

SOUTH WAIRARAPA DISTRICT COUNCIL

24 FEBRUARY 2016

AGENDA ITEM D10

LOCAL GOVERNMENT FUNDING AGENCY

Purpose of Report

To seek approval to sign various documents in relation to the Local Government Funding Agency.

Recommendations

Officers recommend that the Council:

1. *Receive the information.*
2. *Approve the Debenture Trust Deed with Trustees Executer's Ltd.*
3. *Approve the Security Transition Deed.*
4. *Approve the Accession deed to Multi Issuer Deed.*
5. *Approve the Accession Deed to Notes Subscription Agreement.*
6. *Note that SWDC will be a borrower only.*

1. Executive Summary

The Local Government Funding Agency (LGFA) is a body set up by local authorities to enable more effective borrowing arrangements to be accessed.

LGFA have reviewed our financial circumstances and have advised we are eligible to join, following execution of the requisite documents.

The required public consultation was undertaken during the 2012/22 Long Term Plan process.

This paper seeks those approvals.

2. Background

The New Zealand Local Government Funding Agency (LGFA) is a Council-Controlled Organisation (CCO) operating under the Local Government Act 2002.

LGFA specialises in financing the New Zealand local government sector, the primary purpose being to provide more efficient funding costs and

diversified funding sources for New Zealand local authorities. LGFA was established to raise debt on behalf of local authorities on terms that are more favourable to them than if they raised the debt directly.

LGFA governance structure comprises the New Zealand Government (20%) and thirty councils (80%), the LGFA Shareholders Council and the LGFA Board of Directors.

There are 47 local authorities borrowing through LGFA, this combined with those local authorities that have no debt mean that the vast majority of local authorities utilise LGFA offerings.

SWDC has not joined LGFA until now as the amount of borrowing was too low to exceed the cost / benefit threshold. We are now at a stage where it is worthwhile to access this facility.

3. Discussion

The following is an explanation of the documents that require execution.

3.1 Nature of relationship with LGFA

SWDC will be a borrower only from LGFA.

There are other options with regards to a local authority's relationship with LGFA, including becoming a "shareholding Council".

A shareholding member receives some minor additional benefits in terms of slightly lower borrowing costs and a return on their ownership stake of LGFA. Shareholding Councils can also borrow in excess of \$20M.

However the reporting and financial liabilities and obligations are much more onerous and this option is not recommended for SWDC.

In order for LGFA to be set up, councils around New Zealand had to accept that additional burden for the greater good.

3.2 Debenture Trust Deed (Appendix 1)

This allows SWDC to issue "Stock" and create a security over rates. The security is in favour of the Trustee.

The purpose of this Deed is that in theory, the Trustee could force SWDC to raise a rate to cover a default in loan repayment.

SWDC already has a similar Trust Deed with our current borrower, BNZ.

3.3 Security Transition Deed (Appendix 2)

This deed transfers the existing arrangements from the old BNZ deed of charge, to the new Trust Deed.

Effectively instead of having only one party to the Trust Deed (BNZ) multi parties can utilise the one deed issued in favour of Trustees Executors.

3.4 Accession Deed to Multi Issuer Deed (Appendix 3)

We need to “accede” (agree) to the terms and conditions of the “multi issuer deed”.

By signing this document, it means that LGFA has agreed that SWDC may accede to the “Multi Issuer Deed signed by LGFA i.e. join the same arrangements as the other local authorities under the Multi Issuer deed.

A multi issuer deed is one whereby there can be more than one issuer linked to a single “Deed”.

3.5 Accession Deed to Notes Subscription Agreement (Appendix 4)

This agreement means that the LGFA will allow SWDC to become a subscriber to the Notes Subscription agreement between LGFA and the various Local Authorities.

The operation of this agreement is that while we may draw down \$100, we only receive \$98.40. SWDC lends LGFA \$1.60, LGFA uses this “margin” to maintain an adequate (and required) equity buffer in its operations. LGFA pay interest on the \$1.60, and when the loan falls due we only repay \$98.40

3.6 Level of Borrowing through LGFA

It is uncommon for local authorities to borrow 100% of their portfolio through LGFA.

It is intended to transition as much as is prudent over time to LGFA, currently we have approximately 50% of our loan portfolio (of circa \$14.5M) on fixed term, breaking this would be uneconomic.

4. Risks

There is little additional risk associated with this arrangement. The only exposure is the 1.6% (or \$1.60 as exemplified above) that LGFA retains as an equity buffer. It is very unlikely this risk would manifest itself.

5. Conclusion

The introduction of LGFA into the market has resulted in healthy competition among local authority lenders.

LGFA will be used to an amount deemed prudent following analysis.

The introduction of LGFA into the market has reduced local authority borrowing costs across the board.

6. Appendices

Appendix 1 – Debenture Trust Deed

Appendix 2 – Security Transition Deed

Appendix 3 – Accession Deed to Multi Issuer Deed

Appendix 4 – Accession Deed to Notes Subscription Agreement

Contact Officer: Paul Crimp, Chief Executive Officer

Appendix 1 – Debenture Trust Deed

DEBENTURE TRUST DEED

between

SOUTH WAIRARAPA DISTRICT COUNCIL

and

TRUSTEES EXECUTORS LIMITED

 **Simpson Grierson**
Barristers & Solicitors
Auckland & Wellington, New Zealand
www.simpsongrierson.com

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FIRST SCHEDULE - Part I
FIRST SCHEDULE - Part II
FIRST SCHEDULE - Part III
FIRST SCHEDULE - Part IV

SECOND SCHEDULE
THIRD SCHEDULE
FOURTH SCHEDULE

THIS DEED dated the

day of

2016

BETWEEN SOUTH WAIRARAPA DISTRICT COUNCIL a Council duly constituted as a territorial authority under the Local Government Act 2002 (included in the term the **Council**)

AND TRUSTEES EXECUTORS LIMITED (the **Trustee**)

INTRODUCTION

- A.** The Council has the power, subject to the Act, to raise certain money or incur certain obligations from time to time in such amounts and upon such terms and conditions and for such of its lawful purposes as it considers appropriate by means of, or to be evidenced or secured by, stock to be constituted by this Deed.
- B.** The Trustee has agreed, at the request of the Council and for the consideration expressed or referred to in this Deed, to act as trustee under this Deed for the benefit of the Stockholders on the terms and conditions contained in this Deed.

WITNESSES AS FOLLOWS:

1. INTERPRETATION

In this Deed (including the introduction to this Deed) unless the context indicates otherwise the following provisions apply:

1.1 General:

1.1.1 Trust: This Deed shall be construed and shall take effect as a contract and declaration of trust made in New Zealand.

1.1.2 Money: All references to money in this Deed shall, unless the contrary is stated, be deemed to be references to New Zealand currency.

1.1.3 Conversion: Where, for any purpose under this Deed and where consistent with the Act, it is necessary or desirable to determine the equivalent in one currency of an amount in another currency, such equivalent shall be determined in such manner as the Council adopts and is acceptable to the Auditors having regard to prevailing commercial practices and to the policies in such regard adopted in the latest audited financial statements of the Council.

1.1.4 Calculation of foreign currency amounts: Notwithstanding clause 1.1.3, where all or any part of the nominal amount of Stock held by, or all or any part of the Secured Money owing to, a Stockholder is not denominated in New Zealand dollars:

- (a) For the purpose of the Second Schedule or calculating any person's share of any sum payable under this Deed, as the case may be, the Trustee shall be entitled to notionally convert the relevant part of the nominal amount or the Secured Money owed to or by any person, as the case may be, into New Zealand

dollars, that notional conversion to be made at the spot rate, as quoted to the Trustee by a Reference Bank, at which the Trustee is able to purchase New Zealand dollars with the actual currency of the relevant part of the nominal amount, or the relevant part of the Secured Money owed to or by that person, at the time at which that calculation is to be made, provided that:

- (i) such notional conversion shall not alter the amount owing to, or secured in favour of, such person; and
 - (ii) where a notional conversion is undertaken for the purposes of clause 15.1, the conversion shall be undertaken on the same date as the Trustee makes the distribution under that clause.
- (b) Following application of clause 15.1, for the purpose of distributing the amount available for distribution to the relevant Stockholder, the Trustee will convert the New Zealand dollar amount available to be distributed to a Stockholder to the relevant foreign currency in which the relevant part of the Secured Money is owing by reference to the applicable spot rate, as quoted to the Trustee by a Reference Bank for the purposes of clause 1.1.4(a)(ii) above.

1.2 Definitions:

"**Account Receivable**" has the same meaning as in the PPSA;

"**Act**" means the Local Government Act 2002;

"**Annual Plan**" means the report prepared and adopted by the Council under section 95 of the Act for each forthcoming financial year of the Council;

"**Annual Report**" means the report prepared and adopted by the Council under section 98 of the Act at the end of each financial year of the Council;

"**Auditor(s)**" means the person or persons for the time being holding the office of auditor of the Council (or any agent or delegate of such person or persons);

"**Bearer Stock**" means Stock issued in bearer form as provided for in clause 7.1;

"**Charged Assets**" means:

- (a) all rates from time to time set or assessed by the Council under the Rating Act, and all rates revenue in respect thereof;
- (b) each rate arising under section 115 of the Act in relation to any Secured Money and the rates revenue from each such rate;

- (c) the Proceeds of the rates, special rates or rates revenues described in paragraphs (a) and (b) above, but only to the extent to which such Proceeds constitute Accounts Receivable, Negotiable Instruments or Money (as the term "Money" is defined in the PPSA) arising directly from the collection of those rates, special rates or rates revenues,

but, for the avoidance of doubt, excludes any rates (or the Proceeds thereof) which may be collected by the Council on behalf of any other local authority;

"Chief Executive" means the Chief Executive of the Council appointed under section 42 of the Act from time to time, and includes a reference to any person to whom any right or obligation of such Chief Executive has lawfully been delegated;

"Class of Stock" means any category of Stock having substantially the same rights, privileges, limitations and conditions which, at any particular time for any particular purpose, constitute a separate class of Stock within the Stock, as determined by the Council;

"Class of Stockholders" means the Stockholders of a particular Class of Stock;

"Companies Act" means the Companies Act 1993, or in respect of a company not registered under that Act means the equivalent legislation applicable to that company;

"Date of Enforcement" means the date on which the security created by this Deed is enforced by the Trustee;

"Debenture Stock" means all Stock which is not Security Stock;

"Enforcement Event" means any of the events listed in clause 12.1;

"Extraordinary Resolution" has the meaning contained in the Second Schedule;

"Facility" means any loan, advance, accommodation, bill, stock or note issuance, acceptance, endorsement or discount, guarantee, indemnity, letter of credit, bond, note, stock, bill, exchange, swap, rate, or other financial facility, agreement, liability, obligation or arrangement which is lawfully entered into by the Council and in respect of which the money or other liabilities or obligations owing or which may become owing thereunder are, or are proposed to be, secured by Stock;

"financing statement" has the same meaning as in the PPSA;

"FMC Act" means the Financial Markets Conduct Act 2013;

"FMC Regulations" means the Financial Markets Conduct Regulations 2014;

"Financial Markets Supervisors Act" means the Financial Markets Supervisors Act 2011;

"Information and Meetings Act" means the Local Government Official Information and Meetings Act 1987;

"Lapsing Security" means any security interest in, or charge over, some or all of the Charged Assets existing prior to the date of this Deed:

- (a) that was granted in favour of Bank of New Zealand; and
- (b) that the Trustee is satisfied, in its discretion, that the Council will procure the release or discharge of;

"Long Term Plan" means the long term plan prepared and adopted by the Council under section 93 of the Act, as amended from time to time;

"Negotiable Instrument" has the same meaning as in the PPSA;

"NZX" means NZX Limited and includes its successors and assigns;

"NZX Rules" means the rules published by NZX as the "Main Board / Debt Market Listing Rules", as amended from time to time, or any rules published by NZX which replace those rules;

"Paying Agent" means Computershare Investor Services Limited, or such other or additional person who from time to time fulfils the role of paying agent for the purposes of the Registrar and Paying Agency Agreement and this Deed;

"PPSA" means the Personal Property Securities Act 1999;

"Principal" and **"Principal Money"** means, at any time:

- (a) in relation to Stock (other than Security Stock) the sum other than interest payable on redemption of the Stock inclusive of the premium (if any) of the Stock payable in accordance with the conditions of issue of that Stock;
- (b) in relation to Security Stock any amounts secured by that Security Stock which are not in the nature of interest on other amounts secured by that Security Stock;

"Priority Interest Amount" in relation to any Security Stock and the holder thereof, means the amount referred to as such in clause 6.3.1(b), unless otherwise agreed between the Council and the Trustee (including by agreeing wording in the relevant Stock Certificate);

"Priority Principal Amount" in relation to any Security Stock and the holder thereof, means the amount referred to as such in clause 6.3.1(a), unless otherwise agreed between the Council and the Trustee (including by agreeing wording in the relevant Stock Certificate);

"Priority Total Amount" in relation to any Security Stock and the holder thereof, means the aggregate of the Priority Principal Amount and the Priority Interest Amount in respect of that Security Stock;

"Proceeds" has the same meaning as in the PPSA;

"Rating Act" means the Local Government (Rating) Act 2002;

"Receiver" means a receiver or receiver and manager or manager of all or any part of the Charged Assets appointed by the Trustee under this Deed;

"Receiverships Act" means the Receiverships Act 1993;

"Reference Bank" means any one of ANZ National Bank Limited, Bank of New Zealand, ASB Bank Limited and Westpac New Zealand Limited;

"Register" means the register of Stock, or each such register, to be kept by the Registrar pursuant to clause 4;

"Registrar and Paying Agency Agreement" means the registrar and paying agency agreement dated in January 2016 between the Council, the Registrar and the Paying Agent, and includes a reference to such as may be amended, or to any other registrar and paying agency agreement entered into, to provide for more than one Register, and more than one Registrar or Paying Agent;

"Registered Address" means, in respect of a Stockholder, the address in New Zealand for the time being recorded in the Register;

"Registered Facsimile Number" means the facsimile number for the time being recorded in the Register;

"Registered Stock" means all Stock other than Bearer Stock;

"Registrar" means Computershare Investor Services Limited, or such other or additional person who from time to time fulfils the role of registrar for the purposes of the Registrar and Paying Agency Agreement and this Deed;

"Reporting Certificate" means a certificate substantially in the form as appears in the Fourth Schedule or in such other form as the Council and the Trustee may agree;

"Secured Money" means the principal and interest payable on, or in respect of, the Stock and, to the extent that such is lawfully entered into by the Council, all other money owing or payable to or at the direction of the Trustee or any Receiver or any Stockholder under this Deed or the terms of issue of any Stock;

"Secured Obligations" means the obligations of the Council under this Deed and any Stock, but excludes any obligation to pay or deliver any Secured Money;

"Security Stock" means Stock issued pursuant to and in accordance with clause 6.1.1;

"Security Stock Certificate" means a Stock Certificate in respect of Security Stock;

"Stock" means Security Stock, Bearer Stock or any secured indebtedness by whatever name called which in any case is lawfully entered into by the Council and is constituted and issued by the Council under, and in accordance with, this Deed and for the time being outstanding and uncanceled, or a specified portion thereof as the case may require;

"Stock Certificate" or **"Certificate"** means a certificate or other written acknowledgement in respect of Stock issued by the Council under

clauses 3.3, 3.8, or 3.10, or clause 7 evidencing (subject to the Register, in the case of Registered Stock, and the provisions of this Deed, including the conditions applicable to that Stock) that the person named therein is the holder of the amount of Stock stated therein and, in relation to any Stock in respect of which a Stock Certificate has not been issued, includes a reference to the Stock Certificate which would otherwise have been issued in respect of that Stock;

"Stock Issuance Certificate" means a certificate of the Chief Executive for the purposes of clause 3.1 substantially in the form as appears in the Third Schedule or in such other form as the Council and the Trustee may agree;

"Stockholders" or "Holders" means those persons from time to time and for the time being entered in the Register as the holders of Stock and includes their respective successors and personal representatives;

"Trust Deed" and **"this Deed"** means this trust deed (inclusive of its Schedules) as amended from time to time in accordance with the provisions of this trust deed and, except where inconsistent with the context, includes every other deed or other agreement collateral or supplemental to or varying this trust deed or any such collateral or supplemental deed or agreement; and

"Trustee" means the trustee or trustees for the time being holding office as trustee under this Deed.

1.3 Construction: Any reference to:

an **"agreement"** includes a deed and any other instrument or document recording rights and/or obligations, and includes a reference to such as modified, varied, supplemented, novated or substituted from time to time;

a **"business day"** means a day (other than a Saturday or a Sunday) on which registered banks (within the meaning of the Reserve Bank of New Zealand Act 1989) are open in Martinborough and Wellington for the transaction of general banking business;

a **"charge"** has the same meaning as in the Act, and includes a reference to a security interest (within the meaning of the PPSA);

a **"clause"** or **"Schedule"** is a reference to a clause or section of, or schedule to, this Deed;

a **"company"** means any company or body corporate wherever incorporated or domiciled;

"conditions" in respect of any Stock shall be to the conditions applicable to that Stock as referred to in clause 3.3.2 and, includes the further conditions set out in Part IV of the First Schedule (the **"further conditions"**);

the **"Council"** includes any delegate of the Council as referred to in clause 1.6;

"**default**" means a breach, failure to comply or failure to do, however caused, whether voluntary or involuntary and whether within or beyond the control of any person;

"**interest**" includes discounts and other payments in the nature of interest;

"**month**" means calendar month;

"**nominal amount**" in respect of Stock, has the meaning set out or referred to in the relevant Stock Certificate;

"**owing**" includes unpaid;

"**payment**" includes a reference to repayment;

"**person**" means an individual, company, body corporate, corporation, local authority, an association of persons whether corporate or not, a trust or a state or agency of a state whether of central government or local government (in any case, whether or not having separate legal personality);

"**right**" includes right, benefit, entitlement, authority, discretion, remedy or power;

"**supervisor**" has the meaning set out in the FMC Act;

"**tax(es)**" includes a present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature regardless of where or by whom imposed, levied, collected, withheld or assessed and includes interest, penalties, fines, costs, charges or expenses or other amounts relating to or arising in connection therewith;

"**the security created by this Deed**" means the security in favour of the Trustee created by or pursuant to this Deed or any deed or other agreement collateral or supplemental to or varying this Deed;

"**in writing**" and "**written**" include words written, printed, typewritten, lithographed or otherwise represented or reproduced in permanent visible form by any other means;

the sign "\$" and the word "**Dollars**" means New Zealand dollars;

a gender includes each other gender;

the singular includes the plural, and vice versa;

any legislation includes a modification or re-enactment of, legislation enacted in substitution for, or a regulation, order-in-council or other instrument from time to time issued or made under, that legislation;

something being done, includes a reference to it being done from time to time;

an example or an inclusion does not limit what else may be included;

a party to this Deed or any other agreement includes its successors or its permitted assignees or transferees; and

time means a reference to New Zealand time.

1.4 Headings: Headings and the table of contents are to be ignored in construing this Deed.

1.5 Trustee's Actions:

1.5.1 Decisions: Except to the extent the Trustee cannot by law do so or such action is in the opinion of the Trustee contrary to generally accepted prudent practice or is not in the interests of Stockholders, the Trustee shall act reasonably as regards the Council in respect of any consent, approval, discretion, consideration, decision, opinion, determination or action (collectively referred to in this clause 1.5 as a "**decision**") by it in respect of, or pursuant to, this Deed unless this Deed expressly provides for some other basis for the exercise of such decision by the Trustee.

1.5.2 Discretion: Subject to clause 1.5.1, and except to the extent otherwise expressly required by this Deed or by law, the Trustee may exercise any decision in respect of, or pursuant to, this Deed or any Stock in its own discretion.

1.5.3 Binding on Stockholders: Any action taken, or omitted to be taken, by the Trustee under or for the purposes of this Deed (or purportedly so) shall bind the Stockholders.

1.6 Council Powers: Subject to the Act, where this Deed confers any right or obligation on the Council, the right or obligation may be exercised under delegated authority from the Council by any committee or sub-committee, member or officer of the Council.

2. CONSTITUTION OF STOCK

2.1 Constitution of Stock:

2.1.1 Benefit of Deed: The Council may from time to time in accordance with the provisions of this Deed, and in compliance with the Act, create and issue Stock to, or for the benefit of, such persons, in such amounts (whether such amount be set or indeterminate at the time of issue) in such currencies on such terms and upon such conditions contained in this Deed or modified for the purposes of such Stock and at par or at a premium or at a discount and bearing such respective rate of interest (whether fixed, variable or determined by a stated method) or with or without interest and payable or redeemable at such respective times or periods or on demand as the Council may from time to time determine (but subject to any restrictions in that regard imposed by law).

2.1.2 Registration: The issue of Registered Stock will be effected and evidenced by particulars of the Stock being entered in the Register by the Registrar on the instructions of the Council.

2.1.3 Other Indebtedness: Without prejudice to the express provisions of this Deed relating to the issue of Stock generally, nothing in this Deed shall in any way restrict the right of the

Council, and the Council shall at all times be free (but subject to the Act), to undertake or issue obligations or indebtedness (including Stock) ranking subordinate to the indebtedness and obligations of the Council in respect of the Stock.

2.1.4 Modification: If any modification to this Deed, or any other documentation, consent or acknowledgement, is in the opinion of the Council necessary or desirable to permit, facilitate or give effect to any right referred to in clause 2.1.3 the Trustee is, subject to it being reasonably satisfied with the relevant documentation, authorised to concur with the Council in executing the same and any such concurrence shall be on behalf of, and shall bind, the Stockholders.

2.2 Ranking: To the fullest extent permitted by law, the Stock and the Secured Money secured pursuant thereto shall, subject to the provisions of clause 6, as to the security created by this Deed rank *pari passu* as between themselves as to payment of Secured Money even though it and/or the indebtedness forming part of the Secured Money is or was, created or issued at different dates or at par or at a premium or at a discount and carries interest at different rates and matures or is payable or redeemable at different times or on demand or in different currencies or with, or without the knowledge of any other Stockholder.

2.3 Payment of Brokerage or Commission: The Council shall be at liberty to pay a commission, a procuration, application or subscription fee or brokerage to any person for subscribing, underwriting the subscription of, or obtaining subscriptions for, any Stock.

2.4 Redemption of Stock:

2.4.1 Redemption: The Council may at any time, and from time to time, redeem any Stock by purchase either on the market or by private treaty.

2.4.2 Related Persons: No person in, or in respect of, which the Council has an interest shall be precluded from at any time purchasing, re-purchasing, subscribing for, acquiring, holding, selling or otherwise disposing of, any Stock.

2.4.3 Surrender: Security Stock may at any time be surrendered in whole or in part by the holder thereof, and upon surrender the Council shall cancel such Security Stock.

2.4.4 Required Surrender: The Council may require any Stockholder to surrender its Security Stock if the Council has no indebtedness (actual or contingent) to the Stockholder which is secured by that Security Stock, and no obligation to allow the Council to incur any indebtedness to it which would be secured by that Security Stock at any future time.

3. ISSUE OF STOCK

3.1 Stock Issuance Certificate:

3.1.1 Precondition: The Council shall not at any time issue any Stock until a copy of a Stock Issuance Certificate in respect of the issue of that Stock has been delivered to the Trustee.

- 3.1.2 Suspension:** The Council shall not issue any Stock by reference to a Stock Issuance Certificate at any time after the Council is required to give a notice to the Trustee pursuant to clause 10.1.3 in respect of that certificate, and while such notice is operative.
- 3.2 Compliance with Acts Prior to Issue:** The Council shall comply with any applicable provisions of the Act or the FMC Act prior to the issue of any Stock pursuant to a regulated offer under the FMC Act, and in any case the Council shall not issue any Stock pursuant to a regulated offer under the FMC Act unless:
- 3.2.1 Advice to Trustee:** it has first advised the Trustee;
- 3.2.2 Remuneration:** the Trustee and the Council have reviewed and agreed upon the remuneration payable to the Trustee under clause 11.2 for the issue of that Stock; and
- 3.2.3 Supplemental deed:** the Trustee and the Council have made such modifications to the provisions of this Deed, and such additional provisions, as are deemed necessary or desirable by the Council and the Trustee for compliance in all respects with the Act or the FMC Act as required.
- 3.3 Stock Certificates:**
- 3.3.1 Issue:** The Council shall, subject to the conditions applicable to the Stock, issue:
- (a) to, or for the account of, every Stockholder (other than a Holder of Security Stock, Bearer Stock or Stock which is repayable in a currency other than Dollars) upon request one or more Stock Certificates in, or to the effect of, the form set out in Part I of the First Schedule or in such other form as is appropriate to reflect the terms of the relevant Stock;
 - (b) to, or for the account of, each Holder of Security Stock upon request one or more Security Stock Certificates in, or to the effect of, the form set out in either Part II or Part III of the First Schedule or in such other form as is appropriate to reflect the terms of the relevant Security Stock;
 - (c) (in such circumstances, if any, as the Council is entitled to issue Stock which is repayable in a currency other than Dollars) to, or for the account of, each Holder of Stock which is repayable in a currency other than Dollars upon request one or more Stock Certificates in such form as is appropriate to reflect the terms of the relevant Stock.
- 3.3.2 Terms of Issue:** The Stock (whether or not represented by a Stock Certificate) shall be, and be deemed to be, held with the benefit of and subject to the provisions of this Deed, and the terms of the Stock shall include:

- (a) those terms entered in the Register in respect of such Stock; and
- (b) those terms set out in any Stock Certificate issued in respect of such Stock, except to the extent that they:
 - (i) conflict with the terms entered in the Register; or
 - (ii) conflict with the form of Stock Certificate set out in Part I, II or III (as applicable) of the First Schedule (including the conditions attached to those forms and the further conditions set out in Part IV of the First Schedule) (**Stock Certificate Form**), unless such conflict has been agreed to by the Stockholder and the Council; and
- (c) those terms set out in the relevant Stock Certificate Form, as amended by agreement with the Stockholder (and, for the avoidance of doubt, if a Stock Certificate is issued in a form agreed with the Stockholder, that Stock Certificate shall amend the relevant Stock Certificate Form for that Stock); and
- (d) any further terms (including those stipulated in any application form or other issuing or offer documentation in respect of the Stock) as may be required by the Council and approved by the Trustee,

provided that:

- (e) notwithstanding any agreement between the Council and the relevant Stockholder contemplated by the provisions of paragraphs (b)(ii) and (c) above, no term of any Stock which conflicts with an express term of this Deed shall be effective unless agreed to by the Trustee or paragraph (f) applies; and
- (f) any change to a Stock Certificate Form agreed to by the Council and/or the relevant Stockholder but not the Trustee will only be effective to the extent that it is, in the Council's reasonable opinion:
 - (i) required to correct a manifest error or omission, or is of a minor, formal or technical nature; or
 - (ii) required to comply with, or as a result of the coming into effect of, any legislation.

Those provisions and terms, or such of them as are applicable to the respective Stock, shall be binding on the Council, the Trustee and, by their acceptance of the Stock, the relevant Stockholders and all persons claiming through them respectively, each of whom shall be deemed to have notice thereof.

- 3.3.3 Execution:** Stock Certificates shall be executed by the Council either by the Chief Executive on behalf of the Council or in such other manner (including by way of facsimile execution) as is duly authorised by the Council.
- 3.3.4 Passing of Title:** Notwithstanding anything to the contrary contained or implied in this Deed, title to Stock (other than Bearer Stock) shall pass only upon registration by the Registrar of the transfer in compliance with this Deed and the conditions applicable to that Stock, and no dealing with any Stock Certificate (other than in respect of Bearer Stock) shall operate to transfer or otherwise affect title to the Stock to which it relates.
- 3.4 Validity:** No Stockholder, nor the Trustee, shall be concerned or obliged to enquire whether any Stock has been issued in contravention of any provision of this Deed nor, subject to section 119(2) of the Act, shall the validity of any Stock be affected by knowledge of such contravention.
- 3.5 Deemed Validity:** Subject to the Act and to any other limitations arising by law, all Stock issued for valuable consideration, the Stock Certificate for which, or the entry on the Register in respect of which, or other evidence indicates that it has been issued or was intended to be issued under this Deed, shall (without prejudice to the right of the Council to correct any error) be validly issued and (in the case of Debenture Stock) constituted by this Deed and entitled to the benefit of the provisions of this Deed even though it may subsequently be determined that the issue of such Stock was in breach of any provision of this Deed, but without prejudice to the Trustee's rights under this Deed against the Council in relation to such breach.
- 3.6 Exclusion of Interests:** The Stockholders are to be regarded as the beneficial owners of the Stock registered in their names respectively, and in the case of Bearer Stock held by them respectively, and are to be regarded as exclusively entitled thereto, and all persons and the Council may act accordingly. The Registrar shall not, except as provided in the conditions applicable to the Stock or as ordered by a court of competent jurisdiction, be bound to enter in the Register or recognise any trust, equity, right, title, interest (including security interest) or claim affecting the ownership of any Stock or the indebtedness represented thereby.
- 3.7 Limitation on Enforcement:** No Stockholder shall be entitled to enforce any rights under this Deed or in respect of any Stock or otherwise in respect of any Secured Money directly against the Council other than if the Trustee wrongly fails to enforce such rights after having become bound to do so in accordance with the provisions of this Deed.
- 3.8 Replacement:** The Council may with the consent of, or at the request of, the Stockholder concerned execute and deliver to that Stockholder:
- 3.8.1 Loss:** (subject to provision to the Council of such evidence and indemnities as it may require) a Stock Certificate in replacement of a lost, destroyed or damaged Stock Certificate;
- 3.8.2 Correction:** a Stock Certificate in replacement of any Stock Certificate issued in an incorrect form or for an incorrect amount or containing incorrect terms or conditions;

- 3.8.3 Substitution:** several Stock Certificates in substitution for one Stock Certificate, or vice versa;
- 3.8.4 Replacement:** a Stock Certificate in replacement for a Stock Certificate cancelled in error where the Stock evidenced thereby has not been purchased or redeemed;
- 3.8.5 Changed Indebtedness:** where the indebtedness or other obligation evidenced or secured by a Security Stock Certificate has been repaid or otherwise discharged in part, a replacement Stock Certificate for a lesser nominal amount than the original Stock Certificate; and
- 3.8.6 Change of Name:** (subject to provision to the Council of proper proof of the relevant change of name) a Stock Certificate to record the change of name of any Stockholder,

but, except for the purposes of correcting an error, nothing contained in this clause shall permit the Council to alter the terms of issue upon which the Stock evidenced by the original Stock Certificate was issued or to increase the amount of Stock on issue or authorise an alteration to the identity of the Stockholder.

- 3.9 Alteration:** The Council may at any time with the prior written approval of the Trustee (and subject to any conditions which the Trustee may impose) and (subject to clause 16) the Stockholder concerned, alter any of the terms and conditions of any Stock which has been issued, including:

- 3.9.1 Redemptions:** accelerate the redemption or extend the redemption date of any Stock; or
- 3.9.2 Interest:** alter the rate of interest payable on any Stock; or
- 3.9.3 Premium:** agree to the payment of a premium on the redemption of any Stock; or
- 3.9.4 Alteration:** alter (by addition, deletion or amendment) any of the other terms or conditions applicable to any Stock,

but so that no such acceleration, extension, alteration, agreement or payment or any other alteration is inconsistent with the provisions of this Deed or the Act.

- 3.10 Register:** Any acceleration, extension, alteration, agreement or payment or any other alteration of any terms and conditions of any Stock shall be recorded in the Register in respect of the Stock affected and the Council may issue one or more replacement Stock Certificates in respect of such Stock embodying the terms and conditions of any such acceleration, extension, alteration, agreement or payment or any other alteration.

- 3.11 Payment of Instalments:**

- 3.11.1 Non-Payment:** The terms of issue of any Stock may provide such Stock is to be paid for by instalments. If the amount of any instalment is not duly paid to the Council, the Council at any time thereafter before such instalment is paid but only after

giving to the Stockholder in default not less than 14 days' notice of its intention so to do may either:

- (a) forfeit all instalments previously paid (except to the extent that such would constitute a penalty, and subject to clause 3.11.2) and cancel the allotment of the Stock in question, or reissue it; or
- (b) charge and sue for the recovery of such unpaid instalment and charge and sue for the payment of interest thereon at the rate of three percent (3%) per annum above the rate payable on the Stock concerned from the date that such instalment became due until the date it is paid.

3.11.2 Cancellation: A statutory declaration by an officer of the Council that the allotment of Stock has been cancelled on the date stated in the declaration shall be conclusive evidence of the facts therein as against all persons claiming to be entitled to such Stock. If the Council cancels the allotment of such Stock the Council shall refund to the Stockholder concerned the instalments which the Stockholder had paid less the expenses of the Council in relation to the cancellation, but if the Stock is reissued the Council shall apply the proceeds of reissue first in payment of any expenses of reissue and next in satisfaction of the money due to the Council by the Stockholder concerned in respect of such Stock and the balance (if any) shall be paid to that Stockholder.

4. REGISTER OF STOCK

4.1 Register: The Council shall take all reasonable steps to procure that the Registrar establishes and maintains, in accordance with the Registrar and Paying Agency Agreement and all applicable laws and this Deed, a separate Register of Stock to be kept at such place in New Zealand as the Council and the Registrar may from time to time agree.

4.2 Provisions as to Register: In respect of the Register:

4.2.1 Details: the following details shall be entered in the Register in respect of Stock:

- (a) the principal amount of the Stock for the time being issued and outstanding (which, in the case of Security Stock, shall be its nominal amount);
- (b) the date or dates of payment for Stock (when applicable);
- (c) the rate of interest applicable;
- (d) when interest is payable;
- (e) the redemption date;
- (f) the number and date of each Stock Certificate (if any);

- (g) (except for Bearer Stock) all subsequent transfers or changes of ownership of Stock;
- (h) (except for Bearer Stock) the names and addresses of the Stockholders and the date at which such names are entered on the Register;
- (i) where Stock is no longer outstanding, particulars of its redemption, purchase, cancellation or forfeiture by the Council;
- (j) any other additional matters to be entered in the Register in accordance with conditions required by the terms of any particular issue of Stock or by law; and
- (k) any other particulars as may be required by the Council, the Registrar or the Paying Agent as agreed to by the Council and the Registrar;

4.2.2 Security Stock: any Security Stock shall be identified as such in the Register and the details set out in paragraphs 4.2.1(b), 4.2.1(c), 4.2.1(d) and 4.2.1(e) will not be required;

4.2.3 Change of Details: except in the case of Bearer Stock, any change of name or address of any Stockholder or any change in any other information required to be inserted in the Register in respect of any Stockholder shall forthwith be notified to the Registrar in writing by the Holder, or if a joint holding by all the joint Holders, and the Register shall then be altered accordingly;

4.2.4 Replacement/Exchanges: there shall be entered in the Register details of any replacement Stock Certificates issued pursuant to clause 3.8;

4.2.5 Inspection: provided the Register is not closed, the Trustee, any Receiver and any Stockholder (or any person authorised in writing by any of such persons or any other person entitled by law) shall be at liberty at all reasonable times and upon giving reasonable notice during office hours to inspect the Register (but in the case of a Stockholder or any person authorised by a Stockholder, only to inspect the entries in the Register relating to that Stockholder) and (where required by the Registrar, except in the case of the Trustee or a Receiver, upon payment of a reasonable fee) to take copies of and extracts from such entries in the Register as that person is entitled to inspect;

4.2.6 Closure: subject to any applicable laws, the Council or the Registrar may from time to time, subject to the conditions relating to any particular issue of Stock, close the Register for any period or periods not exceeding 30 days in any one year;

4.2.7 Statutory Requirements: the Council shall use all reasonable endeavours to ensure that the Registrar complies with all statutory requirements relating to the keeping of the Register and the details to be entered therein;

- 4.2.8 Auditing:** the Register shall be kept and audited to the satisfaction of the Trustee annually and (if applicable) as required by the FMC Act, or upon request in writing by the Trustee (which request shall only be made when the Trustee considers upon reasonable grounds that special circumstances relating to the maintenance of the Register warrant an audit, and so certifies in writing to the Council and the Registrar); and
- 4.2.9 Evidence:** the Register shall, in the absence of manifest error, be conclusive evidence of the matters entered therein.
- 4.3 Form:** The Register, Registered Stock, or any Stock Certificate in respect of Registered Stock, may be kept in book form, or in the form of a paper or card record, or by computer or any device by means of which information is recorded or stored. If the Register or any such Stock or Stock Certificate is kept by computer or any such device:
- 4.3.1 Deemed Entry:** the recording or storing of any information therein shall be deemed to be the entry thereof in the Register or in respect of the Stock or Stock Certificate; and
- 4.3.2 Deemed Extract:** any material subsequently derived from information so recorded or stored shall be deemed to be an extract from the Register or the Stock or Stock Certificate, as the case may be.

5. INDEMNITY BY STOCKHOLDER

- 5.1 Indemnity:** Whenever, in respect of any Stock, in consequence of:
- 5.1.1 Death, Liquidation:** the death, winding up or liquidation of the Holder of such Stock;
- 5.1.2 Taxes:** the non-payment of any income, or other, tax payable by or in respect of the Holder of such Stock;
- 5.1.3 Duties:** the non-payment of any estate, stamp or other duty by the Holder or personal representatives or successors of the Holder of such Stock;
- 5.1.4 Breach:** non-compliance by the Holder of such Stock with the provisions of the FMC Act, or any other law, or the provisions of this Deed (including the terms and conditions applicable to such Stock in respect of the offering, sale and transferring of Stock); or
- 5.1.5 Other:** any other act of the Holder of such Stock or thing referable to the Holder of such Stock,

there shall by law be imposed any immediate or possible liability on the Council and/or the Trustee under or in respect of the FMC Act or any other law or to make any payment to the New Zealand Government or any taxation authority, the Council and/or, as the case may be, the Trustee shall in respect of such liability be indemnified (subject to section 105 of the FMC Act) by the Holder of such Stock, the personal representatives or estate, or out of the assets, or by the successors, of the Holder of such Stock.

- 5.2 Recovery of Sums Paid:** Any money paid, or losses, damages, costs, fines or claims incurred, by the Council and/or, as the case may be, the Trustee in respect of any liability described in clause 5.1 may be recovered by action from the Holder of such Stock or such Holder's personal representatives or successors or estate or out of relevant assets as a debt due to the Council and/or, as the case may be, the Trustee.
- 5.3 No Prejudice to Rights:** Nothing in this clause 5 shall prejudice or affect any right which any law may confer or purport to confer on the Council and/or, as the case may be, the Trustee, and as between the Council and/or, as the case may be, the Trustee and every Stockholder or the personal representatives, successors, estate or assets of any Stockholder (wherever constituted or situated) any right which such law confers on the Council and/or, as the case may be, the Trustee shall be enforceable by the Council and/or, as the case may be, the Trustee.

6. SECURITY STOCK PROVISIONS

6.1 Issue:

- 6.1.1 Terms:** Stock issued in accordance with this Deed may be issued as Security Stock which shall be issued as a continuing security for the payment on demand or otherwise of any present or future debts, liabilities, advances and other accommodation or obligations of whatever nature, and whether or not pursuant to any one or more Facilities, of or to or for or on behalf of or at the request of the Council (whether by way of indemnity, guarantee or otherwise) generally or as mentioned in the relevant Security Stock Certificate (if one is issued), but in any case, only to the extent that such is lawfully entered into by the Council.
- 6.1.2 Nominal Amount:** Any Security Stock Certificate which is issued shall state a nominal amount, which will not limit the amount secured, but will be relevant for the purposes of determining priority in accordance with clause 6.3.
- 6.1.3 Transferability:** Security Stock shall be transferable to the same extent as the debts, liabilities, advances or other accommodation or obligations to which it relates.

6.2 Validity of Security Stock: Security Stock issued pursuant to clause 6.1.1 shall for all purposes and on all occasions be deemed to be validly issued to each Holder thereof as security for the payment of the accommodation or obligations referred to in clause 6.1.1 (but subject to clause 6.3), provided that if the amount of such accommodation or obligations is less than the nominal amount of such Security Stock held then such Holder shall not be liable solely by virtue of that fact to make any payment to the Council or the Trustee in respect of the Security Stock held by it or be obliged to make any further advance or afford any further accommodation to the Council.

6.3 Priority of Security Stock: Stock issued as Security Stock pursuant to clause 6.1.1 shall at all times, except where otherwise agreed between the Council and the Trustee (including by agreeing wording in the relevant Stock Certificate), be held upon and subject to the following conditions (which shall, or shall be deemed to, be mentioned,

summarised or referred to in every Security Stock Certificate, with the necessary amendments):

6.3.1 Priority Total Amount: notwithstanding anything to the contrary contained or implied in this Deed, in any distribution to the Stockholders pursuant to the provisions of clause 15 the Holder shall be entitled to payment *pari passu* with other Stockholders under clause 15.1.6 in respect of not more than that Stockholder's Priority Total Amount,

PROVIDED THAT:

(a) **Priority Principal Amount:** the principal in respect of which a Stockholder shall be entitled to payment *pari passu* with other Stockholders under clause 15.1.6 shall be limited at any date (the **relevant date**) to the lesser of:

(i) the aggregate amount (as finally determined) of all liabilities, advances, and other accommodation or obligations, in respect of which the Security Stock was issued (as determined in accordance with clause 6.1.1), including capitalised interest and any fees, commissions or expenses, owing by the Council to the Holder of the Security Stock at the relevant date but excluding any uncapitalised interest owing at such date; and

(ii) the nominal amount of that Security Stock held,

(which lesser amount is, except where otherwise agreed between the Council and the Trustee (including by agreeing wording in the relevant Stock Certificate), the **Priority Principal Amount**);

(b) **Priority Interest Amount:** the interest in respect of which a Stockholder shall be entitled to payment *pari passu* with other Stockholders under clause 15.1.6 shall be all interest (except to the extent that it is capitalised into the Priority Principal Amount) payable to it on principal secured by that Stock (up to the Priority Principal Amount) but excluding any interest which has been due and owing since a date more than six months prior to the Date of Enforcement (which amount is, except where otherwise agreed between the Council and the Trustee (including by agreeing wording in the relevant Stock Certificate) the **Priority Interest Amount**);

(c) **Excess:** all amounts owing to a Stockholder in respect of which Security Stock was issued but which do not form a part of the Priority Total Amount shall rank for payment subsequent to the Priority Total Amounts of other Stockholders, but *pari passu* with

any amounts payable under this clause 6.3.1(c) in respect of other Stockholders.

6.4 Selection of Priority Principal Amount: If the amount referred to in clause 6.3.1(a)(i) exceeds the amount referred to in clause 6.3.1(a)(ii), the Stockholder may, in its sole discretion, determine which of the liabilities, advances, accommodation and obligations secured by the Security Stock shall be included as the Priority Principal Amount, and the interest referred to in clause 6.3.1(b) will be calculated on this basis.

6.5 Issue of Second Ranking Stock: Stock may be issued on a second-ranking basis. At the request of the Council the Trustee may, without the consent of the Stockholders, concur with the Council in making any variation or addition to this Deed, the conditions or the form of the Stock Certificates (including, if desirable, approving a new form of Stock Certificate and new conditions applicable to second-ranking Stock) as the Trustee and the Council may agree in order to facilitate the issuing of second-ranking Stock or make provision for outstanding Stock to be in second-ranking form.

7. BEARER STOCK

7.1 Issue: Stock may be issued in bearer form. At the request of the Council the Trustee may, without the consent of the Stockholders, concur with the Council in making any variation or addition to this Deed, the conditions or the form of the Stock Certificates (including, if desirable, approving a new form of Stock Certificate and new conditions applicable to Bearer Stock) as the Trustee and the Council may agree in order to facilitate the issuing of Bearer Stock or make provision for outstanding Stock to be in bearer form.

7.2 Trustee's Entitlements re Bearer Stock:

7.2.1 Bearer as Holder: Whenever in this Deed the Trustee is required or entitled to exercise a trust, duty or right by reference to the interests of Stockholders, the Trustee shall be entitled to assume that in relation to Bearer Stock the bearer of the Stock Certificate in respect of the Bearer Stock is the Holder of such Bearer Stock and that each Holder thereof is also the holder of all coupons or other instruments relating to interest pertaining to such Bearer Stock.

7.2.2 No Liability: The Trustee shall not be liable to the Council or any Stockholder or any holder of any such coupons or other instruments by reason of having accepted as valid or not having rejected any Stock Certificate in respect of the Bearer Stock or coupon or other such instrument purporting to be such and subsequently found to be not authentic.

8. ACKNOWLEDGEMENT OF INDEBTEDNESS AND COVENANT TO PAY

8.1 Acknowledgement of Indebtedness and Covenant to Pay:

8.1.1 Acknowledgement: The Council acknowledges its indebtedness to the Trustee, on behalf of the Stockholders, in respect of the Principal Money outstanding from time to time in respect of the Stock and interest owing thereon and any other sums forming part of the Secured Money represented by such

Stock, and covenants with the Trustee to pay such indebtedness to the Trustee when due, in the currency and manner in which it is payable and, at such place as the Trustee directs by notice in writing.

8.1.2 Payment to Stockholders: Notwithstanding the provisions of clause 8.1.1, the Council shall, unless and until requested otherwise by the Trustee or prevented by law, pay all Principal Money and interest in respect of the Stock and any other sums forming part of the Secured Money represented by such Stock to the Stockholders in accordance with the terms and conditions of issue of the Stock. Each such payment shall operate as payment to the Trustee in satisfaction, to the extent of the payment, of the indebtedness of the Council acknowledged in this clause 8.1.

8.1.3 First Payee: Notwithstanding the provisions of clause 8.1.2, if by the terms of issue of any Stock the first of any payment of interest thereon is payable only to the person to whom such Stock was issued (whether or not such person is the registered Holder of such Stock at the date of the first payment of interest), then payment of interest to such person in accordance with the said terms of issue shall operate in satisfaction of the obligations of the Council in regard to such payment of interest under clause 8.1.2.

8.1.4 Satisfaction: Notwithstanding any of the provisions of this Deed or of any Stock or Stock Certificate, any payment by the Council from time to time in respect of the Stock made to the Trustee shall, to the extent of such payment, satisfy all obligations of the Council to make such payment.

8.2 Unclaimed Payments:

8.2.1 Treatment: If any payment made to any Stockholder pursuant to clause 8.1.2 or 8.1.3 at the Stockholder's last Registered Address is returned unclaimed and remains unclaimed for a period of three months, then the amount of that payment shall (unless notice of a change of Registered Address has in the meantime been received by the Council or the Registrar) be held by, or on behalf of, the Council in a separate trust account designated for such purpose but without any liability to invest the same or to pay interest thereon.

8.2.2 Entitlement: The person or persons who are entitled to those payments shall be entitled to payment upon providing to the satisfaction of the Council sufficient evidence of such entitlement, and details of any such payment so made shall be given to the Trustee. Any money unclaimed for six years or longer shall be forfeited in accordance with the Unclaimed Moneys Act 1971.

8.3 Right to Deduct Withholding and Other Taxes:

8.3.1 Deduction: The Council, or the Paying Agent on behalf of the Council, may (subject to any specific conditions to the contrary relating to any particular issue of Stock or unless and except to the extent that a Stockholder has provided to the Council

evidence satisfactory to the Council that such Stockholder is entitled to the benefit of any exemption therefrom) deduct from any amount payable to, or for the benefit of, a Stockholder (including a Stockholder of Bearer Stock) the amount of any withholding, or other, tax required to be deducted in respect of that amount under the laws of New Zealand. Where any deduction has been made and the amount of it accounted for by the Council, or the Paying Agent on behalf of the Council, to the Commissioner of Inland Revenue or other appropriate authority and the balance of the amount payable has been paid to, or for the benefit of, the Stockholder concerned, the full amount payable to such Stockholder shall be deemed to have been duly paid and satisfied by the Council.

8.3.2 Approved Issuer Levy: Stockholders to whom such is relevant may in writing request the Council, or the Paying Agent on behalf of the Council, to advise the basis (if any), or may otherwise respond to any indication by the Council, or the Paying Agent on behalf of the Council, from time to time of the basis upon which, the Council, at no cost to itself, is prepared from time to time to deduct and pay an approved issuer levy (within the meaning of section 86F of the Stamp and Cheque Duties Act 1971) as an alternative to the exercise by the Council of its rights as referred to in clause 8.3.1.

9. CHARGES BY COUNCIL

9.1 Charge:

9.1.1 Charged Assets: To secure the due payment of the Secured Money and its performance of and compliance with the Secured Obligations, the Council charges, and grants a security interest (within the meaning, and for the purposes, of the PPSA), in favour of the Trustee on behalf of the Stockholders, all its right, title and interest (present and future, legal and equitable) in and to its Charged Assets with the intent that the Charged Assets shall, to the fullest extent permitted by law, be security for the due payment of all of the Secured Money and the performance of and compliance with the Secured Obligations.

9.1.2 Continuing Security: Each such charge and security interest by the Council is and shall be a continuing security for the payment of the Secured Money and the performance of and compliance with the Secured Obligations, in each case as provided for in clause 9.1.1.

9.2 Floating Charge: Each charge by the Council pursuant to clause 9.1 as regards its Charged Assets (to the extent that it is not a security interest under the PPSA) is a floating charge, and in either case until the Date of Enforcement (upon which date such charge shall become fixed in respect of such of the Charged Assets as are subject to action by the Trustee pursuant to clauses 13.1.2, 13.1.3 or 14.1) the Council shall be in no way hindered or prevented from dealing with (whether or not in the ordinary course of its activities) all or any part of its Charged Assets and the Trustee shall, at the request of the Council, execute and deliver all documents which may reasonably be necessary or desirable to permit such dealing by the Council.

9.3 First Charge: Each charge by the Council pursuant to clause 9.1 is, subject to any prior charge created pursuant to clause 9.4, a first ranking charge.

9.4 Other Charges: The Council covenants with the Trustee that, without the prior written consent of the Trustee, it will not, for so long as any Stock is outstanding, create, allow to come into existence or permit to subsist any charge over all or any part of its Charged Assets ranking:

9.4.1 Competing: in priority to, or pari passu with, the charges in favour of the Trustee under this Deed;

9.4.2 Subsequent: after the charges in favour of the Trustee created under this Deed, unless by the specific provisions of such charge (and, if considered necessary by the Trustee, by a separate priority agreement) the priority thereover of the said charges in favour of the Trustee as a continuing security is expressly reserved to the reasonable satisfaction of the Trustee,

except that the Council may permit a Lapsing Security to subsist until the date 30 days after the date of this Deed.

9.5 Further Assurance:

9.5.1 Assurances: The Council shall, to the extent permitted by law, execute and do all registrations, assurances and things which the Trustee may reasonably require for perfecting the security intended to be created by this Deed. Without limiting the foregoing, the Council shall, to the extent permitted by law, do all things and provide all information which the Trustee reasonably considers is desirable, in order:

- (a) to perfect, preserve or otherwise protect the Charged Assets or the security intended to be created under and by this Deed, and the priority of that security as contemplated by this Deed;
- (b) for the Trustee to register and maintain (including to renew before expiry) one or more financing statements in relation to the security interest in the Charged Assets created or provided for by this Deed;
- (c) to remove any financing statement which is registered against the Council in relation to any security which is not permitted by this Deed or otherwise consented to by the Trustee in writing.

9.5.2 Realisation: The Council shall, to the extent permitted by law, from time to time and at all times after the Date of Enforcement execute and do all registrations, assurances and such things (including, without limitation, in respect of the assessing of rates once set) which the Trustee may reasonably require for taking possession of the Charged Assets and facilitating the realisation of the Charged Assets and for exercising all the trusts and rights conferred on the Trustee or any Receiver by this Deed.

9.5.3 Execution: Without limiting the generality of clause 9.5.1, the Council shall, to the extent permitted by law following the Date of Enforcement, execute all mortgages, transfers, conveyances, assignments and assurances of the Charged Assets whether to the Trustee or its nominees and shall, to the extent permitted by law, perform or cause to be performed all acts and things requisite or reasonably desirable according to law for the purpose of giving effect to the carrying out or exercise of any of the said trusts and rights and shall, to the extent permitted by law, give all notices, orders and directions which the Trustee may reasonably consider expedient.

9.6 Attachment not Delayed: Any security interest created by this Deed to which the PPSA applies shall attach, in the case of:

9.6.1 Present: any present Charged Assets, from when the Council first signs or assents to this Deed in one of the ways specified in section 36(1)(b) of the PPSA; or

9.6.2 After-Acquired: any after-acquired Charged Assets, from when the Council acquires any rights in those assets.

The Council acknowledges and agrees that there has been no agreement between the Council and the Trustee that the attachment of any security interest to which the PPSA applies shall be at a time other than that provided in this clause.

9.7 Quiet Enjoyment: Subject to the provisions of this Deed and to the charges upon the Charged Assets contained in this Deed, the Trustee and the Stockholders shall until the Date of Enforcement permit the Council to hold and enjoy the Charged Assets and all other assets and to receive and apply as it thinks fit all income and Proceeds arising from the Charged Assets and to carry on with the Charged Assets any of its activities.

10. COVENANTS BY COUNCIL

10.1 Continuing Covenants: The Council covenants with the Trustee that it shall, subject to the Act and to its rights to withhold information pursuant to the Information and Meetings Act, at all times at which any Stock is outstanding, except as otherwise permitted by the Trustee:

10.1.1 Comply with Act: duly comply with all the requirements of the Act with respect to the keeping and filing of reports, accounts and statements and registration of charges (including this Deed);

10.1.2 Records: procure that the financial statements (within the meaning of clause 29 of Schedule 10 of the Act) and other records of the Council are audited in accordance with any statutory requirements and are (subject to section 40D(4) of the Receiverships Act) at all reasonable times (whether kept at its principal office or any other place or places in New Zealand) open for inspection by the Trustee and any Receiver, or any person properly appointed by the Trustee or the Receiver and that where the FMC Act applies those records will be retained by the Council for a period of at least seven years after the date

on which they are made or the date of completion of the transaction to which they relate (whichever is the later);

10.1.3 Notice of Defective Stock Issuance Certificate: forthwith give notice in writing to the Trustee if any event occurs or any matter or thing comes to the notice of the Council which would cause any current Stock Issuance Certificate to be materially defective;

10.1.4 Compliance with FMC Act: duly comply with the provisions of the FMC Act so far as they may be applicable to the issue of any Stock, and prior to the issue of any product disclosure statement as is required by the FMC Act in respect of any Stock forward a draft copy thereof to the Trustee for its approval and an advance copy of any register entry information under the FMC Act in respect of any Stock the subject of a regulated offer under the FMC Act;

10.1.5 Details of Security Stock: whenever requested by the Trustee deliver to the Trustee within ten business days from the date of such request being received by the Council a certificate as to the amount owing in respect of Security Stock as known to the Council;

10.1.6 Notification of Enforcement Event: notify the Trustee immediately in writing of the occurrence of any Enforcement Event giving full details of any action that has been taken (or is to be taken) as a result; and

10.1.7 Refund Trustee for Expenditure: permit the Trustee or any Receiver or other person properly appointed by the Trustee under this Deed, after giving at least five business days' notice to the Council, and the Council having within that time failed itself to take appropriate action, to make any payments that may in the reasonable opinion of the Trustee be rendered necessary or expedient by reason of any default on the part of the Council in performing any of the covenants contained in this Deed in that regard, and will on demand repay to the Trustee all money expended by the Trustee for any such purpose and, pending such repayment, all money so expended (with interest not exceeding the overdraft rate charged by the Trustee's bankers) shall, to the extent permitted by law, from the date of expenditure be a charge on the Charged Assets and form part of the Secured Money and the Council will, to the extent permitted by law, on demand pay and satisfy and obtain the release of any liabilities to which the Trustee or any such person may become subject consequent upon the execution of any of the Trustee's rights conferred by this Deed.

10.2 Reporting Covenants: The Council covenants with the Trustee that it shall, subject to the Act and to its rights to withhold information pursuant to the Information and Meetings Act, at all times at which any Stock is outstanding, except as otherwise permitted by the Trustee:

10.2.1 Long Term Plan, Annual Plan and Annual Report and Liability Management Policy: as soon as each is adopted by the Council within the terms of sections 93, 95, 98 and 102(2)(b) of the Act respectively, and in any event within one

month of each such adoption, deliver to the Trustee a copy of each of the Annual Plan and the Annual Report for the forthcoming, and previous, financial years respectively and (where not already delivered to the Trustee) the most recent Long Term Plan and the Liability Management Policy (within the meaning of those sections);

- 10.2.2 Interim Financial Information:** promptly after such is prepared in each year, provide to the Trustee a copy of such financial information as the Council may have prepared for external dissemination as to its financial position as at the end of the first six months of each of its financial years;
- 10.2.3 Amendments:** as soon as the Council has approved and adopted any material amendment to any such Long Term Plan or Liability Management Policy, provide details of that amendment to the Trustee;
- 10.2.4 Reporting Certificate:** as soon as reasonably practicable, but in any event no later than 4 months after the end of each of the Council's financial years and no later than 2 months after the end of each of the Council's financial half-years, and, if required by the Trustee, each other financial quarter, and within 21 days of receipt of a written request by the Trustee (which request may only be made where the Trustee certifies that it has reasonable grounds to believe that the Council is not complying with its obligations under this Deed), deliver to the Trustee a completed and signed Reporting Certificate;
- 10.2.5 Information on Request:** on request by the Trustee, provide to the Trustee, any agent of the Trustee or a Receiver, any information which the Trustee reasonably requires with respect to matters relating to the financial statements (within the meaning of clause 29 of Schedule 10 to the Act) of the Council, other records of the Council, the Charged Assets and to the financial position of the Council;
- 10.2.6 Auditors' Reports:**
- (a) at the same time as it furnishes its Annual Report under clause 10.2.1, provide a separate report by the Auditors addressed to the Trustee stating:
 - (i) whether or not in the performance of their duties as auditors they have become aware of any matter which in their opinion is relevant to the exercise or performance of the powers or duties conferred or imposed on the Trustee and if so, giving particulars thereof;
 - (ii) whether or not their audit has disclosed any matter (and if so, particulars thereof) calling in their opinion for further investigation by the Trustee in the interests of the Stockholders;
 - (iii) that they have perused the certificates (if any) given on behalf of the Council pursuant to clause 10.2.4 since their last report and

that so far as matters which they have observed in the performance of their duties are concerned the statements made in such certificates are correct;

- (iv) whether or not the Council or its agents (including the Registrar) have duly maintained the Register in accordance with the provisions of this Deed; and
- (v) as at the end of each relevant financial year:
 - (aa) the amount of the Stock showing separately how much is Security Stock and how much, if any, is Bearer Stock;
 - (bb) the Principal Money owing or secured under the Stock, distinguishing between Security Stock and other Stock;
 - (cc) whether or not from normal audit tests they have conducted they are satisfied that all Principal Money due and payable on the Stock has been paid or otherwise satisfied and that all interest due and payable on the Stock has been paid; and

- (b) where the FMC Act applies in respect of any Stock:
 - (i) provide the Trustee with a copy of any report, financial statement or certificate which the Auditors have issued in respect of the Council or which is otherwise required to be provided to the Trustee pursuant to the FMC Act;
 - (ii) procure that, if the Auditors become aware of any matter that is relevant to the exercise or performance of the rights or duties of the Trustee, the Auditors shall, within seven business days of becoming aware of the matter, report the matter to the Trustee; and
 - (iii) on request of the Trustee provide to the Trustee all information relating to the Council relevant to the exercise of the Council's rights and duties in respect of this Deed;

10.2.7 Furnish Copy of Register: provided the Register is not closed at the relevant time, furnish upon request to the Trustee a copy of the Register;

10.2.8 Name Change: notify the Trustee as soon as is reasonably practicable, and in any event within five business days, of any change in the Council's name.

11. POWERS OF AND OTHER PROVISIONS RELATING TO TRUSTEE

11.1 Enforcement of Holders' rights

11.1.1 The Trustee holds its rights and benefits under this Deed (including the right to enforce the Council's duty to repay or pay interest under the terms of any Stock, the benefit of the security created under clause 9 and the right to enforce the Council's obligations and duties under the terms of the Stock, this Deed and, where applicable, the FMC Act) in trust for, and for the benefit of, the Holders.

11.2 Trustee's Remuneration:

11.2.1 General: The Council shall pay to the Trustee by way of remuneration for its services as trustee such remuneration as shall from time to time be agreed between the Council and the Trustee.

11.2.2 Expenses: Without limiting the generality of the other provisions of this Deed, the Council shall also, to the extent permitted by law, pay on demand all expenses (including travelling expenses and expenses incurred in the taking of any expert advice deemed necessary or expedient by the Trustee) reasonably incurred by or on behalf of the Trustee in connection with:

- (a) the exercise by the Trustee of any right or duty conferred by this Deed on the Trustee;
- (b) any breach or default in the observance or performance by the Council of any provision of this Deed or the PPSA (and not excluded by this Deed);
- (c) any application under the trusts and provisions of this Deed for its consent to, or approval or execution of, any act, document or matter;
- (d) any action taken by or required of the Trustee under this Deed;
- (e) the convening and holding, and carrying out of any directions or resolutions, of any meeting of the Stockholders; and
- (f) any other expenses agreed by the Council from time to time.

11.2.3 Continuation: The remuneration and other payments payable under this clause 11.1 shall continue to be payable until the trusts contained in this Deed are finally wound up and whether or not a Receiver has been appointed or the trusts contained in this Deed are in the course of administration by or under the direction of a court.

11.2.4 Payment: All expenses incurred and payments made by the Trustee or any Receiver in the lawful exercise of the rights conferred by this Deed and all remuneration payable to the

Trustee or to any Receiver, shall be payable by the Council promptly following demand and, while unpaid following demand, shall, to the extent permitted by law, be a charge on the Charged Assets and form part of the Secured Money, and shall be satisfied before any payment is made to the Stockholders in respect of the Secured Money.

- 11.3 Powers of Investment:** Any money held by the Trustee and subject to the trusts of this Deed may, to the extent permitted by law, at the discretion of the Trustee, be invested in the name of the Trustee or its nominee in any investment whatsoever, with power to vary such investments for others of a like nature and to deal with, or dispose of, such investments.
- 11.4 Applications to Court:** The Trustee may, on or at any time after the security created by this Deed has become enforceable (but subject to clause 13.3), apply to a court for an order that the rights and trusts contained in this Deed be exercised under the direction of the court and for the appointment of a Receiver of all or any part of the Charged Assets and for any other order or direction in relation to the execution and administration of the rights and trusts contained in this Deed as the Trustee may deem expedient. The Trustee may in its capacity as Trustee assent to, approve of or oppose any application to a court made by or at the instance of any of the Stockholders and shall, to the extent permitted by law (including, for the avoidance of doubt, section 105 of the FMC Act), be indemnified by the Council against all reasonable costs, charges and expenses incurred by and in relation to any such application or proceedings (except where such alleges, or relates to, any fraud, default, negligence or wrongful action or omission by the Trustee).
- 11.5 Waiver by Trustee:** Except in respect of any event referred to in clauses 12.1.1(a) or 12.1.1(b), the Trustee may, subject to any direction pursuant to clause 13.1, and if so directed by an Extraordinary Resolution, at any time and from time to time by notice in writing to the Council waive, in whole or in part, for a specified period or indefinitely and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Council of any provision expressed or implied in this Deed provided that the Trustee, unless so directed, is satisfied that the interests of the Stockholders will not be materially prejudiced thereby, but such waiver shall not prejudice the rights of the Trustee or the Stockholders in respect of any other breach.
- 11.6 Supplemental Powers of Trustee:** In addition to the provisions of law relating to trustees and to facilitate the discharge of its duties under this Deed, but subject always to section 105 of the FMC Act, it is expressly declared that:
- 11.6.1 Reliance:** the Trustee may, providing that it acts bona fide, without liability for loss, obtain, rely and act on, or decline and elect not to act on:
- (a) the opinion or advice of, or any information obtained from, any barrister, solicitor, valuer, stockbroker, surveyor, auctioneer, chartered accountant or other expert whether obtained by any Stockholder or by the Trustee or otherwise, and although the same may subsequently be found to contain some error or not be authentic;

- (b) a certificate signed by the Chief Executive on behalf of the Council as to any fact or matter prima facie within the knowledge of such person or that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of the Stockholders as sufficient evidence of such fact or matter or the expediency of such dealing, transaction, step or thing; or
- (c) the statements contained in any certificate, resolution or report given under this Deed as conclusive evidence of the facts stated therein;

11.6.2 Reference on Record: the Trustee shall not be responsible for acting or relying upon any resolution purporting to have been passed at any meeting of the Stockholders, or any class thereof, in respect of which a proper record has been made and which the Trustee believes to have been properly passed even though it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or the proceedings of the meeting;

11.6.3 Application: the Trustee shall not be responsible for, or be bound to see to the application of, the money subscribed by applicants for, or subscribers of, the Stock;

11.6.4 Title: the Trustee shall not be bound or concerned to examine or enquire into, or be liable for any defects or failure in, the title of the Council to the Charged Assets, whether such defects or failure might have been discovered upon an examination or enquiry and remedied or not;

11.6.5 Discretion: except as otherwise expressly provided in this Deed, the Trustee shall have sole discretion as to the exercise of all trusts and rights vested in it by this Deed and as to the commencement, prosecution, variation, discontinuance or compromise of any action, proceeding or claim and, provided it has acted with reasonable care and diligence, it shall not be responsible for any loss or cost that may result from the exercise or non-exercise thereof;

11.6.6 Delegation: subject to clause 11.6.7, the Trustee, whenever it thinks it expedient in the interests of the Stockholders to do so, may:

- (a) delegate (with the prior written approval of the Council, except where the security created by this Deed has become enforceable) at any time, to any person, any of the trusts or rights vested in the Trustee by this Deed which cannot conveniently be exercised by it or through its employees, upon such terms and conditions and under such regulations (including power to sub-delegate) as the Trustee may think fit;
- (b) authorise (with the prior written approval of the Council, except where the security created by this Deed has become enforceable) any person it thinks fit

to act as its representative at any meeting of Stockholders;

- (c) instead of acting through its permanent employees employ, with the prior written approval of the Council (which shall not be unreasonably withheld), in the carrying out of any of the trusts or rights vested in the Trustee by this Deed and pay, at the expense of the Trustee, an agent to transact all business and do all acts required to be done under this Deed including the receipt and payment of money;
- (d) delegate from time to time and at any time to any one of its officers any of the trusts or rights vested in the Trustee by this Deed which, owing to the place in which they are to be or may require to be exercised, cannot conveniently be exercised by the Trustee;
- (e) in addition to the exercise of the rights contained in clause 11.4, apply to a court for directions in relation to any question arising, either before or after the Date of Enforcement; and

11.6.7 No delegation of supervisor functions: notwithstanding any provision of this Deed, the Trustee shall not delegate any of its functions set out in section 111(1) of the FMC Act (if applicable) except as expressly permitted by the FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act.

11.6.8 Attendance at Meetings: the Trustee, and any representative of the Trustee, shall be entitled to attend any meeting of the Council and to be heard at any such meeting on any part of the business of the meeting which concerns the Trustee as such or the Stockholders.

11.7 Indemnity of Trustee:

11.7.1 Indemnification: Without prejudice to the right of indemnity by law given to trustees, the Trustee and every Receiver, attorney, manager, agent or other person appointed by the Trustee pursuant to this Deed shall (subject to section 105 of the FMC Act and to the provisions of the Act and the Receiverships Act) be indemnified out of the Charged Assets in respect of all liabilities and expenses incurred in the execution or purported execution of the rights or trusts of this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted, or in any way relating to the provisions of this Deed or its licensee obligations (as defined in section 4 of the Financial Markets Supervisors Act), other than a claim arising out of a wilful default, wilful breach of trust, negligence or breach of duty on the part of the Trustee or any such attorney, manager, agent or other person.

11.7.2 Retention: The Trustee may retain and pay out of any money in its hands arising pursuant to this Deed or from the trusts of this Deed all sums necessary to effect such indemnity and also the remuneration and disbursements of the Trustee as provided

for in this Deed, and the Trustee shall, to the extent permitted by law, have a charge on the Charged Assets for all money payable to it under this clause 11.7 or otherwise however properly arising out of or in connection with this Deed or the issue of the Stock.

11.8 Fiduciary Relationship:

11.8.1 Stockholder: Nothing in this Deed shall be deemed to prohibit the Trustee or any related company of the Trustee (all of whom in this clause 11.8 where the context permits are included in the expression **the Trustee**), or its directors, or officers, from being a Stockholder or the holder of any other security (including any Stock issued under this Deed) issued by the Council or from acting in any representative capacity for a Stockholder, or other such holder.

11.8.2 Own Account: Without limiting the generality of clause 11.8.1, it is expressly declared that the Trustee may so act on its own account or as executor, administrator, trustee, receiver, committee, attorney or agent or in any other fiduciary, vicarious or professional capacity and the acting in such capacity shall not be deemed a breach of any of the obligations under, or arising in respect of, this Deed or otherwise imposed or implied by law arising out of the fiduciary relationship between the Trustee and the Council, or between the Trustee and the Stockholders as the case may be.

11.8.3 Other Transactions: The Trustee shall not by reason of its fiduciary capacity be precluded from making any contracts or entering into any transactions with the Council or with itself as trustee in the ordinary course of the business of the Trustee or from undertaking any insurance, financial or agency service with the Council or for itself as trustee, and the Trustee shall not be accountable either to the Council or the Stockholders for any profits arising from such contracts, transactions or services.

11.9 Represent Stockholders: The Trustee may at any time, either of the Trustee's own volition or pursuant to any direction or in accordance with any policy given or indicated by any meeting of Stockholders, represent Stockholders in any investigation, negotiation, action, transaction or proceedings concerning the interests of the Stockholders generally in the affairs of the Council or in the enforcement of the rights of the Stockholders or any of them, and in particular in obtaining legal, accountancy or other professional advice as to the rights of the Stockholders or the Trustee, the duties of the Trustee and the liabilities of the Council and in enforcing the rights of the Stockholders or the Trustee under any demand, action or proceeding.

11.10 Retirement:

11.10.1 Subject to applicable law, the Trustee may without assigning any reason therefor, and shall if requested to do so pursuant to an Extraordinary Resolution or if requested by the Council, retire at any time by giving 90 days (or such shorter period as the Council may agree) notice in writing to the Council of its intention to do so, subject to the due appointment of a new Trustee previously approved in writing by the Council and the

transfer to such new Trustee of the money, records and investments held by the Trustee under this Deed.

- 11.11 Notice to Stockholders:** Upon receipt of a notice given under clause 11.10, the Council shall promptly give notice of its contents to Stockholders appearing in the Register as at the date of receipt.
- 11.12 Appointment of New Trustee:**
- 11.12.1 Power to Appoint:** The power of appointing a new trustee or trustees of this Deed shall be vested in the Council, but no trustee shall be appointed unless such appointment is first approved by an Extraordinary Resolution. Upon the Trustee notifying the Council under clause 11.10 that it is to retire, the Council shall promptly call a meeting of the Stockholders for the purpose of approving an appointment of a new trustee or trustees, and if approval is given the Council shall exercise its power of appointment.
- 11.12.2 Failure to Appoint:** In the event that the Council, within 30 days of receiving notice of the Trustee's intention to retire, fails to call a meeting of the Stockholders as aforesaid, or to exercise the power vested in it by this Deed after receiving the approval referred to in clause 11.12.1 for appointing a new trustee or new trustees, then in either case the Stockholders may by Extraordinary Resolution exercise such power to the exclusion of the Council.
- 11.13 Additional Powers of Trustee:** The rights conferred upon the Trustee by this Deed shall be in addition to any rights which may from time to time be vested in trustees by law and to any rights which may from time to time be vested in the Trustee as a Stockholder.
- 11.14 Trustee's Duty of Care:** None of the provisions of this Deed shall in any case in which the Trustee has failed to exercise reasonable care, skill and diligence, relieve the Trustee from, or indemnify the Trustee against, any liabilities which by virtue of any legislation or rule of law would otherwise attach to it in respect of any negligence, wilful default, or wilful breach of trust undertaking or breach of duty for which it may be liable in relation to this Deed.
- 11.15 Duties of Trustee:** Notwithstanding any other provision of this Deed:
- 11.15.1 Breach:** the Trustee shall exercise reasonable diligence to ascertain whether or not any breach of the terms of this Deed or of the terms of the Stock has occurred and, except where it is satisfied that the breach will not materially prejudice the security of the Stock or the interests of the Holders thereof, shall do all such things as it is empowered to do to cause any breach of those terms to be remedied; and
- 11.15.2 Available Assets:** the Trustee shall exercise reasonable diligence to ascertain whether or not the assets of the Council that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the amounts of the Stock as they become due, provided that except where otherwise required by law, the Trustee will be entitled to assume without special inquiry, that no such breach

is occurring or has occurred, and that the assets of the Council are sufficient to discharge the amounts of Stock as they become due under and until the Trustee receives actual advice to the contrary, whether in the form of the information and reports provided to the Trustee pursuant to clause 10.2 or otherwise

- 11.16 Trustee's Indemnity by Stockholders:** If the Trustee receives a direction or request pursuant to an Extraordinary Resolution, in accordance with the provisions of this Deed the Trustee shall not be bound to comply with it unless the Trustee has first been indemnified (subject to section 105 of the FMC Act) to its satisfaction against any actions, proceedings, claims and demands to which the Trustee may be rendered liable and all costs, charges, damages and expenses which it may incur by doing so.
- 11.17 Not Bound to Give Notice:** The Trustee shall not be bound to give notice to any person of the execution of this Deed.
- 11.18 Disclosure and Confidentiality:** Except where the Trustee, in its reasonable opinion, considers it necessary for the purposes of this Deed to disclose such to Stockholders, or to any person referred to in clause 11.6.1(a), the Trustee shall treat, and maintain, as confidential all information which it receives from, or in respect of, the Council pursuant to this Deed.

12. ENFORCEMENT OF SECURITY ON DEFAULT

- 12.1 Enforcement Events:** Subject to clause 11.5 and clause 13, the security created by this Deed shall become enforceable following the occurrence of any one or more of the following events, and while such is continuing unremedied or unwaived:

12.1.1 Non-Payment:

- (a) default is made by the Council in the payment on due date or, where payable on demand, promptly following proper demand therefor (or on the expiration of any applicable grace period) of any Principal Money of the Stock, or on any earlier date that the Principal Money shall become payable to a Stockholder, and such default continues unremedied for two business days; or
- (b) default is made by the Council for a period of seven business days in the payment of any interest on or secured by the Stock; or
- (c) default is made by the Council for a period of 30 days after final demand in writing in the payment of any other material amount due and payable by the Council pursuant to this Deed;

- 12.1.2 Receivership:** if a receiver, or receiver and manager, is appointed of (or the Council requests any such appointment), or an encumbrancer takes possession of or exercises its powers of sale in respect of, all or any material part of the Charged Assets unless the Council demonstrates to the satisfaction of

the Trustee that such appointment or taking of possession or exercising of power will not have a material adverse effect on the ability of the Council to repay the Secured Money when such is due and payable; or

12.1.3 Material Default: if any material default not otherwise referred to in the preceding provisions of this clause 12.1 is made by the Council in the performance or observance of any other material covenant, condition or other provision binding upon the Council under this Deed (whether or not the Trustee has waived any prior similar default) and such default continues for more than 30 days after receipt by the Council of a notice in writing from the Trustee specifying the default and requiring such to be remedied.

12.2 Application of the PPSA: The Council and the Trustee:

12.2.1 Contracting Out: contract out of:

- (a) section 120(1) of the PPSA;
- (b) sections 108 and 109 of the PPSA to the extent that:
 - (i) "default" in terms of those sections may occur before the occurrence of an Enforcement Event and accordingly agree, for the purposes of clarification, that those two sections of the PPSA will not apply unless and until an Enforcement Event occurs and continues unremedied and unwaived; and
 - (ii) those sections may require that only a secured party with priority over all secured parties may enforce in the manner permitted by those sections (to the intent that the Trustee and the Council agree that the Trustee shall be entitled, subject to the terms of this Deed, to enforce pursuant to those sections regardless of whether or not the Trustee has priority over all other secured parties);
- (c) section 114(1)(a) of the PPSA to the extent that that section obliges the Trustee to give any period of notice beyond that which the Trustee is obliged to give under clause 13.3;
- (d) section 109(1)(b) and section 109(2) of the PPSA (except to the extent that the events referred to in those sections have led to the security created by this Deed becoming enforceable as provided for in clause 12.1); and
- (e) section 133(1) of the PPSA.

12.3 Verification Statement: The Council waives its right to receive a copy of the verification statement in respect of a financing statement or

financing change statement relating to any security interests created by this Deed until such time as the Council may request such.

- 12.4 Security Trust Deed:** The Council agrees that this Deed is a security trust deed for the purposes of the PPSA, and consents to any registration of a financing statement in respect of the security interest created pursuant to this Deed disclosing that this Deed is a security trust deed.

13. TRUSTEE'S POWERS OF ENFORCEMENT OF SECURITY

- 13.1 Trustee's Powers to Act:** At any time after the security created by this Deed has become enforceable (but subject to clauses 13.3, 13.5 and to the Act), and while it remains enforceable, the Trustee may, and shall forthwith upon being directed to do so by an Extraordinary Resolution, take one or more of the following steps:

13.1.1 Accelerate: subject to the conditions or limitations applicable to any particular Stock, declare the whole or any affected part of the Stock and Secured Money to have become immediately due and payable, whereupon such money shall forthwith become due and payable;

13.1.2 Take Possession: enter into or take possession of all or any part of the Charged Assets;

13.1.3 Realise: either with or without taking possession sell, call in, collect and convert into money all or any part of the Charged Assets in such manner and for such consideration as the Trustee thinks fit;

13.1.4 Apply: apply in accordance with section 108 of the PPSA, Charged Assets in the form of Accounts Receivable, Money (as the term "Money" is defined in the PPSA) or Negotiable Instruments in or towards satisfaction of the Secured Money; and

13.1.5 Meeting: call a meeting of Stockholders for determining what action (if any) the Trustee should take in the circumstances.

- 13.2 Decrystallisation:** At any time after the floating charge created by this Deed has taken effect as a fixed charge in respect of any part of the Charged Assets, it shall resume the status of a floating charge in respect of that part of the Charged Assets which the Trustee identifies in a notice to that effect to the Council.

- 13.3 Notice of Exercise of Powers:** The powers conferred by clause 13.1 shall be exercisable by the Trustee without further notice to the Council. However, before exercising any of the powers contained in clauses 13.1.1 to 13.1.4 (the **powers of conversion**) the Trustee shall, except where it certifies in writing to the Council that, in its opinion, delay would imperil the interests of Stockholders or except upon the happening of any one or more of the events referred to in clauses 12.1.1(a), 12.1.1(b), 12.1.2 or 12.1.3, give written notice of its intention to the Council and shall not enforce the security created by this Deed or exercise the powers of conversion until the expiration of 14 days after the giving of such notice or if within such period the breach or event so specified is remedied to the reasonable satisfaction of the Trustee or the Trustee

notifies the Council in writing that the particular breach or event relied upon no longer in the reasonable opinion of the Trustee detrimentally affects the security created by this Deed. However, if the Trustee has appointed a Receiver in accordance with this clause 13.3, no further notice shall be required before exercising any other powers of conversion.

13.4 Power After Entry:

13.4.1 Take Action: After the Trustee has entered into possession, and until the whole of the Charged Assets have been applied, sold, called in, collected and converted under the powers of conversion, the Trustee may if it thinks fit (but subject to the Act, and except where precluded or limited by law) take such action in and with all or any part of the Charged Assets in such manner as it thinks fit. For this purpose the Trustee may employ such agents, managers, receivers, accountants and employees, upon such terms as to remuneration and otherwise as it thinks proper, and generally may (but subject to the Act, and except where precluded or limited by law) do or cause to be done all acts and things and may enter into such arrangements respecting all or any part of the Charged Assets as it could do if it were absolutely entitled to those assets and without being responsible for any loss or damage which may arise or be occasioned thereby **PROVIDED ALWAYS THAT** no action of the Trustee may prevent the provision of those services of the Council that are essential for the maintenance of public health and safety requirements and for the purposes of this clause an action of the Trustee shall be deemed not to prevent provision of the services mentioned above unless:

- (a) that action necessarily results in that outcome; and
- (b) the outcome is not more fairly attributable to the act or omission to act of persons outside the control of the Trustee.

13.4.2 Expenses: The Trustee shall by and out of the proceeds and income of the Charged Assets pay and discharge the expenses incurred in and about the exercise of any of the powers under clause 13.1 and clause 14, or otherwise in respect of the Charged Assets, and shall pay and apply the residue of the said proceeds and income in the manner provided in clause 15. The Trustee may for any such purpose, and for the purpose of payment to the Trustee of all sums for the time being owing to it (whether by way of remuneration or otherwise) advance, borrow or raise money on the security of all or any part of the Charged Assets in priority to the Stock and interest thereon and at the rate of interest, and on the terms, which the Trustee thinks fit.

13.5 Essential Services: The Council and the Trustee agree that the regime as set out in section 40D of the Receiverships Act shall be deemed to apply mutatis mutandis to any action taken by the Trustee in relation to any Charged Assets pursuant to the powers referred to in clause 13.1 as if the references in that section to "receiver" were references to the Trustee, and the provisions of this Deed shall be read accordingly.

14. APPOINTMENT OF RECEIVER

- 14.1 Appointment and Removal:** At any time after the security created by this Deed has become enforceable, but subject always to clause 13.3, the Act and the Receiverships Act the Trustee may in its discretion and shall upon being directed to do so by an Extraordinary Resolution, (and in any such case without any further notice to or consent on the part of the Council) appoint in writing one or more Receivers (whether severally, jointly or both) of all or any part of the Charged Assets with power from time to time to remove any Receiver so appointed and in case of removal, retirement or death to appoint another in his or her place. Any such Receiver may be appointed either before or after the Trustee has entered into or taken possession of all or any part of the Charged Assets.
- 14.2 Rights of Receiver:** Following an appointment of a Receiver, the Receiver shall (subject to the provisions of the Act, and the Receiverships Act and except where precluded or limited by law) have power to do all or any of the following which are not specifically excluded by his or her appointment:
- 14.2.1 Take Possession:** take possession of, demand, collect, or get in all or any part of the Charged Assets and exercise the rights conferred on Receivers by the Act (and, in particular, section 115 of the Act), and the Receiverships Act, in respect of the Charged Assets;
 - 14.2.2 Deal with Charged Assets:** deal with and exploit all or any part of the Charged Assets in any manner;
 - 14.2.3 Dispose of Charged Assets:** dispose of or concur in the disposal of all or any part of the Charged Assets and any interest in the Charged Assets generally upon such terms and conditions as the Receiver may consider necessary or expedient;
 - 14.2.4 Acquire Property:** acquire an asset or an interest in an asset for inclusion in the Charged Assets;
 - 14.2.5 Appoint Agents:** appoint and employ officers, managers, employees, advisers, contractors or agents for any purpose and on the terms which the Receiver may consider necessary or expedient;
 - 14.2.6 Borrow Money:** advance money to, or borrow or raise money from, any person with or without a charge or other security interest over or affecting the Charged Assets;
 - 14.2.7 Settle Disputes:** bring, defend, submit to arbitration, negotiate, compromise, abandon or settle a claim or a proceeding, or make an arrangement or compromise, in relation to the Charged Assets;
 - 14.2.8 Execute Documents:** (subject to the Receiverships Act) execute or do, or cause or authorise to be executed or done, on behalf of or in the name of the Council or otherwise and under the common seal of the Council or otherwise, all agreements,

acts or things which the Receiver may reasonably consider necessary or expedient in relation to the Charged Assets;

- 14.2.9 Give Receipts:** give a receipt for money paid to or an asset received by the Trustee or Receiver (which receipt shall effectively discharge the payer or the person delivering that asset);
- 14.2.10 Delegate:** delegate any of the rights conferred upon the Receiver under this Deed, the Receiverships Act, the Act or by law;
- 14.2.11 Authorise Transactions:** generally carry out, or cause or authorise to be carried out, any transaction, scheme or arrangement whatever in relation to the Charged Assets which the Receiver may consider necessary or expedient; and
- 14.2.12 Incidental Rights:** do or omit to do anything incidental to the rights contained in this clause 14.2.

The above rights of a Receiver, together with those referred to below, are in addition to and not in substitution for the rights conferred on receivers under statute or at law and are at all times subject to any restrictions imposed from time to time by the Act or the Receiverships Act, including sections 40D(1) and (4).

- 14.3 Withdrawal:** The Trustee may at any time give up possession of any Charged Assets and may at any time discontinue any receivership.
- 14.4 Receiver Agent of the Council:** A Receiver is, to the extent permitted by the Act or the Receiverships Act, to be the agent of the Council, and the Council is to be solely responsible for his or her acts and defaults (including misconduct, negligence or default), but without prejudice to the Council's rights against the Receiver.
- 14.5 Receiver's Remuneration:** The remuneration of a Receiver will be fixed by the Trustee (and may be, or include, a reasonable commission calculated by reference to the gross amount of all money received by the Receiver). Such remuneration is to be payable by the Council and, to the extent permitted by law, is to form part of the Secured Money and will accordingly be secured by the Charged Assets.
- 14.6 The Trustee and a Receiver:** Any Receiver:
- 14.6.1 Rights:** shall unless otherwise directed by the Trustee, have such rights as are conferred upon the Trustee by this Deed and are capable of being exercised by the Receiver as the Trustee may think expedient, and if the Trustee thinks expedient may have the power to sub-delegate the same;
- 14.6.2 Directions:** shall in the exercise of his or her rights comply with any directions given by the Trustee;
- 14.6.3 Payment:** shall (except as otherwise directed by the Trustee) pay all money he or she receives to the Trustee to be held by the Trustee on the trusts declared in clause 15;

- 14.6.4 Application:** is to apply, for the purposes of this Deed, all money received from the Trustee arising from the Charged Assets and the Trustee may determine what funds the Receiver shall keep in hand;
- 14.6.5 Borrow:** may, for the purpose of defraying any costs, losses, charges or expenses (including his or her remuneration) which shall be incurred by him or her in the exercise of rights vested in him or her, and for all or any other purposes of this Deed raise and borrow money by way of any transaction which is lawfully entered into by the Council on the security of all or any part of the Charged Assets either in priority to the Secured Money and the security created by this Deed as may be permitted by the Act or otherwise, at such rate or rates of interest and generally on such terms and conditions as he or she thinks fit (and no person lending any such money shall be concerned to enquire as to the propriety or purpose of the exercise of this power or to see to the application of any money so raised or borrowed) and for those purposes may execute and do all such assurances and things as he or she thinks fit **PROVIDED ALWAYS THAT** a Receiver shall not exercise any such power without first obtaining the written consent of the Trustee thereto but the Trustee shall incur no responsibility or liability to the lender or otherwise by reason of its giving or refusing such consent whether absolutely or subject to any limitation or condition.
- 14.7 Trustee's Right to Sell Concurrently:** The Trustee may, upon such terms as it thinks proper, join in exercising its rights under this Deed with any other secured creditor of the Council and in particular may on such terms as it thinks proper join in appointing a common Receiver of all or any part of the Charged Assets, subject to the Trustee retaining such priority as is enjoyed by it in respect of the Charged Assets but with liberty for the Trustee to make any arrangement it thinks proper for the purpose of ensuring the respective priorities.
- 14.8 No Liability as Mortgagee in Possession:** The Trustee or any Receiver shall not be liable, by reason of an entry into possession of all or any part of the Charged Assets, to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on reallocation or for any default or omission for which a mortgagee in possession might be liable.
- 14.9 Protection of Third Parties:** No person dealing with the Trustee or any Receiver, or their respective agents, shall be concerned to enquire:
- 14.9.1 Enforceability:** whether the security created by this Deed has become enforceable; or
- 14.9.2 Right Exercisable:** whether any right exercised or purported to be exercised pursuant to this Deed has become exercisable; or
- 14.9.3 Money Due:** whether any money remains due upon the security of this Deed; or
- 14.9.4 Conditions:** as to the necessity or expediency of the conditions subject to which any sale shall be made; or

14.9.5 Property: otherwise as to the propriety or regularity of any exercise of the powers of conversion; or

14.9.6 Application: as to the application of any money paid to the Trustee or to any Receiver.

In the absence of fraud on the part of such person, such dealing shall, to the extent permitted by law, be deemed with respect to such person to be within the rights conferred by this Deed and to be valid and effectual accordingly, and the remedy of the Council in respect of any irregularity or impropriety whatever in the exercise of such rights shall be in damages only.

14.10 Receipt of Trustee or Receiver: Upon any exercise of the powers of conversion, and upon any other dealing or transaction under this Deed, the receipt of the Trustee or the Receiver for any money paid to them shall effectively discharge the payer, who need not be concerned to see to the application or be answerable for the loss or misapplication of such payment.

15. TRUSTS OF PROCEEDS OF ENFORCEMENT

15.1 Application: Subject always to the Act, the Receiverships Act and clause 15.5, all money arising from each exercise of the powers of conversion, and all money received under the covenant contained in this Deed for payment to the Trustee of the Principal Money and interest under the Stock, or under any rights conferred by this Deed upon a Receiver or upon the Trustee after the security created by this Deed has become enforceable and the Trustee has determined or become bound to enforce the same, shall be held and applied in the following order:

15.1.1 Remuneration and Costs: (subject to any direction made by any court under the Receiverships Act) in or towards payment or retention of all remuneration payable to the Receiver as provided in this Deed and the costs incurred by the Receiver, and the costs of obtaining appointment of the Receiver incurred by the Trustee or any other person who has incurred them; then

15.1.2 Preferred Claims: in payment of amounts (if any) payable in respect of claims by law to be preferred to claims under any charge over the Charged Assets; then

15.1.3 Essential Services: in or towards payment or retention of those amounts (if any) required to enable the Receiver to provide those services specified in section 40D(1) of the Receiverships Act as are applicable; then

15.1.4 Prior Charges: in or towards payment of, or provision for, any debts or liabilities (if any) secured by any charge or security interest having priority over the security created by this Deed in respect of the Principal Money and interest under the Stock (or, in the case of Security Stock, the Priority Total Amount of the Stock), in accordance with their respective priorities; then

15.1.5 Trustee: in or towards payment of, or provisions for, all amounts owing to the Trustee (including by way of indemnity) under this Deed; then

15.1.6 Priority Amounts: in or towards payment to the Stockholders, pari passu in proportion to the amounts actually or contingently owing to them, of the Principal Money in respect of the Stock (whenever issued) held by them (the Principal Money in respect of Security Stock for this purpose being the Priority Principal Amount) and interest thereon, as in any case entitled thereto **PROVIDED ALWAYS** that:

- (a) the interest payable to each Holder of Security Stock shall be limited to the Priority Interest Amount;
- (b) before making any payment referred to in paragraph (a) above, the Trustee shall, in the case of each Holder of Security Stock but subject to the following provisions, set aside an amount (or the proper proportion thereof in the event of the amount available for distribution and application in accordance with this clause in respect of the abovementioned amounts owing to the Stockholders respectively being less than one hundred cents in the dollar) equal to the aggregate of the contingent liabilities (if any) which are determinate or limited in amount forming part of the Priority Principal Amount in the case of that Security Stock, but so that the amount set aside under this paragraph (b) in respect of any Stockholder shall not, when aggregated with money paid by the Trustee to the Stockholder on account of principal, exceed the Priority Principal Amount for the relevant Stock;
- (c) in the event of all or part of a contingent liability being indeterminate or unlimited in amount, the Trustee shall, subject to the following provisions, set aside as referred to above such amount as shall be nominated by the Holder of the relevant Security Stock as its reasonable estimate of that contingent liability or the proper proportion thereof (in the event of the amount available for distribution and application in accordance with this clause in respect of the abovementioned amounts owing to the Stockholders respectively being less than one hundred cents in the dollar) as the case may be but so that the amount set aside under this paragraph (c) in respect of any Stockholder shall not, when aggregated with money paid by the Trustee to the Stockholder on account of principal, exceed the Priority Principal Amount for the relevant Stock; and
- (d) any amount set aside in accordance with these provisos shall be held by the Trustee and applied in the following manner:
 - (i) each time all or part of a contingent liability becomes an absolute ascertained liability the Trustee shall pay to the Holder of the relevant Security Stock the amount or a proportionate part of such absolute and ascertained liability as referred to above as if the same had been a debt presently payable to such Holder at the Date of Enforcement;

- (ii) each time any portion of the amount set aside pursuant to these provisos is no longer required for the purposes of paragraph (i) above then it shall become available for distribution and payment as otherwise provided in this clause 15.1; then

15.1.7 Excess Amount: in or towards payment to the relevant Security Stockholders of any amount of the Security Stockholder's Secured Money as referred to in clause 6.3.1(c) (and in accordance with that clause), as in any case entitled thereto; then

15.1.8 Subsequent Charges: in or towards payment of, or provision for, any debts or liabilities secured by any charge or security interest ranking subsequent to the security created by this Deed, as in any case entitled thereto (including, where applicable, pursuant to section 117 of the PPSA); then

15.1.9 Council: to, or for the benefit of, the Council as it may direct.

15.2 Payment of Principal Before Interest: In any payments pursuant to clause 15.1, interest shall ordinarily be paid prior to Principal, however, if the Trustee considers it expedient in the interests of Stockholders, payments may, subject to the Act, be made on account of Principal before interest, or the whole of the interest, has been paid, but such alteration in the order of payment shall not prejudice the right of Stockholders to receive the whole amount to which they would have been entitled if the ordinary order of payment had been observed or any lesser amount which the sum ultimately realised from the security created by this Deed would be sufficient to pay.

15.3 Production of Stock Certificates on Payment: Upon any payment being made under any of the provisions of clauses 15.1 or 15.2 any relevant Stock Certificate shall be produced to and endorsed by the Trustee, or the Register noted, with details of the payment. The Trustee may in any particular case dispense with such production and endorsement upon such indemnity (if any) being given as it considers sufficient (subject to section 105 of the FMC Act).

15.4 Stockholders Certificate:

15.4.1 Evidence: For the purposes of clauses 15.1 and 15.2, a certificate from any Stockholder as to the Principal Money or interest at any time of any Stock held by that Stockholder shall in the absence of manifest error be prima facie evidence of the amount of such Principal Money or interest, as the case may be.

15.4.2 Information: For the purposes of the Council, the Registrar or the Paying Agent making any determination, calculation, payment or determining any voting entitlements pursuant to this Deed or the Registrar and Paying Agency Agreement, the Council, the Registrar or the Paying Agent may require any Stockholder to provide it with a certificate or other information giving details of all amounts of any particular kind due or owing or alleged to be due or owing in respect of such Stockholder's

Stock as at any date. The Council, the Registrar or the Paying Agent shall be entitled to act in reliance on such a certificate or other information and shall incur no liability in so acting, or for the consequences of so acting, should any such certificate or other information prove to have been incorrect, or for failing to request or obtain such a certificate or other information.

15.5 Notice of Distribution: The Trustee shall give not less than 14 days' notice to the Stockholders of the day, place and time fixed for any payment to them under clauses 15.1 or 15.2 and after the day so fixed the Stockholders shall be entitled to interest on the balance only (if any) of the Principal Money owing on the Stock held by them (or in the case of the Security Stock on the actual balance secured thereby) after deducting the amount (if any) payable in respect thereof on the day so fixed.

15.6 Postponement of Distribution: If the amount of the money at any time available under clause 15.1 for payment of the Principal Money owing on the Stock is less than ten percent of the amount of such Stock, the Trustee may at its discretion invest that money upon any of the investments authorised in this Deed with power from time to time to vary such investments, and such investments (with the resulting income) may be accumulated until the accumulations together with any other funds for the time being under the control of the Trustee and applicable for the purpose amount to a sum sufficient to pay at least ten percent of the amount of such Stock.

15.7 Certificates of Indebtedness:

15.7.1 Determinations: For the purposes of determining the appropriate payment to be made to any Stockholder pursuant to clause 15.1, or the voting entitlement of any Stockholder under this Deed, the Trustee may (but need not) require any Stockholder to provide it with a certificate giving details of all amounts of any particular kind due or alleged to be due in respect of the Stockholder's Stock as at any date. The Trustee shall be entitled to rely upon the accuracy and correctness of any such certificate.

15.7.2 Information: Each Stockholder shall also provide the Trustee with whatever information it may require for the purpose of this clause 15.7. The Trustee shall incur no liability in so acting or for the consequences of so acting should any such certificate or information prove to have been incorrect, or for failing to request or obtain any such certificate or information.

16. ALTERATIONS

16.1 Trustee May Consent to Certain Alterations: Subject to the FMC Act and Financial Markets Supervisors Act (if applicable), the provisions of this Deed or the terms of any Stock may be added to or varied by deed executed by the Council and the Trustee:

16.1.1 Without Consent: without the consent of the Stockholders, if in the opinion of the Trustee it is necessary or desirable:

- (a) to correct a manifest error or omission, or it is of a minor, formal or technical nature; or
- (b) to facilitate the expedient issue of Stock by the Council or to make provision for outstanding Stock to be issued in bearer form; or
- (c) to facilitate the expedient issue of types of Stock not specifically provided for in this Deed; or
- (d) to comply with the FMC Act and FMC Regulations in relation to the issue of Stock to which that Act or those regulations may apply; or
- (e) to facilitate the listing or maintenance of listing of any Stock on any stock exchange; or
- (f) to facilitate the establishment and maintenance of more than one Register, and the appointment of more than one Registrar or Paying Agent, in respect of the issuing of different types of Stock; or
- (g) to facilitate transfer of Stock under a system authorised or approved under the FMC Act; or
- (h) to comply with, or as a result of the coming into effect of, any applicable law,

and which does not to the satisfaction of the Trustee have a material adverse effect on the interests of the Stockholders; or

16.1.2 With Consent: with the consent of the Stockholders given by an Extraordinary Resolution or being contingent on such consent; or

16.1.3 No Material Adverse Effect: in any other case, if the Trustee is of the opinion it does not have, or is not likely to have, a material adverse effect on the interests of the Stockholders,

PROVIDED ALWAYS THAT no variation or addition shall be made in the terms and conditions of issue of any Security Stock (as distinct from the provisions of this Deed) without the consent in writing of the Holder of that Stock and that the Trustee shall not consent to any amendment without giving the certification required by section 108(2)(b) of the FMC Act to the extent that such certification is required by law.

17. MISCELLANEOUS PROVISIONS

17.1 Notices:

17.1.1 Requirements: Any notice, requisition, demand, request or direction under this Deed (a **notice**) may be signed by or on behalf of the Council or the Trustee or any Stockholder by an authorised officer, employee, agent or attorney or by their respective solicitors and may (without prejudice to any lawful mode of service) be given or made through the post by prepaid letter or by facsimile transmission. Any notice to be given or made to:

- (a) any Stockholder, shall be given or made to its Registered Address or in the case of a Stockholder having a Registered Facsimile Number, its Registered Facsimile Number;
- (b) the Council, shall be given or made to the Council's address or facsimile number stipulated or otherwise advised in accordance with clause 17.1.2; and
- (c) the Trustee, shall be given or made to the Trustee's address or facsimile number stipulated or otherwise advised in accordance with clause 17.1.2.

17.1.2 Deemed Notice: Subject to written advice being given as to an alteration of the address and facsimile number for the Council or for the Trustee appearing below their respective signatures to this Deed, a notice shall be deemed to have been given or made (in the case of a notice given or made by facsimile) when transmitted to such facsimile number (as to which a transmission confirmation report showing the transmission of the relevant facsimile in its entirety produced by the transmitting facsimile machine shall be prima facie evidence) and (in the case of a notice given or sent by post) two business days after being placed in the post, properly addressed to such address and postage prepaid. Any notice received or deemed to have been received after 5 pm on a business day, or at any time on a day which is not a business day, shall be deemed not to have been received until 9 am on the next business day.

17.1.3 Joint Holders: In the case of joint Holders of Stock, a notice given to any Stockholder in the Register in respect of such holding shall be sufficient notice to all the joint Holders.

17.1.4 Council: Any notice to be given by the Council may, where authorised by the Council, be given on its behalf by the Trustee, the Registrar or the Paying Agent.

17.2 Authenticity of Notices: The recipient of a notice shall be entitled to rely on, without the need to carry out any investigation or make further inquiry, any notice which purports to have been given by any person pursuant to clause 17.1 and shall not be liable to that person or any other person in any way should any such notice subsequently be proved not to have been authorised by that person or to have been made, given or signed by someone other than an officer, employee, agent or attorney of that person or any solicitor.

17.3 Registration of Deed: The Trustee may at the Council's cost, or may require the Council at its own cost to, register or procure the registration and recording of this Deed as may be required by law or as may be necessary to perfect the security interest created by this Deed to give it full legal effect.

17.4 Release of Trust Deed: Upon proof being given to the reasonable satisfaction of the Trustee that all Stockholders have been paid or satisfied in respect of both Principal and interest, or that provision for such payment or satisfaction has been made in accordance with the provisions of this Deed and the requirements of any Stock and upon

payment or retention of all costs, charges and expenses incurred by or payable to the Trustee or any Receiver in relation to this Deed, and the remuneration of the Trustee and of any Receiver and all other Secured Money, the Trustee shall at the request and cost of the Council surrender, release or transfer to the Council, or as it may direct, the Charged Assets or such part thereof as may remain charged in the Trustee's favour freed and discharged from the security created by this Deed and from the Secured Money and release and discharge the Council from the Secured Obligations. Nothing in this clause shall limit or prejudicially affect the rights of the Council to any release of the Charged Assets pursuant to clause 9.

- 17.5 Partial Invalidity:** A provision of this Deed has no effect in respect of any Stock to the extent it contravenes, or is inconsistent with, the FMC Act, the FMC Regulations or any term implied into this Deed by the FMC Act or the FMC Regulations to the extent that Act and those regulations are applicable to the relevant Stock. Without limiting the foregoing, if any provision of this Deed or of any Stock Certificate shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.6 Absence of Crown Guarantee:** Neither the Secured Money nor the Secured Obligations are guaranteed by the Crown.
- 17.7 Governing Law and Submission to Jurisdiction:** This Deed, and each Stock Certificate, is governed by and to be construed in accordance with, the laws of New Zealand and the Council, the Trustee and each Stockholder submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters or disputes arising in respect of this Deed or any Stock Certificate.
- 17.8 Governance Requirements:** The Council must comply with:
- 17.8.1** all applicable laws relating to governance matters;
 - 17.8.2** the Act; and
 - 17.8.3** the applicable terms of this Deed from time to time.
- 17.9 Delivery:** For the purposes of Section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this Deed will be delivered by each of the parties hereto (each a **Delivering Party**) immediately on the earlier of:
- 17.9.1** physical delivery of an original of this Deed executed by the relevant Delivering Party into the custody of the other party or other party's solicitors; or
 - 17.9.2** transmission by the relevant Delivering Party or its solicitors (or any other persons authorised in writing by the relevant Delivering Party) of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the relevant Delivering Party, to the other party or other party's solicitors.
- 17.10 Counterparts:** This deed may be signed in any number of counterparts, all of which, when taken together, will constitute one and the same deed.

IN WITNESS OF WHICH this Deed has been executed and delivered.

SIGNED for and on behalf of **SOUTH WAIRARAPA DISTRICT COUNCIL** by:

Elected Member/Councillor

Elected Member/Councillor

Address:

South Wairarapa District Council
19 Kitchener Street
Martinborough 5711

Facsimile: 06 306 9373
For: Paul Crimp/Kyra Low

SIGNED by
TRUSTEES EXECUTORS LIMITED
under its common seal by

Authorised Signatory

.....
[Sign]

.....
[Print name in full]

Authorised Signatory

.....
[Sign]

.....
[Print name in full]

Witness to Authorised Signatory's signature:

Witness to Authorised Signatory's signature:

Signature: _____
[Print name in full]

Signature: _____
[Print name in full]

Occupation: _____

Occupation: _____

Address: _____

Address: _____

Address: Level 5, 10 Customhouse Quay, PO Box 3222, Wellington 6140

Interest Rate: [] per cent per annum

Issue Date: []

Redemption Date: []

GIVEN by or on behalf of the Council this [] day of []

[Execution Block]

NOTES:

- (1) The Holder is entitled to the benefit of, is bound by, and is deemed to have notice of, all the provisions of the Trust Deed (including the Conditions) (which may be inspected at the Principal Office of the Council).
- (2) This Certificate must be surrendered to the Council or the Registrar before transfer of the whole or any part of the Stock can be registered, and prior to redemption of the whole or any part of the Stock.
- (3) All sums specified in this Certificate relate to New Zealand currency.
- (4) No interest coupons are issued in respect of the Stock.
- (5) Words and expressions used in this Certificate and in the Conditions shall have the same definition as in the Trust Deed unless otherwise defined or the context otherwise requires.

CONDITIONS

1. **THE** Holder of the Stock is entitled *pari passu* and rateably with the holders of all other Stock constituted by the Trust Deed to the benefit of, and is subject to, the provisions of the Trust Deed (including the Conditions).
2. **THE** Principal Money and interest then payable in respect of the Stock will be paid, in accordance with the Trust Deed, on the Redemption Date or on such earlier date as the Stock becomes due and payable in accordance with the Trust Deed.
3. **EVERY** Holder shall, as a condition precedent to receiving payment of the amount of Stock evidenced by a Stock Certificate produce, in the case of part payment, and surrender, in the case of payment in full, such Certificate to the Council or the Registrar or, in case of contemplated payment by the Trustee or the Paying Agent on behalf of the Council, to the Trustee or the Paying Agent as the case may require **PROVIDED ALWAYS** that this Condition shall not preclude payment by the Council, the Trustee or the Paying Agent, on behalf of the Council with the consent of the Council, without production of such Certificate if the Council or the Trustee so elects. Upon payment in part, the Certificate shall be, or be deemed to be, endorsed accordingly and returned to the Holder, and upon payment in full, the Certificate shall be deemed to have been cancelled and surrendered to the Council. This Condition shall not apply if the Trustee requires payment to it of the Principal Money in respect of any Stock in accordance with the provisions of the Trust Deed.
4. **EXCEPT** where otherwise agreed between the Council and the Holder, the Stock bears interest from the issue date set out in this Certificate (the **Issue Date**) and shall be paid at the frequency, and as at the dates in each year following the Issue Date, as set out in this Certificate on the basis of a 365 day year and deemed equal *part-year* periods.
5. **INTEREST** shall, where it has not earlier ceased to accrue, cease to accrue on any Stock from the Redemption Date unless upon production of this Certificate the Council wrongfully fails to make payment, in which case interest shall run until actual redemption or payment. This Condition shall not apply if the Trustee requires payment to it of the Principal Money or interest in respect of any Stock in accordance with the provisions of the Trust Deed.
6. **EVERY** Holder will be recognised by the Council, the Paying Agent and the Registrar as entitled to its Stock and to the Principal Money and interest payable thereon free from any equity, security interest, set-off, cross-claim or counter-claim between the Council and the original or any intermediate holder of the Stock (not being the Holder).
7. **THE** Stock may be transferred in accordance with the Trust Deed, provided that:
 - (a) the transfer must be effected in accordance with the FMC Act, and the transferor shall be deemed to remain the owner of the Stock until the name of the transferee is entered in the Register (as defined in the Trust Deed) in respect thereof;
 - (b) every instrument of transfer must be left at, or delivered to, the registered office of the Registrar for registration accompanied by any Certificate in respect of the Stock to be transferred and such other evidence as the Council or the Registrar may require to prove the title of the transferor or its right to transfer the Stock. Upon being satisfied as to the due execution of the transfer, and the due compliance with the provisions of any Act relating to stamp duties, the

Registrar will register the transfer in accordance with the Registrar and Paying Agency Agreement (as defined in the Trust Deed) and will recognise the transferee as the Holder entitled to the amount of Stock comprised in the transfer;

- (c) all instruments of transfer which are registered will be retained by the Council or the Registrar, but any instrument of transfer which the Registrar may decline (on reasonable grounds) to register shall be returned to the person who has delivered the same together with the reasons for non-registration;
- (d) the Registrar shall not be obliged to, but may, register any transfer of Stock during the period between the Registrar's close of business on the Record Date immediately preceding the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest and the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest, or the period between the Registrar's close of business on the date 14 days before any meeting (inclusive of the date on which such meeting is held) of Stockholders is convened in accordance with the Trust Deed and the date of such meeting. For the purposes of these Conditions, **Record Date** means the tenth day before the relevant date for payment of any Principal and/or interest in respect of any Stock or, if such day is not a business day then such day as determined by the Paying Agent in accordance with its usual practice;
- (e) no fee shall be charged by the Council for the registration of a transfer;
- (f) the Council, the Trustee, the Paying Agent and the Registrar will recognise only the Holder as the absolute owner thereof and, except as ordered by a court of competent jurisdiction or by statute, shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which any Stock may be subject. The receipt of such Holder, or in the case of joint Holders the receipt of any of them, of the Principal Money and the interest from time to time accruing due in respect thereof or for any other money payable in respect thereof, or the compliance with the payment directions of the Holder or any one of joint Holders, shall be a good discharge to the Council, the Trustee, the Paying Agent or the Registrar, as the case may be, notwithstanding any notice it may have whether express or otherwise of the right, title, interest (including security interest) or claim of any other person to or in respect of such Stock, interest or money. No notice of any trust express, implied or constructive, nor of any security interest, shall be entered on the Register in respect of any Stock,

provided that the requirements for transfer in paragraphs (b), (c) and (d) shall not apply to the extent that the Council and the Registrar agree a different method of transfer either with the Trustee or, in respect of a particular transfer, with the relevant transferor and transferee.

FIRST SCHEDULE

PART II

Stock Certificate No: []

SOUTH WAIRARAPA DISTRICT COUNCIL
(the **Council**)

Principal Office: South Wairarapa District Council
19 Kitchener Street
Martinborough 5711

Stock Transfer Office: Computershare Investor Services Limited
Level 2, 159 Hurstmere Road
Takapuna
AUCKLAND
(the **Registrar** and **Paying Agent**)

[Description of Stock Issue]

Security Stock Certificate

The Security Stock referred to in this Certificate is Security Stock constituted and secured by a debenture trust deed (**Trust Deed**) dated on or about [] between the Council and Trustees Executors Limited and is issued with the benefit and subject to the provisions of the Trust Deed, the conditions endorsed on and/or otherwise applicable to such Stock and this Certificate, including the further conditions (included in the term **Conditions**).

THIS IS TO CERTIFY THAT

1. [name of holder] (**Holder**) will, upon registration of the Stock pursuant to the Trust Deed, be the registered Holder of \$ [] in nominal amount of Security Stock (**Stock**);
2. **SUBJECT** to the provisions of clause 3 of this Certificate, the Stock is issued by way of continuing security for **[the due payment and satisfaction to the Holder of all liabilities of the Council to the Holder **[in respect of [insert details of specific agreement(s)] (Agreement(s))]* whether incurred before or after the issue of the Stock and whether matured or not and whether incurred by the Council alone or jointly with others and whether as principal or surety and whether absolute or contingent and whether incurred within or outside the scope of the relationship of banker and customer and shall include, but not by way of limitation, liabilities in respect of advances and in respect of cheques, bills, notes and other negotiable or non-negotiable instruments drawn, accepted, endorsed or guaranteed and in respect of interest (whether capitalised or otherwise compounded or current) and as regards current interest including interest on capitalised interest or on interest otherwise compounded to accrue from day to day at the rate or respective rates from time to time without prior or other notice to the Council determined upon by the Holder or otherwise agreed with the Holder and in respect of fees, commissions, exchanges,

re-exchanges, legal expenses and other usual and proper banking and/or commercial charges];

*[*The words in the above brackets may be varied to suit the particular circumstances for which Security Stock is issued.]*

*[**This bracketed wording to be used where the security is only for obligations under one or more specified agreements.]*

3. **THE** Stock is issued on the special condition that at any date (**Relevant Date**) the Stock shall secure as the Priority Total Amount not more than:

(a) as principal the lesser of:

(i) the aggregate amount (as finally determined) of all the liabilities, advances and other accommodation or obligations referred to in clause 2 of this Certificate at the Relevant Date, including capitalised interest owing at the Relevant Date but excluding any uncapitalised interest owing at the Relevant Date; and

(ii) the nominal amount of the Stock,

(such lesser amount being referred to in this Certificate as the **Priority Principal Amount**); and

(b) as interest, all interest payable to the Holder on the principal referred to in paragraph (a)(i) above (up to the Priority Principal Amount) but excluding any interest (except to the extent that it is capitalised into the Priority Principal Amount) which has been due and owing since a date more than six months prior to the Date of Enforcement, and if the amount referred to in paragraph (a)(i) above exceeds the amount referred to in paragraph (a)(ii) above, the Holder may, in its sole discretion, determine which of the liabilities, advances, accommodation and obligations secured by the Stock the Priority Principal Amount is applied to the payment of, and the interest referred to in this paragraph will be calculated on that basis,

AND upon any distribution of the money available to Stockholders pursuant to the provisions of clause 15 of the Trust Deed the Stock shall entitle the Holder to payment pari passu with the other Stockholders in respect only of their Priority Principal Amount together with interest calculated pursuant to the provisions of paragraph (b) above **PROVIDED ALWAYS** in the event of the amount referred to in paragraph (a)(i) above exceeding the Priority Principal Amount then the aggregate of the following amounts:

(i) such excess (if any);

(ii) the interest owing in respect of such excess; and

(iii) any other interest as Secured Money but excluded pursuant to paragraph (b) above,

shall rank for payment subsequent to the Priority Total Amounts of the other Stockholders but pari passu with any amounts as referred to in the equivalent to this proviso in Security Stock Certificates held by other Stockholders (and as consistent with clause 6.3.1(c) of the Trust Deed);

all in accordance with the Trust Deed (including the Conditions).

CONDITIONS

1. **SUBJECT** as herein provided, the Holder of the Stock is entitled pari passu and rateably with the holders of all other Stock constituted by the Trust Deed to the benefit of, and is subject to, the provisions of the Trust Deed (including the Conditions).
2. **EVERY** Holder shall, as a condition precedent to receiving payment of the amount of Stock comprised in the Holder's Stock Certificate produce, in the case of part payment, and surrender, in the case of payment in full, such Stock Certificate to the Council or the Registrar or, in case of contemplated payment by the Trustee or the Paying Agent on behalf of the Council, to the Trustee or the Paying Agent as the case may require **PROVIDED ALWAYS** that this Condition shall not preclude payment by the Council, the Trustee or the Paying Agent, on behalf of the Council with the consent of the Council, without production of such Certificate if the Council or the Trustee so elects. Upon payment in part, the Certificate shall be, or be deemed to be, endorsed accordingly and returned to the Holder, and upon payment in full, the Certificate shall be deemed to have been cancelled and surrendered to the Council. This Condition shall not apply if the Trustee requires payment to it of the Principal Money in respect of any Stock in accordance with the provisions of the Trust Deed.
3. **INTEREST** payable shall, where it has not earlier ceased to accrue, cease to accrue on the money secured by any Stock from the date fixed for payment of the Principal Money unless upon production of this Certificate the Council wrongfully fails to make payment in which case interest shall run until actual redemption or payment. This condition shall not apply if the Trustee requires payment to it of the Principal Money or interest in respect of any Stock in accordance with the provisions of the Trust Deed.
4. **EVERY** Holder will be recognised by the Council, the Paying Agent and the Registrar as entitled to its Stock and to the Principal Money and interest payable thereon free from any equity, security interest, set-off or cross-claim or counter-claim between the Council and the original or any intermediate holder of the Stock (not being the Holder).
5. **THE** Stock may, to the same extent as the debts, liabilities, advances or other accommodation or obligations to which it relates, be transferred in accordance with the Trust Deed by an instrument in writing in the usual or common form, and the following provisions shall apply:
 - (a) every instrument of transfer must be executed by the transferor in the manner required by the Council or the Registrar or as required by the FMC Act and the transferor shall be deemed to remain the owner of the Stock until the name of the transferee is entered in the Register (as defined in the Trust Deed) in respect thereof;
 - (b) every instrument of transfer must be left at the registered office of the Registrar for registration accompanied by any Certificate in respect of the Stock to be transferred and such other evidence as the Council or the Registrar may require to prove the title of the transferor or its right to transfer the Stock. Upon being satisfied as to the due execution of the transfer, and the due compliance with the provisions of any Act relating to stamp duties, the Registrar will register the transfer in accordance with the Registrar and Paying Agency Agreement (as defined in the Trust Deed) and will recognise the transferee as the Holder entitled to the amount of Stock comprised in the transfer;

- (c) all instruments of transfer which shall be registered will be retained by the Council or the Registrar, but any instrument of transfer which the Registrar may decline (on reasonable grounds) to register shall be returned to the person who has delivered the same together with the reasons for such non-registration;
- (d) the Registrar shall not be obliged to, but may, register any transfer of Stock during the period between the Registrar's close of business on the Record Date immediately preceding the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest and the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest, or the period between the Registrar's close of business on the date 14 days before any meeting (inclusive of the date on which such meeting is held) of Holders is convened in accordance with the Trust Deed and the date of such meeting. For the purposes of these Conditions, **Record Date** means the tenth day before the relevant date for payment of any Principal and/or interest in respect of any Stock or, if such day is not a business day then such day as determined by the Paying Agent in accordance with its usual practice;
- (e) no fee shall be charged by the Council for the registration of a transfer;
- (f) the Council, the Trustee, the Paying Agent and the Registrar will recognise only the Holder as the absolute owner thereof and, except as ordered by a court of competent jurisdiction or by statute, shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which any Stock may be subject. The receipt of such Holder, or in the case of joint Holders the receipt of any of them, of the Principal Money and the interest from time to time accruing due in respect thereof or for any other money payable in respect thereof, or the compliance with the payment directions of the Holders or any one of joint Holders, shall be a good discharge to the Council, the Trustee, the Paying Agent or to the Registrar, as the case may be, notwithstanding any notice it may have whether express or otherwise of the right, title, interest (including security interest) or claim of any other person to or in respect of such Stock, interest or money. No notice of any trust express, implied or constructive, nor of any security interest, shall be entered on the Register in respect of any Stock,

provided that the requirements for transfer in paragraphs (b), (c) and (d) shall not apply to the extent that the Council and the Registrar agree a different method of transfer either with the Trustee or, in respect of a particular transfer, with the relevant transferor and transferee.

FIRST SCHEDULE

PART III

Stock Certificate No: []

SOUTH WAIRARAPA DISTRICT COUNCIL
(the **Council**)

Principal Office: South Wairarapa District Council
19 Kitchener Street
Martinborough 5711

Stock Transfer Office: Computershare Investor Services Limited
Level 2, 159 Hurstmere Road
Takapuna
AUCKLAND
(the **Registrar** and **Paying Agent**)

[Description of Stock Issue]

Security Stock Certificate

The Security Stock referred to in this Certificate is Security Stock constituted and secured by a debenture trust deed (**Trust Deed**) dated on or about [] between the Council and Trustees Executors Limited and is issued with the benefit and subject to the provisions of the Trust Deed, the conditions endorsed on and/or otherwise applicable to such Stock and this Certificate, including the further conditions (included in the term **Conditions**).

THIS IS TO CERTIFY THAT

1. [name of holder] (**Holder**) will, upon registration of the Stock pursuant to the Trust Deed, be the registered Holder of Security Stock (**Stock**) in a nominal amount equal to the aggregate amount, from time to time, of the liabilities, advances and other accommodation or obligations referred to in clause 2 of this Certificate;
2. **SUBJECT** to the provisions of clause 3 of this Certificate, the Stock is issued by way of continuing security for **[the due payment and satisfaction to the Holder of all liabilities of the Council to the Holder **[in respect of [insert details of specific agreement(s)] (Agreement(s))]* whether incurred before or after the issue of the Stock and whether matured or not and whether incurred by the Council alone or jointly with others and whether as principal or surety and whether absolute or contingent and whether incurred within or outside the scope of the relationship of banker and customer and shall include, but not by way of limitation, liabilities in respect of advances and in respect of cheques, bills, notes and other negotiable or non-negotiable instruments drawn, accepted, endorsed or guaranteed and in respect of interest (whether capitalised or otherwise compounded or current) and as regards current interest including interest on capitalised interest or on interest otherwise compounded to accrue from day to day at the rate or respective rates from time to

NOTES:

- (1) The Holder is entitled to the benefit of, is bound by, and is deemed to have notice of, all the provisions of the Trust Deed (including the Conditions) (which may be inspected at the Principal Office of the Council).
- (2) This Certificate must be surrendered to the Council or the Registrar before transfer of the whole or any part of the Stock can be registered.
- [(3) All sums specified in this Certificate relate to New Zealand currency.]
- (4) Words and expressions used in this Certificate and in the Conditions shall have the same definition as in the Trust Deed unless otherwise defined or the context otherwise requires.

CONDITIONS

1. **SUBJECT** as herein provided, the Holder of the Stock is entitled pari passu and rateably with the holders of all other Stock constituted by the Trust Deed to the benefit of, and is subject to, the provisions of the Trust Deed (including the Conditions).
2. **EVERY** Holder will be recognised by the Council, the Paying Agent and the Registrar as entitled to its Stock and to the Principal Money and interest payable thereon free from any equity, security interest, set-off or cross-claim or counter-claim between the Council and the original or any intermediate holder of the Stock (not being the Holder).
3. **THE** Stock may, to the same extent as the debts, liabilities, advances or other accommodation or obligations to which it relates, be transferred in accordance with the Trust Deed by an instrument in writing in the usual or common form, and the following provisions shall apply:
 - (a) every instrument of transfer must be executed by the transferor in the manner required by the Council or the Registrar or as required by the FMC Act and the transferor shall be deemed to remain the owner of the Stock until the name of the transferee is entered in the Register (as defined in the Trust Deed) in respect thereof;
 - (b) every instrument of transfer must be left at the registered office of the Registrar for registration accompanied by any Certificate in respect of the Stock to be transferred and such other evidence as the Council or the Registrar may require to prove the title of the transferor or its right to transfer the Stock. Upon being satisfied as to the due execution of the transfer, and the due compliance with the provisions of any Act relating to stamp duties, the Registrar will register the transfer in accordance with the Registrar and Paying Agency Agreement (as defined in the Trust Deed) and will recognise the transferee as the Holder entitled to the amount of Stock comprised in the transfer;
 - (c) all instruments of transfer which shall be registered will be retained by the Council or the Registrar, but any instrument of transfer which the Registrar may decline (on reasonable grounds) to register shall be returned to the person who has delivered the same together with the reasons for such non-registration;
 - (d) the Registrar shall not be obliged to, but may, register any transfer of Stock during the period between the Registrar's close of business on the Record Date immediately preceding the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest and the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest, or the period between the Registrar's close of business on the date 14 days before any meeting (inclusive of the date on which such meeting is held) of Holders is convened in accordance with the Trust Deed and the date of such meeting. For the purposes of these Conditions, **Record Date** means the tenth day before the relevant date for payment of any Principal and/or interest in respect of any Stock or, if such day is not a business day then such day as determined by the Paying Agent in accordance with its usual practice;
 - (e) no fee shall be charged by the Council for the registration of a transfer;

- (f) the Council, the Trustee, the Paying Agent and the Registrar will recognise only the Holder as the absolute owner thereof and, except as ordered by a court of competent jurisdiction or by statute, shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which any Stock may be subject. The receipt of such Holder, or in the case of joint Holders the receipt of any of them, of the Principal Money and the interest from time to time accruing due in respect thereof or for any other money payable in respect thereof, or the compliance with the payment directions of the Holders or any one of joint Holders, shall be a good discharge to the Council, the Trustee, the Paying Agent or to the Registrar, as the case may be, notwithstanding any notice it may have whether express or otherwise of the right, title, interest (including security interest) or claim of any other person to or in respect of such Stock, interest or money. No notice of any trust express, implied or constructive, nor of any security interest, shall be entered on the Register in respect of any Stock,

provided that the requirements for transfer in paragraphs (b), (c) and (d) shall not apply to the extent that the Council and the Registrar agree a different method of transfer either with the Trustee or, in respect of a particular transfer, with the relevant transferor and transferee.

FIRST SCHEDULE

PART IV

FURTHER CONDITIONS

1. **EVERY** Stockholder (other than a Holder of Security Stock) shall on payment in full for the Stockholder's Stock, and every Holder of Security Stock issued pursuant to the provisions of the Trust Deed, shall be entitled to receive free of charge a Certificate or Certificates for its Stock **PROVIDED THAT** joint Holders of Stock shall not be entitled to duplicate Certificates in respect of the Stock held by them jointly and the Certificate in respect of a joint holding may be delivered to such one of the joint Holders as the Council may select.
2. **ON** production to the Council or the Registrar of a damaged Certificate, the Council or the Registrar may cancel such and issue a replacement, and if any Certificate is lost or destroyed then, upon proof thereof to the satisfaction of the Council or the Registrar and on such indemnity if any as it may require being given, and upon payment of out-of-pocket expenses of the Council or the Registrar in investigating evidence as the Council or the Registrar may deem adequate, a replacement may be given to the person apparently entitled thereto. An entry as to the issue of the new Certificate and the indemnity (if any) shall be made in the Register.
3. **THE** executors or administrators of a deceased Stockholder (not being one of several joint Stockholders), and in the case of the deceased of one or more of several joint Stockholders the survivor or survivors of such joint Stockholders, shall be the only persons recognised by the Council, the Registrar or the Trustee as having any title or interest in such Stock **PROVIDED ALWAYS** that if such Stockholder having sold any or all of its Stock had delivered to the transferee, or to a Market Participant (as defined in the "NZX Participant Rules") acting in connection with that sale, a transfer of the Stock so sold signed by him or her but which had not been registered before his or her death the Council may, subject to compliance by the transferee with the conditions as to transfer applicable to the Stock, register that transfer notwithstanding that the Council has notice of that Stockholder's death.
4. **ANY** person becoming entitled to Stock as a result of the death, bankruptcy or liquidation of any Stockholder may (subject to the conditions as to transfer applicable to the Stock), upon producing such evidence of such person's entitlement as the Council shall think sufficient, be registered as the Holder of such Stock. This condition shall include any case in which a person becomes entitled as a survivor of persons registered as joint Holders.
5. **ALL** payments of principal or interest on the Stock will be made (subject to condition 6 below) in New Zealand to the person entered in the Register as the Holder of the Stock on the Record Date immediately preceding the payment date upon which such payment is due and payable, and otherwise in accordance with the provisions of the Trust Deed. For the purposes of these conditions, **Record Date** means the tenth day before the relevant date for payment of any Principal and/or interest in respect of the Stock, or, if such day is not a business day, then such day as determined by the Paying Agent in accordance with its usual practice.
6. **PAYMENTS** in respect of the Stock will be made, after deduction of applicable withholding or other taxes in accordance with the Trust Deed by the Paying Agent posting a cheque to the Registered Address, as at the applicable Record Date, of the Stockholder or, in terms of any agreement between the Council and the Stockholder,

by direct credit or other payment means as notified in writing to the Paying Agent by the Council or the Stockholder. Any such notice shall be deemed to be automatically cancelled on transfer of the Stock.

7. **IF** several persons are entered in the Register as joint Holders of any Stock then without prejudice to condition 6 above the receipt, or compliance with the payment directions, of any one of such persons for any Principal Money (or any part of the Principal Money) or interest or other sums from time to time payable on or in respect of such Stock shall be as effective a discharge to the Council, the Registrar, the Paying Agent and the Trustee as if the person signing such receipt or giving such payment directions were the sole registered Holder of such Stock.
8. **IF** the date for any payment in respect of the Stock is not a business day, payment shall be made on the next succeeding business day and no additional interest or other sum shall be paid in respect of any period during which payment is so delayed.
9. **THE** Stockholder must at all times comply with, and not expose the Council or the Trustee to any immediate or possible liability under or in respect of, the FMC Act or any other law applicable to the advertising, offering, sale or transferring of Stock.
10. **THE** obligations of the Council in respect of the Stock may only be enforced in the circumstances provided for, and in accordance with the terms of, the Trust Deed.

Words and expressions in these further conditions shall have the same meaning as in the Trust Deed unless otherwise defined or the context otherwise requires.

SECOND SCHEDULE

MEETINGS OF STOCKHOLDERS

1. **Definitions:** In this Schedule the expression **Extraordinary Resolution** means a resolution:
 - 1.1 passed at a properly convened and held meeting (including an adjourned meeting) of Stockholders by a majority consisting of not less than three-fourths of the persons who are entitled to vote and voted upon a show of hands or, if a poll is properly demanded, by a majority consisting of not less than three-fourths of the votes given on such poll by those who are entitled to vote; or
 - 1.2 in writing pursuant to clause 19.
2. **Convening of Meetings:**
 - 2.1 The Trustee or the Council may at any time of their own volition convene a meeting of the Stockholders.
 - 2.2 The Council shall whenever required to do so by law convene a meeting of the Stockholders.
 - 2.3
 - (a) The Trustee shall at the request in writing of any Holders of Security Stock or of Stockholders holding not less than 5% in nominal amount of the Stock (other than Security Stock) convene a meeting of the Stockholders.
 - (b) Any such request shall state the nature of the business proposed to be dealt with at the meeting.
 - 2.4 Notwithstanding the provisions of paragraph 2.3(a), the Trustee shall not be obliged to convene a meeting of Stockholders pursuant to such provisions until it has been indemnified (subject to section 105 of the FMC Act) to its reasonable satisfaction against all reasonable costs and expenses to be thereby incurred.
 - 2.5 For the purpose of enabling the Trustee to satisfy itself as to the validity of a request by the Stockholders pursuant to paragraph 2.3(a) the Council will ensure that the Trustee has full access to the Register whether such Register shall for the time being be closed or not.
3. **Place of Meetings:** Each meeting shall be held in Wellington or at such other place as the Trustee determines or approves with the consent of the Council.
4. **Notice of Meetings:**
 - 4.1 At least five business days before the Council gives notice of a meeting it shall advise the Trustee in writing of the intended place, day and hour thereof and the precise nature of the business to be transacted thereat and shall obtain the prior approval in writing of the Trustee to the documents it proposes to send to Stockholders. If the Trustee so requires the documents shall include any statement which the Trustee

wishes to make in relation to the meeting and the matters to be considered thereat.

- 4.2** (a) Notice of every meeting of Stockholders shall be given in the manner provided herein and in clause 17 of the Trust Deed to:
- (i) every Holder of Stock who is entered on the Register on the day two working days before the notice is sent; and
 - (ii) every legal personal representative or an assignee in bankruptcy or liquidator of a deceased or bankrupt Stockholder or Stockholder in liquidation who, but for the Stockholder's death or bankruptcy or liquidation would have been entitled to receive notice of the meeting.
- (b) Notice of every meeting shall be given to:
- (i) each Holder of Registered Stock whose Registered Address is in New Zealand, by ordinary post;
 - (ii) each Holder of Registered Stock whose Registered Address is outside New Zealand, by airmail post;
 - (iii) each Holder of Bearer Stock in such manner as may be provided in the Trust Deed or the conditions of such Bearer Stock;
 - (iv) every councillor of the Council;
 - (v) each other person required to be given notice by law.
- 4.3** In the case of any Extraordinary Resolution to be proposed at a meeting, the Council shall, at least 10 working days (or any lesser period approved by the Trustee) before Council gives notice of the meeting, provide to the Trustee a draft of the proposed notice of the meeting.
- 4.4** At least fifteen working days' notice (or such shorter period as the Trustee and Council shall otherwise agree) of every meeting shall be given to the Stockholders entitled to receive notice of the meeting. The notice shall be exclusive of the day on which it is given or deemed to be given and of the day for which it is given. The notice shall specify the place, day and hour of the meeting and the general nature of the business to be transacted (in sufficient detail to enable a Holder to form a reasoned judgment in relation to it) thereat but it shall not be necessary to specify in the notice the terms of any resolution to be proposed at the meeting except in the case of a resolution proposed to be passed as an Extraordinary Resolution in which case (except in respect of any notice to Holders of Bearer Stock) the text of the proposed resolution shall be set out (together with any of the Trustee's comments on the Extraordinary Resolution). The notice must also set out the right of a Holder to appoint a proxy and any authorised person with respect to voting under clause 14.10.

- 4.5** The accidental omission to give notice to, or the non-receipt of notice by, any persons entitled thereto shall not invalidate the proceedings at any meeting.
- 4.6** If the meeting is convened by the Council a copy of the notice shall be sent to the Trustee. If the meeting is convened by the Trustee a copy of the notice shall be sent to the Council. If any of the Stock is listed for quotation on the NZX a copy of the notice shall also be sent to the NZX at the same time as notices are sent to the Stockholders.
- 4.7** An irregularity in a notice of a meeting is waived if all Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Holders agree to the waiver or the Trustee indicates at the meeting that it is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the relevant Holders.

5. Quorum:

- 5.1** No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business. A Holder is present at a meeting for the purposes of this schedule and part of the quorum if that Holder is present in person or by representative or is participating in a meeting by means of audio, audio and visual, or electronic communications.
- 5.2** The quorum for passing an Extraordinary Resolution shall be Stockholders present in person or by representative holding Stock with a combined nominal amount of no less than 25% of the nominal amount of Stock held by Stockholders who are entitled to vote.
- 5.3** The quorum for the transaction of any business at a meeting of Stockholders other than the passing of an Extraordinary Resolution shall be the Holders present in person or by representative of at least 10% in nominal amount of the Stock.
- 5.4** If within 30 minutes after the appointed time for the meeting a quorum is not present the meeting, if convened at the request of Holders, will be dissolved. In any other case it will be adjourned to the day that is 10 working days later at the same time and place or to such other date, time and place as may be appointed by the chairman, or the Trustee. At such adjourned meeting, if a quorum is not present within 30 minutes after the appointed time for the meeting all the Holders present at the meeting will be a quorum for the transaction of business including the passing of Extraordinary Resolutions.
- 5.5** Notice of any such adjourned meeting of Stockholders at which an Extraordinary Resolution is to be submitted shall be given in the same manner (except in respect of the period of notice as to which a period of five days' notice shall be given) as of an original meeting and such notice shall state that the Stockholders present in person or by representative at the adjourned meeting, whatever their number and whatever the amount of Stock held by them, shall form a quorum and shall have the power to pass any resolution (including an Extraordinary Resolution) and to decide upon all matters which could properly have been dealt with at the meeting from which the adjournment took place.

6. **Right to Speak:** Any director, officer of or solicitor for, the Trustee or any other person authorised in that behalf by the Trustee and any officer of, or solicitor for, the Council or any other person authorised in that behalf by the Council, may attend any meeting and all such persons shall have the right to speak at the meeting.
7. **Chairman:** A person nominated in writing by the Trustee shall preside at every meeting and if no such person is appointed, or if at any meeting the person nominated is not present within fifteen minutes after the time appointed for holding the meeting, the Stockholders present shall choose one of their number to be chairman.
8. **Adjournment:**
 - 8.1 The chairman may, with the consent of any meeting at which a quorum is present and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.
 - 8.2 No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.
9. **Authority to Vote:** The person registered as a Stockholder in the Register shall be exclusively entitled to vote in respect of the Stock recorded as owned by that person provided however that a Stockholder who is an individual may vote personally or by his or her representative (being, for the purposes of this Schedule, a person either appointed by way of proxy or by power of attorney) and a Stockholder which is a company may vote by its representative (being, for the purposes of this Schedule, a person appointed either by way of proxy or by power of attorney or being a person authorised by the relevant provisions of the Companies Act).
10. **Proxies:**
 - 10.1 The instrument appointing a proxy shall be in writing signed by or, in the case of an electronic notice, sent by the appointor or by the appointor's attorney duly authorised in writing or, if the appointor is a company, either under its seal or signed by an officer or attorney so authorised or by any director, secretary, general manager, investment manager or other person who has actual authority to appoint a proxy on behalf of such company.
 - 10.2 A person appointed to act as a proxy need not be a Stockholder and has the right to speak at a meeting of Stockholders.
 - 10.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified by a solicitor or Notary Public or in such other manner as the Trustee shall approve, shall be either deposited at such place as the Trustee, or the Council with the approval of the Trustee, may in the notice convening the meeting direct or (if no such place is appointed) then at the principal office of the Council not less than forty-eight hours (or such shorter period as the Council may nominate in the notice convening the meeting) before the time appointed for holding the meeting or adjourned meeting at which the person named in the

instrument proposes to vote and in default the instrument of proxy shall not be treated as valid **PROVIDED ALWAYS** that the Trustee may in its discretion at any time:

- (a) waive any of the foregoing requirements in relation to any power of attorney or other authority;
- (b) approve and elect to treat as valid any instrument of proxy notwithstanding that it is received or produced at a place other than that specified in the notice or out of time; and
- (c) subject to such conditions (if any) as it may think fit, accept facsimile transmitted copies of any document appointing, or evidencing the appointment of, any representative.

10.4 An instrument of proxy may be in any usual or common form or in any other form which the Trustee may approve and may make provision for directions to be given by the appointee to vote in favour of or against any proposed resolution.

10.5 A proxy, whether in a usual or common form or not, shall, unless the contrary is stated thereon, be valid for the meeting to which it relates and for any adjournment thereof and need not be witnessed. Notwithstanding any provision contained in an instrument of proxy, no instrument of proxy shall be valid after the expiration of twelve months from the date of its execution but this provision shall not be construed to apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.

10.6 An instrument of proxy which is expressed to be in favour of:

- (a) the Council; or
- (b) the chairman; or
- (c) the chairman of the meeting;

shall be valid and effectual as though it were in favour of a named person and shall in the case of sub-paragraph (a) constitute the Chief Executive and in the case of sub-paragraphs (b) and (c) constitute the person who chairs the meeting for which the proxy is used, whether on adjournment or not, as the case may be, the lawful proxy of the appointee.

11. Appointment of Attorney: Any Stockholder may by power of attorney duly executed as a deed appoint an attorney (who need not be a Stockholder) to vote and act on that Stockholder's behalf at any meeting. An attorney shall be entitled to produce evidence of that attorney's appointment at any time before the time appointed for the holding of, or at, the meeting or adjourned meeting or for the taking of a poll at which the attorney proposes to vote. An attorney, if so empowered, may appoint a proxy for the Stockholder granting the power of attorney.

12. Corporate Representative: A person authorised pursuant to the relevant provisions of the Companies Act, or pursuant to any other enactment or applicable empowering provision, by a Stockholder being a company, to act for it at any meeting shall in accordance with that person's authority until that person's authority is revoked by the company concerned be entitled to exercise the same

powers on behalf of the company as that company could exercise if it were an individual Stockholder and shall be entitled to produce evidence of that person's authority to act at any time before the time appointed for the holding of, or at the meeting or adjourned meeting or for the taking of a poll at which that person proposes to vote.

13. Rights of Representatives:

13.1 A representative shall have the right to speak at the meeting and to demand or join in demanding a poll and shall (except when and to the extent to which the representative is specially directed to vote for or against any proposal) have power generally to act at the meeting (or adjourned meeting) for the Stockholder concerned.

13.2 The Trustee and any officer of the Trustee may be appointed a representative.

14. Voting Procedure:

14.1 A resolution put to the vote at a meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman, the Council or by the Trustee or any person acting on behalf of the Trustee or by any Stockholder. Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried, carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The chairman must take account of votes made pursuant to clause 14.10 in compliance with clause 11(6) of Schedule 11 of the FMC Regulations (if applicable).

14.2 If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll is demanded.

14.3 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to any other votes to which the chairman may be entitled.

14.4 A poll demanded on the election of a chairman other than the nominee of the Trustee or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time (not being more than thirty days after the date of the meeting) and place as the chairman may direct. The result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.

14.5 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

14.6 On a poll votes may be given either personally or by representative. On a poll a person entitled to more than one vote need not use all its votes or cast all the votes it uses in the same way.

- 14.7** Every Stockholder who is present at a meeting and entitled to vote (whether personally or by representative) shall, on a show of hands, be entitled to one vote only and on a poll, be entitled to one vote for every \$1.00 of nominal amount of the Stock of which it is the Holder **PROVIDED ALWAYS** that any Stock for the time being held by the Council shall not, whilst so held, confer any right to vote. The certificate of any Holder of Security Stock may be relied upon by the Council and the Trustee for the purposes of calculating the voting entitlement of such Holder of Security Stock.
- 14.8** In the case of joint Stockholders the vote of the senior who tenders a vote, whether in person or by representative, shall be accepted to the exclusion of the votes of the other joint Stockholders and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.
- 14.9** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form of appointment shall be valid notwithstanding the previous death, insanity or (in the case of a company) liquidation of the principal or revocation of the proxy or power of attorney or other form of appointment or of the authority under which the proxy or power of attorney was executed or the transfer of the Stock in respect of which the vote is given provided that no intimation in writing of such death, insanity, liquidation, revocation or transfer is received by the Trustee or the Council at its registered office, in the case of the Trustee, or principal office, in the case of the Council, before the commencement of the meeting or adjourned meeting at which the proxy or power of attorney or other form of appointment is used.
- 14.10** A Holder may:
- (a) exercise the right to vote at any meeting by casting a postal vote, a vote by email or a vote using any electronic means permitted by the Trustee;
 - (b) cast a vote using the above means on all or any of the matters to be voted on at a meeting by sending a notice of the manner in which that Holder's Stock are to be voted on to Council or any appropriately authorised person for that meeting. Such notice must reach that person before 48 hours before the start of the meeting unless Council or any appropriately authorised person (as the case may be), in its absolute discretion, elects to accept any notice notwithstanding that that notice is received or produced at a place other than that specified above or out of time.
- 14.11** The Council or, any appropriately authorised person for that meeting (as applicable) must:
- (a) collect together all of those votes received by it;
 - (b) in relation to each resolution to be voted on at that meeting, count the number of Holders (entitled to vote and) voting for and against the resolution and the number of votes cast for and against the resolution;

- (c) sign a certificate that it has carried out the duties set out in paragraphs 14.11(a) and (b) above and that sets out the results of the counts required by paragraph 14.11(b); and
 - (d) ensure that the certificate required by paragraph 14.11(c) above is presented to the chairman.
- 15. **Disqualification:** No Stockholder shall be entitled to be present or to vote on any question, either personally or by representative, and no person shall be entitled to be present or to vote by representative for any Stockholder at any meeting or upon a poll or be reckoned in a quorum in respect of any Stock held by such Stockholder, whether alone or jointly, whilst any call or other sum shall be due and payable to the Council in respect of any such Stock.
- 16. **Powers Exercisable by Extraordinary Resolution:** Without limiting the rights conferred on the Trustee by the Trust Deed, and subject to the proviso to this paragraph 16, a meeting of the Stockholders shall, in addition to all other rights which by the Trust Deed are specified as exercisable by Extraordinary Resolution, have the following rights exercisable by Extraordinary Resolution, namely right to:
 - (a) sanction either unconditionally or upon any conditions:
 - (i) the release of the Council from the payment of all or any part of the money secured by the Trust Deed; or
 - (ii) the surrender or release of the whole or any part of the Charged Assets;
 - (b) sanction the exchange of Stock for, or the conversion of Stock into shares, stock, debentures, debenture stock or other obligations or securities of the Council or any company or entity formed or to be formed;
 - (c) postpone, or with the concurrence of the Council accelerate, the day when the Principal Money of the Stock shall become payable and suspend or postpone for a time the payment of interest on the Stock;
 - (d) sanction any variation, release, waiver or compromise or any arrangement in respect of the rights of the Stockholders against the Council or against its assets howsoever such rights shall arise;
 - (e) assent to any variation or addition to or waiver of the provisions contained in the Trust Deed or any deed or other instrument collateral or supplemental thereto, or the conditions attaching to the Stock, proposed or agreed to by the Council;
 - (f) give any sanction, assent, release or waiver of any breach or default by the Council under any of the provisions of the Trust Deed;
 - (g) authorise the Trustee or any Receiver, where it shall have entered into possession of the Charged Assets or any part thereof, to give up possession of the same to the Council either unconditionally or upon any condition;

- (h) discharge, release or exonerate the Trustee from all liability in respect of any act or omission for which the Trustee has or may become responsible under the Trust Deed;
- (i) sanction any scheme for the reconstruction of the Council or for the amalgamation of the Council with any other person or entity where such sanction is necessary;
- (j) authorise or direct the Trustee to concur in and execute any supplemental deed or other document embodying any such sanction, authority, approval, assent, variation, release, waiver, compromise, direction or request;

PROVIDED ALWAYS that no variation or addition shall be made to the terms and conditions of issue of any Security Stock without the consent in writing of the Holder of that Security Stock.

- 17. Extraordinary Resolution Binds Stockholders:** An Extraordinary Resolution passed at a meeting (including an adjourned meeting) of the Stockholders duly convened and held in accordance with this Schedule shall be binding upon all the Stockholders, whether present or not or entitled to be present or not at the meeting, and each of the Stockholders and the Trustee (subject to the provisions of its indemnity contained in the Trust Deed) shall be bound to give effect thereto accordingly and the passing of any such resolution shall, as between the Trustee and the Stockholders, be conclusive evidence that the circumstances justify the passing thereof, the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.
- 18. Minutes of Meetings:** Minutes of all resolutions and proceedings at every meeting of Stockholders shall be made by the Council, or if the Council shall not be present at such meeting by some person appointed by the chairman of such meeting, and duly entered in books from time to time provided for that purpose by the Council at the expense of the Council and any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding meeting of Stockholders shall be prima facie evidence of the matters therein stated and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to be duly passed and had. Copies of such minutes shall be furnished by the Council to the Trustee as early as possible after the holding of the meeting to which they refer.
- 19. Written Resolutions:** Anything that may be done by the Stockholders by resolution or Extraordinary Resolution passed at a meeting of such Stockholders may, without prejudice to paragraph 1.1, also be done, without a meeting, by written resolution signed by at least 75% of Stockholders entitled to vote in respect of such resolution and holding in aggregate at least 75% of the aggregate nominal amount of Stock provided that the Stockholder or Stockholders promoting such a resolution have given the Trustee, the Council and all other Stockholders at least three business days' prior notice of the proposed resolution. Any such resolution may consist of several documents in similar form (including letters, electronic mail or similar means of communication), each signed by one or more Stockholders.

- 20. Only Persons on Register Recognised by Council:** The persons registered as Stockholders in the Register, and no other person or persons, shall be recognised and treated as the legal holders of the Stock therein mentioned whether such persons are or are not in fact the owners thereof. For the purpose of establishing voting entitlements at a meeting the Register shall be closed as of close of business one day prior to the final date proxies may be received pursuant to paragraph 10.3.
- 21. Classes of Stock:**
- 21.1** In addition to meetings of Stockholders in general, meetings of Classes of Stockholders may be held, and the provisions of this Second Schedule shall apply to any meeting of a Class of Stockholders as if references to "Stockholders" were references to Stockholders in that Class of Stockholders only and references to "Stock" were references to the relevant Class of Stock only.
- 21.2** A power which may be exercised by Stockholders by Extraordinary Resolution may only be exercised by an Extraordinary Resolution of a Class of Stockholders if the Trustee agrees, acting reasonably, that the exercise of that power only affects that Class of Stockholders, unless each affected Class of Stockholders passes the same, or substantially the same, Extraordinary Resolution.
- 21.3** The references to Extraordinary Resolution in clauses 11.10, 11.12.1, 11.12.2, 13.1 and 14.1 shall be read as references to an Extraordinary Resolution passed by Stockholders generally and not by one or more Classes of Stockholders only.

THIRD SCHEDULE

STOCK ISSUANCE CERTIFICATE

I, **[name]**, the Chief Executive of South Wairarapa District Council (the **Council**) hereby certify that:

1. the issue of *[type of Stock]* with a [maximum aggregate nominal amount of \$[]][nominal amount equal to the aggregate amount, from time to time, of the liabilities, advances and other accommodation or obligations referred to in the Stock Certificate for that Stock¹] (the **New Stock**) under the terms of the Debenture Trust Deed dated on or about [] (the **Trust Deed**) has been duly authorised by the Council, or has been authorised by a person or persons within the delegated authorities approved by the Council;
2. as at the date of this certificate (but prior to the issuance of the New Stock if it is to be issued on the date of this certificate) the total nominal amount of Stock issued and outstanding under the Trust Deed (showing separately the respective total nominal amounts) is as follows:

(i)	Debenture Stock of:	\$
(ii)	Security Stock (issued with a fixed nominal amount) of:	\$
[(iii)	Bearer Stock of:	\$]

[together with:

(iv)	Security Stock (issued with a floating nominal amount), which as at <i>[date]</i> amounted to: <i>[specify for each currency]</i>
------	--
3. no Enforcement Event has occurred and remains unremedied;
4. for the purposes of section 115(3) of the Act, the loans or obligations secured by the New Stock have been raised for the benefit of [all/defined part] of the Council's district;
5. for the purposes of section 118 of the Act, the Council has complied with the Act in entering into and the performance of its obligations under the Trust Deed, the Registrar and Paying Agency Agreement and all other obligations entered into by the Council in connection with the Council's borrowing and granting security under the Trust Deed, including in respect of the New Stock.

This Certificate is given by me as Chief Executive of the Council in good faith on behalf of the Council and I shall have no personal liability in connection with the issuing of this Certificate.

¹ [The initial nominal amount of the Security Stock issued with a floating nominal amount under this Certificate is [].]

Unless otherwise defined or the context otherwise requires, terms with a defined meaning in the Trust Deed shall have the same meaning where used in this Certificate.

Dated:

Chief Executive
South Wairarapa District Council

FOURTH SCHEDULE REPORTING CERTIFICATE

I, **[name]** the Chief Executive of South Wairarapa District Council (the **Council**) hereby certify to the best of my knowledge and belief for the purposes of the Debenture Trust Deed dated on or about [] (the **Trust Deed**):

- *1. Since the date on which the last Reporting Certificate containing this certification was given [or in the case of the first Reporting Certificate, since the date of the Trust Deed]:
- (a) all interest due on the Stock [has/has not] been paid;
 - (b) all Stock which has fallen due for repayment [has/has not] been repaid:
[details of any non-payment];
 - (c) [no/the following] Enforcement Event has occurred and remains unremedied:
[details of any Enforcement Event].
- *2. As at [the end of the financial year of the Council or other date in respect of which the Reporting Certificate is being given] the total amount of Stock issued and outstanding under the Trust Deed (showing separately the respective nominal amounts) is as follows:
- (i) Debenture Stock of: \$
 - (ii) Security Stock (issued with a fixed nominal amount) of: \$
 - [(iii) Bearer Stock of: \$]
- [together with:
- (iv) Security Stock (issued with a floating nominal amount), which as at [the end of the financial year of the Council or other date in respect of which the Reporting Certificate is being given] amounted to:
[specify for each currency]
- *3. The Council [has/has not] complied with the Act in connection with the Trust Deed, the Registrar and Paying Agreement, and any borrowing documentation which the Council has entered into under, in accordance with or secured by the Trust Deed.
- [detail of any non-compliance]
4. On the basis of such information as to the financial position and prospects of the Council as is generally received by me in my capacity as Chief Executive (including reports from the Council's financial managers), I am not aware of any reason why the Council will not be able to meet its liabilities in relation to Stock and interest thereon which are anticipated to fall due or to become payable during the twelve months from the date of this Certificate.

5. [For the purposes of paragraph [4] of this Certificate, I have considered in particular:
- (a) the liability of the Council under the Security Stock Certificate(s) issued with a floating nominal amount;
 - (b) the likelihood of the liabilities secured by those Security Stock Certificates being called on; and
 - (c) the ability of the Council to recover or recoup from other parties in relation to any payments that the Council would be required to make in respect of those Security Stock Certificates.]

[delete this paragraph if no Security Stock Certificate has been issued with a floating nominal amount]

- *6. Since the date on which the last Reporting Certificate containing this certification was given [or on the case of the first Reporting Certificate, since the date of the Trust Deed] the Council has complied in all material respects with all the material provisions, covenants and obligations under the Trust Deed, and I am not aware of any reason [am aware of the following reasons/of reasons which have already been advised to the Trustee] why in the period of twelve months from the date of this Certificate the Council will not so comply with such provisions, covenants and obligations.

This Certificate is given by me as Chief Executive of the Council in good faith on behalf of the Council and I shall have no personal liability in connection with the issuing of this Certificate.

Dated:

Chief Executive
South Wairarapa District Council

[These paragraphs are not required in a Reporting Certificate provided to the Trustee in respect of the end of the first and third quarters of the Council's financial year. Paragraph numbering should be updated accordingly.]*

Appendix 2 – Security Transition Deed

SECURITY TRANSITION DEED

between

SOUTH WAIRARAPA DISTRICT COUNCIL

and

BANK OF NEW ZEALAND

THIS DEED is dated the

day of

2016

BETWEEN SOUTH WAIRARAPA DISTRICT COUNCIL (Council)

AND BANK OF NEW ZEALAND (BNZ)

BACKGROUND

- A.** The Council is in the process of arranging to enter into a debenture trust deed. Under that debenture trust deed the Council will be able to issue stock which provides the holders of such stock with the benefit of security over the rates and rates revenue of the Council.
- B.** The Council has previously granted security over its rates and rates revenue to BNZ.
- C.** BNZ has agreed to surrender the security they currently hold over the rates and rates revenue of the Council in return for a share of the security issued under the new debenture trust deed on the terms set out in this deed.

1. INTERPRETATION

1.1 Definitions: In this deed, unless the context otherwise requires:

\$ means the lawful currency of New Zealand;

Act means the Local Government Act 2002;

BNZ Financing Statement means the financing statement numbered F91R87C21PA61527 that is registered on the PPSR;

BNZ Security means the deed of charge dated on or about 30 August 2002, between BNZ and the Council (as amended from time to time);

Charged Assets has the meaning given to that term in the Debenture Trust Deed;

CP Confirmation means confirmation from BNZ or its solicitors that it has received the documents and other evidence referred to in clause 5;

Debenture Trust Deed means a debenture trust deed in, or substantially in, the form provided in draft to BNZ prior to the date of this deed, to be entered into between the Council and the Trustee and, where the context requires, means such debenture trust deed when it has been entered into;

Effective Date means the date on which the Council has received a CP Confirmation;

Facilities means all agreements between BNZ and the Council under which the Council has indebtedness (including contingent indebtedness) to BNZ, BNZ has agreed to advance funds to the Council, or the Council and BNZ have entered

into derivatives transactions (in each case, as they have may have been amended from time to time), and each of them is a **Facility**;

PPSA means the Personal Property Securities Act 1999;

PPSR means the Personal Property Securities Register;

Trustee means Trustees Executors Limited in its capacity as trustee under the Debenture Trust Deed;

Trustee Financing Statement is defined in clause 5.5(a); and

Working Day means any day which is not a Saturday, Sunday or public holiday (as defined in section 44(1) of the Holidays Act 2003) in Martinborough and Wellington.

1.2 PPSA: In this deed, unless the context otherwise requires, the terms **account receivable, collateral, financing statement, money, negotiable instrument** and **proceeds** have the meaning given to them in the PPSA.

1.3 Debenture Trust Deed: In this deed, **Charged Assets, Register, Security Stock, Security Stock Certificate, Stock** and **Stock Issuance Certificate** have the same meanings as in the Debenture Trust Deed.

1.4 References: Except to the extent that the context otherwise requires, any reference in this deed to:

the **Council** includes any delegate of the Council as referred to in clause 1.6;

a **clause** or **Schedule** is a reference to a clause of, or a Schedule to, this deed;

a **person** includes an individual, company, corporation, local authority, an association of persons whether corporate or not, a trust or a state or agency of a state whether of central government or local government (in each case, whether or not having separate legal personality); and

written and **in writing** include all means of reproducing words in a tangible and permanently visible form.

1.5 Miscellaneous:

(a) The introduction to and headings in this deed are inserted for convenience only and shall be ignored in construing this deed.

(b) Unless the context otherwise requires, words denoting the singular number also include the plural and vice versa.

(c) References to any legislation or to any provision of any legislation shall be deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted and, unless otherwise stated, to New Zealand legislation, and, unless the context otherwise requires, shall also include any statutory instruments issued under any such legislation or provision.

(d) References to any document (however described, and including, to avoid doubt (but without limitation), the Facilities) shall include

references to that document as modified, novated, supplemented, varied or replaced from time to time.

- (e) References to any party to this deed or any other document shall include its successors or permitted assigns.
- (f) Anything which may be done at any time may also be done from time to time.

1.6 Subject to the Act, where this deed confers any right, obligation or discretion on the Council, that right, obligation or discretion may be exercised under delegated authority from the Council by any committee or sub-committee, member or officer of the Council.

2. RELEASE OF SECURITY

With effect from the Effective Date, BNZ unconditionally releases and discharges the Charged Assets (and any other property charged or secured under the BNZ Security) from all security interests and charges granted to it by the Council under the BNZ Security, and unconditionally releases and discharges the Council from all its obligations under the BNZ Security, but without affecting the liability of the Council or the rights of BNZ or any other person under any other agreement.

3. TERMINATION OF AGREEMENTS

The parties agree that the BNZ Security will terminate on the Effective Date.

4. AMENDMENT OF FACILITIES

With effect from the Effective Date:

4.1 a new definition is added to each of the Facilities which reads as follows:

"Debenture Trust Deed means the Debenture Trust Deed between South Wairarapa District Council and Trustees Executors Limited dated in January 2016;"

4.2 any reference to the BNZ Security in the Facilities is amended to be a reference to the "Debenture Trust Deed"; and

4.3 each Facility shall be deemed to include a requirement to the effect that, for so long as that Facility remains in force, the Council is required to send BNZ copies of the information provided to the Trustee under clauses 10.2.1, 10.2.2, 10.2.3 and 10.2.4 of the Debenture Trust Deed at the same time as that information is sent to the Trustee.

5. CONDITIONS PRECEDENT

BNZ agrees to send a CP Confirmation to the Council within five Working Days of receiving (by email to BNZ or its solicitors) all of the following documents and other evidence, in a form and substance satisfactory to it:

5.1 a duly executed copy of this deed;

- 5.2 a copy of the duly executed Debenture Trust Deed;
- 5.3 a copy of the duly executed Security Stock Certificate in respect of all the Council's obligations to BNZ showing a nominal amount of \$20,000,000 together with an extract from the Register showing that the Security Stock evidenced by the relevant Security Stock Certificate has been registered;
- 5.4 a copy of the duly executed Stock Issuance Certificate issued under the Debenture Trust Deed in respect of the Security Stock evidenced by the Security Stock Certificates issued to BNZ pursuant to clause 5.3 above;
- 5.5 the results of a search of the PPSR on the name "South Wairarapa District Council" which shows that:
- (a) the Trustee has registered a financing statement on the PPSR (**Trustee Financing Statement**) in relation to the Charged Assets; and
 - (b) the only financing statement which is registered on the PPSR before the Trustee Financing Statement and which describe collateral which includes some or all of the Charged Assets is the BNZ Financing Statement; and
- 5.6 a copy of a duly executed certificate from the chief executive of the Council substantially in the form set out in Schedule 1.

6. DISCHARGE OF EXISTING FINANCING STATEMENTS

- 6.1 BNZ undertakes to, within ten Working Days of the Effective Date discharge the BNZ Financing Statement.
- 6.2 For the purposes of the Contracts (Privity) Act 1982, this deed is for the benefit of, and is intended to be enforceable by, any person entitled to give written demand to BNZ in respect of the BNZ Financing Statement under section 162(b) of the PPSA.

7. TRUSTEE

The parties may not vary this deed without the consent of the Trustee. This clause is intended to create, for the purposes of the Contracts (Privity) Act 1982, an obligation enforceable at the suit of the Trustee.

8. COUNTERPARTS

This deed may be signed in any number of counterparts, all of which, when taken together, will constitute one and the same deed. A party may enter into this deed by signing any counterpart.

9. ABSENCE OF CROWN GUARANTEE

No obligation of the Council under or in respect of this deed or any Facility is guaranteed by the Crown.

10. GOVERNING LAW AND JURISDICTION

- 10.1** This deed shall be governed by and construed in accordance with the laws of New Zealand.
- 10.2** The parties agree that any legal action or proceeding arising out of or in connection with this deed may be brought in the courts of New Zealand and irrevocably submit to the non-exclusive jurisdiction of those courts.

11. DELIVERY

For the purposes of Section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this deed will be delivered by each of the parties hereto (each a **Delivering Party**) immediately on the earlier of:

- 11.1** physical delivery of an original of this deed executed by the relevant Delivering Party into the custody of the other party or the other party's solicitors; or
- 11.2** transmission by the relevant Delivering Party or its solicitors (or any other persons authorised in writing by the relevant Delivering Party) of a facsimile, photocopied or scanned copy of an original of this deed, executed by the relevant Delivering Party, to the other party or the other party's solicitors.

EXECUTED AND DELIVERED AS A DEED

SIGNED for and on behalf of **SOUTH
WAIRARAPA DISTRICT COUNCIL** by:

Elected Member

Elected Member

SIGNED for and on behalf of **BANK OF
NEW ZEALAND**
by its attorneys:

in the presence of:

Witness' signature

Witness' name

Witness' occupation

Witness' address

SCHEDULE 1

FORM OF CHIEF EXECUTIVE CERTIFICATE

I, Paul Crimp, the Chief Executive of South Wairarapa District Council (**Council**) certify as follows:

1. RESOLUTIONS

1.1 The Council has, by all necessary resolutions duly passed (**resolutions**):

- (i) approved the transactions contemplated by the Security Transition Deed dated on or about the same date as this certificate between the Council and Bank of New Zealand (the **Security Transition Deed**), or delegated sufficient authority to the person who has approved those transactions to give that approval;
- (ii) approved the transactions contemplated by the Debenture Trust Deed dated on or about January 2016 between the Council and Trustees Executors (the **Debenture Trust Deed**), or delegated sufficient authority to the person who has approved those transactions to give that approval; and
- (iii) authorised execution of the Security Transition Deed, the Debenture Trust Deed and the Stock Issuance Certificate and Security Stock Certificate referred to in the Security Transition Deed (together, the **Documents**) by the Council or delegated sufficient authority to the person who authorised execution of the Documents to give that authorisation.

1.2 The resolutions remain in full force and effect.

2. COMPLIANCE WITH THE ACT

For the purposes of section 118 of the Local Government Act 2002, in entering into the Documents and performing its obligations under the Documents, and all other documentation contemplated by or entered into in connection with the Documents, the Council has complied, and will continue to comply, with the Act.

3. DUE EXECUTION

The Documents have been properly executed by the Council.

This certificate is given by me in my capacity as Chief Executive of the Council in good faith on behalf of the Council and on the agreed basis that I shall have no personal liability in connection with the issuing of this certificate.

Dated:

Paul Crimp
Chief Executive

Appendix 3 – Accession Deed to Multi Issuer Deed

SOUTH WAIRARAPA DISTRICT COUNCIL

Acceding Party

NEW ZEALAND LOCAL GOVERNMENT FUNDING AGENCY LIMITED

Subscriber

ACCESSION DEED TO MULTI-ISSUER DEED

RUSSELL McVEAGH

ACCESSION DEED dated

BETWEEN South Wairarapa District Council ("Acceding Party"), and New Zealand Local Government Funding Agency Limited ("Subscriber") pursuant to the Multi-Issuer Deed defined below.

INTRODUCTION

- A. The Subscriber has agreed that the Acceding Party may accede to the Multi-Issuer Deed as an "Issuer".
- B. This deed records the accession.

AGREEMENT

1. INTERPRETATION

1.1 Interpretation: In this deed:

"**Local Authority**" has the meaning given to it in the Local Government Act 2002.

"**Multi-Issuer Deed**" means the deed dated 7 December 2011 (as amended and restated on 4 June 2015) between the Subscriber and various Local Authorities entitled "Multi-Issuer Deed".

1.2 Multi-Issuer Deed: Terms defined in the Multi-Issuer Deed have the same meaning in this deed unless the context requires otherwise.

2. ACCESSION

2.1 Accession: The Acceding Party hereby:

- (a) agrees with the Subscriber that with effect on and from the date of this deed, it will be bound by the Multi-Issuer Deed as an Issuer as if it had been an original party thereto and named therein as an Issuer, and agrees to be bound by the terms of, and perform its obligations under, the Multi-Issuer Deed; and
- (b) agrees that it will be bound by the special conditions (if any) set out in the annexure to this deed as if those were terms of the Multi-Issuer Deed.

2.2 Acknowledgement: The Subscriber acknowledges and agrees to the accession made under this deed.

2.3 Implied provisions: For the purposes of section 14 of the Property Law Act 2007, the Acceding Party acknowledges that this deed is, and for all purposes and at all times shall be construed as being, supplemental to the Multi-Issuer Deed.

3. NOTICE

The details for notices for the Acceding Party for the purposes of the Multi-Issuer Deed are:

Delivery Address: South Wairarapa District Council
19 Kitchener Street
Martinborough 5711

Attention: Paul Crimp/Kyra Low

Email: paul.crimp@swdc.govt.nz / kyra.low@swdc.govt.nz

Postal Address: PO Box 6
Martinborough 5741

4. GOVERNING LAW

This deed shall be governed by the laws of New Zealand.

5. NO CROWN GUARANTEE

The obligations and liabilities of the Acceding Party and Subscriber under this deed and the Multi-Issuer Deed are not guaranteed by the Crown.

6. COUNTERPARTS

This deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this deed by signing any such counterpart.

EXECUTED AS A DEED

Acceding Party

**SOUTH WAIRARAPA DISTRICT
COUNCIL** by:

Signature of Elected Member

Signature of Elected Member

Name of Elected Member

Name of Elected Member

Subscriber

**NEW ZEALAND LOCAL GOVERNMENT
FUNDING AGENCY LIMITED** by:

Signature of director

Signature of director

Name of director

Name of director

ANNEX TO THE ACCESSION DEED

1. The Acceding Party will not make any alteration to its Debenture Trust Deed without the prior written consent of the Subscriber.

Appendix 4 – Accession Deed to Notes Subscription Agreement

SOUTH WAIRARAPA DISTRICT COUNCIL

Acceding Party

NEW ZEALAND LOCAL GOVERNMENT FUNDING AGENCY LIMITED

Issuer

**ACCESSION DEED TO NOTES SUBSCRIPTION
AGREEMENT**

RUSSELL McVEAGH

ACCESSION DEED dated

BETWEEN South Wairarapa District Council ("Acceding Party"), and New Zealand Local Government Funding Agency Limited ("Issuer") pursuant to the Notes Subscription Agreement defined below.

INTRODUCTION

- A. The Issuer has agreed that the Acceding Party may accede to the Notes Subscription Agreement as a "Subscriber".
- B. This deed records the accession.

AGREEMENT

1. INTERPRETATION

1.1 Interpretation: In this deed:

"**Local Authority**" has the meaning given to it in the Local Government Act 2002.

"**Notes Subscription Agreement**" means the notes subscription agreement dated 7 December 2011 (as amended and restated on 4 June 2015) between the Issuer and various Local Authorities.

1.2 Notes Subscription Agreement: Terms defined in the Notes Subscription Agreement have the same meaning in this deed unless the context requires otherwise.

2. ACCESSION

2.1 Accession: The Acceding Party hereby agrees with the Issuer that with effect on and from the date this deed is counter-signed by the Issuer, it will be bound by the Notes Subscription Agreement as a Subscriber as if it had been an original party thereto and named therein as a Subscriber, and agrees to be bound by the terms of, and perform its obligations under, the Notes Subscription Agreement.

2.2 Acknowledgement: The Issuer acknowledges and agrees to the accession made under this deed.

2.3 Implied provisions: For the purposes of section 14 of the Property Law Act 2007, the Acceding Party acknowledges that this deed is, and for all purposes and at all times shall be construed as being, supplemental to the Notes Subscription Agreement.

3. NOTICE

The details for notices for the Acceding Party for the purposes of the Notes Subscription Agreement are:

Delivery Address: South Wairarapa District Council
19 Kitchener Street
Martinborough 5711

Attention: Paul Crimp/Kyra Low

Email: paul.crimp@swdc.govt.nz / kyra.low@swdc.govt.nz

Postal Address: PO Box 6
Martinborough 5741

4. GOVERNING LAW

This deed shall be governed by the laws of New Zealand.

5. NO CROWN GUARANTEE

The obligations and liabilities of the Acceding Party and Issuer under this deed and the Notes Subscription Agreement are not guaranteed by the Crown.

6. COUNTERPARTS

This deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this deed by signing any such counterpart.

EXECUTED AS A DEED

Acceding Party

**SOUTH WAIRARAPA DISTRICT
COUNCIL** by:

Signature of Elected Member

Signature of Elected Member

Name of Elected Member

Name of Elected Member

Issuer

**NEW ZEALAND LOCAL GOVERNMENT
FUNDING AGENCY LIMITED** by:

Signature of director

Signature of director

Name of director

Name of director