

DEED OF AMENDMENT AND RESTATEMENT

between

AUCKLAND COUNCIL

and

TRUSTEES EXECUTORS LIMITED

 **Simpson Grierson**

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

PARTIES

1. AUCKLAND COUNCIL (Borrower)
2. TRUSTEES EXECUTORS LIMITED (Bank)

BACKGROUND

The parties have agreed to amend and restate the debenture trust deed dated 13 December 2010 (**Debenture Trust Deed**) on the terms of this deed to comply with and to reflect the Financial Markets Conduct Act 2013 (**FMCA**) and the Financial Markets Conduct Regulations 2014.

THIS DEED RECORDS THAT:**1. DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions:** In this deed, unless the context indicates otherwise, words and expressions defined in the Debenture Trust Deed have the same meaning when used in this deed.
- 1.2 **Interpretation:** In this deed, unless the context indicates otherwise, the interpretation provisions of the Debenture Trust Deed apply as if they were set out in this deed.

2. AMENDMENT AND RESTATEMENT

- 2.1 With effect from the date of this deed:
 - (a) the Debenture Trust Deed is amended and restated in the form set out in the Schedule to this Deed; and
 - (b) references in the Debenture Trust Deed to "this Deed" shall be references to the Debenture Trust Deed as amended and restated by this deed.

3. CONFIRMATION

- 3.1 Each of the parties confirms and acknowledges that, except as expressly agreed in this deed, its obligations and covenants under, and the provisions of, the Debenture Trust Deed continue and remain in full force and effect.
- 3.2 For the purposes of clause 17.1 of the Debenture Trust Deed, the Trustee:
 - (a) is of the opinion that the amendments contemplated by this deed are:
 - (i) in accordance with clause 17.1(a)(i) of the Debenture Trust Deed, of a technical nature; and
 - (ii) in accordance with clause 17.1(a)(viii) of the Debenture Trust Deed, to comply with, or as a result of the coming into effect of, any applicable law; and
 - (b) is of the reasonable opinion that such amendments are not, nor are likely to become, prejudicial to the general interests of the Stockholders.

4. GENERAL

- 4.1 **Partial Invalidity:** If any provision of this deed is or becomes invalid or unenforceable, that provision will be deemed deleted from this deed. The invalidity or unenforceability of that provision will not affect the other provisions of this deed, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 4.2 **Further Assurances:** Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this deed.
- 4.3 **Waiver:** Any waiver by a party of any of its rights or remedies under this deed will be effective only if it is recorded in writing and signed by that party. If the waiver relates to a breach of any provision of this deed, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of this deed at any time by either party will in any way affect limit or waive that party's right to subsequently require strict compliance with this deed.
- 4.4 **Counterparts:** This deed may be signed in counterparts. All executed counterparts will together constitute one document.
- 4.5 **Amendment:** No amendment to this deed will be effective unless it is in writing and signed by each party.
- 4.6 **Governing Law and Jurisdiction:** This deed is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this deed.

EXECUTED AND DELIVERED AS A DEED

SIGNED for and on behalf of **AUCKLAND COUNCIL** by:

A handwritten signature in black ink, appearing to read "Stephen Town", written over a horizontal line.

Stephen Town, Chief Executive

SIGNED by
TRUSTEES EXECUTORS LIMITED by



[Handwritten signature]

Authorised Signatory

[Sign]

Melanie Lyn Hewitson

[Print name in full]

[Handwritten signature]

Authorised Signatory

[Sign]

Susan Jane Bingham

[Print name in full]

2016/055 (2 of 2)

Witness to Authorised Signatory's signature:

Witness to Authorised Signatory's signature:

Signature: *Adesh Kaur*
[Print name in full]

Signature: *Adesh Kaur*
[Print name in full]

Occupation: Adesh Kaur
Business Analyst

Occupation: Adesh Kaur
Business Analyst

Address: Auckland

Address: Auckland

Address: Level 7, 51 Shortland Street
PO Box 4197
Auckland 1140

Facsimile: (09) 308 7101
For: Robert Gatward (Team Manager)

DEBENTURE TRUST DEED

between

AUCKLAND COUNCIL

and

TRUSTEES EXECUTORS LIMITED



**Simpson
Grierson**

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BETWEEN **AUCKLAND COUNCIL** a Council duly constituted as a territorial authority under the Act (**Council**)

AND **TRUSTEES EXECUTORS LIMITED (Trustee)**

INTRODUCTION

- A.** 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 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.
- C.** On 1 November 2010, Council assumed the liabilities and obligations of the Existing Local Authorities pursuant to the Local Government (Tamaki Makaurau Reorganisation) Act 2009 (**Reorganisation Act**). The Existing Local Authorities were dissolved and then, to the extent the Existing Local Authority's districts form part of Council's district, merged to form Council.
- D.** The liabilities and obligations assumed by Council included certain secured debt obligations of the Existing Local Authorities. Pursuant to section 31 of the Local Government (Auckland Transitional Provisions) Act 2010 those secured debt obligations were consolidated under a single security structure on the basis of the terms and conditions set out in this Deed and as provided for in an Order in Council under that section that came into effect on the Effective Date.
- E.** The FMCA came into effect in two stages, on 1 April and 1 December 2014. The FMCA requires that trust deeds for the issuance of debt securities contain certain terms by the end of the transitional period, being 1 December 2016. Council has outstanding retail Stock maturing on 29 September 2017. As a consequence, this Deed must comply with the requirements of the FMCA and is to be amended to achieve this under clauses 17.1(a)(i) and 17.1(a)(viii) of this Deed.

THIS DEED RECORDS:

1. INTERPRETATION

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

1.1 General:

- (a) Trust:** This Deed will be construed and will take effect as a contract and declaration of trust made in New Zealand.
- (b) Money:** All references to money in this Deed will, unless the contrary is stated, be references to New Zealand currency.

- (c) **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 will be determined in such manner as Council adopts and is acceptable to the Auditor having regard to prevailing commercial practices and to the policies in such regard adopted in the latest audited financial statements of Council.
- (d) **Calculation of foreign currency amounts:** Notwithstanding clause 1.1(c), 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:
- (i) 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:
- (A) such notional conversion shall not alter the amount owing to, or secured in favour of, such person; and
- (B) where a notional conversion is undertaken for the purposes of clause 16.1, the conversion shall be undertaken on the same date as the Trustee makes the distribution under that clause.
- (ii) Following application of clause 16.1, 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(d)(i)(B) above.

1.2 Definitions:

"Act" means the Local Government Act 2002;

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

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

"Auckland City Council Security Debenture" means the debenture entered into between the Auckland City Council and Trustees Executors Limited as security agent, dated 9 July 1998 as amended from time to time prior to the Effective Date;

"Auckland Regional Trust Deed" means the debenture trust deed entered into between Auckland Regional Council and Perpetual Trust Limited as trustee, dated 22 August 2003 as amended from time to time prior to the Effective Date;

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

"Bearer Stock" means Stock issued in bearer form as provided for in clause 8.1;

"Charged Assets" means:

- (a) all rates (past, present and future) from time to time set or assessed by the Existing Local Authorities under the Rating Act, and all rates revenue in respect thereof;
- (b) all rates from time to time set or assessed by Council under the Rating Act, and all rates revenue in respect thereof;
- (c) each rate arising under section 115 of the Act in relation to any Secured Money and all rates revenue in respect thereof;
- (d) the Proceeds of the rates, special rates or rates revenues described in paragraphs (a), (b) and (c) above, but only to the extent to which such Proceeds constitute Accounts Receivable, Negotiable Instruments or Money 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 are or may be collected by Council on behalf of any other local authority;

"Chief Executive" means the chief executive of 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 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;

"Effective Date" means 13 December 2010;

"Enforcement Event" means any of the events listed in clause 13.1;

"Existing Global Stock" means:

- (a) any 'Global Stock' originally issued pursuant to, and as defined as such in, any of the Rodney Trust Deed, the Manukau Trust Deed, the Waitakere Trust Deed or the North Shore Trust Deed; and
- (b) the benefit of the security created by the Auckland City Council Security Debenture extended to third parties pursuant to a 'Global Security Certificate' as defined in, and issued pursuant to, the Auckland City Council Security Debenture,

in each case, for the time being outstanding and uncanceled, or a specified portion thereof as the case may require, as such may, in any case, have been reduced in aggregate nominal amount in accordance with the terms of the relevant Existing Trust Deed prior to the Effective Date;

"Existing Local Authorities" means each of Auckland Regional Council, Auckland City Council, Franklin District Council, Manukau City Council, North Shore City Council, Papakura District Council, Rodney District Council and Waitakere City Council;

"Existing Security Stock" means:

- (a) any 'Security Stock' issued pursuant to, and as defined as such in, any of the Existing Trust Deeds;
- (b) any Existing Global Stock;
- (c) the benefit of the security created by the Franklin Security Agency Deed extended to certain noteholders pursuant to clause 2.4 of the Franklin Note Deed Poll or clause 3.1 of the Franklin Security Agency Deed; and
- (d) the benefit of the security created by the Auckland City Council Security Debenture extended to third parties pursuant to a 'Security Certificate' as defined in, and issued pursuant to, the Auckland City Council Security Debenture,

in each case, for the time being outstanding and uncanceled, or a specified portion thereof as the case may require, as such may, in any case, have been reduced in aggregate nominal amount in accordance with the terms of the relevant Existing Trust Deed prior to the Effective Date;

"Existing Stock" means Existing Security Stock and any secured indebtedness by whatever name called, which was constituted and issued in accordance with any of the Existing Trust Deeds prior to the Effective Date and which is deemed to be issued and governed by the terms of this Deed pursuant to clause 2.1, for the time being outstanding and uncanceled, or a specified portion thereof as the case may require;

"Existing Stock Certificate" means a certificate or other written acknowledgement (including a deed of acknowledgement under the Franklin Security Agency Deed) in respect of Existing Stock issued under the relevant Existing Trust Deed prior to the Effective Date (subject to the Register, in the case of Registered Stock, and the provisions of this Deed, including the conditions

applicable to that Stock), evidencing that the person named therein is the holder of the amount of Existing Stock stated therein;

"Existing Trust Deeds" means each of the:

- (a) Auckland Regional Trust Deed;
- (b) Auckland City Council Security Debenture;
- (c) Franklin Security Agency Deed;
- (d) Manukau Trust Deed;
- (e) North Shore Trust Deed;
- (f) Papakura Trust Deed;
- (g) Rodney Trust Deed; and
- (h) Waitakere Trust Deed;

"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 or has been lawfully entered into by Council (including to the extent transferred to Council pursuant to section 35 of the Reorganisation Act) 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;

"FMA" means the Financial Markets Authority;

"FMCA" means the Financial Markets Conduct Act 2013;

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

"FMSA" means the Financial Markets Supervisors Act 2011;

"Franklin Note Deed Poll" means the deed poll in relation to the issue of registered secured notes entered into by Franklin District Council in favour of the holders described therein, dated 29 August 2001 as amended from time to time prior to the Effective Date;

"Franklin Security Agency Deed" means the security agency deed entered into between Franklin District Council and the Public Trust as security agent, dated 7 August 2001 as amended from time to time prior to the Effective Date;

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

"Liability Management Policy" means the liability management policy prepared and adopted by the Council under section 102(4)(b) of the Act;

"**LTCCP**" means each long term council community plan prepared and adopted by Council under section 93 of the Act;

"**Manukau Trust Deed**" means the debenture trust deed entered into between Manukau City Council and Trustees Executors Limited as trustee, dated 15 October 1999 as amended from time to time prior to the Effective Date;

"**North Shore Trust Deed**" means the debenture trust deed entered into between North Shore City Council and Trustees Executors Limited as trustee, dated 16 July 1998 as amended from time to time prior to the Effective Date;

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

"**NZX Rules**" means the rules published by NZX as the "NZX Listing Rules", as amended from time to time, or any rules published by NZX which replace those rules;

"**Order in Council**" means the order in council made by the Governor General on 13 December 2010 pursuant to section 31 of the Local Government (Auckland Transitional Provisions) Act 2010;

"**Papakura Trust Deed**" means the debenture trust deed entered into between Papakura District Council and Perpetual Trust Limited as trustee, dated 16 February 2009 as amended from time to time prior to the Effective Date;

"**Paying Agent**" means the person or persons appointed to this role under the Registrar and Paying Agency Agreement for the time being;

"**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 7.3(a)(ii), unless otherwise agreed between 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 7.3(a)(i), unless otherwise agreed between Council and the Trustee (including by agreeing wording in the relevant Stock Certificate) and includes the "Secured Amount" as that term is defined in any Existing Stock Certificate issued under the Auckland Regional Trust Deed;

"**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;

"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;

"Register" means the register of Stock, or each such register, to be kept by the Registrar pursuant to clause 5;

"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, in respect of a Stockholder, the facsimile number in New Zealand for the time being recorded in the Register;

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

"Registrar and Paying Agency Agreement" means:

- (a) the registrar and paying agency agreement dated 2 December 2010 between Council, the Registrar and the Paying Agent, as may be amended, substituted or replaced from time to time; and
- (b) any other registrar and paying agency agreement entered into by Council, to provide for more than one Register, and more than one Registrar or Paying Agent;

"Registrar" means the person or persons appointed to this role under the Registrar and Paying Agency Agreement for the time being;

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

"Retail Stock" means Stock which has been offered or sold to the public under the Securities Act or as a regulated offer under the FMCA;

"Rodney Trust Deed" means the debenture trust deed entered into between Rodney District Council and Perpetual Trust Limited as trustee and dated 5 February 1999 as amended from time to time prior to the Effective Date;

"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 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 Council under this Deed and any Stock, but excludes the Secured Money;

"Securities Act" means the Securities Act 1978;

"Security Stock" means Existing Security Stock and stock issued pursuant to and in accordance with clause 7.1(a);

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

"Stock" means Existing Stock, Security Stock or any secured indebtedness by whatever name called which in any case is lawfully entered into by Council and is constituted and issued by 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 Council under clauses 2.3, 4.3 or 4.8 or clause 8 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 4.1 substantially in the form as appears in the Third Schedule or in such other form as 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 including, for the avoidance of doubt, those persons noted on the Register to whom the benefit of the Franklin Security Agency Deed or Auckland City Council Security Debenture was extended in accordance with their respective terms (or pursuant to clause 2.4 of the Franklin Note Deed Poll) and in each case 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;

"Trustee" means the trustee or trustees for the time being holding office as trustee under this Deed and being the supervisor for the purposes of the FMCA;

"Waitakere Trust Deed" means the debenture trust deed entered into between Waitakere City Council and Trustees Executors Limited as trustee, dated 30 November 1998 as amended from time to time prior to the Effective Date.

1.3 Further Terms: Any reference to:

the terms **"Accounts Receivable"**, **"financing statement"**, **"Money"**, **"Negotiable Instrument"**, **"Proceeds"** and **"security interest"** have the meaning ascribed to them in the PPSA;

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 Auckland for the transaction of general banking business;

a **"charge"** has the same meaning as in the Act, and includes a security interest;

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

"conditions" in respect of any Stock will be to the conditions applicable to that Stock as referred to in clause 4.3(b) and, includes the further conditions set out in Part III of the First Schedule (the **"further conditions"**);

"Council" includes any delegate of 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;

"issuer obligation" has the meaning set out in the FMCA, being an obligation imposed on the Council under this Deed in respect of any Retail Stock, the terms of the offer of that Retail Stock, the FMCA or any court order relating to that Retail Stock;

"month" means calendar month;

"nominal amount" in respect of Stock, means the face value of such Stock (which, in the case of Existing Security Stock issued pursuant to the Franklin Security Agency Deed, shall be the principal amount recorded on the applicable register in respect of that Stock immediately prior to the Effective Date);

"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 a right, benefit, entitlement, authority, discretion, remedy or power;

"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; and

"working day" has the meaning set out in the Interpretation Act 1999.

1.4 Construction: Any reference to:

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

"**in writing**" and "**written**" include words written, printed, typewritten 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;

time means a reference to New Zealand time; and

headings and the table of contents are to be ignored in construing this Deed.

1.5 Trustee's Actions:

(a) **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 will act reasonably as regards 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.

(b) **Discretion:** Subject to clause 1.5(a), 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.

(c) **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) will bind the Stockholders.

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

2. ASSUMPTION OF EXISTING STOCK

- 2.1 Deemed Stock Issue:** All Existing Stock is, from the Effective Date, deemed to have been issued by Council pursuant to, and governed by the terms of, this Deed.
- 2.2 Existing Stock Terms:**
- (a) Stock Terms:** Terms applicable to the Existing Stock will be as set out in this Deed, and any replacement Security Stock Certificate or Stock Certificate issued pursuant to clause 2.3 below, and (for the avoidance of doubt) includes the conditions and the further conditions.
 - (b) Not Separate Class:** For the purposes of this Deed, all Existing Stock will not be considered to be a separate Class of Stock.
- 2.3 Replacement of Existing Stock Certificates:** On the Effective Date, Council issued replacement Security Stock Certificates or Stock Certificates (as applicable) (**Replacement Stock Certificates**) in the forms set out in Part I, or Part II of the First Schedule to the respective holders of Existing Security Stock and other Existing Stock as at the Effective Date. Such Replacement Stock Certificates shall be deemed to have been issued pursuant to and in compliance with the terms of this Deed. On and from the issue of the Replacement Stock Certificates, each of the Existing Stock Certificates is cancelled and of no further effect.
- 2.4 Continuation of Debt:** The cancellation of the Existing Stock Certificates and issue of the Replacement Stock Certificates is not to be considered redemption or repayment of the indebtedness secured by that Existing Stock or the re-advance of financial accommodation or the re-issue of that Existing Stock. Any secured indebtedness constituted by the Existing Stock, in respect of which a Replacement Stock Certificate has been issued, shall continue as an obligation owing by Council to that Stockholder, and such obligation will be deemed to be outstanding in accordance with the terms of this Deed and the applicable Replacement Stock Certificate (including the conditions and the further conditions).
- 2.5 Cancellation of Existing Trust Deeds:** From the Effective Date, all of the Existing Trust Deeds will be deemed to be cancelled and of no further effect, and Council will be released from all of its obligations under such Existing Trust Deeds. Any charge or security created by those Existing Trust Deeds will be released and discharged from the Effective Date.
- 2.6 Enforcement Proceeds:** For the avoidance of doubt, notwithstanding any provision to the contrary in any Existing Stock Certificate, Existing Trust Deed or associated document, any amounts recovered as a result of enforcement of the security created by this Deed will be applied in accordance with the terms of this Deed and in particular clause 16.
- 2.7 Assumption of Liabilities:** The parties hereto acknowledge that pursuant to section 35 of the Reorganisation Act as amended by the Local Government (Tamaki Makaurau Reorganisation) Amendment Act 2010 all rights, assets, liabilities and obligations of the Existing Local Authorities, under or in respect of, the Existing Stock (including those arising under the Existing Trust Deeds) were assumed by Council on 1 November 2010.

2.8 Security Consolidation: Pursuant to section 31 of the Local Government (Auckland Transitional Provisions) Act 2010, the Governor General made the Order in Council effecting the replacement of the Existing Trust Deeds with this Deed on and from the Effective Date. It is intended that those parties who held the benefit of the charges created by the Existing Trust Deeds as at the Effective Date (excluding the trustees or security agents under those Existing Trust Deeds) become Stockholders under this Deed and receive the benefit of the charge created by this Deed.

3. CONSTITUTION OF STOCK

3.1 Constitution of Stock:

- (a) **Benefit of Deed:** Council may from time to time in accordance with the provisions of this Deed, and in compliance with the Act (and the FMCA, if applicable), create and issue Stock to, or for the benefit of, such persons, in such amounts (whether such amounts 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 rates 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 Council may from time to time determine (but subject to any restrictions in that regard imposed by law).
- (b) **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 Council. On the Effective Date, Council will ensure that the Register contains the particulars of the Existing Stock in accordance with the requirements set out in clause 5.2.
- (c) **Other Indebtedness:** Without prejudice to the express provisions of this Deed relating to the issue of Stock generally, nothing in this Deed will in any way restrict the right of Council, and Council will 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 Council in respect of the Stock.
- (d) **Modification:** If any modification to this Deed, or any other document, consent or acknowledgement, is in the opinion of Council necessary or desirable to permit, facilitate or give effect to any right referred to in clause 3.1(c) the Trustee is, subject to it being reasonably satisfied with the relevant documentation, authorised to concur with Council in executing the same and any such documentation will be on behalf of, and will bind, Stockholders.
- 3.2 Ranking:** To the fullest extent permitted by law, the Stock and the Secured Money secured pursuant thereto will, subject to the provisions of clause 7, 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.

3.3 Payment of Brokerage or Commission: Council will 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.

3.4 Redemption of Stock:

- (a) **Redemption:** Council may at any time, and from time to time, redeem any Stock by purchase either on the market or by private treaty, provided that redemption of Stock which is listed for quotation on NZX (whether for cash or for non-cash consideration) shall be made either at market value or at a value not exceeding the Principal plus accrued and unpaid interest in respect of that Stock.
- (b) **Related Persons:** No person in, or in respect of, which Council has an interest will be precluded from at any time purchasing, re-purchasing, subscribing for, acquiring, holding, selling or otherwise disposing of, any Stock.
- (c) **Surrender:** Security Stock may at any time be surrendered in whole or in part by the holder thereof, and upon surrender Council will cancel such Security Stock.
- (d) **Required Surrender:** Council may require any Stockholder to surrender its Security Stock if:
 - (i) Council has no indebtedness (actual or contingent) to the Stockholder which is secured by that Security Stock, and
 - (ii) the Stockholder has no obligation to allow Council to incur any indebtedness to the Stockholder which would be secured by that Security Stock at any future time.

4. ISSUE OF STOCK

4.1 Stock Issuance Certificate:

- (a) **Precondition:** Council will 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.
- (b) **Suspension:** Council will not issue any Stock by reference to a Stock Issuance Certificate at any time after Council is required to give a notice to the Trustee pursuant to clause 11.1(c) in respect of that certificate, and while such notice is operative.
- (c) **Existing Stock:** The issue of Existing Stock will be deemed to have been made in compliance with clause 4.1(a).

4.2 Compliance with Acts Prior Retail Issues: Council will comply with any applicable provisions of this Deed, the Act, the Securities Act or the FMCA (as applicable) prior to the issue of any Retail Stock, and in any case Council will not issue any Retail Stock (other than Existing Retail Stock already issued prior to the Effective Date) unless:

- (a) **Advice to Trustee:** it has first advised the Trustee; and

- (b) **Remuneration:** the Trustee and Council have reviewed and agreed upon the remuneration payable to the Trustee under clause 12.2 for the issue of that Retail Stock.

4.3 Stock Certificates:

- (a) **Issue:** Council will, subject to the conditions applicable to the Stock, issue:
- (i) 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;
 - (ii) 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 Part II of the First Schedule or in such other form as is appropriate to reflect the terms of the relevant Security Stock;
 - (iii) (in such circumstances, if any, as 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; and
 - (iv) in the case of Retail Stock, Stock Certificates in respect of such Retail Stock will include all information required under the FMCA and be provided in the manner required by the FMCA.
- (b) **Terms of Issue:** Stock (whether or not represented by a Stock Certificate) will be, and be deemed to be, held with the benefit of and subject to the provisions of this Deed, and the conditions applicable to the Stock will include the following terms:
- (i) those terms entered in the Register in respect of such Stock; and
 - (ii) those terms set out in any Stock Certificate issued in respect of such Stock, except to the extent that they:
 - (aa) conflict with the terms entered in the Register; or
 - (bb) conflict with the form of Stock Certificate set out in Part I or II (as applicable) of the First Schedule (including the conditions attached to those forms and the further conditions set out in Part III of the First Schedule) (**Stock Certificate Form**),

unless such conflict has been agreed to by the Stockholder, the Trustee and Council; and

- (iii) 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 will operate to amend the relevant Stock Certificate Form for that Stock); and
- (iv) 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 Council and approved by the Trustee,

provided that:

- (v) where Stock which is listed for quotation on NZX is to be repaid or is callable on demand with interest on maturity, the Stockholder is entitled to be repaid without having to give notice that repayment is required;
- (vi) notwithstanding any agreement between Council and the relevant Stockholder contemplated by the provisions of paragraphs 4.3(b)(ii) and 4.3(b)(iii) above, no term of any Stock which conflicts with an express term of this Deed will be effective unless agreed to by the Trustee or paragraph 4.3(b)(vi) applies; and
- (vii) any change to a Stock Certificate Form agreed to by Council and/or the relevant Stockholder but not the Trustee will only be effective to the extent that it is, in Council's reasonable opinion:
 - (aa) required to correct a manifest error or omission, or is of a minor, formal or technical nature; or
 - (bb) 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, will be binding on Council, the Trustee and, by their acceptance of the Stock, the relevant Stockholders and all persons claiming through them respectively, each of whom will be deemed to have notice thereof.

- (c) **Execution:** Stock Certificates will be executed by Council either by the Chief Executive on behalf of Council or in such other manner (including by way of facsimile or pdf execution) as is duly authorised by Council.
- (d) **Passing of Title:** Notwithstanding anything to the contrary contained or implied in this Deed, title to Stock (other than Bearer Stock) will 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) will operate to transfer or otherwise affect title to the Stock to which it relates.

4.4 Validity: No Stockholder, nor the Trustee, will 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, will the validity of any Stock be affected by knowledge of such contravention.

- 4.5 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, will (without prejudice to the right of 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 Council in relation to such breach.
- 4.6 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 Council may act accordingly. The Registrar will 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 a security interest) or claim affecting the ownership of any Stock or the indebtedness represented thereby.
- 4.7 Limitation on Enforcement:** No Stockholder will 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 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.
- 4.8 Replacement:** Council may with the consent of, or at the request of, the Stockholder concerned, execute and deliver to that Stockholder:
- (a) **Loss:** (subject to provision to Council of such evidence and indemnities as it may require) a Stock Certificate in replacement of a lost, destroyed or damaged Stock Certificate;
 - (b) **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;
 - (c) **Substitution:** several Stock Certificates in substitution for one Stock Certificate, or vice versa;
 - (d) **Replacement:** a Stock Certificate in replacement for a Stock Certificate cancelled in error where the Stock evidenced thereby has not been purchased or redeemed;
 - (e) **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
 - (f) **Change of Name:** (subject to provision to 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 will permit 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.

4.9 Alteration: Council may at any time with the prior written approval of (subject to clause 17) the relevant Stockholder, alter any of the terms and conditions of any Stock which has been issued, including:

- (a) **Redemptions:** accelerate the redemption or extend the redemption date of any Stock; or
- (b) **Interest:** alter the rate of interest payable on any Stock; or
- (c) **Premium:** agree to the payment of a premium on the redemption of any Stock; or
- (d) **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.

4.10 Register: Any acceleration, extension, alteration, agreement or payment or any other alteration of any terms and conditions of any Stock will be recorded in the Register in respect of the Stock affected and 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.

4.11 Payment of Instalments:

- (a) **Non-Payment:** The terms of issue of any Stock may provide for such Stock to be subscribed or paid for by instalments. If the amount of any instalment is not duly paid to Council, 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:
 - (i) forfeit all instalments previously paid (except to the extent that such would constitute a penalty, and subject to clause 4.11(b)) and cancel the allotment of the Stock in question, or reissue it; or
 - (ii) 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.
- (b) **Cancellation:** A statutory declaration by an officer of Council that the allotment of Stock has been cancelled on the date stated in the declaration will be conclusive evidence of the facts therein as against all persons claiming to be entitled to such Stock. If Council cancels the allotment of such Stock Council will refund to the Stockholder concerned the instalments which the Stockholder had paid less the expenses of Council in relation to the cancellation, but if the Stock is reissued Council will apply the proceeds of reissue first in payment of any expenses of reissue and next in satisfaction of the money due to Council by the

Stockholder concerned in respect of such Stock and the balance (if any) will be paid to that Stockholder.

5. REGISTER OF STOCK

- 5.1 Register:** Council will take all reasonable steps to procure the Registrar establishes and maintains, in accordance with the Register and Paying Agency Agreement and all applicable laws, a separate Register of Stock to be kept at such place in New Zealand as Council and the Registrar may from time to time agree.
- 5.2 Register shall prevail:** In the event of any conflict between any Stock Certificate issued in respect of Stock and the Register, the Register shall prevail.
- 5.3 Provisions as to Register:** In respect of the Register:
- (a) **Details:** the following details will be entered in the Register in respect of Stock:
 - (i) the principal amount of the Stock for the time being issued and outstanding (which, in the case of Security Stock, will be its nominal amount);
 - (ii) the date or dates of subscription or payment for Stock (when applicable);
 - (iii) the rate of interest applicable;
 - (iv) when interest is payable;
 - (v) the redemption date;
 - (vi) the number and date of each Stock Certificate (if any);
 - (vii) (except for Bearer Stock) all subsequent transfers or changes of ownership of Stock;
 - (viii) (except for Bearer Stock) the names and addresses of the Stockholders and the date at which such names are entered on the Register;
 - (ix) where Stock is no longer outstanding, particulars of its redemption, purchase, cancellation or forfeiture by Council;
 - (x) 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
 - (xi) any other particulars as may be required by Council, the Registrar or the Paying Agent as agreed to by Council and the Registrar;
 - (b) **Security Stock:** any Security Stock will be identified as such in the Register and the details set out in paragraphs 5.3(a)(ii), 5.3(a)(iii), 5.3(a)(iv) and 5.3(a)(v) will not be required;

- (c) **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 will forthwith be notified to the Registrar in writing by the holder, or if a joint holding by all the joint holders, and the Register will then be altered accordingly;
 - (d) **Replacement/Exchanges:** there will be entered in the Register details of any replacement Stock Certificates issued pursuant to clauses 2.3 or 4.8;
 - (e) **Disclosure and Inspection:** Council shall ensure that:
 - (i) the Registrar discloses to a Stockholder who so requests, any information held on the Register which relates to the Stock registered in the name of that Stockholder; and
 - (ii) in respect of Retail Stock, the Registrar makes available for inspection, and provides copies of or extracts from, the Register as required by, and in accordance with, the FMCA and all other applicable laws, and subject to the same laws, where required by the Registrar, except in the case of the Trustee, upon payment of a reasonable fee, take copies of and extracts from such entries in the Register as that person is entitled to inspect.
 - (f) **Closure:** subject to any applicable laws, 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;
 - (g) **Statutory Requirements:** Council shall ensure that the Registrar complies with all statutory requirements relating to the keeping of the Register and the details to be entered therein;
 - (h) **Auditing:** the Register in respect of any Retail Stock shall be audited in accordance with applicable auditing and assurance standards by the Auditor, to determine whether in the Auditor's opinion there is reasonable assurance that the Register correctly contains all information required by applicable laws, annually within 4 months after the Council's balance date; and
 - (i) **Evidence:** the Register will, in the absence of manifest error, be conclusive evidence of the matters entered therein.
- 5.4 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:
- (a) **Deemed Entry:** the recording or storing of any information therein will be deemed to be the entry thereof in the Register or in respect of the Stock or Stock Certificate; and

- (b) **Deemed Extract:** any material subsequently derived from information so recorded or stored will be deemed to be an extract from the Register or the Stock or Stock Certificate, as the case may be.

5.5 Reference Register: Where a Facility in respect of which Council extends the benefit of this Deed consists of certificated or uncertificated notes, stock, bonds or any other debt instruments (each "**Notes**"), and the identity from time to time of the holders of those Notes is determined by reference to a register maintained in respect of those Notes, reference to the contents of that register in respect of that Facility in any Security Stock Certificate and/or the Register shall be deemed to constitute entry of the names and addresses of those persons from time to time as Stockholders in the Register for the purpose of this Deed.

6. INDEMNITY BY STOCKHOLDER

6.1 Indemnity: Whenever, in respect of any Stock, in consequence of:

- (a) **Death, Liquidation:** the death, winding up or liquidation of the holder of such Stock;
- (b) **Taxes:** the non-payment of any income, or other, tax payable by or in respect of the holder of such Stock;
- (c) **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;
- (d) **Breach:** non-compliance by the holder of such Stock with the provisions of the FMCA, 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); and
- (e) **Other:** any other act of the holder of such Stock or thing referable to the holder of such Stock,

there is or will by law be imposed any immediate or possible liability on Council and/or the Trustee under or in respect of the FMCA or any other law or to make any payment to the New Zealand Government or any taxation authority, Council and/or, as the case may be, the Trustee will in respect of such liability be indemnified 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.

6.2 Recovery of Sums Paid: Any money paid, or losses, damages, costs, fines or claims incurred, by Council and/or, as the case may be, the Trustee in respect of any liability described in clause 6.1 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 Council and/or, as the case may be, the Trustee.

6.3 No Prejudice to Rights: Nothing in this clause 6 will prejudice or affect any right which any law may confer or purport to confer on Council and/or, as the case may be, the Trustee, and as between 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 Council and/or, as the case may be, the Trustee will be enforceable by Council and/or, as the case may be, the Trustee.

7. SECURITY STOCK PROVISIONS

7.1 Issue:

- (a) **Terms:** Stock issued in accordance with this Deed may be issued as Security Stock, which will 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 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 Council.
- (b) **Nominal Amount:** Any Security Stock Certificate which is issued will 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 7.3.
- (c) **Transferability:** Security Stock will be transferable to the same extent as the debts, liabilities, advances or other accommodation or obligations to which it relates.

7.2 Validity of Security Stock: Security Stock issued pursuant to clause 7.1(a) will 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 7.1(a) (but subject to clause 7.3). If the amount of such accommodation or obligations is less than the nominal amount of such Security Stock held then such holder will not be liable solely by virtue of that fact to make any payment to 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 Council.

7.3 Priority of Security Stock: Stock issued as Security Stock pursuant to clause 7.1 will at all times, except where otherwise agreed between Council and the Trustee (including by agreeing wording in the relevant Stock Certificate), be held upon and subject to the following conditions (which will, or will be deemed to, be mentioned, summarised or referred to in every Security Stock Certificate, with the necessary amendments):

- (a) **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 16 the holder will be entitled to payment *pari passu* with other Stockholders under clause 16.1(f) in respect of not more than that Stockholder's Priority Total Amount,

PROVIDED THAT:

- (i) **Priority Principal Amount:** the Principal in respect of which a Stockholder will be entitled to payment *pari passu* with other Stockholders under clause 16.1(f) will be limited at any date (the **relevant date**) to the lesser of:
 - (aa) 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 7.1(a)), including capitalised interest and any fees, commissions or expenses, owing by Council to the holder of the Security Stock at the relevant date but excluding any uncapitalised interest owing at such date; and

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

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

(ii) **Priority Interest Amount:** the interest in respect of which a Stockholder will be entitled to payment *pari passu* with other Stockholders under clause 16.1(f) will 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 Council and the Trustee (including by agreeing wording in the relevant Stock Certificate), the **Priority Interest Amount**);

(iii) **Excess:** all other 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 will rank for payment subsequent to the Priority Total Amounts of other Stockholders, but *pari passu* with any amounts payable under this clause 7.3(a)(iii) in respect of other Stockholders.

7.4 Selection of Priority Principal Amount: If the amount referred to in clause 7.3(a)(i)(aa) exceeds the amount referred to in clause 7.3(a)(i)(bb), the Stockholder may, in its sole discretion, determine which of the liabilities, advances, accommodation and obligations secured by the Security Stock will be included as the Priority Principal Amount, and the interest referred to in clause 7.3(a)(ii) will be calculated on this basis.

7.5 Issue of Second Ranking Stock: Stock may be issued on a second-ranking basis. At the request of Council the Trustee may, without the consent of the Stockholders, concur with 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 Council may agree in order to facilitate the issuing of second-ranking Stock or make provision for Stock to be issued on a second-ranking basis.

8. BEARER STOCK

8.1 Issue: Stock may be issued in bearer form.

8.2 Form of Bearer Stock: At the request of Council the Trustee may, without the consent of the Stockholders, concur with 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 Council may agree in

order to facilitate the issuing of Bearer Stock or make provision for Stock to be issued in bearer form.

8.3 Trustee's Entitlements re Bearer Stock:

- (a) **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 will 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.
- (b) **No Liability:** The Trustee will not be liable to 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 such Stock Certificate coupon or other instrument subsequently being found to be not authentic.

9. COVENANT TO PAY

9.1 Covenant to Pay:

- (a) **Acknowledgement:** 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.
- (b) **Payment to Stockholders:** Notwithstanding the provisions of clause 9.1(a), Council will, 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 conditions of issue of the Stock. Each such payment will operate as payment to the Trustee in satisfaction, to the extent of the payment, of the indebtedness of Council acknowledged in this clause 9.1.
- (c) **First Payee:** Notwithstanding the provisions of clause 9.1(b), if by the terms of issue of any Stock the first 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 will operate in satisfaction of the obligations of Council in regard to such payment of interest under clause 9.1(b).
- (d) **Satisfaction:** Notwithstanding any of the provisions of this Deed or of any Stock or Stock Certificate, any payment by Council from time to time in respect of the Stock made to the Trustee will, to the extent of such payment, satisfy all obligations of Council to make such payment.

9.2 Unclaimed Payments:

- (a) **Treatment:** If any payment made to any Stockholder pursuant to clause 9.1(b) or 9.1(c) 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 will (unless notice of a change of Registered Address has in the meantime been received by Council or the Registrar) be held by, or on behalf of, Council in a separate trust account designated for such purpose but without any liability to invest the same or to pay interest thereon.
- (b) **Entitlement:** The person or persons who are entitled to those payments will be entitled to payment upon providing to the satisfaction of Council sufficient evidence of such entitlement, and details of any such payment so made will be given to the Trustee. Any money unclaimed for six years or longer shall be forfeited in accordance with the Unclaimed Moneys Act 1971.

9.3 Withholding and Other Taxes:

- (a) **Deduction:** Council, or the Paying Agent on behalf of Council, shall (without prejudice to any specific conditions in relation thereto relating to any particular issue of Stock or unless and except to the extent that a Stockholder has provided to Council evidence satisfactory to 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 Council, or the Paying Agent on behalf of 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 will be deemed to have been duly paid and satisfied by Council.
- (b) **Approved Issuer Levy:** Stockholders to whom such is relevant may in writing request Council, or the Paying Agent on behalf of Council, to advise the basis (if any), or may otherwise respond to any indication by Council, or the Paying Agent on behalf of Council, from time to time of the basis upon which, 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 Council of its rights as referred to in clause 9.3(a).

10. CHARGES BY COUNCIL

10.1 Charge:

- (a) **Charged Assets:** Council charges, and grants a security interest, 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 will, 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 all of the Secured Obligations.
- (b) **Continuing Security:** Each such charge and security interest by Council is and will be a continuing security for the payment, as provided for in clause 9.1(a), of the Secured Money.

10.2 Floating Charge: Each charge by Council pursuant to clause 10.1 as regards its Charged Assets (to the extent, if any, 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 will become fixed in respect of such of the Charged Assets as are subject to action by the Trustee pursuant to clauses 14.1(b), 14.1(c) or 15.1) Council will 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 the Charged Assets and the Trustee will, at the request of Council, execute and deliver all documents which may reasonably be necessary or desirable to permit such dealing by Council.

10.3 First Charge: Each charge by Council pursuant to clause 10.1 is, subject to any prior charge created pursuant to clause 10.4, a first ranking charge.

10.4 Other Charges: 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:

- (a) **Competing:** in priority to, or pari passu with, the charges in favour of the Trustee under this Deed; and
- (b) **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.

10.5 Further Assurance:

- (a) **Assurances:** Council will, 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, Council will, to the extent permitted by law, do all things and provide all information which the Trustee reasonably considers is desirable, in order:

- (i) 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;
 - (ii) 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;
 - (iii) to remove any financing statement which is registered against Council in relation to any security which is not permitted by this Deed or otherwise consented to by the Trustee in writing.
- (b) **Realisation:** Council will, 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 do 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.
- (c) **Execution:** Without limiting the generality of clause 10.5(a), Council will, 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 will, 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 trusts and rights referred to in clause 10.5(b) and will, to the extent permitted by law, give all notices, orders and directions which the Trustee may reasonably consider expedient.

10.6 Attachment: Any security interest created by this Deed to which the PPSA applies will attach, in the case of:

- (a) **Present:** any present Charged Assets, from the Effective Date; or
- (b) **After-Acquired:** any after-acquired Charged Assets, from when Council acquires any rights in those assets.

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

10.7 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 will until the Date of Enforcement permit 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.

11. COVENANTS BY COUNCIL

11.1 Continuing Covenants: Council covenants with the Trustee that it will, 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:

- (a) **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);
- (b) **Records:** procure that the financial statements and other records of Council (as required by the Act) are 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 Stockholder, or any person properly appointed by the Trustee or any Stockholder;
- (c) **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 Council which would cause any current Stock Issuance Certificate to be materially defective;
- (d) **Compliance with FMCA:** duly comply with the provisions of the FMCA so far as they may be applicable to the issue of any Retail Stock, and prior to the issue of any product disclosure statement as is required by the FMCA in respect of any Retail Stock forward a draft copy of such document to the Trustee for its approval;
- (e) **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 Council a certificate as to the amount owing in respect of Security Stock as known to Council;
- (f) **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;
- (g) **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 Council, and 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 necessary or expedient by reason of any default on the part of Council in performing any of the covenants contained in this Deed. Council 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) will, 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 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;
- (h) **Report of contravention:** where the Stock is Retail Stock, if the Council has reasonable grounds to believe that it has contravened, may have contravened, or is likely to contravene, any of its issuer obligations in respect of that Retail Stock in a material respect, as soon as practicable, report the contravention or possible contravention to the Trustee in writing and advise the Trustee of the steps (if any) that it has

taken or intends to take in light of the contravention or possible contravention, and the date by which the steps were taken or are to be taken;

- (i) **Insolvency:** where the Stock is Retail Stock, if Council becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become insolvent (as defined in the FMCA), as soon as practicable:
 - (i) disclose to the Trustee all information relevant to that matter that is in its possession or under its control and that was obtained in the course of, or in connection with, the performance of its functions as issuer; and
 - (ii) advise the Trustee of the steps (if any) that it intends to take in respect of that matter and the date by which the steps are to be taken; and
- (j) **Auditor:** for so long as any Retail Stock is Outstanding, comply with the fifth schedule.

11.2 Reporting Covenants: Council covenants with the Trustee that it will, 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 otherwise permitted by the Trustee:

- (a) **LTCCP, Annual Plan and Annual Report and Liability Management Policy:** as soon as each is adopted by Council within the terms of sections 93, 95, 98 and 102(4)(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 LTCCP and the Liability Management Policy (within the meaning of those sections);
- (b) **Interim Financial Information:** promptly after such is prepared in each year, provide to the Trustee a copy of such financial information as 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;
- (c) **Amendments:** as soon as Council has approved and adopted any material amendment to any such LTCCP or Liability Management Policy, provide details of that amendment to the Trustee;
- (d) **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;
- (e) **Information on Request:** make available or provide to the Trustee or a person authorised by it for these purposes all documents and records

relating to Council and any reports or other information (which may be about any matter relevant to the Trustee's performance of its functions and include forward-looking reports), that the Trustee or its authorised person, by written notice requires Council to make available or provide within the time and in the manner (which must be reasonable in the circumstances) specified by the Trustee or its authorised person;

(f) Auditor's Reports:

- (i) at the same time as the Reporting Certificate at the end of each of Council's financial years is provided under clause 11.2(d), provide a separate report by the Auditor addressed to the Trustee stating:
- (aa) whether or not in the performance of their duties as auditor 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;
 - (bb) 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;
 - (cc) that they have perused the certificates (if any) given on behalf of Council pursuant to clause 11.2(d) 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;
 - (dd) whether in the Auditor's opinion, there is a reasonable assurance that, in all material respects, the Register in respect of Retail Stock has been maintained in accordance with the FMCA and the provisions of this Deed and correctly contains the information required by the FMCA; and
 - (ee) as at the end of each relevant financial year:
 - (A) the amount of the Stock, showing separately how much is Security Stock and how much, if any, is Bearer Stock;
 - (B) the Principal Money owing or secured under the Stock, distinguishing between Security Stock and other Stock;
 - (C) 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
- (ii) where the FMCA applies in respect of any Retail Stock:

- (aa) provide the Trustee with a copy of any report, financial statement or certificate which the Auditor has issued in respect of Council; and
- (bb) on request of the Trustee provide to the Trustee all information relating to Council relevant to the exercise of Council's rights and duties in respect of this Deed.

Notwithstanding the above, the Auditor's report may be provided in such other form as may be agreed between Council, Trustee and the Auditor from time to time;

- (g) **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; and
- (h) **Name Change:** notify the Trustee as soon as is reasonably practicable, and in any event within five business days, of any change in Council's name.

12. TRUSTEE'S POWERS

12.1 Appointment: Council appoints the Trustee, and the Trustee accepts appointment, as trustee for the Stockholders on the terms and conditions of this Deed. The Trustee will hold in trust for the benefit of the Stockholders:

- (a) the right to enforce any obligations or duties that Council has under this Deed and the FMCA, including the right to enforce Council's obligation to repay to a Stockholder the Principal of the Stock held by that Stockholder, together with interest thereon, in accordance with the terms of this Deed; and
- (b) the security created under this Deed.

12.2 Trustee's Remuneration:

- (a) **General:** Council will pay to the Trustee by way of remuneration for its services as trustee such remuneration as will from time to time be agreed between Council and the Trustee.
- (b) **Expenses:** Without limiting the generality of the other provisions of this Deed, Council will 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:
 - (i) the exercise by the Trustee of any right or duty conferred by this Deed on the Trustee;
 - (ii) any breach or default in the observance or performance by Council of any provision of this Deed or the PPSA (and not excluded by this Deed);

- (iii) any application under the trusts and provisions of this Deed for its consent to, or approval or execution of, any act, document or matter;
 - (iv) any action taken by or required of the Trustee under this Deed; and
 - (v) the convening and holding, and carrying out of any directions or resolutions, of any meeting of the Stockholders.
 - (c) **Continuation:** The remuneration and other payments payable under this clause 12.2 will 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.
 - (d) **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, will be payable by Council promptly following demand and, while unpaid following demand, will, to the extent permitted by law, be a charge on the Charged Assets and form part of the Secured Money, and will be satisfied before any payment is made to the Stockholders in respect of the Secured Money.
- 12.3 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.
- 12.4 Applications to Court:** The Trustee may apply to a court for an order under section 208 or 210 of the FMCA, and it may approve of or oppose any application to a court made by or at the instance of the FMA or any of the Stockholders. The Trustee will, subject to clause 12.18 and otherwise to the extent permitted by law, be indemnified by 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).
- 12.5 Waiver by Trustee:** Except in respect of any event referred to in clause 13.1(a)(i) or 13.1(a)(ii), the Trustee may, subject to any direction pursuant to clause 14.1, and will if so directed by an Extraordinary Resolution, at any time and from time to time by notice in writing to 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 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 will not prejudice the rights of the Trustee or the Stockholders in respect of any other breach.
- 12.6 Supplemental Powers of Trustee:** In addition to the laws relating to trustees and to facilitate the discharge of its duties under this Deed, but subject to clause 12.13, it is expressly declared that:

- (a) **Right to engage expert:** the Trustee is entitled, in the performance of its functions, to engage any expert (for example, an auditor, investigating accountant, valuer, or actuary) if the Trustee considers, on reasonable grounds, that it requires the assistance of that expert to determine the financial position of Council or review the business, operation or management systems or the governance of Council. If the Trustee engages such an expert, Council will provide reasonable assistance to that expert to allow that expert to provide the assistance to the Trustee and (without limiting clause 12.2(b)) the fees and expenses of the expert, which must be reasonable in the circumstances, will be paid by Council;
- (b) **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:
- (i) 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;
 - (ii) a certificate signed by the Chief Executive on behalf of 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
 - (iii) the statements contained in any certificate, resolution or report given under this Deed as conclusive evidence of the facts stated therein;
- (c) **Reference on Record:** the Trustee will 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;
- (d) **Application:** the Trustee will not be responsible for, or be bound to see to the application of, the money subscribed by applicants for, or subscribers of, the Stock;
- (e) **Title:** the Trustee will not be bound or concerned to examine or enquire into, or be liable for any defects or failure in, the title of Council to the Charged Assets, whether such defects or failure might have been discovered upon an examination or enquiry and remedied or not;
- (f) **Discretion:** except as otherwise expressly provided in this Deed, the Trustee will 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

will not be responsible for any loss or cost that may result from the exercise or non-exercise thereof;

- (g) **Delegation:** the Trustee must not delegate any of its functions under clauses 12.16(b) to 12.16(d) of this Deed unless such delegation is expressly permitted by the FMCA or permitted by, and then subject to, conditions imposed under the FMSA but may, for the avoidance of doubt, delegate its other functions. Where the Trustee may delegate its functions, it may, whenever it thinks it expedient in the interests of the Stockholders to do so:
- (i) delegate (with the prior written approval of 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;
 - (ii) authorise (with the prior written approval of 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;
 - (iii) instead of acting through its permanent employees employ, with the prior written approval of Council (which will 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;
 - (iv) in addition to the exercise of the rights contained in clause 12.4, apply to a court for directions in relation to any question arising, either before or after the Date of Enforcement; and
- (h) **Attendance at Meetings:** the Trustee, and any representative of the Trustee, will be entitled to attend any meeting of 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.

12.7 Indemnity of Trustee:

- (a) **Indemnification:** Subject to clause 12.18 and any limitations placed on rights of indemnity by the FMCA, 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 will be indemnified out of the Charged Assets in respect of all liabilities and expenses incurred in the execution or purported execution of its licensee obligations (as defined in section 4 of the FMSA) and 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, 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.

- (b) **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 expenses of the Trustee as provided for in this Deed.
- (c) **Charge:** The Trustee will, to the extent permitted by law, have a charge on the Charged Assets for all money payable to it under this clause 12.7 or otherwise however properly arising out of or in connection with this Deed or the issue of the Stock.

12.8 **Fiduciary Relationship:**

- (a) **Stockholder:** Nothing in this Deed will be deemed to prohibit the Trustee or any related company of the Trustee (all of whom in this clause 12.8 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 Council or from acting in any representative capacity for a Stockholder or other such holder.
- (b) **Own Account:** Without limiting the generality of clause 12.8(a), 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 will 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 Council or between the Trustee and the Stockholders, as the case may be.
- (c) **Other Transactions:** The Trustee will not by reason of its fiduciary capacity be precluded from making any contracts or entering into any transactions with Council or with itself as trustee in the ordinary course of business of the Trustee or from undertaking any insurance, financial or agency service with Council or for itself as trustee, and the Trustee will not be accountable either to Council or the Stockholders for any profits arising from such contracts, transactions or services.

12.9 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 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 Council and in enforcing the rights of the Stockholders or the Trustee under any demand, action or proceeding.

12.10 Resignation or removal: Subject to, in the case of clauses 12.10(a) to 12.10(c) below, the Trustee having performed all its functions and duties, or the due appointment of and acceptance of appointment by a new trustee in accordance with clause 12.11 or a court consenting to such resignation or removal (as applicable):

- (a) the Trustee may resign at any time, without assigning any reason, by giving at least 90 days' (or such shorter period as Council may agree) notice in writing to Council, which notice Council will promptly give to Stockholders recorded in the Register as at the date of receipt;
- (b) the Trustee will be removed from office by an Extraordinary Resolution of all Stockholders passed to that effect;
- (c) Council may, with the consent of the FMA, remove the Trustee from office; or
- (d) the FMA or Council may remove the Trustee from office in accordance with the FMSA.

12.11 Appointment of New Trustee:

- (a) **Power to Appoint:** The power to appoint a new trustee of this Deed will be vested in Council, but no trustee will be appointed unless such appointment is first approved by an Extraordinary Resolution. Upon the Trustee notifying Council under clause 12.10(a) that it is to retire, Council will 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 Council will exercise its power of appointment. Only a licensed supervisor (as those terms are defined in the FMCA) whose licence covers the supervision of all Stock issued under this Deed may be appointed as a trustee of this Deed.
- (b) Upon the acceptance of any appointment by a new trustee:
 - (i) the new trustee will succeed to, and become vested with, all the rights, powers and obligations of the retiring Trustee under the this Deed and, as from that time, the retiring Trustee shall be discharged from its rights, powers and obligations; and
 - (ii) the retiring Trustee must transfer to the successor trustee all moneys, investments, property and books held by the Trustee under this Deed.
- (c) Council shall notify all Stockholders of the appointment of any new trustee as soon as reasonably practicable following such appointment.
- (d) **Failure to Appoint:** If at any time there is Stock outstanding, within 30 days of receiving notice of the Trustee's intention to retire under clause 12.10(a) or the removal of the trustee under clauses 12.10(b) to 12.10(d) above, Council 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 12.11(a) 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 Council.

12.12 Additional Powers of Trustee: The rights conferred upon the Trustee by this Deed will 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.

- 12.13 Limitation on indemnity:** The Trustee's rights to be indemnified in relation to the performance of the Trustee's licensee obligations (as that term is defined under section 4 of the FMSA) under this Deed are available only in relation to the proper performance of its duties under clauses 12.16(e) and 12.16(h) and no other provision of this Deed that is contrary to the foregoing shall have any effect.
- 12.14 Trustee's Duty of Care:** None of the provisions of this Deed, but subject to clause 12.13 and any applicable law, will 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.
- 12.15 No liability:** The Trustee is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Stockholders of Retail Stock.
- 12.16 General responsibilities and duties of the Trustee:** Notwithstanding any other provision of this Deed, the Trustee:
- (a) must:
 - (i) 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
 - (ii) do all the things that it is empowered to do to cause any breach of those terms to be remedied (except if it is satisfied that the breach will not materially prejudice the security of the Stock or the interests of the holders of the Stock);
 - (b) is responsible for acting on behalf of the Stockholders in relation to Council, any matter connected with this Deed or the terms of the regulated offer of Stock and any contravention or alleged contravention of the issuer obligations in respect of Stock;
 - (c) is responsible for supervising Council's performance of its issuer obligations and in order ascertain whether or not the assets of 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;
 - (d) is responsible for performing and exercising any other functions, duties and powers conferred or imposed on the Trustee by this Deed, the FMCA and the FMSA;
 - (e) must:
 - (i) act honestly in acting as trustee;
 - (ii) in exercising its powers and performing its duties as trustee, act in the best interests of the Stockholders;
 - (iii) exercise reasonable diligence in carrying out its functions as trustee;

- (f) must do all the things it has the power to do to cause any contravention or alleged contravention of the issuer obligations in respect of Stock to be remedied unless it is satisfied that the contravention will not have a material adverse effect on the Stockholder of that Stock;
 - (g) subject to any court order made under section 210 of the FMCA, must act in accordance with any direction given by an Extraordinary Resolution of Stockholders or an affected class of Stockholders that is not inconsistent with any enactment, rule of law or this Deed in relation to:
 - (i) seeking a remedy to a contravention or alleged contravention of the issuer obligations in respect of Stock; and
 - (ii) any other matter connected with the Trustee's functions; and
 - (h) in exercising its powers and performing its duties as trustee, must exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor (as those terms are defined in the FMCA) would exercise in the same circumstances.
- 12.17 Representation and warranty:** The Trustee represents and warrants to Council and the Stockholders that it is licensed (as that term is defined in the FMCA) and that such licence covers the supervision of all Stock issued under this Deed. The representation and warranty contained in this clause 12.17 shall be deemed to be repeated for the benefit of Council and each Stockholder on each date on which Stock is issued and on each date on which a payment is made in respect of Stock.
- 12.18 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 will not be bound to comply with it unless the Trustee has first been indemnified 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.
- 12.19 Not Bound to Give Notice:** The Trustee will not be bound to give notice to any person of the execution of this Deed.
- 12.20 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 12.6(b)(i), the Trustee will treat, and maintain, as confidential all information which it receives from, or in respect of, Council pursuant to this Deed.

13. ENFORCEMENT

- 13.1 Enforcement Events:** Subject to clause 12.5 and clause 14, the security created by this Deed will become enforceable following the occurrence of any one or more of the following events, and while such is continuing unremedied or unwaived:
- (a) **Non-Payment:**
 - (i) default is made by 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 will become payable to a Stockholder, and such default continues unremedied for two business days; or

- (ii) default is made by Council for a period of seven business days in the payment of any interest on or secured by the Stock; or
 - (iii) default is made by Council for a period of 30 days after final demand in writing in the payment of any other material amount due and payable by Council pursuant to this Deed;
- (b) **Receivership:** if a receiver, or receiver and manager, is appointed of (or 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 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 Council to repay the Secured Money when it is due and payable; or
- (c) **Material Default:** if any material default not otherwise referred to in the preceding provisions of this clause 13.1 is made by Council in the performance or observance of any other material covenant, condition or other provision binding upon 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 Council of a notice in writing from the Trustee specifying the default and requiring it to be remedied.

13.2 Application of the PPSA: Council and the Trustee:

- (a) **Contracting Out:** contract out of:
- (i) section 120(1) of the PPSA; and
 - (ii) sections 108 and 109 of the PPSA to the extent that:
 - (aa) "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
 - (bb) 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 Council agree that the Trustee will 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);
 - (iii) 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 14.3;

- (iv) 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 13.1); and
- (v) section 133(1) of the PPSA.

13.3 Verification Statement: 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 Council may request it.

13.4 Security Trust Deed: 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.

14. TRUSTEE'S POWERS OF ENFORCEMENT OF SECURITY

14.1 Trustee's Powers to Act: At any time after the security created by this Deed has become enforceable (but subject to clause 14.3, clause 14.5 and to the Act), and while it remains enforceable, the Trustee may, and will forthwith upon being directed to do so by an Extraordinary Resolution, take one or more of the following steps:

- (a) **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 will forthwith become due and payable;
- (b) **Take Possession:** enter into or take possession of all or any part of the Charged Assets;
- (c) **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;
- (d) **Apply:** apply, in accordance with section 108 of the PPSA, Charged Assets in the form of Accounts Receivable, Money or Negotiable Instruments in or towards satisfaction of the Secured Money; and
- (e) **Meeting:** call a meeting of Stockholders for determining what action (if any) the Trustee should take in the circumstances.

14.2 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 will 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 Council.

14.3 Notice of Exercise of Powers: The powers conferred by clause 14.1 will be exercisable by the Trustee without further notice to Council. However, before exercising any of the powers contained in clauses 14.1(a) to (d) inclusive (the **powers of conversion**) the Trustee will, except where it certifies in writing to 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 13.1(a)(i), 13.1(a)(ii), 13.1(b) or 13.1(c), give written notice of its intention

to Council and will not enforce the security created pursuant to 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 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 14.3, no further notice will be required before exercising any other powers of conversion.

14.4 Power After Entry:

- (a) **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 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 will be deemed not to prevent provision of the services mentioned above unless:
- (i) that action necessarily results in that outcome; and
 - (ii) the outcome is not more fairly attributable to the act or omission to act of persons outside the control of the Trustee.
- (b) **Expenses:** The Trustee will 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 14.1 and clause 15, or otherwise in respect of the Charged Assets, and will pay and apply the residue of the said proceeds and income in the manner provided in clause 16. 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.

- 14.5 Essential Services:** Council and the Trustee agree that the regime as set out in section 40D of the Receiverships Act will 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 14.1 as if the references in that section to "receiver" were references to the Trustee, and the provisions of this Deed will be read accordingly.

15. RECEIVER

- 15.1 Appointment and Removal:** At any time after the security created by this Deed has become enforceable, but subject always to clause 15.3, the Act and the Receiverships Act, the Trustee may in its discretion and will 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 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.
- 15.2 Rights of Receiver:** Following an appointment of a Receiver, the Receiver will (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:
- (a) **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;
 - (b) **Deal with Charged Assets:** deal with and exploit all or any part of the Charged Assets in any manner;
 - (c) **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;
 - (d) **Acquire Property:** acquire an asset or an interest in an asset for inclusion in the Charged Assets;
 - (e) **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;
 - (f) **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;
 - (g) **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;
 - (h) **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 Council or otherwise and under the common seal of Council or otherwise, all agreements, acts or things which the Receiver may reasonably consider necessary or expedient in relation to the Charged Assets;
 - (i) **Give Receipts:** give a receipt for money paid to or an asset received by the Trustee or Receiver (which receipt will effectively discharge the payer or the person delivering that asset);

- (j) **Delegate:** delegate any of the rights conferred upon the Receiver under this Deed, the Receiverships Act, the Act or by law;
- (k) **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
- (l) **Incidental Rights:** do or omit to do anything incidental to the rights contained in this clause 15.2.

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).

15.3 Withdrawal: The Trustee may at any time give up possession of any Charged Assets and may at any time discontinue any receivership.

15.4 Receiver Agent of Council: A Receiver is, to the extent permitted by the Act or the Receiverships Act, to be the agent of Council, and Council is to be solely responsible for his or her acts and defaults (including misconduct, negligence or default), but without prejudice to Council's rights against the Receiver.

15.5 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 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.

15.6 The Trustee and a Receiver: Any Receiver:

- (a) **Rights:** will 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 will have the power to sub-delegate the same;
- (b) **Directions:** will in the exercise of his or her rights comply with any directions given by the Trustee;
- (c) **Payment:** will (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 16;
- (d) **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 will keep in hand;
- (e) **Borrow:** may, for the purpose of defraying any costs, losses, charges or expenses (including his or her remuneration) which will 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 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 will 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). For those purposes, the Receiver may execute and do all such assurances and things as he or she thinks fit **PROVIDED ALWAYS THAT** a Receiver will not exercise any such power without first obtaining the written consent of the Trustee thereto but the Trustee will 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.

15.7 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 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.

15.8 No Liability as Mortgagee in Possession: The Trustee or any Receiver will 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.

15.9 Protection of Third Parties: No person dealing with the Trustee or any Receiver, or their respective agents, will be concerned to enquire:

- (a) **Enforceability:** whether the security created by this Deed has become enforceable;
- (b) **Right Exercisable:** whether any right exercised or purported to be exercised pursuant to this Deed has become exercisable;
- (c) **Money Due:** whether any money remains due upon the security of this Deed;
- (d) **Conditions:** as to the necessity or expediency of the conditions subject to which any sale will be made;
- (e) **Property:** otherwise as to the propriety or regularity of any exercise of the powers of conversion; or
- (f) **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 will, 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 Council in respect of any irregularity or impropriety whatever in the exercise of such rights will be in damages only.

15.10 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 will 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.

16. TRUSTS OF PROCEEDS OF ENFORCEMENT

16.1 Application: Subject always to the Act, the Receiverships Act and clause 16.5, 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, will be held and applied in the following order:

- (a) **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
- (b) **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
- (c) **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
- (d) **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
- (e) **Trustee:** in or towards payment of, or provisions for, all amounts owing to the Trustee (including by way of indemnity) under this Deed; then
- (f) **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:
 - (i) the interest payable to each holder of Security Stock will be limited to the Priority Interest Amount;
 - (ii) before making any payment referred to in paragraph (f) above, the Trustee will, 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 (f) in respect of any Stockholder will 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;

- (iii) in the event of all or part of a contingent liability being indeterminate or unlimited in amount, the Trustee will, subject to the following provisions, set aside as referred to above such amount as will be nominated by the holder of the relevant Security Stock as its reasonable estimate of that contingent liability and approved by the Trustee 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 in respect of any Stockholder will 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
- (iv) any amount set aside in accordance with these provisos will be held by the Trustee and applied in the following manner:
 - (aa) each time all or part of a contingent liability becomes an absolute ascertained liability the Trustee will 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;
 - (bb) each time any portion of the amount set aside pursuant to these provisos is no longer required for the purposes of paragraph (aa) above then it will become available for distribution and payment as otherwise provided in this clause 16.1; then
- (g) **Excess Amount:** in or towards payment to the relevant Stockholders of any amount of the Stockholder's Secured Money as referred to in clause 7.3(a)(iii) (and in accordance with that clause), as in any case entitled thereto; then
- (h) **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
- (i) **Council:** to, or for the benefit of, Council as it may direct.

16.2 Payment of Principal Before Interest: In any payments pursuant to clause 16.1, interest will 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 will 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.

- 16.3 Production of Stock Certificates on Payment:** Upon any payment being made under any of the provisions of clauses 16.1 or 16.2 any relevant Stock Certificate will 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.
- 16.4 Stockholder's Certificate:**
- (a) **Evidence:** For the purposes of clauses 16.1 and 16.2, a certificate from any Stockholder as to the Principal Money or interest at any time of any Stock held by that Stockholder will in the absence of manifest error be prima facie evidence of the amount of such Principal Money or interest, as the case may be.
 - (b) **Information:** For the purposes of 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, 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. Council, the Registrar or the Paying Agent will be entitled to act in reliance on such a certificate or other information and will 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.
- 16.5 Notice of Distribution:** The Trustee will give not less than 14 days notice to the Stockholders of the day, place and time fixed for any payment to them under clauses 16.1 or 16.2 and after the day so fixed the Stockholders will 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.
- 16.6 Postponement of Distribution:** If the amount of the money at any time available under clause 16.1 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. 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.
- 16.7 Stockholder Information:** Each Stockholder will also provide the Trustee with whatever information it may require for the purpose of this clause 16. The Trustee

will 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:

17. ALTERATIONS

17.1 Trustee May Concur in Certain Alterations: The provisions of this Deed or the terms of any Stock may be added to or varied by deed executed by Council and the Trustee:

(a) **Without Consent:** without the consent of the Stockholders, if in the opinion of the Trustee it is necessary or desirable:

- (i) to correct a manifest error or omission, or it is of a minor, formal or technical nature;
- (ii) to facilitate the expedient issue of Stock by Council or to make provision for outstanding Stock to be issued in bearer form;
- (iii) to facilitate the expedient issue of types of Stock not specifically provided for in this Deed;
- (iv) to comply with the FMCA and the FMCA Regulations in relation to the issue of Retail Stock to which that Act or those regulations may apply;
- (v) to facilitate the listing or maintenance of listing of any Stock on any stock exchange;
- (vi) 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;
- (vii) to facilitate transfer of Retail Stock under a system authorised or approved under the FMCA; or
- (viii) to comply with, or as a result of the coming into effect of, any applicable law; and

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

(b) **With Consent:** by an Extraordinary Resolution of each class of Stockholders that is or may be adversely affected by the amendment; or

(c) **Not Prejudicial:** in any other case, if the Trustee is satisfied that it does not have a material adverse effect on the affected Stockholders,

provided always that:

(d) no variation or addition will be made in the terms and conditions of issue of any Security Stock (as distinct from the provisions of this Deed) that have a material adverse effect on the Stockholders of that Security Stock without the consent in writing of the relevant holder of that Stock; and

- (e) in relation to an amendment affecting Stock, the Trustee must, where required by the FMCA, provide or, where applicable, obtain the certificates required under section 108(2)(b) of the FMCA.

18. MISCELLANEOUS PROVISIONS

18.1 Notices:

- (a) **Requirements:** Any notice, requisition, demand, request or direction under this Deed (a **notice**) may be signed by or on behalf of 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:
- (i) any Stockholder, will be given or made to its Registered Address or in the case of a Stockholder having a Registered Facsimile Number, its Registered Facsimile Number;
 - (ii) Council, will be given or made to Council's address or facsimile number stipulated or otherwise advised in accordance with clause (b);
 - (iii) the Trustee, will be given or made to the Trustee's address or facsimile number stipulated or otherwise advised in accordance with clause (b).
- (b) **Deemed Notice:** Subject to written advice being given as to an alteration of the address and facsimile number for Council or for the Trustee appearing below their respective signatures to this Deed, a notice will 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 will 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, will be deemed not to have been received until 9 am on the next business day.
- (c) **Joint Holders:** In the case of joint holders of Stock, a notice given to any Stockholder in the Register in respect of such holding will be sufficient notice to all the joint holders.
- (d) **Council:** Any notice to be given by Council may, where authorised by Council, be given on its behalf by the Trustee, the Registrar or the Paying Agent.

- 18.2 **Authenticity of Notices:** The recipient of a notice will 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 18.1 and will 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.

- 18.3 Registration of Deed:** The Trustee may at Council's cost, or may require 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.
- 18.4 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 will at the request and cost of Council surrender, release or transfer to 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 Council from the Secured Obligations. Nothing in this clause will limit or prejudicially affect the rights of Council to any release of the Charged Assets pursuant to clause 10.
- 18.5 Partial Invalidity:** A provision of this Deed has no effect to the extent that it contravenes, or is inconsistent with, the FMCA, the FMC Regulations or any term implied into this Deed by the FMCA or the FMC Regulations. Without limiting the foregoing, if any provision of this Deed or of any Stock Certificate is or becomes invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 18.6 Absence of Crown Guarantee:** Neither the Secured Money nor the Secured Obligations are guaranteed by the Crown.
- 18.7 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 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.
- 18.8 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:
- (a) 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
 - (b) 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.

Executed and Delivered as a Deed.

SIGNED for and on behalf of **AUCKLAND COUNCIL** by:

Chief Executive

Address: 1 Greys Avenue
Auckland

Facsimile:
For: Stephen Town
Chief Executive

**SIGNED by
TRUSTEES EXECUTORS LIMITED 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 7, 51 Shortland Street
PO Box 4197
Auckland 1140

Facsimile: (09) 308 7101
For: Robert Gatward (TeamManager)

FIRST SCHEDULE

**PART I
(Stock Certificate)**

Stock Certificate No: []

**AUCKLAND COUNCIL
(Council)**

Principal Office: Auckland Council
[]
[]

Stock Transfer Office: []
[]
[]
[]
(the Registrar and Paying Agent)

[Description of Stock Issue]

Stock Certificate

The Stock referred to in this Certificate (**Stock**) is constituted and secured by a debenture trust deed (**Trust Deed**) dated on or about [] between Council and [**Trustee**] 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. **THE** Stockholder named below (**Holder**) will, upon registration of the Stock pursuant to the Trust Deed, be the registered Holder of the amount of Stock referred to below;
2. **THE** Stock bears interest at the rate set out below and is redeemable [at par] on the redemption date set out below (**Redemption Date**);
3. **INTEREST** on the Stock evidenced by this Certificate is payable [*frequency*] in arrears on [*dates*] in each year until the Redemption Date, computed on the amount of Principal Money of the Stock from time to time outstanding; and
4. **ALL** payments of Principal and interest will be made in New Zealand and in Dollars and subject to applicable law,

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

Name and Address of Stockholder: []

Principal Amount of Stock: [*words*] [*figures*]

Interest Rate: [] per cent per annum

Issue Date: []

Redemption Date: []

GIVEN by and on behalf of 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 Council).
- (2) The Holder will, 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 Council or the Registrar or, in case of contemplated payment by the Trustee or the Paying Agent on behalf of Council, to the Trustee or the Paying Agent as the case may require provided always that this condition will not preclude payment by Council, the Trustee or the Paying Agent, on behalf of Council with the consent of Council, without production of such Certificate if Council or the Trustee so elects. Upon payment in part, the Certificate will be, or be deemed to be, endorsed accordingly and returned to the Holder, and upon payment in full, the Certificate will be deemed to have been cancelled and surrendered to Council. This condition will 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) All sums specified in this Certificate relate to New Zealand dollars.
- (4) No interest coupons are issued in respect of the Stock.
- (5) Words and expressions used in this Certificate and in the Conditions will 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. **EXCEPT** where otherwise agreed between Council and the Stockholder, the Stock bears interest from the issue date set out in this Certificate (**Issue Date**) and will 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].
4. **INTEREST** will, where it has not earlier ceased to accrue, cease to accrue on any Stock from the Redemption Date unless upon production of this Certificate Council wrongfully fails to make payment, in which case interest will run until actual redemption or payment. This condition will 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.
5. **EVERY** Stockholder will be recognised by 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 Council and the original or any intermediate holder of the Stock (not being the Stockholder).
6. **THE** Stock may be transferred in accordance with the Trust Deed, provided that:
 - (a) the transfer must be effected in accordance with the Securities Transfer Act 1991, and the transferor will 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 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 Stockholder entitled to the amount of Stock comprised in the transfer;
 - (c) all instruments of transfer which are registered will be retained by Council or the Registrar, but any instrument of transfer which the Registrar may decline (on reasonable grounds) to register will be returned to the person who has delivered the same together with the reasons for non-registration;
 - (d) the Registrar will 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;

provided that the requirements for transfer in paragraphs (b), (c) and (d) above will not apply to the extent that 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.

- (e) no fee will be charged by Council for the registration of a transfer; and
- (f) Council, the Trustee, the Paying Agent and the Registrar will recognise only the Stockholder as the absolute owner thereof and, except as ordered by a court of competent jurisdiction or by statute, will 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 Stockholder, or in the case of joint Stockholders 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 Stockholder or any one of joint Stockholders, will be a good discharge to 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, will be entered on the Register in respect of any Stock.

FIRST SCHEDULE

PART II

FORM OF SECURITY STOCK CERTIFICATE

Stock Certificate No: []

AUCKLAND COUNCIL
(the Council)

Principal Office: Auckland Council
1 Greys Avenue
Auckland

Stock Transfer Office: Computershare Investor Services Limited
159 Hurstmere Road
Takapuna
Private Bag 92119
Auckland 1142
(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 2 December 2010 (as amended from time to time) between Council and Trustees Executors Limited (as amended from time to time) 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 (being the face value of the Stock for the purposes of the Trust Deed);
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 Priority Total Amount relating to the Stock is not more than:

(a) 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 interest accrued pursuant to the terms of the Agreement(s) and 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 accrued pursuant to the terms of the Agreement(s) and payable to the Holder on the principal referred to in paragraph 3(a)(i) above (up to the Priority Principal Amount) but excluding any interest accrued pursuant to the terms of the Agreement(s) and which has been due and owing since a date more than six months prior to the Date of Enforcement,

AND upon any distribution of the money available to Stockholders pursuant to the provisions of clause 16 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** that any amounts owing to the Holder in respect of which this Stock is issued but which do not form part of the Priority Total Amount shall rank for payment subsequent to the Priority Total Amounts of the other Stockholders but *pari passu* with any amounts referred to in the equivalent to this proviso in Security Stock Certificates held by other Stockholders (and as consistent with clause 7.3(a)(iii) of the Trust Deed);

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

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.
- (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 Securities Transfer Act 1991 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****FURTHER CONDITIONS**

1. **EVERY** Stockholder (other than a Holder of Security Stock) on payment in full for the Stockholder's Stock, and every Holder of Security Stock issued pursuant to the provisions of the Trust Deed, will be entitled to receive free of charge a Certificate or Certificates for its Stock **PROVIDED THAT** joint holders of Stock will 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 Council may select.
2. **ON** production to Council or the Registrar of a damaged Certificate, 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 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 Council or the Registrar in investigating evidence as 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) will 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, will be the only persons recognised by 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 an NZX Trading and Advising Firm (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 Council may, subject to compliance by the transferee with the conditions as to transfer applicable to the Stock, register that transfer notwithstanding that 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 Council thinks sufficient, be registered as the holder of such Stock. This condition will 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 Council and the Stockholder, by

direct credit or other payment means as notified in writing to the Paying Agent by Council or the Stockholder. Any such notice will 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 will be as effective a discharge to 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 will be made on the next succeeding business day and no additional interest or other sum will 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 Council or the Trustee to any immediate or possible liability under or in respect of, the Securities Act, the FMCA or any other law applicable to the advertising, offering, sale or transferring of Retail Stock.
10. **THE** obligations of 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 will 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 duly convened meeting (including an adjourned meeting) of Stockholders by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands or, if a poll is duly demanded, by a majority consisting of not less than three-fourths of the votes given on such poll; or
 - 1.2 in writing signed by at least three-fourths in number of the persons having the right to vote on that resolution, having in the aggregate at least three-fourths in nominal amount of the Stock giving the right to vote at a meeting of Stockholders, provided that the person or persons promoting that resolution have given the Trustee, Council and the Stockholders at least three business days prior notice of the proposed resolution.
2. **Convening of Meetings:**
 - 2.1 The Trustee or Council may at any time of their own volition convene a meeting of Stockholders.
 - 2.2 Council will whenever required to do so by law convene a meeting of Stockholders.
 - 2.3
 - (a) The Trustee will at the request in writing of any Stockholder or Stockholders holding not less than 10% in nominal amount of the Stock convene a meeting of Stockholders.
 - (b) Any such request will 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 will not be obliged to convene a meeting of Stockholders pursuant to such provisions until it has been indemnified 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) Council will ensure that the Trustee has full access to the Register whether such Register will for the time being be closed or not.
3. **Place of Meetings:** Each meeting will be held in Auckland or such other place as the Trustee determines or approves with the consent of Council.
4. **Notice of Meetings:**
 - 4.1 At least five business days before Council gives notice of a meeting, it will 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 will 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 will include any statement which the Trustee wishes to make in relation to the meeting and the matters to be considered thereat.

- 4.2** (a) Subject to clause 4.6 below, notice of every meeting of Stockholders will be given in the manner provided herein and in clause 18 of the Trust Deed to:
- (i) every holder of Stock; 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.
- 4.3** Subject to clause 4.6 below, at least fourteen days notice (or such shorter period as the Trustee and Council will otherwise agree) of every meeting will be given to the Stockholders entitled to receive notice of the meeting. The notice will 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 will specify the place, day and hour of the meeting, the general nature of the business to be transacted thereat and the terms of any resolution to be proposed at the meeting.
- 4.4** The accidental omission to give notice to, or the non-receipt of notice by, any persons entitled to such notice will not invalidate the proceedings at any meeting.
- 4.5** If the meeting is convened by Council a copy of the notice will be sent to the Trustee. If the meeting is convened by the Trustee a copy of the notice will be sent to Council. If any of the Stock is listed for quotation on NZX a copy of the notice will also be sent to NZX at the same time as notices are sent to the Stockholders.
- 4.6** **Extraordinary Resolutions:** Where an Extraordinary Resolution is to be submitted to a meeting of Stockholders, the following will apply:
- (a) Written notice of the time and place of the meeting of Stockholders will be sent at least 15 working days before the meeting to:
 - (i) every Stockholder entitled to receive notice of the meeting;
 - (ii) the Trustee; and
 - (iii) every councillor of Council and the Auditor.
 - (b) The notice will provide for:
 - (i) the nature of the business to be transacted at the meeting in sufficient detail to enable a Stockholder or their representative to form a reasoned judgment in relation to it;

- (ii) the text of the Extraordinary Resolution to be submitted to the meeting; and
 - (iii) the right of a Stockholder to appoint a proxy.
 - (c) at least 10 working days (or such lesser period as agreed with the Trustee) before the notice is given under clause 4.6(a) of this Schedule, a draft of the proposed notice will be given to the Trustee. At least 5 working days before the notice is given under clause 4.6(a), the Trustee may provide written comments on the proposed Extraordinary Resolution and such comments will be included in the notice given to the Stockholders.
- 4.7 An irregularity in a notice of a meeting is waived if all Stockholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Stockholders 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 Stockholders.

5. Quorum:

- 5.1 No business will be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 5.2 The quorum for a meeting at which an Extraordinary Resolution is to be submitted will be Stockholders present in person or by representative holding or representing no less than 25% of the nominal amount of the debt securities held by the number of Stockholders entitled to vote on the business to be transacted at the meeting.
- 5.3 The quorum for the transaction of any business at a meeting of Stockholders other than the passing of an Extraordinary Resolution will be Stockholders present in person or by representative holding or representing at least 10% in nominal amount of the Stock.
- 5.4 If within half an hour after the time appointed for the meeting a quorum is not present, the meeting, if convened upon the request of Stockholders, will be dissolved. In any other case, it will stand adjourned to the day that is 10 working days after the date appointed for the meeting at the same time and place, or to such other day and time, not being less than 10 working days thereafter, and to such place, as may be appointed by the Trustee and at such adjourned meeting the Stockholders present in person or by representative will be a quorum for the transaction of business.
- 5.5 Notwithstanding clauses 5.3 and 5.4 of this schedule but subject to clause 5.6, notice of any such adjourned meeting of Stockholders at which any resolution is to be submitted will be given in the same manner (except in respect of the period of notice as to which a period of five days' notice will be given) as of an original meeting and such notice will 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, will form a quorum and will 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.

- 5.6** If a meeting of Stockholders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.
- 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, Council or any other person authorised in that behalf by Council, may attend any meeting and all such persons will have the right to speak at the meeting.
- 7. Chairman:** A person nominated in writing by the Trustee will 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 will 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 will if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- 8.2** No business will 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 will 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 will be in writing signed 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 will approve, will be either deposited at such place as the Trustee, or 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 Council not less than forty-eight hours (or such shorter period as 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 will 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 to 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, will, 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 will be valid after the expiration of twelve months from the date of its execution but this provision will 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) Council; or
- (b) the chairman; or
- (c) the chairman of the meeting;

will be valid and effectual as though it were in favour of a named person and will 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 will 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 will 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 will 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 will have the right to speak at the meeting and to demand or join in demanding a poll and will (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 will 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, 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 will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 14.2** If a poll is duly demanded it will be taken in such manner as the chairman may direct and the result of such poll will 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 will 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 will be taken immediately. A poll demanded on any other question will 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 will 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 will 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) will, 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 Council will not, whilst so held, confer any right to vote. The certificate of any Holder of Security Stock may be relied upon by 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, will be accepted to the exclusion of the votes of the other joint Stockholders and for this purpose seniority will 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 will 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 Council at its registered office, in the case of the Trustee, or principal office, in the case of 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.
15. **Disqualification:** No Stockholder will be entitled to be present or to vote on any question, either personally or by representative, and no person will 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 will be due and payable to 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 will, 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 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 Council or any company or entity formed or to be formed;
- (c) postpone, or with the concurrence of Council accelerate, the day when the Principal Money of the Stock will 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 Council or against its assets howsoever such rights will 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 Council;
- (f) give any sanction, assent, release or waiver of any breach or default by Council under any of the provisions of the Trust Deed;
- (g) authorise the Trustee or any Receiver, where it will have entered into possession of the Charged Assets or any part thereof, to give up possession of the same to 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 Council or for the amalgamation of 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 will 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 will 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) will be bound to give effect thereto accordingly and the passing of any such resolution will, as between the Trustee and the Stockholders, be conclusive evidence that the circumstances justify the passing thereof, the intention being that it will 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 will be made by the Trustee, or if the Trustee will 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 Trustee at the expense of 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 will 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 will 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 will be furnished by the Trustee to Council 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 also be done, without a meeting, by written resolution signed by at least three-fourths in number of Stockholders having the right to vote in respect of such resolution and holding in aggregate at least three-fourths of the aggregate nominal amount of Stock provided that the Stockholder or Stockholders promoting such a resolution have given the Trustee, Council and all other Stockholders at least three business days prior notice of the proposed resolution.
20. **Only Persons on Register Recognised by Council:** The persons registered as Stockholders in the Register, and no other person or persons, will 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 will 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 will 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 one or more Classes of Stockholders, in which case the power may be exercised by Extraordinary Resolution of the Class(es) of Stockholders affected (unless the power affects any Class of Stockholders differently from other Stockholders then a separate Extraordinary Resolution of that Class of Stockholder shall be required).
- 21.3** The references to Extraordinary Resolution in clauses 12.9, 12.11(a), 12.11(b), 14.1, 15.1 and 17.1(b) will be read as references to an Extraordinary Resolution passed by Stockholders generally (and, where more than one Class of Stockholders is affected, by Extraordinary Resolutions of each Class of Stockholders affected by the exercise of the power) and not by one or more Classes of Stockholders only.

THIRD SCHEDULE

STOCK ISSUANCE CERTIFICATE

I, **[name]**, the Chief Executive of Auckland Council (**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 Stock] (**New Stock**) under the terms of the Debenture Trust Deed dated on or about 2 December 2010 (as amended from time to time) (**Trust Deed**) has been duly authorised by Council, or has been authorised by a person or persons within the delegated authorities approved by 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 *[date]* (being no more than 5 business days before the date of this certificate) amounted to:]
[specify each currency]

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 Council in connection with 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 Council in good faith on behalf of Council and I shall have no personal liability in connection with the issuing of this Certificate.

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
Auckland Council

**FOURTH SCHEDULE
REPORTING CERTIFICATE**

I, **[name]** the Chief Executive of Auckland 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 2 December 2010 (as amended from time to time) (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 [date] (being no more than 5 business days before the date of this certificate) 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.
- [details 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
Auckland 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.]*

FIFTH SCHEDULE

AUDITOR

1. **Appointment:** Council must, before recommending the appointment or reappointment of a person as an auditor of Council:
 - (a) consult with the Trustee on such appointment or reappointment and the nature and scope of any assurance engagement in relation to the Council's compliance with this Deed;
 - (b) ensure that any comments of the Trustee concerning the proposed Auditor are brought to the attention of the persons appointing or reappointing the Auditor;
 - (c) give the Trustee an opportunity to be a party to the assurance engagement for the purpose of the Trustee obtaining assurance of matters relevant to the exercise or performance of the Trustee's powers or duties;
 - (d) ensure that the terms of appointment of the Auditor, whether the Auditor is conducting an audit, review or other engagement, include that the Auditor will give the Trustee an opportunity to meet with the Auditor, without any representative of Council being present, to raise or discuss:
 - (i) at the beginning of such engagement, any issues or concerns relevant to the exercise or performance of the Trustee's powers or duties; and
 - (ii) matters arising in the performance of such engagement and to answer any questions the Trustee may have concerning such engagement.
2. **Resignation:** Council must notify the Trustee if the Auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Trustee any explanation provided by the Auditor for resigning its appointment or declining to accept appointment or reappointment. Council must not attempt to prevent any person who has resigned its appointment as an auditor, or declined to accept an appointment or reappointment as an auditor, from offering an explanation, or disclosing to the Trustee the reason, for resigning or declining appointment or reappointment.