signing: / /

- If the Grantee is a company the form of company execution should be used
- If the Grantee is an individual the second form of execution should be used

FIRST SCHEDULE

ITEM 1 DATE:	24 JUL 2012
ITEM 2 GRANTOR'S NAME: GRANTOR'S ADDRESS:	Midland HWY Pty Ltd (ACN 153 096 069) C/- Level 1144, 1 Queens Road, Melbourne Victoria 3004
ITEM 3 GRANTEE'S NAME: GRANTEE'S ADDRESS:	SIMON DOUGLASS AND/OR NOMINEE 9 JONES STREET, WESTCOURT QLD 4870
ITEM 4 GRANTOR'S SOLICITOR'S NAME: GRANTOR'S SOLICITOR'S ADDRESS:	Evans Ellis Lawyers Level 1144, 1 Queens Road, Melbourne Victoria 3004
ITEM 5 GRANTEE'S SOLICITOR'S NAME: GRANTEE'S SOLICITOR'S ADDRESS:	Summit Law 570 Glenhuntly Road, Elsternwick Victoria 3185
ITEM 6 GUARANTOR NAME: GUARANTOR ADDRESS: GUARANTOR NAME: GUARANTOR ADDRESS:	
ITEM 7 <u>OPTION FEE:</u> (A) INITIAL OPTION INSTALMENT FEE: \$ (B) SECOND OPTION INSTALMENT FEE: \$ (C) THIRD OPTION INSTALMENT FEE: \$ TOTAL OPTION FEE: \$	\$1,000.00 \$34,000.00 \$35,000.00
ITEM 8 <u>OPTION PAYMENT DATES:</u> (A) INITIAL INSTALMENT DATE: (B) SECOND INSTALMENT DATE: (C) THIRD INSTALMENT DATE:	Payable concurrently with the Grantee delivering to the Grantor this Deed executed by the Grantee Within thirty (30) days after the date of this Deed Within three hundred and sixty five days (365) days after the date of this Deed

<u>ITEM 9</u> OPTION TERM:	A period commencing on the date of this Deed and expiring ten (10) years from the date of this Deed
<u>ITEM 10</u> OPTION EXERCISE PERIOD:	A period of twenty-one (21) days after the date on which the Grantor gives written notice to the Grantee of Planning Approval
<u>ITEM 11</u> LAND:	Lots 1 and 2 on Title Plan No TP 005002H, Corner of Midland Highway & Sherwood Road and the corner of Sherwood Road & Wakeman Rd, Bagshot in the State of Victoria and being the land described in Certificates of Title Volume 10270 Folios 178 & 179
<u>ITEM 12</u> LOT:	Lot No 136 on Proposed Plan of Subdivision PS 604248N, Midland Highway, Bagshot VIC 3551 ("Acacia Banks")
<u>ITEM 13</u> PURCHASE PRICE: (SUBJECT TO CLAUSE 12)	\$87,900.00
<u>ITEM 14</u> THE LEAD GENERATOR:	21 st Century Property Direct

- If the Grantee is a company the form of company execution should be used
- If the Grantee is an individual the second form of execution should be used

SECOND SCHEDULE

CONTRACT OF SALE OF REAL ESTATE

THIRD SCHEDULE

NOTICE OF EXERCISE OF OPTION

TO: MIDLAND HWY PTY LTD (ACN 153 096 069)

NOTICE is given by _____
(Grantee) that the Grantee Irrevocably exercises the Option over the Land granted to the
Grantee, or its nominee, by the Grantor under the Option Deed dated the _____ day of _____ 2012

Executed by _____
ACN _____ in accordance with Section
127(1) of the *Corporations Act 2001*:

Secretary/Director

Print name

Date of signing: / /

Director

Print name

Date of signing: / /

Signed sealed and delivered by the _____
_____ in the presence of:

Witness

Print name

Print address

Signature

Print name

Print address

Date of signing: / /

- If the Grantee is a company the form of company execution should be used
- If the Grantee is an individual the second form of execution should be used

FOURTH SCHEDULE

NOTICE OF NOMINATION OF OPTION

TO: MIDLAND HWY PTY LTD (ACN 153 096 069)

NOTICE is given by _____
(Grantee) that the Grantee notifies the Grantor that the Grantee has irrevocably nominated
of _____
to the exclusion of the Grantee as its nominee to exercise the Option over the Property
granted to the Grantee by the Grantor in the Option Deed dated the _____ day of **2012**

GRANTEE

Executed by _____
ACN _____ in accordance with Section
127(1) of the *Corporations Act 2001*:

Secretary/Director

Director

Print name

Print name

Date of signing: / /

Date of signing: / /

Signed sealed and delivered by the _____
_____ in the presence of:

Witness

Signature

Print name

Print name

Print address

Print address

Date of signing: / /

- If the Grantee/Nominee is a company the form of company execution should be used
- If the Grantee/ Nominee is an individual the second form of execution should be used

NOMINEE

Executed by _____
ACN _____ in accordance with Section
127(1) of the *Corporations Act 2001*:

Secretary/Director

Print name

Date of signing: / /

Signed sealed and delivered by the _____
_____ in the presence of:

Witness

Print name

Print address

Director

Print name

Date of signing: / /

Signature

Print name

Print address

Date of signing: / /

- If the Grantee/Nominee is a company the form of company execution should be used
- If the Grantee/ Nominee is an individual the second form of execution should be used

FIFTH SCHEDULE

FORM OF CAVEAT

Caveat

Section 89 Transfer of Land Act 1958

Privacy Collection Statement

The information from this form is collected by the Registrar of Titles under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes.

Lodged by

Name:

Phone:

Address:

Reference:

Customer Code:

The caveator claims the estate or interest specified in the land described on the grounds set out and forbids the registration of any person as proprietor of and of any instrument affecting the estate or interest to the extent specified.

Land: (volume and folio, and if applicable mortgage, charge or lease)

Certificate of Title Volume Folio

Caveator: (full name)

Estate or Interest claimed:

Estate in fee simple

Grounds of claim:

As Grantee pursuant to an Option to Purchase agreement from Midland Hwy Pty Ltd (ACN 153 096 069)

Extent of prohibition: (If not ABSOLUTELY delete and insert desired text)

Absolutely, save and except for a dealing arising from or relating to Midland Hwy Pty Lrd (ACN 153 096 069)

Address in Victoria for service of notice: (full name and address include postcode)

Dated:

30800812A

Duty Use Only

C

Page of

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

SIXTH SCHEDULE

GUARANTEE AND INDEMNITY

Parties:

Each person whose name and address appears below their signature in this Deed as a Guarantor (each a Guarantor)

MIDLAND HWY PTY LTD (ACN 153 096 069) (the Grantor)

Recitals:

- A. In order to induce the Grantor to enter into Option Agreement (as defined below) each Guarantor has agreed to give the guarantee and indemnity contained in this Deed.

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The definitions apply to what the context requires, otherwise:

Business Day means a weekday which banks are open in Melbourne.

Option Agreement means the Option to Purchase dated on or about the date of this Deed under which the Grantor grants an option to the Grantee named therein to purchase the Property for the Purchase Price and on the conditions set out in the Option Agreement.

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise.

Liquidation includes official management, receivership, liquidation, provisional liquidation, compromise, arrangements, amalgamation, administration (voluntary or otherwise), reconstructions, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

Power means a power, right or authority, discretion or remedy, which is given to the Grantor by this Deed or by Law.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) Words which are defined in the Option Agreement have the same meaning in this Deed.
- (b) The singular includes the plural and the converse.
- (c) If there are two or more Guarantors, a reference to the Guarantor means each Guarantor.
- (d) Words implying a gender imply any gender.
- (e) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

- (f) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (g) Clause means a clause of this Deed.
- (h) A reference to a party to this Deed or another contract or document includes the party's successors and substitutes or assigns.
- (i) A reference to an agreement or document is to the agreement or document as amended, novated, supplemented, varied or replaced from this time, except to the extent prohibited by this Deed.
- (j) A reference to writing includes a facsimile transmission, and any means or reproducing words in a tangible and permanently visible form.
- (k) A reference to legislation or to a provision of legislation includes a modification, re-enactment of, on substitute for it and a regulation or statutory instrument issued under it.
- (l) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be jointly and severally.
- (m) A reference to conduct includes or including means includes, without limitation, or including, without limitation, respectively.
- (n) Unless stated otherwise, one provision does not limit the effect of another.
- (o) All obligations in this Deed or any other document are to be performed duly and punctually.

2. GUARANTEE

2.1 Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Grantor:

- (a) the payment by the Grantee of the Option Fee and of all other money payable by the Grantee to the Grantor under the Option Agreement;
- (b) the performance and observance by the Grantee of all its other obligations under the Option Agreement; and
- (c) the payment by the Grantee of any damages payable by the Grantee for its failure or delay to fulfil any of its obligations under the Option Agreement.

2.2 Payment

If the Grantee defaults in:

- (b) the payment of the Option Fee or any other amount due under the Option Agreement, the Guarantor must on demand pay that amount to the Grantor; and/or
- (c) the performance and observation of any of the Grantee's other obligations under the Option Agreement, the Guarantor must on demand pay to the Grantor all losses, damages, expenses and costs which the Grantor is entitled to recover because of that default whether or not the Grantor has exercised or exhausted its remedies for their recovery from the Grantee.

2.3 Liability unaffected by other events

The liability of the Guarantor is not affected by anything which but for this provision, might release, prejudicially affect or discharge him or in any way relieve the Guarantor from any obligation including the following (whether with or without the consent of the Guarantor):

- (a) the grant the Grantee and/or any other person of any time, waiver or other

- indulgence, or the discharge or release of them;
- (b) any transaction or arrangement that may take place between the Grantor and/or the Grantee or any other person;
- (c) the Liquidation of the Grantee and/or any other person;
- (d) the Grantor becoming a party to or bound by any compromise, moratorium, assignment of property, scheme or arrangement, composition of debts or scheme of reconstruction by or relating to the Grantee and/or any other person;
- (e) the Grantor exercising or delaying or refraining from exercising any right, power or remedy given to it by Law or by the Option Agreement or by any other document or agreement with the Grantee and/or any other person;
- (f) the amendment, variation, novation, replacement, rescission, invalidity, extinguishment, repudiation, avoidance, unenforceability, frustration, failure, expiry, termination, loss, release, discharge, abandonment, assignment or transfer in whole or in part and with or without consideration, of the Option Agreement at any time or of any right, obligation, power or remedy;
- (g) the failure by the Grantee and/or any other person to notify either Guarantor of any default by the Grantee and/or any other person under the Option Agreement;
- (h) the Grantor obtaining a judgment against the Grantee and/or any other person for the payment of any money under the Option Agreement or any other document or agreement with the Grantor;
- (i) any legal limitation, disability, incapacity or other circumstance relating to the Grantee, either Guarantor and/or any other person;
- (j) any change in circumstance (inciting of a person or in the members or constitution of a partnership); and
- (k) this Deed not being valid or executed by or binding on any person.

2.4 Principal and independent obligation

This clause 2 is a principal and independent obligation. Except for stamp duty purposes, it is not ancillary or secondary to another right or obligation.

2.5 Grantor may prove against Guarantor

In the event of the Liquidation of the Grantee, the Guarantor:

- (a) will not be entitled to prove in the Liquidation in competition with the Grantor; and
- (b) authorises the Grantor to prove for all moneys owing to the Grantor by the Grantee and not paid and to retain and carry a suspense account and at the discretion of the Grantor, to appropriate amounts received until the Grantor has received 100 cents in the dollar in respect of the moneys owing to it by the Grantee; and
- (c) waives in favour of the Grantor all rights against the Grantor and the Grantee and any other person, estate and other assets so far as is necessary to give effect to anything contained in this Deed.

2.6 Rescission of payment

Wherever for any reason (including under any Law relating to Liquidation, fiduciary obligation or the protection of creditors):

- (a) all or part of any transaction of any nature (including any payment or transfer) made before or after the exercise of the Option in the Option Agreement which relates in any way to the money payable under it is void, set aside or voidable;

- (b) any claim that anything contemplated by paragraph (a) is so upheld, conceded or compromised; or
- (c) the Grantor is required to return assets (or compensation for them) or repay any money received by it under that transaction, the Grantor will immediately be entitled against the Guarantor to all rights in respect of the money payable under the Option Agreement which it would have had if all or the relevant part of the transaction or receipt had not taken place. The Guarantor must indemnify the Grantor on demand against any resulting loss, cost or expense. This clause continues to apply after the Option Agreement is terminated (if terminated).

2.7 Continuing guarantee

This Deed is a continuing guarantee and indemnity despite any settlement of account, intervening payment or anything else until all money payable under the Option Agreement and this Deed is paid in full and all the Grantee's other obligations under the Option Agreement are performed and observed.

3. INDEMNITY

As a separate and additional liability, the Guarantor indemnifies the Grantor in respect of:

- (a) all liability, including all actions, proceedings, judgments, damages, losses, costs and expenses of any nature, which may be incurred by, brought, made or recovered against the Grantor consequent on or arising directly or indirectly out of any default or delay by the Grantee in the performance and observance of its obligations contained or implied in the Option Agreement; and
- (b) any money payable under the Option Agreement (including money which would have been money payable under the Option Agreement if it were recoverable) which is not recoverable from the Grantee for any reason, including any legal limitation, disability or incapacity affecting the Grantee or an obligation in the Option Agreement being or becoming unenforceable, void or illegal and whether or not:
 - (i) any transaction relating to that money was void or illegal or has been avoided; or
 - (ii) anything relating to that transaction was or ought to have been known to the Grantor.

4. VARIATION

This Deed covers the Option Agreement as amended, varied or replaced from time to time, whether or not with the consent of or notice to the Guarantor.

5. WAIVERS, REMEDIES CUMULATIVE

- (a) No failure to exercise and no delay in exercising any Power by the Grantor operates as a waiver. Nor does any singular partial exercise of any Power preclude any other or further exercise of that Power or another Power.
- (b) The Powers under this Deed are in addition to, and do not exclude or limit, any right, power or remedy provided by Law.

6. SEVERANCE

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That provision does not affect the remaining provisions of this Deed nor affect the validity or enforceability, of that

provision in any other jurisdiction.

7. COSTS AND EXPENSES

On demand the Guarantor must indemnify the Grantor against any costs, charge, expense, liability, outgoing or payment which the Grantor may sustain or incur in relation to:

- (a) The preparation, execution, stamping and completion of this Deed; and
- (b) Any actual or contemplated enforcement of, or the actual or contemplated exercise, preservation or consideration of any right under, this Deed, including in each case legal costs and expenses (including in-house lawyers charged at their usual rates) on a full indemnity basis.

8. FURTHER ASSURANCES

Each party must take all steps, execute all documents and do everything reasonably required by any other party to give effect to any of the transactions contemplated by this Deed.

9. ASSIGNMENT

The Grantor may assign any of its rights under this Deed at any time, subject to the provisions of the Option Agreement.

10. NOTICES

- (a) Any notice, order, acceptance or other communication hereunder shall be in writing and signed and forwarded to the addresses specified herein or to such other addresses as may be substituted by written notice to the other party from the party wishing to alter its address.
- (b) Such notice, order, acceptance or other communication shall be deemed to be given and served:

- 1. where hand delivered, on the date of delivery;
- 2. where sent by ordinary prepaid post, two (2) Business Days after the time of posting;
- 3. where sent by facsimile, at the time recorded on the sender's transmitting machine;
- 4. where sent by email, when the sender's computer indicates that the message has been received,

provided always that if the time of dispatch or delivery (as the case may be) is after 5.00pm (local time) on a Business Day in the place to which the notice is sent, the notice shall be deemed to have been received at the commencement of business on the next such day in that place.

- (c) A party receiving such notice must, where requested by the first party giving the notice, provide written acknowledgement of receipt of such notice confirming the date of receipt.

11. ACKNOWLEDGEMENT BY GUARANTOR

The Guarantor confirms that:

- (a) he has not entered into this Deed in reliance on, or as a result of, any statement conduct of any kind of or on behalf of the Grantor (including any advice, warranty, representation or undertaking); and

- (b) the Grantor is not obliged to do anything (including disclosing anything or giving advice), except as expressly set out in the Option Agreement or in writing duly signing by or on behalf of the Grantor.

12. GOVERNING LAW AND JURISDICTION

This Deed is governed by the laws of Victoria. The Guarantor submits to the nonexclusive jurisdiction of courts exercising jurisdiction there.

13. COUNTERPARTS

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

14. DEED BINDING ON SIGNATORIES

This Deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

EXECUTED AS A DEED and dated the

2012

Signed sealed and delivered by the Guarantor in the presence of:

Witness

Guarantor

Print name

Print Guarantor name

Print address

Print Guarantor address

Date of signing: / /

Signed sealed and delivered by the Guarantor in the presence of:

Witness

Guarantor

Print name

Print Guarantor name

Print address

Print Guarantor address

Date of signing: / /

Signed sealed and delivered by the Guarantor in the presence of:

Witness

Guarantor

Print name

Print Guarantor name

Print address

Print Guarantor address

Date of signing: / /