

Execution version

# Deed of amendment and restatement of debenture stock and unsecured notes trust deed

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UDC Finance Limited (**Company**)

Trustees Executors Limited (**Supervisor**)

# Deed of amendment and restatement

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# Details

Date 20 June 2016

## Parties

Name	<b>UDC Finance Limited</b>
Company Number	3580
Short name	<b>Company</b>
Notice Details	Ground Floor ANZ Centre Auckland

Name	Trustees Executors Limited
Company number	142877
Short name	<b>Supervisor</b>
Notice details	Level 7 51 Shortland Street Auckland

## Background

- A The Company and the Supervisor (under its then name The Trustees Executors and Agency Company of New Zealand Limited) entered into an amending and supplemental debenture trust deed dated 22 May 1986 (as amended from time to time), a consolidated copy of which incorporating subsequent amendments was published on 1 April 1998 (as amended from time to time), effectively replacing the provisions of two existing debenture deeds dated 3 September 1974 and 5 February 1979 respectively (and as amended from time to time) (**Trust Deed**) under which the Charging Group Members are authorised to issue Stock, Security Stock, Variable Notes and Money Market Secured Deposits pursuant to the Trust Deed, and the Supervisor agreed to act as trustee on behalf of the Holders in accordance with the terms of the Trust Deed.
- B The Company and the Supervisor have determined to amend and restate the Trust Deed as a consequence of or in connection with the issue of debt securities becoming governed by the Financial Markets Conduct Act 2013 (**FMCA**) and Financial Markets Conduct Regulations 2014 (**FMC Regulations**) from the Effective Date.
- C The Company and the Supervisor have also determined to make modifications to the Trust Deed in order to correct typographical errors, improve readability, remove redundant provisions and facilitate more effective supervision.
- D For the purposes of clause 7.1 of the Trust Deed, the Supervisor concurs with the Company in making the modifications to the Trust Deed as set out in this Deed, because the modifications are:
- (a) of a formal or technical nature and not prejudicial to the general interests of the Holders; and / or
  - (b) considered by the Supervisor not to be, or likely to become prejudicial to the general interests of the Holders; and / or

(c) not inconsistent with provisions generally accepted as appropriate and reasonable for inclusion in debenture trust deeds of financial intermediaries,

on the basis that such modifications are necessary or desirable to give effect to the requirements under the FMCA and/or FMC Regulations.

E The Company and the Supervisor have accordingly agreed to enter into and execute this Deed.



# Agreed terms

## 1. Defined terms and interpretation

### 1.1 Defined terms

In this Deed, unless the context otherwise requires, words and expressions defined in the Trust Deed and not otherwise defined in this Deed have the same meanings when used in this Deed and **Effective Date** means 28 June 2016 or such other date that the Company elects as the “effective date” for the Company’s offer of UDC Secured Investments for the purposes of clause 19 of schedule 4 of the FMCA.

## 2. Amendment

### 2.1 Amendment and restatement of the Trust Deed

The parties agree that with effect on and from the Effective Date, the Trust Deed is amended and restated in its entirety in the form set out in Schedule 1.

### 2.2 Confirmation

Except as expressly modified by this Deed, the provisions of the Trust Deed are unchanged and remain in full force and effect after the Effective Date.

## 3. Miscellaneous

### 3.1 Counterparts

This Deed may be executed and delivered in counterparts (including by electronic or facsimile transmission) each of which will constitute one and the same instrument. Any party may enter into this Deed by executing any such counterpart.

### 3.2 Further assurance

The Supervisor and the Company agree to do anything which may be considered necessary or desirable to give full effect to the intent and purpose of this Deed.

### 3.3 Supplemental

For the purposes of section 14 of the Property Law Act 2007, the parties to this document acknowledge that this document is supplemental to the Trust Deed.

### 3.4 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 immediately on the earlier of:

- (a) physical delivery of an original of this Deed, executed by that party, into the custody of the other party or the other party’s solicitors; or
- (b) transmission by that party or its solicitors (or any other person authorised in writing by that party) of a facsimile, photocopied or scanned copy of an original of this deed, executed by that party, to the other party or the other party’s solicitors.

### 3.5 Governing law

This Deed is governed by the laws of New Zealand and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

# Signing page

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EXECUTED AND DELIVERED as a deed

Company

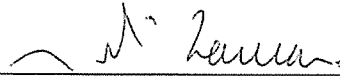
Executed by UDC FINANCE LIMITED:



Signature of director

MARK HIDDLESTON

Name of director (print)



Signature of director

STUART MCLAUCHLAN

Name of director (print)

Supervisor

Executed by TRUSTEES EXECUTORS  
LIMITED:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory (print)

Name of authorised signatory (print)

Signature of witness

Name of witness (print)

Address of witness

Occupation of witness

# Signing page

**EXECUTED AND DELIVERED** as a deed

**Company**

**Executed by UDC FINANCE LIMITED:**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director (print)

**Supervisor**

**Executed by TRUSTEES EXECUTORS LIMITED:**

\_\_\_\_\_  
Signature of authorised signatory

*Melanie Lyn Hewitson*

\_\_\_\_\_  
Name of authorised signatory (print)

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

\_\_\_\_\_  
Name of witness (print)

*Adesh Kaur*  
\_\_\_\_\_  
Address of witness  
*Business Analyst*  
*Auckland*

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

\_\_\_\_\_  
Signature of authorised signatory

*Susan Jane Bingham*

\_\_\_\_\_  
Name of authorised signatory (print)



*2016/072(1043)*

## Schedule 1 – Amended and restated Trust Deed

**UDC FINANCE LIMITED**

**AND**

**TRUSTEES EXECUTORS LIMITED**

**DEBENTURE STOCK AND**

**UNSECURED NOTES**

**TRUST DEED**

**SECTION 1**

**CONSTRUCTION AND DEFINITIONS**

**1. CONSTRUCTION AND DEFINITIONS**

**1.1 Commencement Date**

This Deed shall come into force on the 22nd day of May 1986 or such later date as the Company and the Supervisor agree in writing (the “Commencement Date”).

**1.2 Governing Law**

This Deed shall be construed and take effect as a contract and declaration of trust made in New Zealand and shall be governed by and construed in accordance with New Zealand law.

**1.3 Definitions**

In this Deed, unless the context otherwise requires,

“**Accession**” has the meaning given to that term by section 16 of the PPSA.

“**Account Receivable**” has the meaning given to that term by section 16 of the PPSA.

“**Aircraft**” has the meaning given to that term by regulation 3 of the Personal Property Securities Regulations 2001.

“**ANZ Bank**” means the ANZ Bank New Zealand Limited.

“**Appropriate Rate**” means a rate of interest two percent above the 90 day commercial bill rate (expressed as a percentage yield per annum) in New Zealand as from time to time published by Reuters News Services or if no such rate is so published two percent above the rate of interest payable by the Supervisor to its principal bankers at the relevant time on overdraft.

“**Approved Investments**” means Government or Local Authority stock, transferable certificates of deposit issued by a Bank, bills of exchange, promissory notes, and other negotiable securities.

“**Assets**” means:

- (a) in relation to any Corporation, all or any part of the present and future undertaking, property and assets of the Corporation whatsoever and wheresoever, and its uncalled, or called but unpaid, capital, and when used without reference to a particular Corporation means the total Assets as hereinbefore defined of all of the Charging Group Members; and
- (b) for the purposes of Clauses 3.1, 3.4, 4.2.2, and 5.1 of the Trust Deed and in the definition of Charged Assets, “Assets” means (a) above and also includes all present and after acquired personal property in which the Corporation has rights.

“**Associated Company**” means a company which is not a Subsidiary and which is treated by the Company as an associated company in accordance with NZ GAAP.

“**Auditors**” means the persons for the time being holding the office of auditor of any Borrower as provided for by the Companies Act and/or the FMCA.

“**Balance Sheet**” means a consolidated balance sheet of the Charging Group whether audited or not prepared from time to time on the same accounting, valuation and other principles and practices (consistently applied) as the last audited balance sheet of the Company provided that if with the approval of the Auditors the Directors change the principles and practices on which balance sheets of the Company are thereafter to be prepared, such changes shall apply to succeeding balance sheets of the Charging Group.

“**Bank**” means:-

- (a) a registered bank as defined in the Reserve Bank of New Zealand Act 1989; and
- (b) those Corporations domiciled within or outside New Zealand which the Directors have during the preceding 12 months certified to the Supervisor in writing as being accorded by the jurisdiction in which they are

domiciled the highest recognition as a banking institution generally available within that jurisdiction.

**“Bearer Certificate”** means a Certificate for a Bearer Security, and “Bearer Stock Certificate”, “Bearer Money Market Secured Deposit Certificate”, “Bearer Note Certificate” have corresponding meanings.

**“Bearer Securities”** means Securities issued payable to bearer, and “Bearer Stock”, “Bearer Money Market Secured Deposits” and “Bearer Notes” have corresponding meanings.

**“Borrower”** means any Charging Group Member that has issued Securities under this Deed which are for the time being outstanding.

**“Capital Ratio”** means the capital ratio as defined and calculated in accordance with Part 3 of the NBDT Regulations as varied by the Exemptions.

**“Cash and Cash Equivalents”** means, in relation to the Charging Group, on any date, the aggregate of cash, bank endorsed commercial bills, government securities and any other assets which would be disclosed as liquid assets in a statement of financial position prepared as at that date for the Charging Group in accordance with NZ GAAP.

**“Certificate”** means a certificate or other writing evidencing Securities issued by a Borrower pursuant to this Deed.

**“Chattel Paper”** has the meaning given to that term by section 16 of the PPSA.

**“Charge”** includes a Security Interest, mortgage, charge, lien or pledge (including a floating charge) and “charges” and “charged” bear meaning accordingly.

**“Charged Assets”** means all Assets charged in favour of the Supervisor with payment of the Stock, or in which a Security Interest has been granted to the Supervisor.

**“Charging Group”** means the Company and the Charging Subsidiaries.

**“Charging Group Member”** means each of the Company and the Charging Subsidiaries.

**“Charging Subsidiary”** means any Subsidiary which executes a supplemental deed pursuant to Clause 3.4.2, but does not include any Subsidiary which has been discharged from liability under this Deed.

**“Class”** means:



- (a) where used in relation to Securities, each of First Ranking Stock, Second Ranking Stock, Notes and Money Market Secured Deposits of each Borrower and, where applicable, includes any “class” of those categories of Securities within the meaning given to that term in the FMCA;
- (b) where used in relation to Holders, the Holders of each of First Ranking Stock, Second Ranking Stock, Notes and Money Market Secured Deposits of each Borrower;

If and whenever a Borrower shall have on issue types of Securities within either of the above general classifications which in the opinion of the Supervisor cannot be considered as sufficiently similar for a particular purpose (in those respects which are material to the Supervisor’s consideration) to other Securities on issue within that same general classification, then such differing types of Securities may if the Supervisor so determines be deemed to constitute a separate Class of Securities for such particular purpose.

“**Commencement Date**” means the date on which this Deed comes into force pursuant to Clause 1.1.

“**Committed Credit Facility**” means any bank loan facilities available to the Company with, at the relevant time at which the matter is determined, a term, or in respect of which the balance of the term, is greater than one year.

“**Companies Act**” means the Companies Act 1993.

“**Company**” means UDC Finance Limited.

“**Corporation**” means a body corporate and where the context so admits shall include an individual.

“**Coupons**” means bearer coupons, cheques or other instruments relating to Bearer Certificates and covering the payment of interest on the Bearer Securities represented by such Certificates and for the time being outstanding.

“**Couponholders**” means the several persons who are for the time being Holders of Coupons.

“**Court**” means any court of competent jurisdiction.

“**Date of Enforcement**” means the date on which the Supervisor enforces the security constituted by this Deed.

“**Director**” means a director of the Company (or, if the context so requires, another Borrower) for the time being.

“**Directors**” means the Directors of the Company (or, if the context so requires, another Borrower) and a quorum of the Directors in accordance with the constitution (if any) of the Company (or relevant Borrower) for the time being.



**“Directors Certificate”** means a certificate signed by at least two Directors on behalf of all the Directors and issued in terms of Clause 6.5.4(a)(ii).

**“Document of Title”** has the meaning given to that term by section 16 of the PPSA.

**“Event of Default”** means any of the events specified in Clause 5.1.

**“Excluded Subsidiary”** means any wholly owned Subsidiary which the Supervisor has agreed may remain or become a Non-Charging Subsidiary.

**“Exemptions”** means the Non-bank Deposit Takers (UDC Finance Limited) Exemption Notice 2015 as amended by the Non-bank Deposit Takers (UDC Finance Limited) Exemption Amendment Notice 2016.

**“First Ranking Security Stock”** means First Ranking Stock issued pursuant to and in accordance with Clause 2.2.

**“First Ranking Security Stock Pari Passu Amount”** in relation to an amount of First Ranking Security Stock means the Security Stock Pari Passu Amount in relation to that Stock.

**“First Ranking Stock”** means all Stock constituted and issued by a Borrower as First Ranking Stock (including all First Ranking Security Stock) under and pursuant to this Deed from time to time outstanding and ranking for Principal and interest in priority to the Second Ranking Stock and Notes, and includes the Principal Moneys represented thereby.

**“First Ranking Stockholders”** means in the case of Registered Stock the several persons from time to time entered in the Register of First Ranking Stockholders as the holders of First Ranking Stock and includes their personal representatives, and in the case of Bearer Stock the several persons who are for the time being the holders of Bearer Certificates in respect of First Ranking Stock.

**“FMA”** means the Financial Markets Authority as defined in the FMCA.

**“FMCA”** means the Financial Markets Conduct Act 2013.

**“FMC Regulations”** means the Financial Markets Conduct Regulations 2014.

**“Goods”** has the meaning given to that term by section 16 of the PPSA.

**“Holders”** means the Stockholders, Noteholders, and Money Market Secured Depositholders or if the context so requires the holders of one or more of the Classes of such Securities.

**“Interest”** in relation to Security Stock and Variable Notes includes discounts premiums and other charges or fees in the nature of interest.

**“Investment Security”** has the meaning given to that term by section 16 of the PPSA.

**“Issuer Obligation”** has the meaning in section 6(1) of the FMCA.

**“Liquid Assets”** means, in relation to the Charging Group and a date, the aggregate of:

- (a) Cash and Cash Equivalents of the Charging Group on that date; and
- (b) the Undrawn Committed Credit Facility Amount on that date.

**“Majority of Stockholders”** means:

- (a) all Major Security Stockholders; and
- (b) the five largest (in nominal amount of Stock held) holders of First Ranking Stock other than Major Security Stockholders; and
- (c) if the Stock held by the Stockholders referred to in subparagraphs (a) and (b) above does not amount in the aggregate to 50% in nominal amount of the First Ranking Stock, such other holders of First Ranking Stock the aggregate nominal amount of whose First Ranking Stock together with the aggregate nominal amount of the First Ranking Stock held by the Stockholders referred to in subparagraph (a) and (b) comprises more than fifty per cent (50%) in nominal amount of the First Ranking Stock.

**“Major Security Stockholder”** means a holder for the time being of First Ranking Security Stock being of 2½% or more in nominal amount of the total nominal amount of First Ranking Stock.

**“Money Market Secured Deposit”** means deposits or loans accepted by a Borrower at any time that are secured by a Prior Charge over a Specifically Charged Asset given in accordance with Clause 3.2.1 of this Deed.

**“Money Market Secured Deposit Certificate”** means a certificate for a Money Market Secured Deposit issued by a Borrower pursuant to this Deed evidencing either that the person named therein or, in the case only of Bearer Money Market Secured Deposits, that the bearer for the time being of such certificate is the holder of the amount of the Money Market Secured Deposit stated therein or the benefit of the rights conferred thereby.

**“Money Market Secured Depositholder”** means in the case of Registered Money Market Secured Deposits the several persons from time to time and for the time being entered on the appropriate Register as the holders of such Money Market Secured Deposits and their personal representatives and in the case of Bearer Money Market Secured Deposits means the several persons who are from time to time and for the time being the holders of the Bearer Money Market

Secured Deposit Certificates in respect of such Bearer Money Market Secured Deposits.

**“Money Market Secured Deposit Moneys”** means the Principal Moneys and interest and any other money for the time being owing in respect of the Money Market Secured Deposits payable to or at the direction of the Supervisor or any Money Market Secured Depositholder pursuant to the Deed or the terms of issue of the Money Market Secured Deposit.

**“Money Market Secured Deposit Pari Passu Amount”** means any Money Market Secured Deposit Moneys that have not been paid or satisfied by enforcement of the Prior Charge by or on behalf of the Money Market Secured Depositholder.

**“Moneys”** means the Stock Moneys, the Note Moneys and the Money Market Secured Deposit Moneys.

**“Month”** means calendar month.

**“Motor Vehicle”** has the meaning given to that term by section 57 of the PPSA.

**“NBDT Act”** means the Non-bank Deposit Takers Act 2013.

**“NBDT Regulations”** means the Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010.

**“Negotiable Instrument”** has the meaning given to that term by section 16 of the PPSA.

**“Non-Charging Related Company”** means a Related Company which is not a Charging Subsidiary.

**“Non-Charging Subsidiary”** means a Subsidiary which is not a Charging Subsidiary.

**“Notes”** means all Securities from time to time issued and outstanding pursuant to this Deed as obligations of the Charging Group not entitled to the benefit of the Charges over the Charged Assets created by Clause 3.1, or a specified portion thereof as the case may require, and includes the Principal Moneys represented thereby but does not include the Money Market Secured Deposits.

**“Note Certificate”** means a certificate issued by a Borrower pursuant to Clause 2.9 evidencing that the person named therein or, in the case only of Bearer Notes, that the Bearer for the time being of such certificate, is the holder of the Notes stated therein or the benefit of the rights thereby conferred.

**“Noteholder”** means in the case of Registered Notes the several persons from time to time and for the time being entered on the appropriate Register as the holders of such Notes and their personal representatives, and in the case of Bearer



Notes means the several persons who are from time to time and for the time being the holders of the Bearer Certificates in respect of such Notes.

**“Note Moneys”** means the Principal Moneys and interest and any other money for the time being owing in respect of the Notes payable to or at the direction of the Supervisor or any Noteholders pursuant to this Deed or the terms of issue of any of the Notes.

**“NZ GAAP”** has the meaning of generally accepted accounting practice in section 8 of the Financial Reporting Act 2013.

**“Parent Company”** means a Corporation which is for the time being a holding company of the Company within the meaning of Section 5 of the Companies Act.

**“PDS”** means a product disclosure statement for any Security issued under a regulated offer under the FMCA.

**“Person”** includes an individual, a Corporation and any association of persons whether corporate or unincorporated, any government or department or agency thereof and any legislative body, authority or agency.

**“PPSA”** means the Personal Property Securities Act 1999.

**“Principal”** and **“Principal Moneys”** means:

- (a) in relation to Security Stock, the Security Stock Pari Passu Amount in respect of such Stock; and
- (b) in relation to Variable Notes, the Variable Notes Pari Passu Amount in respect of such Notes; and
- (c) in relation to Securities other than Security Stock and Variable Notes, the amount (other than interest) payable on redemption of the Securities inclusive of the premium (if any) on the Security payable in accordance with the conditions of issue thereof.

**“Prior Charge”** means any Charge on the Charged Assets or any part thereof ranking pari passu with or in priority to the Charge in favour of the Supervisor created by or pursuant to this Deed or as the case requires the principal, interest and other moneys secured by such Charge, but does not include any charge that is a Purchase Money Security Interest in favour of a seller of Goods to a Charging Group Member, or a lessor of Goods to a Charging Group Member under a lease that does not in substance secure payment or performance of an obligation, in each case created or provided for by a transaction that is in the ordinary course of business and for the purpose of carrying on the same.

**“Purchase Money Security Interest”** has the meaning given to that term by section 16 of the PPSA.

**“Receiver”** means a receiver of all or any part of the Charged Assets appointed under this Deed and includes a manager.

**“Record”** means each record of Bearer Securities to be kept by the Company pursuant to Clause 2.13.

**“Register”** means any register kept pursuant to Clause 2.12.

**“Registered Address”** means, in respect of a Registered Holder, his address for the time being recorded in the Register.

**“Registered Securities”** means all Securities other than Bearer Securities, and “Registered Stock” and “Registered Notes” and “Registered Money Market Secured Deposits” have corresponding meanings.

**“Registered Holder”** means a Holder of Securities whose name is entered on the relevant Register, and “Registered Stockholder” and “Registered Noteholders” have corresponding meanings.

**“Registrar”** means the Registrar of Financial Service Providers appointed under section 35 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

**“Related Company”** means a Parent Company, a subsidiary of a Parent Company, a Subsidiary, or an Associated Company.

**“Restatement Date”** means the date, on or about 28 June 2016, when the amendment and restatement of this Deed comes into effect, in accordance with the terms of a deed of amendment and restatement dated on or about 28 June 2016 and entered into between the Company and the Supervisor.

**“Second Ranking Security Stock”** means Second Ranking Stock issued pursuant to and in accordance with Clause 2.2.

**“Second Ranking Security Stock Pari Passu Amount”** in relation to an amount of Second Ranking Security Stock means the Security Stock Pari Passu Amount in relation to that Stock.

**“Second Ranking Stock”** means all Stock constituted and issued by a Borrower as Second Ranking Stock (including all Second Ranking Security Stock) under and pursuant to this Deed from time to time outstanding and ranking for Principal and interest immediately after the First Ranking Stock, and includes the Principal Moneys represented thereby.

**“Second Ranking Stockholders”** means in the case of Registered Stock the several persons from time to time entered in the Register of Second Ranking Stockholders as the holders of Second Ranking Stock and includes their personal representatives, and in the case of Bearer Stock the several persons who are for

the time being the holders of Bearer Certificates in respect of Second Ranking Stock.

**“Securities”** means debt securities (as defined in the FMCA) of any nature whatsoever and by whatever name called and of whatever ranking or priority and whether secured or unsecured, which are issued or offered by a Borrower pursuant to this Deed (whether or not before the Restatement Date), being either Stock or Notes or Money Market Secured Deposits, and where the context so admits shall be deemed to include the Certificates by which such Securities are evidenced or represented and the balance of a security after any transfer transmission redemption or forfeiture of any part of that Security.

**“Security Interest”** has the meaning given to that term by section 17 of the PPSA.

**“Security Stock”** unless the context otherwise requires includes First Ranking Security Stock and Second Ranking Security Stock.

**“Security Stock Certificate”** means a Stock Certificate in respect of Security Stock.

**“Security Stock Pari Passu Amount”** in relation to Security Stock means the lesser of:

- (a) the nominal amount of the said Stock; and
- (b) the aggregate amount as at the relevant date of all debts obligations and liabilities, including capitalised interest, actually or contingently owing by the Charging Group as security for which the Security Stock is held, but excluding such interest owing to the Holder as is required to be deducted therefrom in accordance with the terms of the relevant Stock Certificate.

**“Shareholders Funds”** means the aggregate of:-

- (a) the amount by which the total tangible Assets of the Charging Group exceeds the total liabilities of the Charging Group (as shown in the latest Balance Sheet); and
- (b) the estimated net proceeds of that portion of any proposed increase in the issued share capital of the Company which is payable in cash within three months of the date at which the calculation of the above amounts is being made or which is Underwritten.

**ADJUSTED BY** deducting -

- (c) the book value of all Assets of the Charging Group which are situate overseas and which are not charged in favour of the Supervisor to the Supervisor’s satisfaction; and



- (d) the following amounts to the extent that they are not provided for in the latest Balance Sheet:
  - (i) Losses known to have been incurred and provision for bad or doubtful debts;
  - (ii) Taxes, dividends, and long service leave; and
  - (iii) Any other amount of a similar nature which the Auditors consider should be deducted.

**“Special Resolution”** means, unless the context expressly otherwise requires, a Special Resolution of the First Ranking Stockholders passed in the manner provided in the Second Schedule, but where the context expressly so requires may mean a Special Resolution of all Stockholders or of all Second Ranking Stockholders or of all Noteholders or of all Holders or any Class of Holders.

**“Specifically Charged Asset”** means any Asset of a Borrower that is the subject of a Prior Charge given by that Borrower pursuant to Clause 3.2.1 of this Deed as security for the payment of all or any part of the Money Market Secured Deposit Moneys.

**“Stock”** means all Securities by whatever name called from time to time issued on the basis that they are secured by and have the benefit of the charges over the Charged Assets created by or pursuant to this Deed and that are still outstanding, or a specified portion thereof as the case may require, and includes the Principal Moneys represented thereby but does not include Money Market Secured Deposits.

**“Stock Certificate”** means a certificate for Stock issued by a Borrower pursuant to this Deed evidencing either that the person named therein or, in the case only of Bearer Stock, that the Bearer for the time being of such certificate is the holder of the amount of Stock stated therein.

**“Stockholders”** unless the context otherwise requires includes First Ranking Stockholders and Second Ranking Stockholders.

**“Stock Moneys”** means at any time and from time to time the Principal Moneys and interest payable on the Stock (such interest in the case of Security Stock being interest for which the holders of the Security Stock is secured pursuant to the provisions of the relevant Stock Certificate) and other moneys payable to or at the direction of the Supervisor or to any Stockholders under or pursuant to this Deed or the terms of issue of any of the Stock, but does not include the Note Moneys or the Money Market Secured Deposit Moneys.

**“Subsidiary”** means a Corporation which is for the time being a subsidiary of the Company within the meaning of Section 5 of the Companies Act.

**“Supervisor”** means the supervisor and trustee for the Securities for the time being under this Deed.

**“Total Liabilities”** means, on any date, the aggregate value of all liabilities of the Charging Group (excluding contingent liabilities, but including liabilities in respect of convertible notes and bonds and redeemable preference shares) which would be disclosed if a statement of financial position for the Charging Group was prepared as at that date in accordance with NZ GAAP.

**“Trust Deed”** and **“this Deed”** means this trust deed and the schedules hereto as amended and/or restated from time to time in accordance with its provisions.

**“Uncalled Capital”** means the amount of any uncalled capital of the Company held by the ANZ Bank or by any holding company or subsidiary company of the ANZ Bank within the meaning of Section 5 of the Companies Act or by any company whose shareholders funds are more than 7 times the amount of that uncalled capital held by that company.

**“Underwritten”** means, in relation to a proposed issue of share capital, that such proposed issue has to the satisfaction of the Supervisor been underwritten or is the subject of an unconditional contract to subscribe and that such subscription will be made in cash within three (3) months of the date at which the calculation of Shareholders Funds is to be made or in respect of which the Supervisor is otherwise satisfied that the shareholder or person concerned will duly take up and pay the amount due on the shares to which he is entitled to subscribe within a period of three (3) months after the aforesaid date.

**“Undrawn Committed Credit Facility Amount”** means, on any date, the aggregate principal amount available for drawing under the Committed Credit Facility at that date.

**“Variable Notes”** means Notes issued pursuant to Clause 2.3.

**“Variable Notes Pari Passu Amount”** in relation to Variable Notes means the lesser of -

- (a) the nominal amount of the Notes; and
- (b) the aggregate amount as at the relevant date of the principal moneys of all debts, including capitalised interest, actually owing by the Charging Group in respect of which the Variable Notes are held.

**“working day”** has the same meaning as in the Interpretation Act 1999.



## 1.4 Interpretation

In this Deed, unless the context otherwise requires -

- (a) Except as specifically defined in this Deed, words defined in the Companies Act, FMCA or FMC Regulations shall have the same meanings where used in this Deed.
- (b) References to Clauses and Schedules are to the Clauses and Schedules of this Deed.
- (c) A reference to legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement.
- (d) Each reference to a party to this Deed shall be read as a reference to that party and its successors and assigns.
- (e) The plural includes the singular and vice versa, and words importing one gender, include the other genders.
- (f) The words “written” and “writing” include cabled, telefaxed, and telexed communications and any means of visible reproduction.
- (g) All covenants by the Charging Group shall be joint and several.
- (h) All references to money are to the currency of New Zealand.
- (i) The word “charge” includes a Security Interest.

## 1.5 Headings and Schedules

The Section, Clause and Schedule headings appear as a matter of convenience and shall not affect the construction of this Deed. The Schedules to this Deed and the provisions contained therein shall have the same force and effect as if set out in the body of this Deed.

## 1.6 Foreign Currency

Subject to any special terms and conditions of issue of any Security where for the purposes of any provision of this Deed it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non-New Zealand currency such sum shall, unless otherwise agreed in writing by the Supervisor either generally or in any particular case, be converted to New Zealand currency on a basis agreed from time to time with the Auditors and any Security which is payable in a non-New Zealand currency shall for the purposes of this Deed be treated as being a Security of an amount equal to the New Zealand currency equivalent determined as aforesaid **PROVIDED ALWAYS THAT** in determining the New Zealand currency equivalent of a liability in a non-New

Zealand currency, account may be taken of any contract or arrangement in force for covering the risk of fluctuations between New Zealand currency and the non-New Zealand currency of the liability.

**1.7 Consents**

Any consent required to be obtained under this Deed from a party to this Deed shall not be unreasonably or arbitrarily refused or withheld.

**1.8 Related Companies not liable under this Deed**

Notwithstanding Clause 4.1.1(a) and any other provision of this Deed, neither the ANZ Bank nor any holding company or subsidiary of the ANZ Bank within the meaning of Section 5 of the Companies Act (other than the Charging Group Members) shall be in any way responsible for or guarantee repayment of the Securities or payment of any interest or other moneys relating thereto.

## SECTION 2

### ISSUE OF SECURITIES

#### 2. ISSUE OF SECURITIES

##### 2.1 Issue of Stock, Money Market Secured Deposits and Notes

- 2.1.1 Subject to the provisions of this Deed, every Charging Group Member shall be at liberty to issue Stock and/or Notes and/or Money Market Secured Deposits at any time and from time to time in such amounts and such currencies and upon such terms and conditions (not being inconsistent with the provisions contained herein) including those applicable to Security Stock and Variable Notes as hereinafter contained, as the Charging Group Member may from time to time determine.
- 2.1.2 Securities may be issued either 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 without interest and payable or redeemable at such respective times or periods or on demand with payment of such premiums or allowances (whether fixed variable or determined by a stated method) or on conversion into shares or other securities of a Charging Group Member and whether securing or evidencing obligations of a Charging Group Member for borrowed money or securing or evidencing other obligations of any Charging Group Member, in all cases as the Charging Group Member may from time to time determine.
- 2.1.3 Subject to the provisions of this Deed, any Charging Group Member may at any time and from time to time convert any of its debts or other obligations for the payment of money into Securities having the benefit of this Deed upon such terms and conditions as may be agreed between the Charging Group Member and the relevant creditor, such conversion to be evidenced by the issue of such Certificate (if any) and making of such entries or notations on the Register as may be appropriate in the circumstances.
- 2.1.4 A Charging Group Member may pay a commission procuration fee or brokerage to any person firm or corporation for subscribing or underwriting the subscription of or procuring subscriptions for Securities.
- 2.1.5 The use in this Deed of the words "Security", "Stock", "Money Marked Secured Deposits" and "Notes" shall not restrict the use of other names of such securities for marketing purposes. A Borrower is permitted to use any description to name any Security, and is permitted to use several different names for Securities of the same type.
- 2.1.6 No Holder shall be concerned or obligated to enquire whether any Security has been issued in contravention of this Deed. Every Security

issued for valuable consideration pursuant to this Deed, the Certificate for which or the entry on the relevant Register for which or other evidence indicates that it has been or was intended to be issued and constituted by this Deed shall be validly issued and constituted by this Deed and entitled to the benefit hereof notwithstanding that its issue was in breach of this Deed but without prejudice nevertheless to the Supervisor's rights under this Deed against the Charging Group in relation to any such breach. In the absence of any indication entry or other evidence as described in the preceding sentence, a security shall not be or be deemed to be issued or constituted as a Security under this Deed.

## 2.2 Security Stock

- 2.2.1 Stock may be issued pursuant to this Deed to any Bank or other person either as First Ranking Security Stock or Second Ranking Security Stock upon such terms and conditions (not being inconsistent with the provisions contained in this Deed) as the Borrower may from time to time determine as a continuing security for the payment on demand or otherwise of any present or future liabilities (whether by way of indemnity, guarantee or otherwise), loans, credits, advances, discounts and other accommodation or obligations of any nature whatsoever to or for or on behalf of or at the request of the Borrower or any Charging Group Member generally together with interest and other moneys as provided in the Stock Certificate issued in respect of the Security Stock.
- 2.2.2 Security Stock issued pursuant to this Deed shall for all purposes and on all occasions be deemed to be validly issued to each Holder thereof as security for the Principal Moneys for the Security Stock so held and interest thereon and notwithstanding that the amount (other than interest owing to the Holder thereof) may be less than the nominal amount of the Security Stock so held the Holder shall not be liable to make any payment to the Borrower or the Supervisor in respect of the Security Stock so held or be obliged to incur any further liabilities to make any further advance or afford any further accommodation to the Borrower or any Charging Group Member except as may be expressly agreed between the Borrower and such Holder.
- 2.2.3 Security Stock is issued on the special condition that at any date (hereinafter called "the relevant date") the said Stock shall secure only:
  - (a) As Principal the lesser of:
    - (i) the liabilities referred to in Clause 2.2.1 at the relevant date after deducting therefrom interest (other than capitalised interest) accruing from the immediately preceding interest payment date in respect of such liabilities; and
    - (ii) the nominal amount of the said Stock;



(such lesser amount being referred to in this Trust Deed as “the Security Stock Pari Passu Amount”); and

- (b) As interest the amount of interest deducted pursuant to paragraph (a) of this Clause plus interest on the Security Stock Pari Passu Amount from the relevant date up to the date of final payment at the rate charged or chargeable by the Holder in respect of advances by the Holder to the Borrower or any Charging Group Member or any one or more of them at the relevant date or, if there shall be differential rates charged or chargeable to the Borrower or any Charging Group Member or any one or more of them at the relevant date, then at the overall average rate charged or chargeable as aforesaid.

2.2.4 Security Stock issued pursuant to Clause 2.2.1 shall at all times be held upon and subject to the conditions that notwithstanding anything elsewhere contained or implied in this Deed:

- (a) Upon any distribution to Stockholders pursuant to the provisions of Clause 5.2:
  - (i) Every Holder of First Ranking Security Stock shall be entitled in respect thereof to payment pari passu with the other First Ranking Stockholders in respect only of the First Ranking Security Stock Pari Passu Amount together with interest as calculated in accordance with Clause 2.2.3(b) on the basis that the date of distribution is the relevant date;
  - (ii) Every Holder of Second Ranking Security Stock shall be entitled in respect thereof to payment pari passu with the other Second Ranking Stockholders in respect only of the Second Ranking Security Stock Pari Passu Amount together with interest as calculated in accordance with Clause 2.2.3(b) on the basis that the date of distribution is the relevant date;
- (b) Security Stock shall not be transferable except with the prior written consent of the Supervisor.

2.2.5 Where Security Stock is issued as security for the obligations of any other Corporation (including any other Charging Group Member), the issuer of such Security Stock shall be deemed to have become liable as guarantor for such obligations of that other Corporation and all the provisions of Clause 3.3 hereto shall so far as applicable apply as if the Corporation concerned was the issuer of the Security Stock. This Clause shall be subject to any written agreement between the Charging Group and the relevant Stockholder which expressly excludes the operation of this Clause, or the application of Clause 3.3, in whole or in part.

## 2.3 Variable Notes

- 2.3.1 Notes (called “Variable Notes”) may be issued pursuant to this Deed to any person upon such terms and conditions (not being inconsistent with the provisions contained in this Deed) as the Borrower may from time to time determine as continuing evidence for the acceptance by the Borrower of any present or future liabilities, deposits, loans, credits, advances and other accommodation or obligations of any nature whatsoever to or for or on behalf of or at the request of the Borrower together with interest and other moneys as provided in the Certificate issued in respect of the Variable Notes.
- 2.3.2 Variable Notes issued pursuant to this Deed shall for all purposes and on all occasions be deemed to be validly issued to each holder thereof as evidence of the Principal Moneys of the Variable Notes so held and interest thereon and notwithstanding that the amount (other than interest owing to the Holder thereof) may be less than the nominal amount of the Variable Notes so held the Holder shall not be liable to make any payment to the Borrower or the Supervisor in respect of the Variable Notes so held or be obliged to make any further deposits, loans, credits, advances or afford any further accommodation or obligation to the Borrower except as may be expressly agreed between the Borrower and such Holder.
- 2.3.3 Variable Notes are issued on the special condition that at any date (hereinafter called “the relevant date”) the said Notes shall be evidence of liability of the Charging Group only for -
- (a) As Principal the lesser of:
- (i) the liabilities referred to in Clause 2.3.1 at the relevant date after deducting therefrom interest (other than capitalised interest) accruing from the immediately preceding interest payment date in respect of such liabilities; and
  - (ii) the nominal amount of the said Notes;
- (such lesser amount being referred to in this Trust Deed as “the Variable Notes Pari Passu Amount”); and
- (b) As interest the amount of interest deducted pursuant to paragraph (a) of this Clause plus interest on the Variable Notes Pari Passu Amount from the relevant date up to the date of final payment at the rate charged or chargeable by the Holder in respect of advances by the Holder to the Borrower or any Charging Group Member or any one or more of them at the relevant date or, if there shall be differential rates charged or chargeable to the Borrower or any Charging Group Member or any one or more of them at the relevant date, then at the overall average rate charged or chargeable as aforesaid.

2.3.4 Variable Notes issued pursuant to Clause 2.3.1 shall at all times be held upon and subject to the conditions that notwithstanding anything elsewhere contained or implied in this Deed:

- (a) Upon any distribution to Noteholders pursuant to the provisions of Clause 5.2 hereof every Holder of Variable Notes shall be entitled in respect thereof to payment pari passu with the other Noteholders in respect only of the Variable Notes Pari Passu Amount together with interest as calculated in accordance with the provisions of Clause 2.3.3 on the basis that the date of distribution is the relevant date.
- (b) Variable Notes shall not be transferable except with the prior written consent of the Supervisor.

### **2.3A Money Market Secured Deposits**

2.3A.1 Money Market Secured Deposits shall be issued pursuant to this Deed upon such terms and conditions (not being inconsistent with the provisions of this Deed) as the Borrower may from time to time determine and notwithstanding anything to the contrary in the terms of issue of any Money Market Secured Deposit and the terms of the relevant Prior Charge all Money Market Secured Deposits shall become immediately due and payable and the security constituted under the relevant Prior Charge shall become immediately enforceable by the Money Market Secured Depositholder (who agrees by the acceptance of such Money Market Secured Deposit to act accordingly) if the Supervisor so determines by written notice to the Borrower at any time after the happening of an Event of Default.

### **2.4 Ranking of Securities**

2.4.1 Subject to Clause 2.2 and subject to any Prior Charges, including any Prior Charges given to Money Market Secured Depositholders in relation to Specifically Charged Assets the Stock shall rank as to the payment of Principal and interest (if any) in priority to the Notes and in addition:

- (a) The First Ranking Stock shall rank as to payment of Principal and interest (if any) in priority to and immediately ahead of the Second Ranking Stock whenever issued;
- (b) Inter se the First Ranking Stock shall rank pari passu as to payment of Principal and interest notwithstanding that it is created or issued at different dates or at par or at a premium or at a discount and carries interest at different rates or carries no interest and matures or is payable or redeemable at different times or on demand;
- (c) The Second Ranking Stock shall rank as to payment of Principal and interest (if any) subject to and immediately after payment in full of the Principal and interest of the First Ranking Stock whenever issued;



- (d) Inter se the Second Ranking Stock shall rank pari passu as to payment of Principal and interest notwithstanding that it is created or issued at different dates or at par or at a premium or at a discount and carries interest at different rates or carries no interest and matures or is payable or redeemable at different times or on demand.

The order of priority above set out shall apply in all circumstances and in particular the First Ranking Stock whenever issued shall always rank in priority as above provided to the Second Ranking Stock whenever issued, and notwithstanding that it be subscribed for or issued or acquired after the Second Ranking Stock has been subscribed for or issued or acquired, and notwithstanding that any person subscribing for or being issued with or otherwise acquiring First Ranking Stock is at the time aware that Second Ranking Stock has been subscribed for issued or acquired and is outstanding at the date of the subscription or issue or acquisition of the First Ranking Stock.

- 2.4.2 Subject to Clauses 2.3 and 3.2, inter se the Notes and the Money Market Secured Deposits as to the Money Market Secured Deposit Pari Passu Amount shall rank pari passu as unsecured obligations of the Borrower notwithstanding that they have been accepted or issued at different times or at par or at a premium or at a discount and carry interest at different rates or carry no interest and mature or are repayable at different times or on demand or after notice.

## 2.5 **Alteration of Terms**

- 2.5.1 A Borrower may at any time and from time to time by prior arrangement with the Holder or Holders of any Securities:

- (a) Accelerate the redemption or extend the maturity date of such Securities; or
- (b) Alter the rate of interest payable on those Securities; or
- (c) Agree to the payment of a premium on the redemption of those Securities; or
- (d) Alter any of the other terms or conditions attached to those Securities;

but so that no such alteration, acceleration, extension or payment shall be inconsistent with any of the provisions of this Deed.

- 2.5.2 Details of any such alteration, acceleration, extension or payment shall be recorded in the Register in respect of the Securities affected and the Borrower may issue a new Certificate or Certificates in respect of such Securities embodying the terms and conditions of any such alteration, acceleration, extension or payment.



## 2.6 **Redemption by Purchase**

- 2.6.1 A Borrower may, by agreement with the Holder, at any time redeem any Security (other than Security Stock or a Variable Note) by purchase at a price not exceeding the then current market price thereof on a stock exchange in New Zealand or, if there be no such market price, the value thereof as certified by a member of any such stock exchange plus stamp duty and brokerage (if any) and may, but shall not be obliged to, cancel any Security so purchased.

## 2.7 **Exclusion of Equities**

- 2.7.1 Securities may be issued to such persons as the Borrower shall determine. The Holders are to be regarded as the beneficial owners of the Registered Securities registered in their names respectively and of the Bearer Securities in respect of which they hold the Certificate(s), and exclusively entitled thereto and all persons and the Borrower may act accordingly. Except in circumstances permitted under the FMCA, a Borrower shall not enter in the Register notice of any trust (whether expressed, implied, or constructive) or recognise any trust or equity affecting the ownership of a Security or the monies thereby represented.
- 2.7.2 Each of the Holders and Couponholders shall be entitled to sue for the performance and observance of the provisions of this Deed so far as his Security or Coupon (as the case may be) is concerned save where the Supervisor has a discretion under the said provisions or where the Supervisor has commenced some proceedings or action for the purpose of obtaining the performance or observance of the provisions of this Deed.
- 2.7.3 Every Holder will be recognised by the Borrower as entitled to his Security and to the Principal Moneys and interest payable thereon free from any equity set-off or cross claim between the Borrower and any person other than the Holder.

## 2.8 **Acknowledgement of Indebtedness**

- 2.8.1 Each Borrower hereby acknowledges its indebtedness to the Supervisor in respect of the Principal Moneys for the time being and from time to time outstanding of the Securities issued by it and interest thereon as hereinafter mentioned, and covenants with the Supervisor that -
- (a) As and when the Securities or any part thereof ought to be redeemed or paid off in accordance with the terms thereof, or on such earlier date as the security hereby constituted becomes enforceable pursuant to this Deed or otherwise and the Supervisor has determined or becomes bound to enforce the same, the Borrower will pay to the Supervisor in respect of any Security repayable in New Zealand currency either at the Supervisor's registered office or head office or elsewhere in New Zealand as the Supervisor shall otherwise by notice in writing direct and in respect of any which is repayable in any other currency at such other place as the Supervisor shall

by notice in writing direct the Principal Moneys of the Securities or so much thereof as shall be unpaid in the currency in which such Principal Moneys are repayable in accordance with the terms of issue thereof; and

- (b) Until such payment the Borrower will pay to the Supervisor as aforesaid or accumulate interest on the Security in the currency in which such interest is payable and otherwise in accordance with the terms of issue thereof.

2.8.2 Notwithstanding the foregoing the Borrower shall, unless and until otherwise requested by the Supervisor or prevented by exchange control or other fiscal laws or regulations in New Zealand, pay to the Holders all Principal Moneys and pay or accumulate interest as aforesaid in respect of the Securities to or for the account of the Holders in accordance with the terms and conditions of issue, as follows:

- (a) in the case of Bearer Securities, the Principal Moneys shall be paid to the Bearer of the Bearer Certificate and interest shall be paid to the Couponholder or otherwise in accordance with the terms and conditions of issue thereof; and
- (b) in the case of Registered Securities, the Principal Moneys and interest shall be paid to or for the account of the Registered Holders concerned;

and each such payment shall operate as payment to the Supervisor in satisfaction pro tanto of the indebtedness in this Clause acknowledged or undertaken to be paid.

## 2.9 Certificates

2.9.1 Every Borrower shall comply with the provisions of the FMCA relating to the sending of confirmations to Holders. Every such confirmation shall be in such form or forms as the Supervisor approves (including in the form of a Certificate) **PROVIDED THAT** -

- (a) it must:
  - (i) include a brief description of the transaction to which the confirmation relates and the parties to the transaction;
  - (ii) identify the Securities involved to which the transaction relates;
  - (iii) state the price of each Security to which the transaction relates (if known when the confirmation is made);
  - (iv) state the number or amount of Securities to which the transaction relates;
  - (v) state any fees or costs deducted (if known when the confirmation is made);

- (vi) state the total amount paid or payable for the transaction (if known when the confirmation is made); and
    - (vii) state the date of the transaction;
  - (b) it is supplied:
    - (i) (in accordance with the FMC Regulations) through an electronic facility on a substantially continuous basis (but only if the Holder has agreed to this method); or
    - (ii) (in accordance with the FMC Regulations) by giving it to the Holder or sending it to the Holder's Registered Address no later than 10 working days after the last day of each reporting period in each year (but only if the Securities were issued under a continuous issue PDS and the Holder has agreed to this method); or
    - (iii) by giving it to the Holder or sending it to the Holder's Registered Address no later than 5 working days after the transaction occurs.
- 2.9.2 Subject to the terms of issue thereof, Securities shall be held with the benefit of and subject to the provisions of this Deed, any conditions endorsed on the relevant Certificates (if any), the conditions contained in the First Schedule, and any further conditions forming part of the terms of issue of the Securities, and those provisions and conditions or such of them as are applicable thereto respectively shall be binding upon the Charging Group and the Holders and all persons claiming through them respectively.
- 2.9.3 Coupons shall be in such form or forms as the Supervisor may from time to time approve.
- 2.9.4 Certificates, confirmations and Coupons may be in any form or forms including that of a receipt, acknowledgement, statement or passbook.
- 2.9.5 A Borrower may with the consent of the Holder concerned execute and deliver to a Holder:
- (a) A Certificate in replacement of a lost, destroyed or damaged Certificate;
  - (b) A Certificate in replacement of the one issued in an incorrect form or for an incorrect amount or containing incorrect terms;
  - (c) Several Certificates in substitution for one Certificate;
  - (d) Where the debt or other obligation evidenced or secured by a Security Stock Certificate or a Variable Note Certificate has been repaid or otherwise



discharged in part, a Certificate in replacement thereof for a lesser nominal amount than the original Certificate;

- (e) A Certificate for Registered Securities to the holder of Bearer Securities in replacement of such Bearer Securities or a Certificate for Bearer Securities to the holder of Registered Securities in replacement of such Registered Securities.

Subject as hereinbefore provided nothing contained in this Clause shall permit a Borrower to alter the terms of issue upon which the Security evidenced by the original Certificate was issued or to increase the amount of Securities on issue.

## **2.10 Instalments**

2.10.1 If by the terms of issue thereof any Security is to be paid for by instalments and the amount of any instalment is not duly paid to the Borrower the Borrower may at any time thereafter before such instalment is paid but only after giving to the Holder in default not less than fourteen days notice of its intention so to do either:

- (a) forfeit all instalments previously paid and cancel the allotment of the Security in question; or
- (b) sue for the recovery of such unpaid instalment and charge and sue for payment of interest thereon at the Appropriate Rate from the date that such instalment became due until the said instalment is paid.

2.10.2 A statutory declaration in writing that the declarant is a Director of the Borrower and that the Security has been duly forfeited on the date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to such Security. The Borrower may receive the consideration if any given for such security on any sale or disposition thereof and may execute a transfer of such Security in favour of the person to whom such Security is sold or disposed of and he shall thereupon be registered as the holder of such Security and shall not be bound to see to the application of the purchase money if any nor shall his title to such Security be affected by an irregularity or invalidity in the proceedings in reference to the forfeiture sale or disposal of such Security.

## **2.11 Indemnity for Taxes**

2.11.1 Whenever in respect of any Securities there shall in consequence of:

- (a) the death of the Holder; or
- (b) the non-payment of any income tax or other tax payable by the Holder; or

- (c) the non-payment of any death, stamp or other duty by the legal personal representative of the Holder by or out of his estate; or
- (d) any other act or thing;

be imposed by law any immediate or possible liability on any Charging Group Member to make any payment to any taxation or other Government authority of any country the Charging Group Member shall in respect of such liability be indemnified by the Holder, his executors or administrators and estate and any moneys paid by the Charging Group Member in respect of any such liability may be recovered by action from the Holder, his executors or administrators or estate as a debt due to the Charging Group Member **PROVIDED ALWAYS** that the foregoing provisions of this Clause shall be subject to any express agreement to the contrary between the Charging Group Member and the Holder concerned.

- 2.11.2 Nothing herein contained shall prejudice or affect any right or remedy which any such law may confer or purport to confer on the Charging Group Members, and as between the Charging Group Members and every Holder, his executors or administrators and estate wheresoever constituted or situated any right or remedy which such law shall confer on the Charging Group Member shall be enforceable by it.

## 2.12 **Register**

2.12.1 Each Borrower shall establish and maintain a Register of Securities (which shall comprise a separate register for, or enable separate identification in respect of, First Ranking Stock, Second Ranking Stock, Money Market Secured Deposits and Notes on issue) in respect of all Securities issued by it other than Bearer Securities, to be kept at the registered office of the Borrower or at such other place in New Zealand as the Borrower may from time to time by notice in writing to the Supervisor determine.

2.12.2 A Register may be kept as an electronic register or in any other reasonable manner that the Borrower thinks fit.

2.12.3 Each Borrower must send a notice to the Registrar of the place where its Register is kept and of any change in that place. Such notice must be given within 10 working days after the Register has been established or after the change in place (as the case may be). However, if the Borrower is a company under the Companies Act and the Register is kept at its registered office, no such notice is required.

2.12.4 There shall be entered in each Register:

- (a) the name and address of each Holder;
- (b) the date of which the Securities were issued or transferred to the Holder;

- (c) the amount and ranking (and currency if not New Zealand currency) of the Securities (other than Bearer Securities) for the time being issued and held by the respective Holders;
- (d) when interest is payable, the date or dates of payment;
- (e) the rate of interest if applicable;
- (f) the repayment date or dates;
- (g) the number and date of the Certificate or Certificates therefor;
- (h) all transfers or changes of ownership (and the dates of such transfers or changes or ownership) or issues of replacement or substitutionary Certificates and the names and addresses of the previous Holders and the persons deriving title under them and the date at which such names are entered on the Register;
- (i) as regards Securities no longer outstanding, particulars of their redemption or purchase or forfeiture by the Borrower or conversion to bearer securities or registered securities as the case may be;
- (ga) in respect of each Money Market Secured Deposit, a brief description and the book value of the Specifically Charged Asset and a brief description of the nature of the Prior Charge;
- (j) such other particulars as are reasonably required by the Supervisor or required by law;

2.12.5 Any Security Stock, Money Market Secured Deposits and Variable Notes shall be indicated as such in the relevant Register;

2.12.6 Any change of name or address or any Holder shall forthwith be notified to the Borrower in writing by him or if a joint holding by all the joint holders and thereupon the relevant Register shall be altered accordingly;

2.12.7 The Supervisor, any Receiver appointed by the Supervisor, the Holders or any of them, and any person authorised in writing by any of such persons shall be at liberty at all reasonable times during office hours to inspect the Registers and to take copies of and extracts from the same paying only such charges therefor as may be permitted by the FMCA or any other applicable legislation;

2.12.8 Subject to Clause 2.12.9, each Borrower must ensure that its Register is available for inspection by a person who serves on the Borrower written notice of intention to inspect, at the place at which the Register is kept between the hours of 9am and 5pm on each working day during the inspection period. The term "inspection period" means the period commencing on the third working day after the day on which notice of



intention to inspect is served on the Borrower by the person concerned and ending with the eighth working day after the day of service.

2.12.9 Clause 2.12.8 shall not apply to a Borrower where:

- (a) the Securities are debt securities issued by that Borrower who is a continuous issuer of those Securities; and
- (b) it is a term of the offer of the Securities that:
  - (i) the part of the Register that concerns the Securities of a particular Holder (A) is available for inspection by A in the manner referred to in Clause 2.12.8 if A serves written notice on the Borrower of its intention to inspect; and
  - (ii) A may require a copy of, or an extract from, that part of the Register to be sent to A within 5 working days after A has made a written request for the copy or extract to the Borrower (free of charge).

2.12.10 Subject to Clause 2.12.11, a person may require a copy of, or an extract from, a Register that is available for inspection by the person under Clause 2.12.8 to be sent to the person within 5 working days after the person has made a written request for the copy or extract to the Borrower:

- (a) if the person has paid the fee prescribed in the FMC Regulations (if any); and
- (b) if the person who makes a request (other than a request for information about that person) includes in the request a statement of the person's reasons for the request (including the purpose for which the person intends to use the copy of, or extract from, the Register),

and the Borrower shall comply with such a request.

2.12.11 The Borrower may, if it thinks fit, provide a copy of the statement referred to in Clause 2.12.10(b) to the FMA and, if it does so before the expiry of the 5 working day period referred to in Clause 2.12.10, the period for sending the copy or extract is extended to 10 working days, unless the FMA provides written notice to the Borrower that it is not required to comply with such a request within that 10 working days, in which case the Borrower does not need to comply with Clause 2.12.10.

2.12.12 Each Borrower must ensure that its Register is audited either in accordance with Clauses 2.12.13 or 2.12.14. However, where the registrar entity that keeps the Register on behalf of the Borrower does not comply with Clause 2.12.14, the Borrower must nevertheless ensure compliance with Clause 2.12.13.

2.12.13 Each Borrower must ensure that an audit of the Register is carried out every year within 4 months after the Borrower's balance date. The audit must be carried out in accordance with applicable auditing and assurance standards.

2.12.14 Where the Register is kept by a registrar entity on behalf of a Borrower, the Register must be audited at least once a year. The audit must be carried out in accordance with applicable auditing and assurance standards.

2.12.15 Each Borrower shall comply with all statutory requirements necessary to be fulfilled in respect of the Registers.

### 2.13 **Bearer Security Records**

2.13.1 Each Borrower shall establish and maintain a Record of Bearer Securities (if any) to be kept at the registered office of the Borrower or such other place as the Borrower may from time to time by notice in writing to the Supervisor determine. Such Records shall show:

- (a) the amount and ranking of Bearer Securities for the time being issued;
- (b) the details of Bearer Certificates and Coupons issued and outstanding;
- (bb) in respect of each Money Market Secured Bearer Deposit, a brief description and the book value of the Specifically Charged Asset;
- (c) the redemption, purchase by the Borrower, surrender, payment or conversion to Registered Securities of Bearer Securities;
- (d) details of Bearer Certificates or Coupons issued in replacement or substitution for worn out, defaced, lost or destroyed Bearer Certificates or Coupons;
- (e) the names and addresses of any Holders of Bearer Securities who have notified the Borrower thereof for the purpose of receiving by mail notices to such Holders pursuant to this Deed;
- (f) such other particulars as are reasonably required by the Supervisor.

The Borrower shall make such Records available for the inspection of the Supervisor at all reasonable times. The provisions of Clauses 2.12.5 to 2.12.8 (inclusive) shall apply to such record as if such record were a Register referred to in such clauses.



## 2.14 Unclaimed Payments

- 2.14.1 If any such payment made to any Holder pursuant to Clause 2.8.2 at his last Registered Address shall be returned unclaimed and remain unclaimed for thirty days such payment may (unless notice of a change of Registered Address has in the meantime been received by the Borrower) be retained by the Borrower and shall be held for the Holder without liability to invest the same or pay interest thereon. Any Principal or interest unclaimed after five years from the date on which payment was tendered shall be automatically forfeited to the Borrower for its benefit.
- 2.14.2 Notwithstanding the provisions of Clause 2.8.2 if by the terms of issue of any Security, the first payment of interest thereon is payable only to the person to whom such Security was issued (whether such person is the Registered Holder of such Security at the date of the first payment of interest or not) then payment of interest to such person in accordance with the said terms of issue shall operate in satisfaction of the obligations of the Borrower in regard to such payment of interest under the said Clause 2.8.2.
- 2.14.3 Unless otherwise provided by the terms of issue, if the Holder of any Bearer Security or any Couponholder fails to produce the relevant Certificate or Coupon (as the case may be) to the Borrower when required to entitle such Holder or Couponholder to payment of Principal or interest as the case may be within six (6) months after the due date of payment of such Principal or interest the amount thereof shall (unless the relevant Certificate or Coupon has in the meantime been produced to the Borrower) be retained by the Borrower and held for the Holder or Couponholder without liability to invest the same or pay interest thereon. Any Principal or interest which remains unclaimed six years after the due date for payment shall be automatically forfeited to the Borrower for its benefit.
- 2.14.4 Without prejudice to the foregoing provisions of this Clause, after forfeiture of any sum under Clauses 2.14.1 and 2.14.3 for the benefit of the Borrower the person or persons who would have been entitled to payment thereof had the same not been forfeited shall be entitled to payment of such sum upon adducing to the satisfaction of the Directors sufficient evidence that he or they would have been entitled thereto had the same not been forfeited.
- 2.14.5 Without prejudice to the foregoing provisions of this Clause, if the Supervisor shall hold any moneys which represent Principal or interest in respect of Bearer Securities which have become void pursuant to the conditions of issue thereof, the Supervisor shall (subject to the application thereof in accordance with Clause 5.2) pay the same forthwith to the Borrower (without rights to such moneys as between the Borrower and any other person for the time being entitled thereto in priority to the Borrower).

### SECTION 3

#### CHARGES AND GUARANTEES OF DEBT SECURITIES

### 3. CHARGES AND GUARANTEES OF DEBT SECURITIES

#### 3.1 Charges

3.1.1 Each Charging Group Member hereby charges in favour of the Supervisor all its Assets with payment of the Stock Moneys; and -

- (a) All such charges shall constitute continuing security for the payment of the Stock Moneys; and
- (b) All such charges shall be floating charges and accordingly until the Date of Enforcement but subject always to the provisions of this Deed no Charging Group Member shall be in any way hindered or prevented from selling, leasing, paying dividends out of profits or otherwise disposing of or dealing with the Assets for the time being subject to the said floating charge or any part thereof in the ordinary course of business and for the purpose of carrying on the same.

##### 3.1.1A Security Interest

- (a) In addition to the Charge created by Clause 3.1.1, each Charging Group Member grants to the Supervisor a Security Interest in all its Assets, except those of its Assets where the PPSA does not apply to such an interest in them, as security for payment of the Stock Moneys and the performance of all its obligations to the Supervisor under this Deed.
  - (b) Such Security Interest shall constitute continuing security for the payment of the Stock Moneys and the performance of all its obligations to the Supervisor under this Deed.
  - (c) Despite the creation of the said Security Interest, until the Date of Enforcement but subject always to the provisions of this Deed no Charging Group Member shall be in any way hindered or prevented from selling, leasing, paying dividends out of profits or otherwise disposing of or dealing with the Assets for the time being subject to such Security Interest or any part thereof in the ordinary course of business and for the purpose of carrying on the same.
- 3.1.2 Each Charging Group Member covenants that it will not, without the prior written consent of the Supervisor, create or permit to subsist any Charge over the Charged Assets ranking *pari passu* with or in priority to the Charges created pursuant to this Clause other than:-

- (a) any Prior Charges in existence at the Commencement Date; and

- (b) any Prior Charge created in terms of Clause 3.2; and
- (c) any charge that is:
  - (i) a Purchase Money Security Interest created by a Charging Group Member in favour of a seller of Goods; or
  - (ii) a lease in favour of a lessor of Goods to a Charging Group Member that does not in substance secure payment or performance of an obligation,

in each case created or provided for by a transaction that is in the ordinary course of business and for the purpose of carrying on the same.

### 3.2 Prior Charges

3.2.1 Notwithstanding the charges by the Charging Group contained in and the other provisions of Clause 3.1.1 and Clause 3.1.1A, each Charging Group Member shall be at liberty at any time or times before the Date of Enforcement -

- (a) For the purposes of financing the cost of acquisition, construction, or development or improvement of any property or assets (including any property or assets held jointly with others), to create or permit to subsist a Prior Charge over such property or assets or (in the case of development or improvements to any land) over the land and the development or improvements, for an amount not exceeding two thirds of the cost of acquisition, construction, development or improvement of the property or assets together with interest discounts and other financing charges and ancillary sums;
- (b) To create a charge over its Charged Assets or any of them in favour of the Supervisor ranking *pari passu* with the charges created by or pursuant to this Deed in order to secure debenture stock ranking *pari passu* in point of security with the Stock;
- (c) To renew or extend the term, increase the rate of interest or otherwise vary the provisions of any Prior Charge given to or permitted to subsist pursuant to the foregoing provisions or replace any such Prior Charge but subject always to the condition that the principal sum secured by such Prior Charge or the Prior Charge given in renewal or replacement thereof shall not be increased;
- (d) To create and permit to subsist Prior Charges over a Specifically Charged Asset to secure the Money Market Secured Deposit Moneys payable in respect of a Money Market Secured Deposit issued by that Charging Group Member if, and only if:



- (i) The book value of the Specifically Charged Asset does not at any time exceed the amount derived by multiplying the Money Market Secured Deposit Moneys owing by the Charging Group Member in respect of that Money Market Secured Deposit by 1.25; and
- (ii) The Prior Charge given over such Specifically Charged Asset is given for the purpose and in the normal course of business of a money market dealer, merchant bank or other financial intermediary carrying on business in New Zealand of a similar type or nature.

3.2.2 The charges required to be given by any company in favour of the Supervisor on it becoming a Charging Subsidiary pursuant to the provisions of Clause 3.4.1 may be subject in the case of a wholly owned subsidiary (including a wholly beneficially owned subsidiary) of that Charging Subsidiary only to any charge either for a specified sum or for a sum expressed as a specified maximum sum existing immediately prior to it becoming a wholly owned subsidiary of that Charging Subsidiary and in the case of any other Subsidiary only to any charge either for a specified sum or for a sum expressed as a specified maximum sum existing immediately prior to it becoming a Charging Subsidiary.

3.2.3 It is hereby declared that all such Prior Charges created, permitted to subsist, or varied in accordance with the provisions of this Clause shall rank as charges upon the assets subject thereto in priority to the charges thereover created by or pursuant to this Deed **AND** whenever it may be necessary to give effect to such intended priority the Supervisor at the request and expense of the Charging Group shall join in the execution of any memorandum of priority or other relevant document **AND** no vendor, lender or other person shall be concerned or obliged to enquire whether any loan to or liability assumed by any Charging Group Member is in contravention of the provisions of this Deed nor shall the validity and priority of any charge given to or held by any vendor, lender or other person be affected by knowledge on the part of such vendor, lender or other person of any such contravention.

### **3.3 Guarantee by Charging Group**

3.3.1 The Company and the Charging Subsidiaries jointly and severally unconditionally guarantee the due and punctual payment by each Borrower in accordance with the provisions of this Deed and the observance and performance by each Borrower of all its obligations under this Deed, and the Company and each of the Charging Subsidiaries agrees that the following provisions shall have effect and shall apply to each of them and in this Clause the expression “guarantee” shall include every guarantee given under or pursuant to this Deed.

3.3.2 Whenever any default has been made by a Borrower in the payment of all or any of the Moneys the other Charging Group Members will forthwith whether or not demand therefor shall be made pay such moneys to the Supervisor to the intent that the same may be applied by the Supervisor pursuant to this Deed.



3.3.3 The liability of the Company and each Charging Subsidiary under this guarantee shall not be abrogated prejudiced or affected by any of the following:

- (a) The granting of time, credit or any indulgence or other concession to a Borrower or to any guarantor (including any Charging Group Member) by the Holders or any of them or by the Supervisor or by any compounding compromise release abandonment waiver variation relinquishment or renewal of any securities documents of variation relinquishment or renewal of any securities documents of title assets or of any of the rights of the Holders or any of them or of the Supervisor against the Borrower or any Charging Group Member or guarantor or by anything done or omitted or neglected to be done by the Supervisor or the Holders or any of them in exercise of the authorities powers and discretions vested in them by this Deed or by any other dealing matter or thing which but for this provision might operate to abrogate prejudice or affect the respective guarantees;
- (b) The liability of any other guarantor of a Borrower (including any other Charging Group Member) ceasing from any cause whatsoever (including the release or discharge by the Holders or any of them or by the Supervisor);
- (c) Any other person joining in this or giving any similar guarantee;
- (d) The liquidation of the Company or any Charging Subsidiary or other guarantor;
- (e) Any Charging Group Member or other guarantor being incompetent to give this guarantee or any other guarantee or any collateral security or failing to become legally bound in whole or in part under any of them respectively;
- (f) Any security (including any security given pursuant to this Deed) held or taken being void defective or informal;
- (g) Failure by the Company or any Charging Subsidiary or other guarantor to provide any security which ought to be provided under or pursuant to this Deed;
- (h) Any other wholly owned Subsidiary failing or being incompetent to become or remain a Charging Subsidiary;
- (i) Any alteration modification variation or addition to this Deed made pursuant to the provisions in that behalf in this Deed contained.

3.3.4 This guarantee shall be a principal obligation and shall be treated as in addition to and not in substitution for or collateral to any other security or right which the Supervisor may have under or by virtue of this Deed and in particular shall be independent of any other security to the intent that the respective guarantees may be enforced against the Company and the Charging Subsidiaries or any of them without first having recourse to any

such securities or rights and without taking steps or proceedings against the Borrower or any other guarantor (including the Company and any Charging Subsidiary) and notwithstanding that any other security may be in whole or in part unenforceable by reason of any rule of law or equity and notwithstanding the loss by the Supervisor of any other security and notwithstanding any laches acts or omissions on the part of the Supervisor.

- 3.3.5 Except as otherwise provided in this Deed this guarantee is to be a continuing guarantee and shall be irrevocable and shall remain in full force and effect until the whole of the Moneys have been paid or satisfied.
- 3.3.6 The Supervisor may determine from time to time whether it shall enforce or refrain from enforcing any guarantee and unless otherwise directed as aforesaid may from time to time make any arrangement or compromise with any one or more of them the Charging Subsidiaries or the Company in relation to the premises which the Supervisor may think expedient in the interests of the Holders.
- 3.3.7 All moneys from time to time received by the Supervisor in reduction of a Borrower's indebtedness from or on account of a Borrower including any dividends upon the liquidation of the Company or any Charging Subsidiary or other guarantor or from any other person or from the realisation of any security and capable of being applied by the Supervisor in reduction of a Borrower's indebtedness in relation to the Moneys shall be regarded as payment in gross without any right on the part of any one or more of them the Company or the Charging Subsidiaries to stand in the place of the Supervisor in respect of or to claim the benefit of any moneys so received as against the Company or any Charging Subsidiary until the whole of the Moneys have been paid or satisfied so that the event of the Company or any Charging Subsidiary or other guarantor going into liquidation the Supervisor shall be entitled to prove against it for the total indebtedness of the Borrowers in relation to the Moneys.
- 3.3.8 In the event of the liquidation of any Charging Group Member or other guarantor no Charging Group Member will prove in such liquidation in competition with the Supervisor and each Charging Group Member hereby authorises the Supervisor to prove for all moneys which the Charging Group Member has paid hereunder or is otherwise owing to it and have not been repaid to it by the Charging Group Member or guarantor and to retain and to carry to a suspense account and appropriate at the discretion of the Supervisor any amount received until the Supervisor shall have received one hundred (100) cents in the dollar in respect of the indebtedness of the Borrowers in relation to the Moneys. Each Charging Group Member hereby waives in favour of the Supervisor all rights whatever against the Supervisor and the Borrowers and any other guarantor or other person or their or its estate and assets so far as necessary to give effect to anything in this guarantee contained.
- 3.3.9 This guarantee shall not prejudicially affect or be prejudicially affected by any other security or guarantee now or hereafter held by the Supervisor

for the Moneys but such other security or guarantee shall be deemed to be collateral herewith and the Company and the Charging Subsidiaries will not as against the Supervisor in any way claim the benefit or seek the transfer of any such security or any part thereof or any rights of recourse.

- 3.3.10 If any payment made to the Supervisor or to any Receiver appointed by the Supervisor or to any Holder or by or on behalf of the Company or any Charging Subsidiary be avoided by law such payment shall be deemed not to have discharged or affected the liability of the Company or any Charging Subsidiary therefor or any charge by the Company or that Charging Subsidiary in favour of the Supervisor in respect thereof and in that event the Supervisor the Company and the Charging Subsidiary shall be restored to the position in which each would have been and be entitled to exercise all the rights which each would have had if such payment had not been made.
- 3.3.11 A Charging Group Member shall in respect of any sums paid by it hereunder and in respect of any other rights which may accrue howsoever to it in respect of any sum so paid rank and be entitled to enforce the same only after all the Moneys shall have been duly paid and satisfied.
- 3.3.12 Although as between the Borrower and the other Charging Group Members the joint and several liability of those other members to the Supervisor may be that of sureties only nevertheless as between these other members and the Supervisor the liability of each member shall be deemed to be the liability of a principal debtor and the charges given by each member to the Supervisor by or pursuant to this Deed or any security collateral thereto shall constitute security for the Moneys and such liability shall not be affected or diminished nor shall such charges over the Charged Assets of the members charged by or pursuant to this Deed or any security collateral thereto be released or discharged by any of the matters hereinbefore mentioned or by any other act indulgence or omission which but for this present provision would have operated to release such member wholly or partly from its liabilities hereunder to the Supervisor.
- 3.3.13 As a separate and independent stipulation each Charging Group Member agrees that any moneys payable under the Trust Deed which may not be recoverable from a Borrower by reason of any legal limitation, disability or incapacity on or of the Borrower or any other fact or circumstance including unenforceability, shall nevertheless be recoverable from the member as though the same had been incurred by the member and the member were the sole or principal debtor in respect thereof.

#### **3.4 New Subsidiaries**

- 3.4.1 Forthwith upon any Corporation becoming a Subsidiary of the Company, the Company shall advise the Supervisor of the name of the Subsidiary and whether or not it is a wholly owned Subsidiary, and make available to the Supervisor a copy of the most recent balance sheet and profit and loss account of the Subsidiary.



3.4.2 The Company shall procure that any Corporation (other than an Excluded Subsidiary) which shall after the Commencement Date, become a wholly owned Subsidiary of the Company shall subject to Clause 3.4.3, with reasonable expedition execute in favour of the Supervisor, a deed supplemental to these presents:-

- (a) guaranteeing, in terms mutatis mutandis of Clause 3.3, the payment of the Moneys and all other moneys intended to be hereby secured;
- (b) as security for such guarantee, charging in favour of the Supervisor its Assets with payment of the Stock Moneys and also granting a Security Interest in all of its Assets, except those of its Assets where the PPSA does not apply to such an interest in them, as security for the payment of the Stock Moneys and the performance of its obligations under that supplemental deed, each such Charge to be a first floating Charge or a first ranking Security Interest (as the case may be) subject however to any Charges subsisting at the date when such Corporation became a wholly owned Subsidiary and which comply with Clause 3.1 and otherwise subject to the like provisions and restrictions as are applicable to the charges created by the Company and any Charging Subsidiaries; and
- (c) granting to the Supervisor the same power of attorney as is granted by Clause 3.7; and
- (d) covenanting to observe and perform such of the provisions and restrictions of this Deed as are binding on any Charging Subsidiaries.

The supplemental deed shall be in such form, and contain such terms and conditions, as are required to incorporate the Corporation as a Charging Subsidiary under this Deed and as the Supervisor and the Company may from time to time agree upon.

3.4.3 Notwithstanding the provisions of Clause 3.4.2, upon receipt of a certificate of two Directors on behalf of the Directors of the Company that there are sound commercial reasons why a Subsidiary should not be obliged to become a Charging Subsidiary specifying the reasons therefor and such reasons are acceptable to the Supervisor, the Supervisor shall permit such Subsidiary to remain a Non-Charging Subsidiary upon such terms and conditions as the Supervisor considers appropriate and on the basis that the Supervisor may subsequently for good reasons withdraw such dispensation and require the Subsidiary to become a Charging Subsidiary.

### 3.5 Releases

3.5.1 At any time or times before the security created by this Deed shall have become enforceable and the Supervisor shall have determined or become bound to enforce the same the Supervisor may, upon the request in writing and at the cost of the Charging Group without any approval by the Holders unless in the opinion of the Supervisor the interests of the



Holders would be materially prejudiced and upon being satisfied as a result of receiving such valuations or other evidence as the Supervisor may specify either that full market or otherwise reasonable value is being received, or (in relation to the release of a Charging Subsidiary and the charges over its Charged Assets) that the relevant Charging Subsidiary is (due to a change in its ownership or control or in the nature of location of its business or assets) not one which would require to be joined as a Charging Subsidiary if it had recently become a Subsidiary and upon and subject to such terms and conditions as in its discretion the Supervisor may specify, exercise any one or more of the following powers namely:

- (a) release the Company or any Charging Subsidiary from its guarantee and other obligations under this Deed;
- (b) release any part of the Charged Assets from the operation of any charges thereover created by or pursuant to this Deed;

**AND** the Supervisor may execute all documents which may be necessary to effectuate any such release or discharge and in order that any resolution for the purposes of paragraphs (i) and (ii) of Clause 5.1.1(c) may be carried into effect will at the request and expense of the Charging Group execute such documents as may be requisite upon being satisfied that any condition imposed by that Clause will be complied with **PROVIDED ALWAYS** that the Supervisor shall not concur in the sale and subsequent release of the whole or a major part of the undertaking or assets of the Charging Group (viewing the Charging Group as a single entity) without the sanction of a Special Resolution.

- 3.5.2 The proceeds of sale of any part of the Charged Assets so long as the security created by this Deed has not become enforceable but subject to any terms and conditions imposed by the Supervisor pursuant to Clause 3.5.1, may be applied by the Company or the Charging Subsidiary concerned in such manner as the recipient shall deemed expedient for the purpose of carrying on its business.

### 3.6 Further Assurance

The Company and each of the Charging Subsidiaries shall execute, sign and do all such registrations, mortgages and transfers and such assurances and things as the Supervisor may reasonably require for perfecting the security created or intended to be created by or pursuant to this Deed and shall from time to time and at all times after the security created by this Deed shall have become enforceable execute, sign and do all such registrations, mortgages and transfers and such assurances and things as the Supervisor may reasonably require for facilitating the realisation of the Charged Assets and for exercising all the trusts, powers, authorities and discretions hereby conferred on the Supervisor or any Receiver and in particular and without prejudice to the generality of the foregoing the Company and each of the Charging Subsidiaries shall execute all mortgages, transfers, conveyances, assignments and assurance of the Charged Assets whether to the Supervisor or its nominees and shall perform or cause to be performed all acts and things requisite or desirable according to law for the purpose of giving effect to the carrying out or exercise of any of the said trusts, powers, authorities

and discretions and shall give all notices, orders and directions which the Supervisor may think expedient and for the purposes of this Clause a certificate in writing signed by the Supervisor to the effect that any particular execution, registration, mortgage, transfer, assurance or thing required by it is reasonably required by it shall be conclusive evidence of the fact.

### 3.7 **Appointment of Attorney**

The Company and each of the Charging Subsidiaries hereby irrevocably appoints the Supervisor and any Receiver appointed by the Supervisor and the Supervisor's general manager, assistant general manager, manager corporate trusts, and secretary for the time being severally to be its attorney or attorneys and in its name and on its behalf to enter into execute, sign and do all assurances, deeds, instruments, acts and things whatsoever which shall in the opinion of the Supervisor or such Receiver (as the case may be) be necessary or expedient or which it ought to execute sign and do for the purpose of carrying out any trust or obligation hereby declared or imposed upon it for giving to the Holders or to the Supervisor on their behalf the full benefit of any of the provisions of this Deed and generally to use its name in the exercise of all or any of the powers conferred by this Deed on the Supervisor or any Receiver appointed by the Supervisor (as the case may be) **PROVIDED ALWAYS** that the above provisions shall not be exercisable until the security created by this Deed shall have become enforceable and the Supervisor shall have determined or become bound to enforce the same.

### 3.8 **Quiet Enjoyment**

Notwithstanding the mortgages and charges upon the Charged Assets created by or pursuant to this Deed and any further mortgages or charges upon such assets or any part thereof which may be executed by the Company or the Charging Subsidiaries in pursuance of any provision herein contained the Supervisor shall permit the Company and the Charging Subsidiaries to hold and enjoy the Charged Assets and to receive and apply as they think fit all rents and income arising therefrom and to carry on thereon and therewith any businesses or association until the security created by this Deed shall have become enforceable and the Supervisor shall have determined or become bound to enforce the same.

## SECTION 4

### FINANCIAL AND OTHER COVENANTS AND REPORTS

#### 4. FINANCIAL AND OTHER COVENANTS AND REPORTS

##### 4.1 Financial Covenants

4.1.1 Each Charging Group Member covenants with the Supervisor that at all times:-

- (a) the aggregate amount of Shareholders Funds and Uncalled Capital are not less and will not be less than forty million dollars (\$40,000,000) or such higher amount as is determined pursuant to Clause 4.1.2 or Clause 4.1.3; and
- (b) the aggregate book value of real property and ordinary shares in Corporations (other than Charging Group Members) held by the Charging Group Members (other than any of the same held as security for financial accommodation extended by a Charging Group Member or held as a consequence of the enforcement of any security interest) will not, without the prior written consent of the Supervisor, exceed fifty (50) percent of the aggregate amount of Shareholders Funds and Uncalled Capital;
- (c) the Principal Moneys owing in respect of Stock will not exceed the aggregate amount of total tangible Assets of the Charging Group after deducting the book value of all Specifically Charged Assets; and
- (d) the Liquid Assets of the Charging Group will be the greater of:
  - (i) 10 percent of Total Liabilities if the Capital Ratio is less than 11 percent; or
  - (ii) 8.75 percent of Total Liabilities if the Capital Ratio is greater than or equal to 11 percent and less than 12 percent; or
  - (iii) 7.5 percent of Total Liabilities if the Capital Ratio is greater than or equal to 12 percent;
- (e) the aggregate of:
  - (i) Liquid Assets of the Charging Group; and
  - (ii) the assets of the Charging Group with maturities of less than or equal to 30 days,



will be greater than 105 percent of the total amount payable in respect of the aggregate of Securities:

- (iii) which are on call; and
- (iv) with maturities of less than or equal to 30 days;
- (f) it shall maintain a minimum Capital Ratio of not less than 8 percent or such higher percentage as specified from time to time pursuant to the NBDT Regulations; and
- (g) it shall comply with the condition of the maximum limit on aggregate exposures to related parties specified in the Exemptions, as defined and calculated in accordance with Part 4 of the NBDT Regulations as varied by the Exemptions.

4.1.2 On or about the date that is two years after the Commencement Date and at two-yearly intervals thereafter, the Supervisor shall review the aggregate amount of Shareholders' Funds and Uncalled Capital required to be maintained for the purposes of Clause 4.1.1(a) and on any such review may by written agreement with the Company increase that amount to such amount as they consider appropriate after having regard to the then business of the Charging Group.

4.1.3 If at any time the Company ceases to be a subsidiary (within the meaning of section 5 of the Companies Act) of the ANZ Bank and also of every holding company (within the meaning of that section) of the ANZ Bank, the Supervisor at any time thereafter shall be entitled after consultation with the Company by written notice:

- (a) to increase the amount at that time prescribed as the minimum aggregate amount of Shareholders Funds and Uncalled Capital for the purposes of Clause 4.1.1(a) to such amount as the Supervisor considers appropriate having regard to the business of the Charging Group and to such other factors as the Supervisor thinks appropriate; and
- (b) to increase the percentage amount at that time prescribed as the minimum percentage amount of Liquid Assets in Clause 4.1.1(d) to such amount as the Supervisor considers appropriate having regard to the business of the Charging Group and to such other factors as the Supervisor thinks appropriate.

## 4.2 Other Covenants

4.2.1 Each Charging Group Member covenants with the Supervisor that it will not provide credit to, or give guarantees, indemnities, or securities for the obligations of, any person otherwise than in accordance with good commercial practice.



4.2.2 Each Charging Group Member covenants with the Supervisor that it will not without the prior written consent of the Supervisor:-

- (a) dispose of any of its Assets or provide services to or purchase any assets or accept services from a Non-Charging Related Company other than in the ordinary course of business and for proper value;
- (b) make any alteration to its business as a result of which the principal business of the Charging Group shall cease to be that of a financial intermediary;
- (c) sell or transfer whether by a single transaction or any series of transactions whether related or not the whole or any substantial part of the business of the Charging Group viewing such business as a single entity except to a Charging Group Member;
- (d) write up the value of any Asset in its books of account to a value in excess of a value acceptable to the Auditors without qualification;
- (e) change its name (including the name appearing on its Certificate of Incorporation or any name under which it trades in the ordinary course of its business) without first notifying the Supervisor of the new name not less than 15 days before the change is to take effect;
- (f) relocate its principal place of business outside New Zealand or change its place of incorporation;
- (g) allow any Charged Assets to become an Accession or a fixture to any property that is not Charged Assets (except in the ordinary course of its business); and
- (h) move any of its Charged Assets outside New Zealand, except for inventory sold or leased in the ordinary course of its business, provided that this exception shall not apply if the Supervisor has given it notice to the contrary.

4.2.3 Each Charging Group Member covenants with the Supervisor -

- (a) To permit the Supervisor, its agent, attorney or representative to attend any general meeting of the Charging Group Member and be heard on any business of the meeting which concerns the Supervisor or the Holders.
- (b) To give the Supervisor or a Receiver such oral or written information as they reasonably require relating to its business, property or affairs except that the Charging Group Member shall not be bound to disclose any trade secret, process or trade information which it is forbidden by contract or otherwise to disclose.

- (c) In accordance with the best current commercial practice to duly pay all its liabilities and comply with all other obligations lawfully binding on it.
- (d) To carry on and conduct its business in an efficient, prudent and business-like manner.
- (e) To forthwith give notice in writing to the Supervisor of any breach of Clause 4.1 and, as quickly as practicable, provide full details of the breach and the steps taken by the Charging Group Member to remedy such breach.
- (f) To comply with the prudential management guidelines adopted by the Directors from time to time in respect of the business of the Charging Group.
- (g) To observe and perform all the terms, covenants, conditions, agreements and other obligations contained or implied in any Prior Charge or in any grant, lease, tenancy or other contract affecting the Charged Assets or any part thereof and on its part to be observed and performed except to the extent to which the observance or performance thereof has been duly waived **AND** will also observe and perform the terms, covenants and conditions upon or subject to which any part of the Charged Assets may be held and will give notices and take all steps necessary to effect renewals of leases forming part of its land.
- (h) To use its voting powers in and representation on the board of directors of each Charging Subsidiary in such manner as to ensure full compliance and observance by each Charging Subsidiary at all times with the covenants, conditions, agreements and provisions of this Deed and in such manner also as to prevent any act or omission on the part of any Charging Subsidiary to comply with and perform the same or which would or might detrimentally affect the interests of the Holders.
- (i) If required by the Supervisor, it will promptly provide to the Supervisor written notice containing details of any present or after acquired serial numbered goods consisting of Motor Vehicle(s) and Aircraft (in each case, other than to the extent that (but only for so long as) such serial numbered goods are held by it as inventory) sufficient to enable the registration of a valid financing statement or financing change statement so as to perfect or maintain the perfection of the Supervisor's Security Interest in those serial numbered goods.
- (j) For the avoidance of doubt, where the purpose of the Stock Moneys is to provide a Charging Group Member with working capital, that purpose includes the acquisition of any personal property that is acquired by the relevant Charging Group Member in the ordinary course of its business and for the purpose of carrying on the same.
- (k) Each Borrower that is a non-bank deposit taker for the purposes of the NBDT Act must:

- (i) have a risk management programme that complies with the NBDT Act (**Risk Management Programme**);
- (ii) take all practicable steps to comply with the Risk Management Programme;
- (iii) submit the Risk Management Programme to the Supervisor for approval. If the Supervisor is not satisfied with the Risk Management Programme the Borrower must amend the Risk Management Programme and resubmit it to the Supervisor within a reasonable time specified by the Supervisor; and
- (iv) agrees that the Supervisor may require the Borrower to have the Risk Management Programme, or the manner in which it is being implemented or operated, reviewed and reported on at the cost of the Borrower, within any reasonable time period specified by the Supervisor.

4.2.4 Each Borrower who is an issuer of a regulated offer under the FMCA undertakes that, where it becomes aware of information on the basis of which it could reasonably form the opinion that the Borrower is, or is likely to become, insolvent, it will as soon as practicable:

- (a) disclose to the Supervisor all information relevant to that matter that is in the possession or under the control of any Borrower and that was obtained in the course of, or in connection with, the performance of its functions as Borrower; and
- (b) advise the Supervisor of the steps (if any) that the Borrower intends to take in respect of that matter and the date by which the steps are to be taken.

4.2.5 The Supervisor is entitled, in the performance of its obligations, to engage an expert (for example, an auditor, investigating account, valuer, or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:

- (a) determine the financial position of a Borrower; or
- (b) review the business, operation, or management systems, or the governance, of a Borrower,

in which case, that Borrower undertakes to:

- (c) provide reasonable assistance to the expert to allow the expert to provide the assistance under this Clause 4.2.5; and
- (d) pay all fees and expenses of the expert, in respect of the engagement in this Clause 4.2.5, which must be reasonable in the circumstances.



4.2.6 Despite anything to the contrary in the Second Schedule, each Borrower undertakes to call a meeting of Holders or any Class of Holders on the written request of:

- (a) the Supervisor; or
- (b) a Class of Holders that have a combined nominal value of no less than 5% of the nominal value of the Securities in that Class; or
- (c) a person who is authorised by this Deed or the FMC Regulations to call the meeting.

4.2.7 Each Borrower undertakes to ensure that the Supervisor:

- (a) is permitted to attend any meeting of Holders or Class of Holders; and
- (b) receives the notices and communications that any Holder or Class of Holders is entitled to receive in relation to a meeting of those Holders or Class of Holders; and
- (c) may be heard at any meeting of Holders or Class of Holders on any part of the business of the meeting that concerns the Supervisor's functions or the Holders or Class of Holders for whom the Supervisor is acting; and
- (d) may appoint the chairperson of any meeting of Holders or Class of Holders.

4.2.8 The Supervisor, Company and each of the Charging Subsidiaries (each in respect of itself only) agree that section 111(1) of the PPSA is hereby contracted out of in respect of particular Charged Assets to the extent, and with effect at such times and, then, only for so long as, the Supervisor is not the secured party with priority over all other secured parties in respect of those Charged Assets.

4.2.9 The Company and each of the Charging Subsidiaries (each in respect of itself only) agrees that nothing in sections 114(a), 133 and 134 of the PPSA shall apply to this Deed, or the Security Interests created by this Deed and, with the agreement of the Supervisor, hereby contracts out of such sections of the PPSA.

#### **4.3 Appointment of Auditor**

4.3.1 Each Borrower must, before recommending the appointment or reappointment of an Auditor of the Borrower:

- (a) consult with the Supervisor on such appointment or reappointment and the nature and scope of any assurance engagement in relation to the Borrower's compliance with this Deed;



- (b) ensure that any comments of the Supervisor concerning the proposed Auditor are brought to the attention of the persons appointing or reappointing the Auditor;
- (c) give the Supervisor an opportunity to be a party to the assurance engagement for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the Supervisor's powers or duties; and
- (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 Supervisor an opportunity to meet with the Auditor, without any representative of the Borrower 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 Supervisor's powers or duties; and
  - (ii) matters arising in the performance of the audit, review or engagement and to answer any questions the Supervisor may have concerning the audit, review or engagement.

#### **4.4 Resignation of Auditor**

- 4.4.1 Each Borrower must notify the Supervisor if the Auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditor for resigning its appointment or declining to accept appointment or reappointment. Each Borrower must not attempt to prevent a person who has resigned its appointment as Auditor, or declined to accept an appointment or reappointment as Auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.

#### **4.5 Copies of Documents**

- 4.5.1 Each Borrower must, in respect of each document required by or for the purposes of the FMCA in respect of the Securities:
  - (a) keep a copy of the document for a period of at least 7 years after the date on which the document comes into possession of the Borrower; and
  - (b) keep a document that is relevant to a person (A) available for inspection by A at the place at which the Borrower's records are kept between the hours of 9am and 5pm on each working day during the inspection period, or by a person authorised in writing by A for the purpose, who serves written notice of intention to inspect on the Borrower;

- (c) provide, on request and on payment of the relevant fee, to A a copy of, or an extract from, a document that is relevant to A (and must provide the copy or extract within 20 working days after receiving the request).

4.5.2 In clause 4.5.1:

- (a) a document is “relevant” to a person if the person has or had a right to access or obtain a copy of the document under the FMCA, the FMC Regulations, this Deed or the terms of the offer of Securities;
- (b) “inspection period” means the period commencing on the third working day after the day on which notice of intention to inspect is served on the Borrower by the person concerned and ending with the eighth working day after the day of service; and
- (c) “relevant fee” means a reasonable printing and administration fee set by the Borrower.

## 4.6 Reports to Supervisor

### 4.6.1 Monthly Reports

Each Borrower will, within 30 days of the end of each month, deliver to the Supervisor –

- (a) a report for that month that is a copy of the monthly management report prepared for the directors of the Borrower signed by two Directors, however the report does not need to contain particular information if the Supervisor has waived the requirement for the report to contain that kind of information; and
- (b) a report for that month that is signed by two Directors of the Borrower on:
  - (i) the capital of the Borrower;
  - (ii) the liquidity of the Borrower;
  - (iii) the asset quality of the Borrower (including arrears reports, and restructured, impaired, past due, and bad debts);
  - (iv) reinvestment rates; and
  - (v) any breach by any Charging Group Member of financial covenants in financing arrangements with third parties.

#### 4.6.2 Quarterly Reports

Each Borrower will within 45 days of the end of each quarter of each financial year deliver to the Supervisor a report signed by two Directors in a form agreed from time to time with the Supervisor.

#### 4.6.3 Half-yearly Reports

Each Borrower will furnish to the Supervisor within three months, after the end of each financial half-year of the Charging Group copies of:

- (a) the issuing group's financial statements (as defined in Section 6 of the Financial Reporting Act 2013) for that half-year; and
- (b) if requested by the Supervisor, the financial statements (as defined in Section 6 of the Financial Reporting Act 2013) for that half-year, of each or any Charging Group Member;

each duly signed by two Directors on behalf of the Borrower, together with all documents required by the Companies Act, FMCA or Financial Reporting Act 2013 to be annexed to or to accompany the same.

#### 4.6.4 Duty to audit or review half-yearly financial statements

Each Borrower must have the half-yearly financial statements of the issuing group audited by a qualified auditor, unless the Supervisor expressly waives this requirement. If the Supervisor waives the requirement for half-yearly audits, the Borrower must instead have the half-yearly financial statements of the issuing group reviewed by a qualified auditor.

#### 4.6.5 Annual Financial Statements

Each Borrower will furnish to the Supervisor within three months, after the end of each financial year of the Charging Group:

- (a) Copies of:
  - (i) the issuing group's audited annual financial statements (as defined in Section 6 of the Financial Reporting Act 2013) for that year; and
  - (ii) if requested by the Supervisor, the audited annual financial statements (as defined in Section 6 of the Financial Reporting Act 2013) for that year, of each or any Charging Group Member -

each duly signed by two Directors on behalf of the Borrower, together with all documents required by the Companies Act, FMCA or Financial Reporting Act 2013 to be annexed to or to accompany the same.

- (b) The Auditor's opinion on the annual financial statements.

#### **4.6.6 Auditor's Report to Supervisors**

Each Borrower will furnish to the Supervisor, within three months (or such further time as the Supervisor agrees) after the end of each financial year and financial half-year (as the case may be) a report by the Auditors to the Supervisor as of the dates to which the latest relevant financial statements under Clause 4.6.5(a) and the half-yearly financial statements under Clause 4.6.4 are prepared, in a form agreed from time to time between the Auditor and the Supervisor, and approved in writing by the Borrower.

#### **4.6.7 Special Reports**

The Company shall furnish to the Supervisor from time to time:

- (a) at the request of the Supervisor (where the Supervisor considers that special circumstances warrant such request and so certifies in writing to the Company):
  - (i) copies of the financial statements referred to in Clause 4.6.5(a) each duly audited and signed and made up, in the case of balance sheets, as at a date stipulated by the Supervisor (being not less than 21 nor more than 42 days after the request is made) and in the case of profit and loss accounts, covering the period from the end of the immediately preceding financial year to the date as at which the relevant balance sheet is made up; and
  - (ii) a statement by the Auditors in terms of Clause 4.6.6.
- (b) Copies of any balance sheet, profit and loss account and other material issued to the Holders, or to The New Zealand Stock Exchange.

#### **4.6.8 Requested Information**

- (a) If requested by the Supervisor (or a person authorised by the Supervisor to exercise its powers under this Clause 4.6.8), each Borrower must:
  - (i) make available to the Supervisor (or other authorised person) all documents and records relating to the Borrower;
  - (ii) provide the Supervisor (or other authorised person) any other reports or information required by the Supervisor (or other authorised person); and
  - (iii) use reasonable endeavours to provide the Supervisor with access to such employees and board members of the Borrower as the Supervisor reasonably requires.



- (b) Reports or information required under Clause 4.6.8(a) may:
  - (i) be about any matter relevant to the performance of the Supervisor's functions; and
  - (ii) include forward-looking reports.
- (c) The reports or information requested by the Supervisor under this Clause 4.6.8 must be provided within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor.

#### **4.6.9 Notification**

Each Borrower that is a non-bank deposit taker for the purposes of the NBDT Act will furnish to the Supervisor a report signed by two Directors to advise the Supervisor, in advance or as soon as it is known, of:

- (a) every transaction that would require the consent of the Reserve Bank under section 43 of the NBDT Act (Bank's consent for change of ownership); and
- (b) every change of directors and senior managers of the Borrower and, at the same time as provided pursuant to the NBDT Act, a copy of the relevant suitability notice provided relating to such change; and
- (c) (at the same time as notified pursuant to the NBDT Act), any notification of suitability concerns relating to a director or senior manager of a Borrower.

#### **4.6.10 Major transactions**

Each Borrower will furnish to the Supervisor a report signed by two Directors to advise the Supervisor, in advance, of any major transactions (as defined in the Companies Act), or of any related series of transactions that have the effect of a major transaction, entered into or to be entered into by the Borrower.

## SECTION 5

### DEFAULT EVENTS AND ENFORCEMENT

#### 5.     **DEFAULT EVENTS AND ENFORCEMENT**

##### 5.1    **Default Events**

5.1.1 The security constituted by this Deed shall become enforceable on the happening of any one of the following events:

- (a)    (i)     If default is made in payment on due date of any Principal of a Security or for fourteen days in the payment of any interest thereon, or
- (ii)    If default is made in payment of any other moneys payable under this Deed for fourteen days after demand therefor in writing;
- (b)    If the Company without the prior written consent of the Supervisor pays any dividend while any Principal or interest which has become due and payable in respect of the Securities remains unpaid as a result of the default of a Charging Group Member;
- (c)    If an order is made or resolution passed for winding up or dissolution without winding up of a Charging Group Member other than -
  - (i)     for the purposes of a reconstruction or amalgamation the terms of which have been previously approved by the Supervisor; or
  - (ii)    where the relevant Charging Group Member is at the date of winding up solvent, its assets are to be distributed in specie to another Charging Group Member;
- (d)    If a receiver is appointed of, or an encumbrancer takes possession of, or exercises power of sale in respect of, any Asset;
- (e)    If a distress or execution of an amount exceeding one percent (1%) of Shareholders Funds, is levied, enforced upon or sued out against any Asset and is not being contested in good faith by proper proceedings;
- (f)    If a Charging Group Member, in the opinion of the Supervisor and without its consent in writing, ceases or threatens to cease to carry on business;
- (g)    If a Charging Group Member without the consent of the Supervisor sells the whole or a major part of its Assets other than to another Charging Group Member;

- (h) If a Charging Group Member shall create or permit to subsist any Charge over its Assets in breach of this Deed, or makes default under any Prior Charge as a result of which the chargeholder takes any step to enforce that Prior Charge;
- (i) If any Charging Group Member is unable to pay its debts within the meaning of Section 287 of the Companies Act;
- (j) If any Charging Group Member shall reduce or attempt to reduce its paid up share capital without the consent in writing of the Supervisor;
- (k) If an inspector is appointed to investigate the records of a Charging Group Member pursuant to section 179 of the Companies Act or pursuant to the Corporations (Investigation and Management) Act 1989;
- (l) If a Charging Group Member, without the consent in writing of the Supervisor, enters into any arrangement or composition with creditors generally;
- (m) If a Charging Group Member requests the Supervisor to appoint a receiver of the whole of its undertaking and assets;
- (n) If any default of a Charging Group Member shall occur under this Deed, other than a default specifically referred to in any other paragraph of this Clause, and continue for more than fourteen days after receipt by the Company of notice from the Supervisor specifying the default and requiring the same to be remedied;

**PROVIDED ALWAYS** that the Supervisor may at any time upon the happening of any Event of Default by notice in writing to the Company convert the floating charges hereby created into fixed charges.

5.1.2 Notwithstanding the provisions of Clause 5.1.1 the security by this Deed constituted shall not become enforceable on the happening of any of the following events namely:

- (a) if the aggregate of Shareholders Funds and Uncalled Capital fall below the amount from time to time stipulated pursuant to Clause 4.1.1(a) by reason only of a revaluation or devaluation of the New Zealand currency or any other currency in which any Security is repayable, or
- (b) the failure by the Company to deliver to the Supervisor a resolution of the Directors in the form required by any Quarterly Report under Clause 4.6.2, or
- (c) if any other event occurs and the Supervisor determines that such event is immaterial to the interests of Holders generally;



unless in the opinion of the Supervisor the interests of Holders would be materially prejudiced or unless the Supervisor shall be requested in writing to do so by a Majority of Stockholders or upon being directed so to do by a Special Resolution **AND IT IS HEREBY EXPRESSLY DECLARED** that on the happening of any such event as aforesaid the Supervisor shall not be under any obligation to inform any Holder of such happening or to convene a meeting of Holders unless in the opinion of the Supervisor the interests of the Holders would be materially prejudiced by the happening of any such event.

## 5.2 Enforcement

5.2.1 Subject to Clause 5.1.2, at any time after the happening of an Event of Default the Supervisor may in its discretion and, upon the request in writing of any Major Security Stockholder or of the holder or holders of at least one fifth part in nominal amount of the Stock, or upon being directed to do so by a Special Resolution, shall do any one or more of the following:

- (a) Declare the whole of the Money Market Secured Deposit Moneys, the Stock Moneys or the Note Moneys to have become immediately due and payable whereupon the Money Market Secured Deposit Moneys, the Stock Moneys or the Note Moneys (as the case may be) shall forthwith become immediately due and payable;
- (b) Enter upon or take possession of the Charged Assets;
- (c) With or without taking possession sell (together or in parts) call in, collect and convert the Charged Assets into money on such terms and for such consideration payable in such manner as the Supervisor thinks fits and upon any such sale the Supervisor may sell by public auction or private contract and may buy in, rescind or vary any contract of sale and may re-sell without being responsible for any loss occasioned thereby; and
- (d) Collect any unpaid capital and call up and collect any Uncalled Capital and the Directors shall exercise the powers conferred upon them by the constitutions of the relevant Charging Group Member at the direction and under the control of the Supervisor;

**AND** the Supervisor may compromise and effect compositions and for any purposes aforesaid, may execute and do all such assurances and things as the Supervisor may think fit.

5.2.2 The powers conferred by Clause 5.2.1 shall be exercisable by the Supervisor without notice to the Company but before exercising any such power (the “enforcement powers”) or calling up the Moneys the Supervisor shall, unless in its opinion delay would prejudice the interests of the Holders generally, or, in its opinion, the Event of Default is not remediable within seven days, give written notice of its intention to the Company and shall not call up the Moneys or exercise an enforcement power for seven days after such notice is given nor thereafter if within



that seven days period the relevant default is remedied or the Supervisor notifies the Company that, in the opinion of the Supervisor, the relevant default no longer detrimentally affects the security created by this Deed **PROVIDED HOWEVER** that if the Supervisor has appointed a Receiver then subject to sections 119 or 128 of the Property Law Act 2007, no further notice shall be required before exercising an enforcement power.

- 5.2.3 After entry into possession as aforesaid and until the whole of the Charged Assets have been sold, called in, collected and converted under the enforcement powers the Supervisor may, if it thinks fit so to do, carry on any business with the Charged Assets and may manage the same in such manner as it thinks fit and for that purpose may employ such persons upon such terms as it thinks proper, effect repairs and renewals, acquire by purchase, lease or otherwise any further property or rights (which upon acquisition shall be deemed to be part of the Charged Assets) and generally and without restriction enter into such arrangements, contractual or otherwise, respecting the Charged Assets as it could do if it were absolutely entitled thereto and without being responsible for any loss or damage occasioned thereby and the Supervisor shall pay and discharge the expenses of the business out of the revenue in the manner herein provided in Clause 5.2.11. For any such purposes the Supervisor may advance, borrow or raise money on the security of the Charged Assets in priority to the Moneys on such terms as the Supervisor may think fit.
- 5.2.4 On and at any time after the Date of Enforcement the Supervisor, in its discretion, may, and upon request in writing of any Majority Security Stockholder or of the holder or holders of at least one fifth part in nominal amount of the Stock or upon being directed to do so by an Special Resolution, shall appoint a Receiver of the Charged Assets with power to remove such Receiver and in such case or on retirement or death to appoint another in his place. A Receiver may be appointed before or after exercise of an enforcement power.
- 5.2.5
- (a) A Receiver shall, unless otherwise directed by the Supervisor have all the powers, authorities and discretion vested in the Supervisor by this Deed including in particular the powers set out in Clauses 5.2.1 and 5.2.3 and the power to delegate.
  - (b) In the exercise of his powers, authorities and discretions a Receiver shall comply with any lawful and proper directions given by the Supervisor.
  - (c) The Supervisor may fix the remuneration of such Receiver and direct payment thereof out of the Charged Assets but the Charging Group shall be primarily liable for such payment.
  - (d) The Supervisor may (but shall not be bound to) require any Receiver to give security for the performance of his duties.

- (e) Unless otherwise directed by the Supervisor all moneys received by a Receiver shall be paid over to the Supervisor to be held by it on the trusts of Clause 5.2.11.
  - (f) The Supervisor may pay to a Receiver to be applied for the purposes hereof any moneys arising from the Charged Assets and may determine what funds the Receiver may retain.
  - (g) A Receiver may with the prior consent of the Supervisor for the purposes of paying or discharging any Charge or carrying on the business of a Charging Group Member of defraying any expenses (including his remuneration) incurred by him in the exercise of his powers, authorities and discretions or for any other purposes hereof raise and borrow money on the security of the Charged Assets in priority to the Moneys and the security hereby constituted or otherwise on such terms as he thinks fit and no Person shall be concerned to enquire as to the propriety or purpose of the exercise of this power or to see the application of moneys so raised or borrowed and the Receiver may concur in redeeming the Charged Assets from any Charge and for those purposes may execute and do all such assurances and things as he shall think fit.
  - (h) Every Receiver shall be the Agent of each Charging Group Member and the Charging Group alone shall be responsible for his action and, subject to (c) above, his remuneration and neither the Supervisor, nor the Holders shall incur any liability therefor or in respect thereof by reason of their making or consenting to his appointment.
  - (i) The above powers shall be in addition to and not in substitution for the rights and powers conferred upon receivers and mortgagees by law.
- 5.2.6 In addition to the powers hereunder given the Supervisor may without any notice to any Charging Group Member enter into possession of and hold, or appoint a Receiver to take possession of and hold, any Charged Asset which may at any time appear to it to be in danger of being taken under any process of law by any creditor of the Charging Group or to be otherwise in jeopardy and the Supervisor may give up possession or withdraw the receivership and, when a Receiver is appointed under this Clause, the provisions of Clauses 5.2.4 and 5.2.5 hereof shall apply mutatis mutandis.
- 5.2.7 The Supervisor shall not nor shall any Receiver be liable by reason of any entry into possession to account as mortgagee in possession or for anything except actual receipt or be liable for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.
- 5.2.8 No person dealing with the Supervisor or any Receiver or their agents shall be concerned to enquire whether the security hereby constituted has become enforceable or whether any power exercised (or purported to be exercised) has become exercisable or whether any moneys remain owing under this Deed or as to the necessity or expediency of the conditions of

any sale made or otherwise as to the propriety or regularity of any exercise of the enforcement powers or to see the application of any moneys paid to the Supervisor or any Receiver and, in the absence of fraud on the part of such person, such dealing shall be deemed, so far as regards the safety and protection of such person, to be authorised hereby and to be valid and effectual accordingly and the remedy of the Charging Group in respect of any irregularity or impropriety whatsoever in the exercise of such powers shall be in damages only.

- 5.2.9 Upon any sale, calling in, collection or conversion or any other dealing or transaction under this Deed the receipt of the Supervisor or the Receiver for any moneys shall effectually discharge the payer and from being concerned to see to the application or being answerable for the loss or misapplication thereof.
- 5.2.10 The Supervisor may, upon such terms as it thinks fit, join in exercising its powers hereunder with any other Person.
- 5.2.11 Subject to Clause 5.2.12, all moneys received by the Supervisor or any Receiver on and after the Date of Enforcement shall (subject to payment or provision thereof of or for any Prior Charges or any debts or liabilities having priority to the Stock Moneys and the Note Moneys) be held and applied:
- (a) First (subject to any direction made by any Court) in payment or retention of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor or any Receiver under this Deed or any collateral security and of all remuneration payable to the Supervisor or any Receiver hereunder with interest thereon as herein provided;
  - (b) Secondly in or towards payment to the First Ranking Stockholders *pari passu* in proportion to the amounts actually or contingently owing to them and in the respective currencies in which the Stock is payable of the Principal Moneys in respect of the First Ranking Stock (whenever issued) held by them and interest thereon **PROVIDED ALWAYS**
    - (i) the interest payment to each Holder of First Ranking Security Stock shall be limited to the extent provided in Clause 2.2;
    - (ii) before making any such payment as aforesaid the Supervisor shall in the case of each Holder of First Ranking Security Stock set aside a sum (or the proper proportion thereof in the event of the amount available for distribution and application as aforesaid in respect of the amounts owing to the First Ranking Stockholders respectively as aforesaid being less than one hundred (100) cents in the dollar) which is sufficient to meet any liabilities included in the Principal Moneys of such Stock which are not presently payable or are payable only upon a contingency for which purpose the Holder of the relevant Security Stock shall make a reasonable estimate of any liability which is indeterminate as to amount **AND** the Supervisor shall apply the sum to set aside in or towards



payment of such liabilities (or such proportion thereof as aforesaid) as and when the same become payable together with outstanding interest thereon up to the date of payment in the manner (if any) provided in the Stock Certificate;

- (iii) at three-monthly intervals the amount (if any) by which the sum set aside pursuant to paragraph (ii) above exceeds the relevant liabilities (or such proportion thereof as aforesaid) then outstanding shall become available for distribution and payment as otherwise provided in this Clause;
- (c) Thirdly, in or towards payment of the Second Ranking Stockholders *pari passu* in proportion to the amounts owing to them and in the respective currencies in which the Stock is payable of the Principal Moneys in respect of the Second Ranking Stock (whenever issued) held by them and interest thereon **PROVIDED ALWAYS** that:
  - (i) the interest payable to each holder of Second Ranking Security Stock shall be limited to the extent provided in Clause 2.2;
  - (ii) before making any such payment as aforesaid the Supervisor shall in the case of each Holder of Second Ranking Security Stock set aside a sum (or the proper proportion thereof in the event of the amount available for distribution and application as aforesaid in respect of the amounts owing to the Second Ranking Stockholders respectively as aforesaid being less than one hundred (100) cents in the dollar) which is sufficient to meet any liabilities included in the Principal Moneys of such Stock which are not presently payable or are payable only upon a contingency for which purpose the holder of the relevant Security Stock shall make a reasonable estimate of any liability which is indeterminate as to amount **AND** the Supervisor shall apply the sum so set aside in or towards payment of such liabilities (or such proportion thereof as aforesaid) as and when the same become payable together with outstanding interest thereon up to the date of payment in the manner (if any) provided in the Stock Certificate.
  - (iii) at three-monthly intervals the amount (if any) by which the sum set aside pursuant to paragraph (ii) above exceeds the relevant liabilities (or such proportion thereof as aforesaid) then outstanding shall become available for distribution and payment as otherwise provided in this Clause;
- (d) Fourthly, subject to the rights of any subsequent encumbrancers in payment of any surplus in or towards the payment to Noteholders *pari passu* in accordance with their respective entitlements to the Note Moneys and to the Money Market Secured Depositholders *pari passu* in accordance with their respective entitlements to the Money Market Secured Deposit *Pari Passu* Amount and to any other unsecured creditors of the Charging Group, or to a liquidator (if any) of the Charging Group



or to the Charging Group or to such other person or persons as the High Court of New Zealand on the application of the Supervisor shall direct.

- 5.2.12 If the Supervisor considers it expedient in the interests of Holders, payment of Principal may be made before interest or the whole of interest has been paid but such alteration in the order of payment shall not prejudice the right of Holders to receive the whole amount to which they would have been entitled if the ordinary order of payment had been observed or any less amount which the sum ultimately realised from the security would be sufficient to pay.
- 5.2.13 The Supervisor shall give at least fourteen days notice to the Holders of the day, place and time fixed for any payment to them under Clause 5.2.12 and, after the day so fixed, the Holders shall be entitled to interest on the balance (if any) of the Principal owing on the Securities (or in the case of Security Stock and Variable Notes on the actual balance secured or evidenced thereby) after deducting the amount (if any) payable in respect thereof on the day so fixed.
- 5.2.14 Upon any payment under Clause 5.2.11 the Certificate of the relevant Securities shall be produced to and endorsed by the Supervisor with details of the payment but the Supervisor may in any particular case dispense with such production or endorsement upon satisfactory indemnity being given.
- 5.2.15 If the amount of the moneys at any time applicable under Clause 5.2.11 is less than ten percent (10%) of the Principal of the Securities the Supervisor may invest those moneys in any investment authorised by this Deed and such investments and the income thereof may be accumulated until they and any other moneys under the control of the Supervisor and applicable for the purpose are sufficient to pay ten percent (10%) of the Moneys.
- 5.2.16 In the event that the Supervisor enforces the security constituted by this Deed, then any person who has made application to any Borrower for Securities and whose application moneys have been received by that Borrower, but who at the Date of Enforcement, has not become the Holder of those Securities, shall be deemed to be the Holder of the Securities applied for from the date such application moneys were received by the Borrower with the benefit of and subject to the provisions of this Deed as though he had been entered as the Holder in the appropriate Register of Securities on the date on which the Borrower received the application money except that in the case of a person who has applied for a Money Market Secured Deposit, he shall be deemed to be the holder of the Prior Charge to be given in respect of the Asset which was intended to become a Specifically Charged Asset (if any) and shall not have the benefit of the charge created by this Deed.

## SECTION 6

### SUPERVISOR

#### 6. SUPERVISOR

##### 6.1 Appointment of Supervisor

6.1.1 The parties acknowledge that each Borrower has appointed the Supervisor, and the Supervisor accepted appointment, as supervisor for the Holders and trustee for the Securities on the terms and conditions contained in this Deed.

##### 6.2 Benefit of Holders

6.2.1 The Supervisor holds the following for the benefit of the Holders:

- (a) the right to enforce each Borrower's duty to repay the Principal Moneys for the time being and from time to time outstanding under the Securities issued by it and interest thereon in accordance with Clause 2.8.1; and
- (b) the Charge and Security Interest granted under this Deed and the enforcement of that Security Interest in accordance with Clause 5.2; and
- (c) the right to enforce any other duties that any Borrower or Charging Group Member and any other person has under:
  - (i) the terms of the Securities; and
  - (ii) the provisions of this Deed, the FMCA or the FMC Regulations in relation to the Securities.

##### 6.3 Enforcement of Holder's rights

6.3.1 The Supervisor holds its rights and benefits under this Trust Deed for, and for the benefit of, the Holders. No Holder shall be entitled to enforce any of its rights or remedies under this Deed directly against a Borrower or any Charging Subsidiary unless the Supervisor fails to enforce such rights or remedies within a reasonable period after having become bound to do so in accordance with this Trust Deed.

##### 6.4 Remuneration of Supervisor

6.4.1 The Company shall pay to the Supervisor by way of remuneration for its services hereunder:

- (a) an acceptance fee of such amount as shall have been agreed between the Company and the Supervisor in writing prior to execution of this Deed;
- (b) on each anniversary of the Commencement Date such annual fee as shall be agreed in writing; and
- (c) such additional fees for convening and attending meeting of Holders as shall be agreed;

**PROVIDED ALWAYS THAT**

- (aa) the Supervisor may elect payment of remuneration determined by and commensurate with work actually required to be carried out by the Supervisor hereunder in lieu of the above fees;
  - (bb) any failure to agree on any of the above amounts payable to the Supervisor shall be referred to arbitration under the Arbitration Act 1996.
- 6.4.2 In addition to the above fee and remuneration the Supervisor may charge commission at the rate from time to time usually charged by the Supervisor on moneys actually received by the Supervisor hereunder after the Date of Enforcement.
- 6.4.3 The Company will also pay all expenses (including travelling expenses) reasonably incurred by or on behalf of the Supervisor in connection with the preparation, execution and registration of this Deed and of any deed collateral or supplemental hereto, the exercise of any power or execution of any trust conferred on the Supervisor hereunder including the taking of any expert advice deemed necessary by the Supervisor and in relation to any default by a Charging Group Member under this Deed or any security collateral hereto.
- 6.4.4 Remuneration shall be payable until the trusts hereof are finally wound up and whether or not a Receiver has been appointed or the trusts hereof are in the course of administration by or under the direction of any Court.
- 6.4.5 All expenses incurred by, payments made in the lawful exercise of the powers hereby conferred on and remuneration and fees payable to, the Supervisor or any Receiver shall be payable on demand and shall be a charge on the Charged Assets and form part of the Moneys and until payment shall carry interest at the highest rate per annum for the time being payable on any Security.
- 6.4.6 The Company will also pay on demand all reasonable charges made by the Supervisor for work done by it in connection with any application under the trusts hereof for its consent to or approval of any acts or matter.



## 6.5 **Incidental Provisions relating to Supervisor**

- 6.5.1 Any moneys subject to the trusts hereof may, at the discretion of the Supervisor, be invested in the name of the Supervisor or its nominee in any investments whatsoever or if the Company so requests, in the purchase of Securities with power to vary or transpose such investment for others of a like nature and deal with or dispose thereof and all income from such investments shall belong to the Company.
- 6.5.2 The Supervisor may, on or at any time after the Date of Enforcement apply to the Court for an order that the powers and trusts hereof be exercised under the direction of the Court and for the appointment of a Receiver of the Charged Assets and for any other order or direction in relation to the execution and administration of the powers and trusts hereof as the Supervisor deems expedient and may assent to, approve of or oppose any application to the Court made by any Holder and shall be indemnified by the Company against all expenses incurred in relation to any such application or proceedings.
- 6.5.3 In addition and independent of the provisions of Clause 6.5.2, the Supervisor may apply for an order under section 208 of the FMCA on the basis set out in section 207 of that Act.
- 6.5.4 By way of supplement to the law relating to supervisors and to facilitate the discharge of its duties hereunder, but subject always to the provisions of the FMCA it is expressly declared that the Supervisor:
- (a) May, without liability for loss, obtain and act in reliance on:
    - (i) the opinion of or any information obtained from any barrister, solicitor, valuer, stockbroker, surveyor, auctioneer, chartered accountant or other expert;
    - (ii) a certificate signed by any two Directors that any particular transaction or thing is expedient or commercially desirable and not detrimental to the interests of the Holders or as to any matter *prima facie* within their knowledge or as sufficient evidence of such matter or the expediency or desirability of such transaction or thing;
    - (iii) the statements contained in any certificate or report given pursuant to this Deed as conclusive evidence of the facts stated therein;
  - (b) Shall not be responsible for relying upon any resolution purported to have been passed at any meeting of the Holders and which the Supervisor believes to have been properly passed even though it appears that such resolution is not valid by reason of a defect in the convening of the meeting or the proceedings thereat or otherwise.



- (c) Shall not be responsible for the money subscribed by subscribers of the Securities or be bound to see to the application hereof.
  - (d) Shall not be bound or concerned to enquire into or be liable for any defects in the title of the Charging Group to the Charged Assets whether such defect might have been discovered upon enquiry and remedied or not.
  - (e) Shall, notwithstanding any other provision of this Deed, exercise reasonable diligence to ascertain whether or not the Charging Group has committed any breach of this Deed or of the conditions of issue of any Security.
  - (f) Shall, save as otherwise provided in this Deed, have absolute discretion as to the exercise of all trusts and powers vested in it hereby and as to the conduct of any action proceedings or claim and, provided it shall have acted with reasonable care and diligence, shall not be responsible for any loss that may result.
  - (g) Shall not be liable to the Charging Group, or any Holder for accepting as valid, any Certificate subsequently found to be forged or not authentic.
- 6.5.5 Without prejudice to the right of indemnity by law given to trustees or supervisors, the Supervisor and every Receiver, attorney manager, agent or other Person appointed by the Supervisor hereunder shall be indemnified out of the Charged Assets for all liabilities and expenses incurred in the exercise or execution of the powers or trusts hereof and against all actions, costs, claims and demands in respect of any matter or thing done or omitted relating hereto other than a claim arising out of a wilful or grossly negligent default and the Supervisor may retain and pay out of any moneys received under this Deed all sums necessary to effect such indemnity and also the remuneration and disbursements of the Supervisor as herein provided.
- 6.5.6 Each right of the Supervisor to be indemnified or relieved, exempt, or excused from liability (whether before or after the liability arises) is set out in this Deed and is only available in relation to the proper performance of the Supervisor's duties under sections 112(1) and 113 of the FMCA. All provisions of this Deed shall be interpreted subject to this Clause 6.5.6.
- 6.5.7 Nothing in this Deed shall prohibit the Supervisor, its holding company or any of their subsidiaries (hereinafter in this Clause collectively called "the Supervisor") their directors or officers from being a Holder or shareholder of a Charging Group Member or from acting in any representative capacity of a Holder or shareholder. The Supervisor may enter into any transactions with the Charging Group in the ordinary course of the business and shall not be accountable to the Charging Group or the Holders for any profits arising from such transactions.

- 6.5.8 The Supervisor may of its own volition or pursuant to any direction by Holders represent the Holders generally in any transaction or proceedings concerning them generally.

## **6.6 Retirement/Removal of Supervisor**

- 6.6.1 The Supervisor may retire at any time without assigning any reason upon giving at least thirty days notice in writing to the Company subject to compliance with Clause 6.6.3 and shall transfer to such substitute supervisor the securities collateral herewith and the moneys and investments held by the Supervisor hereunder.

- 6.6.2 The Supervisor may be removed as supervisor, subject to compliance with Clause 6.6.3, if:

- (a) it is removed by the FMA or a Borrower under Part 2 of the Financial Markets Supervisors Act 2011; or
- (b) is removed by a Special Resolution of the Holders; or
- (c) is removed or resigns in accordance with this Deed.

- 6.6.3 The Supervisor may not:

- (a) be removed or resign under Clause 6.6.2(b) or 6.6.2(c) unless:
  - (i) all functions and duties of the position have been performed; or
  - (ii) another licensed supervisor has been appointed, and accepted the appointment, in its place in accordance with Clause 6.7; or
  - (iii) the Court consents.
- (b) (despite anything in this Deed) be removed by a Borrower under Clause 6.6.2(c) without the FMA's consent.

## **6.7 Appointment of New Supervisor**

- 6.7.1 The power of appointing a new supervisor hereof shall be vested in the Company but no new supervisor shall be appointed unless first approved by a Special Resolution. Upon any proposed vacancy in the office of Supervisor the Company shall promptly call a meeting of Holders for the purpose of approving the appointment of a new Supervisor and if approval is given the Company shall exercise its power of appointment.

- 6.7.2 If within thirty days of receiving notice of the Supervisor's intention to retire the Company fails to call a meeting of the Holders as aforesaid or to

appoint a new supervisor then the Holders may by Special Resolution exercise such power to the exclusion of the Company.

- 6.7.3 Within 5 working days after a change to the Supervisor, each Borrower must ensure that notice of the change is lodged with the Registrar.

## 6.8 **Supervisor Powers**

- 6.8.1 The Supervisor is responsible for the following functions:

- (a) acting on behalf of the Holders of the Securities in relation to:
  - (i) each Borrower; and
  - (ii) any matter connected with this Deed or the terms of a regulated offer of Securities; and
  - (iii) any contravention or alleged contravention of the Borrower's Issuer Obligations; and
- (b) supervising each Borrower's performance:
  - (i) of its Issuer Obligations; and
  - (ii) in order to ascertain whether the assets of the Borrower and of each Charging Group Member 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 Securities as they become due; and
- (c) performing or exercising any other functions, duties and powers conferred or imposed on the Supervisor by or under the FMCA, the FMC Regulations, the Financial Markets Supervisors Act 2011 or this Deed.

- 6.8.2 The Supervisor must not delegate any of its functions under Clause 6.8.1 (except as expressly permitted by the FMCA or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011).

## 6.9 **Supervisor's general powers and duties**

- 6.9.1 The Supervisor must:

- (a) act honestly in acting as a supervisor; and
- (b) in exercising its powers and performing its duties as a supervisor, act in the best interests of the Holders; and

- (c) exercise reasonable diligence in carrying out its functions as a supervisor; and
- (d) do all things it has the power to do to cause any contravention referred to in Clause 6.8.1(a)(iii) or section 111(1)(a)(iii) of the FMCA to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on the Holders); and
- (e) subject to any order of the Court made under section 210 of the FMCA, act in accordance with any direction given by a Special Resolution of the Holders that is not inconsistent with any enactment, rule of law, or this Deed in relation to:
  - (i) seeking a remedy to a contravention referred to in Clause 6.8.1(a)(iii) or section 111(1)(a)(iii) of the FMCA; and
  - (ii) any other matter connected with the Supervisor's functions.

6.9.2 The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Holders.

6.9.3 The powers, authorities and discretions hereby conferred upon the Supervisor shall be in addition to any powers, authorities and discretions which may from time to time be vested in trustees by law and to any powers, authorities and discretions which may from time to time be vested in the Supervisor as the holder of any Securities.

#### **6.10 Exercise of Supervisor's powers**

6.10.1 The Supervisor must, in exercising its powers and performing its duties as a Supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor under the Financial Markets Supervisors Act 2011 would exercise in the same circumstances.

#### **6.11 Compliance with Request and Indemnity**

6.11.1 The Supervisor shall be indemnified against all actions, proceedings, claims and demands and all costs, charges, and expenses which it may incur by complying with a request or direction pursuant to Clauses 5.2.1 or 5.2.4 or Clause 1.3 of the Second Schedule.



## SECTION 7

### MISCELLANEOUS PROVISIONS

#### 7. MISCELLANEOUS PROVISIONS

##### 7.1 Modification of Trust Deed

7.1.1 Except as provided in Clause 7.1.2, section 109 of the FMCA or sections 22(7) or 37(6) of the Financial Markets Supervisors Act 2011 or any other power to amend or replace the Trust Deed under any enactment, the Company may not cancel, vary, amend or replace any provision of this Deed while any Securities are outstanding.

7.1.2 Subject to any direction given under Clause 6.9.1(e), an amendment or replacement of any provision of the Trust Deed under this Clause 7.1.2 requires the consent of the Supervisor, which must not be given unless:

- (a) either:
  - (i) the amendment or replacement is approved by, or is contingent on approval by, Special Resolution of each Class of Holders that is or may be adversely affected by the amendment or replacement; or
  - (ii) the Supervisor is satisfied that the amendment does not have a material adverse effect on the Holders; and
- (b) the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that the Trust Deed, as amended or replaced, will comply with sections 104 to 106 of the FMCA on the basis set out in the certificate.

Any deed supplemental to this Deed evidencing any such modification shall, if executed by the Company, bind the Charging Subsidiaries also.

7.1.3 Within 5 working days after an amendment to or replacement of this Deed, the Borrowers must ensure that notice of the amendment or replacement, and a copy of the certificate (if any) for the amendment or replacement is lodged with the Registrar.

##### 7.2 Waiver

7.2.1 Subject to clause 7.1 (if applicable) and any direction or request given by the relevant Holders, or pursuant to Clauses 5.2.1 or 5.2.4, and provided the Supervisor is satisfied that the general interests of the relevant Holders will not be materially prejudiced thereby, the Supervisor may at any time and from time to time by notice in writing to the Company waive either wholly or in part, for a specified period or indefinitely and on such other

terms and conditions as it deems expedient any breach or anticipated breach by one or more Charging Group Members of any of the provisions of this Deed and no such waiver shall in any way prejudice the rights of the Supervisor or the Holders in respect of any other breach.

### 7.3 Notices

7.3.1 Any notice, demand or request under this Deed may be signed by or on behalf of a Charging Group Member, the Supervisor or any Holders by an officer, employee, agent, attorney or solicitor thereof and may be given:

- (a) to holders of Bearer Securities in accordance with Clause 7.3.2 and to other Holders by prepaid letter addressed at their Registered Address or in the case of a notice to a Corporation (including the Company) or the Supervisor at its registered office or principal place of business. In proving the giving of such notice it shall be sufficient to prove that the person signing has signed for or on behalf of the person giving the notice and that the envelope containing the notice was properly addressed, stamped and despatched in the ordinary course of post and the notice shall be deemed to be served on the day following the day of posting. In the case of joint holders a notice given to the Holder or whose name stands first in the Register shall be sufficient; and
- (b) by one party to this Deed to any other party to this Deed (unless that other party has by fifteen days written notice specified another address) by making or delivering it to that other party at the address shown below and shall be deemed to have been delivered when received, in the case of delivery, when despatched, in the case of any communication made by telex or, in the case of any communication made by letter, the second day following the day of posting.

If to a Charging Group Member to that member at its registered office for the time being;

If to the Supervisor to:

The Manager  
Governance and Investor Oversight  
Trustees Executors Limited  
Level 7  
51 Shortland Street  
PO BOX 4197  
**AUCKLAND 1140**

or such other address as the Supervisor may notify to the Company.

7.3.2 Any notice may, subject to any applicable conditions of issue, be given by a Charging Group Member to any holder of Bearer Securities as follows:

- (i) If the Charging Group Member is aware of the name and address of the Holder then by notice as provided in paragraph (a) above; or

- (ii) If the Charging Group Member is not aware of the name and address of the Holder then by advertising the same once at least in daily newspapers having general circulation in Auckland, Wellington, Christchurch, Dunedin and any notice so advertised shall be deemed to be given on the day following that on which the last of such advertisements appears.

#### **7.4 Registration of Deed**

The Company shall at its own cost register this Deed pursuant to the Companies Act and the FMCA and pay all stamp duty, registration fees and other expenditure incidental thereto.

#### **7.5 Release of Deed**

Upon proof to the reasonable satisfaction of the Supervisor that all Moneys have been paid or satisfied or that provision for such payment or satisfaction has been made in accordance with this Deed and all other moneys payable hereunder have been so paid, satisfied or provided for, the Supervisor shall, at the request and cost of the Company release or transfer to the Charging Group the Charged Assets free and discharged from the Charges created by or pursuant to this Deed.

#### **7.6 General Covenant**

The Charging Group Members hereby covenant with the Supervisor to observe and perform duly and punctually all the obligations imposed on them by this Deed or by the conditions of issue of any Security.

#### **7.7 Invalidity**

If any provision of this Deed shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

#### **7.8 Inconsistency with Law**

To the extent any provision of this Deed contravenes, or is inconsistent with, the NBDT Act, the FMCA, the FMC Regulations or any term implied into this Trust Deed by law, that provision shall have no effect to the extent of that contravention or inconsistency.

### 7.9 Meetings of Holders

The frequency of, the procedure for convening and holding, the business to be conducted at, and the voting rights at meetings of Holders is set out in the Second Schedule of this Deed and Schedule 11 of the FMC Regulations is disapplied to the extent permissible by law.

**IN WITNESS** whereof these presents have been executed the day and year first hereinbefore written.



## FIRST SCHEDULE

### CONDITIONS IMPLIED IN SECURITY CERTIFICATES

1. The Principal Moneys and interest payable in respect of the Securities comprised in the Certificate will be paid on the date or dates fixed by the Borrower in respect of the Securities, or on such earlier date as the security constituted by the Trust Deed shall become enforceable and the Supervisor determines or becomes bound to enforce the same.
2. Every Holder shall as a condition precedent to receiving payment of the amount of the Securities comprised in his Certificate including premium (if any) produce such Certificate to the Borrower or in the case of contemplated payment by the Supervisor produce it to the Supervisor **PROVIDED ALWAYS** that this Condition shall not preclude payment by the Borrower or by the Supervisor with the consent of the Borrower without production of such Certificate if the Borrower or the Supervisor so elects **AND** upon payment in part the Certificate shall be endorsed accordingly and returned to the Holder and upon payment in full the Certificate shall be deemed to have been cancelled and surrendered to the Borrower **AND PROVIDED FURTHER** that this Condition shall not apply if the Supervisor requires payment of any Security in accordance with the provisions of the Trust Deed.
3. Interest shall cease to accrue on any Security from the date fixed for payment of the Principal Moneys unless upon production of the Certificate the Borrower fails to make payment in which case interest shall run until redemption or payment is actually effected or made **PROVIDED THAT** should the Supervisor require payment to it of the Principal Moneys premium (if any) or interest in respect of any Security in accordance with the provisions of the Trust Deed this Condition shall not apply.
4. Every holder will be recognised by the Borrower as entitled to his Security and to the Principal Moneys premium (if any) and interest payable thereon from any equity set-off or cross claim between the Borrower and the original or any intermediate Holder of the Security.
5. A Security (other than Security Stock and Variable Notes) if fully paid may be transferred in sums of \$100.00 of original face value of the Security or multiples thereof by an instrument in writing in any usual common form and the following provisions shall apply:
  - (a) Every instrument of transfer must either be signed both by the transferor and transferee each of whose signatures shall be duly witnessed by a witness who shall add to his signature his address and occupation or shall be in such form as complies with the FMCA or FMC Regulations and the transferor shall be deemed to remain the owner of the Security until the name of the transferee is entered into the Register in respect thereof.

- (b) Every instrument of transfer must be left duly stamped with all duty payable thereon at the registered office of the Borrower (or at such other place as the Borrower specifies) for registration accompanied by the Certificate to be transferred and such other evidence as the Directors may require to prove the title of the transferor or his right to transfer the Security. 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 Directors will register the transfer and will recognise the transferee as the Holder entitled to the amount of the Security comprised in the transfer.
  - (c) All instruments of transfer which shall be registered will be retained by the Borrower but any instrument of transfer which the Directors may decline to register shall be returned to the person leaving the same.
  - (d) The Borrower shall not be obliged to register any transfer of a Security during the period of fourteen (14) days immediately preceding any date upon which interest is payable on the Security.
  - (e) No fees shall be charged for the registration of a transfer.
  - (f) Subject to the provisions of the Trust Deed the Borrower will only recognise the Holder as the absolute owner thereof and except as ordered by a Court or by statute required shall not be bound to take notice or see to the execution of any trust whether express implied or constructive to which any Security may be subject and the receipt of such Holder or in the case of joint Holders the receipt of any of them for the Principal premium (if any) and the interest from time to time accruing due in respect thereof or for any other moneys payable in respect thereof shall be a good discharge to the Borrower notwithstanding any notice it may have whether express or otherwise of the right title interest or claim of any other person to or in respect of such Security interest or moneys. No notice of any trust express or implied or constructive shall be entered on the Register in respect of any Security.
6. Every Holder (other than a holder of Security Stock or Variable Notes) shall on payment in full of the Security, and every Holder of Security Stock or Variable Notes issued pursuant to the provisions of the Trust Deed shall, be entitled to receive free of charge a Certificate or Certificates for his Security duly executed under seal by the Borrower pursuant to the Trust Deed. Joint Holders of Securities shall not be entitled to duplicate Certificates in respect of the Security held by them jointly and the Certificates in respect of a joint holding may be delivered to such one of the joint Holders as the Borrower may select.
7. If any Certificate be worn out or defaced the Directors on production thereof may cancel the same and issue a new Certificate in lieu thereof, and if any Certificate be lost or destroyed then upon proof thereof to the satisfaction of the Directors and on such indemnity if any as they may require being given and the payment of out-of-pocket expenses of the Borrower in investigating evidence as the Directors may deem adequate being made a new Certificate in lieu thereof may be given to the person apparently entitled to such lost or destroyed Certificate. An entry as

to the issue of the new Certificate and the indemnity (if any) shall be made in the Register.

8. The executors or administrators of a deceased Holder (not being one of several joint Holders) and in the case of the death of one or more of several joint Holders the survivor or survivors of such joint Holders shall be the only persons recognised by the Borrower as having any title or interest in such Security **PROVIDED ALWAYS** that if the Holder having sold any or all of his Securities had delivered to the transferee or to a member of the Stock Exchange acting in connection with that sale a transfer of the Securities so sold signed by him but such transfer had not been registered before his death the Directors may subject to compliance by the transferee with the conditions as to transfer contained in the Certificates register that transfer notwithstanding that the Borrower has notice of that Holder's death.
9. Any person becoming entitled to Securities in consequence of the death or insolvency of any Holder may upon producing such evidence that he sustains the character in respect of which he proposes to act under this Condition or of his title as the Directors shall think sufficient be registered himself as the holder of such Securities or subject to the provisions of these Conditions as to transfer may transfer such Securities. This Condition shall include any case in which a person becomes entitled as a survivor or persons registered as joint Holders.
10. Any principal moneys and interest payable in respect of the Securities may be paid by cheque or warrant crossed "not negotiable" sent through the post to the Registered Address of the Holder or in the case of joint Holders who is first named on the Register in respect of such Securities or to such person and to such address or to such Bank or other account as the Holder or joint Holders may in writing direct and payment of such cheque or warrant to the Holders or to such other person or bank or other account as the Holders or joint Holders may so direct shall be a satisfaction of the Principal or interest in respect of which it was drawn.
11. If several persons are entered into the Register as joint Holders of any Securities then without prejudice to the last preceding Condition the receipt of anyone of such persons for any Principal Moneys or interest from time to time payable on or in respect of such Securities shall be as effective a discharge to the Borrower as if the person signing such receipt were the sole registered Holder of such Securities.
12. A body corporate may be registered as the Holder or one of the joint Holders of Securities.



## **SECOND SCHEDULE**

### **MEETINGS OF HOLDERS**

#### **1. Convening**

- 1.1 The Supervisor or any Borrower may at any time convene a meeting of all or any Class of Holders. References in this Schedule to Holders shall include only the Holders comprising the Class or Classes for which any meeting is convened except where the context otherwise requires, and “Securities” shall be construed accordingly. References in this Schedule to “regulations” are references to the provisions of this Schedule.
- 1.2 A Borrower shall whenever required to do so pursuant to the FMCA or FMC Regulations made thereunder convene a meeting of the Holders or any Class thereof.
- 1.3 The Supervisor shall also at the request in writing of any Major Security Stockholder convene a meeting of Holders or Stockholders. Any request pursuant to this clause shall state the nature of the business proposed to be dealt with at the meeting.
- 1.4 For the purpose of enabling the Supervisor to satisfy itself as to the validity of a request by the Holders pursuant to regulation 1.3 or a request pursuant to the FMCA or FMC Regulations, each Borrower will allow the Supervisor full access to any Register or Record whether the same shall for the time being be closed or not.
- 1.5 Before a Borrower convenes a meeting it shall give the Supervisor 10 days notice in writing of the place day and hour thereof and the nature of the business to be transacted and it shall obtain the prior approval of the Supervisor to the draft of the documents to be sent to the Holders in respect of such meeting, and if the Supervisor shall so require the Borrower shall include with the documents sent any statement which the Supervisor requires to make in relation to the meeting and the matters to be dealt with at such meeting.

#### **2. Place**

- 2.1 Meetings shall be held in the city or town at which the registered office of the Company is situated or at such other place as the Supervisor determines or approves.



### 3. Notice

3.1 Notice of every meeting shall be given to Holders in manner provided in the Trust Deed (namely in Clause 7.3), and shall be deemed to be served on the day specified in that Clause 7.3.

3.2 If the meeting is convened by a Borrower a copy of the notice shall be sent to the Supervisor. If the meeting is convened by the Supervisor a copy of the notice shall be sent to the Borrower. A copy of the notice shall also be sent to every Stock Exchange in New Zealand on which the Securities are listed for quotation and to every director and an auditor of the Borrower. Each such copy of the notice shall be sent not later than the time at which notices are sent to the Holders.

### 3.3 Notice

3.3.1 Notice of a meeting shall be given in the manner provided in the Trust Deed to:

- (a) in the case of a meeting of all Stockholders, every holder of Bearer Stock and every Registered Stockholder; and
- (b) in the case of a meeting of First Ranking Stockholders, every holder of First Ranking Stock issued to bearer and every Registered First Ranking Stockholder; and
- (c) in the case of a meeting of Second Ranking Stockholders, every holder of Second Ranking Stock issued to bearer and every Registered Second Ranking Stockholder; and
- (d) in the case of a meeting of Noteholders, every holder of a Note issued to bearer and every Registered Holder of a Registered Note; and
- (da) in the case of a meeting of Money Market Secured Depositholders, every holder of a Bearer Money Market Secured Deposit and every Registered Holder of a Money Market Secured Deposit; and
- (e) every person upon whom the ownership of any Registered Security devolves by reason of his being a legal personal representative or an assignee in bankruptcy of a Holder where the Holder but for his death or bankruptcy would in accordance with the foregoing subclauses be entitled to receive notice of the meeting, - in each case as ascertained in accordance with regulation 3.3.2.

3.3.2 In the case of Holders or Registered Securities notice shall be given to every Holder entered in the Register as at the close of business five working days prior to the date of despatch of the notice.

- 3.4 Fifteen working days' notice at least of every meeting shall be given. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. The notice shall specify:
- (a) the place, day and hour of the meeting;
  - (b) the nature of the business to be transacted in sufficient detail to enable a Holder to form a reasoned judgment in relation to it;
  - (c) the text of any Special Resolution to be submitted the meeting in accordance with regulation 3.6;
  - (d) the right of a Holder to appoint a proxy.
- 3.5 The accidental omission to give notice to or non-receipt of notice by any person entitled thereto shall not invalidate the proceedings at any meeting.
- 3.6 If a Special Resolution is to be submitted to the meeting:
- (a) a draft of the proposed notice of the meeting (including any explanatory memorandum required by the FMC Regulations, if applicable) must be given to the Supervisor at least 10 working days before the notice is given under regulation 3.4 (or any lesser period approved by the Supervisor); and
  - (b) the notice of the meeting must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution (but only if the Supervisor has provided those comments in writing to the Borrower at least 5 working days before the notice required to be given under regulation 3.4).
4. **Quorum**
- 4.1 No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 4.2 A quorum for a meeting of Holders at which a Special Resolution is to be submitted is present if, Holders or their proxies are present or have cast votes who hold Securities with a combined nominal value of no less than 25% of the nominal value of the Securities held by those persons who are entitled to vote. "Entitled to vote" means entitled to vote on the business to be transacted by the meeting.
- 4.3 The quorum for the transaction of any business at a meeting of all Holders (other than the passing of a Special Resolution of all Holders) shall be the Holders present in person or by proxy or by attorney or by representative of at least 10 percent in nominal amount of the Securities.

- 4.4 The quorum for the transaction of any business at a meeting of any Class of Holders other than the passing of a Special Resolution of such Class shall be the Holders present in person or by proxy or by attorney or by representative of at least 10 percent in nominal amount of the Securities of that Class.
- 4.5 If within half an hour from the time appointed for the meeting a quorum is not present the meeting if convened upon the request of Holders shall be dissolved. In any other case it shall stand adjourned to such day and time not being less than ten working days (10) days thereafter and at the same time and place, or such other time and place as may be appointed by the Supervisor and at such adjourned meeting, if a quorum is not present within half an hour then the Holders or their proxies present shall be a quorum for the transaction of business including the passing of Special Resolutions.
- 4.6 Notice of such adjourned meeting at which a Special Resolution of all the Holders or any Class is to be submitted shall be given in the same manner (except in respect of the necessity to specify the text of the resolution and in respect of the period of notice which shall be not less than seven days exclusive of the day on which it is served or deemed to be served and of the day for which it is given) as for an original meeting and such notice shall state that the Holders present at the adjourned meeting whatever their number and whatever the amount of the Securities held by them shall form a quorum.

5. **Right to Attend and Speak**

- 5.1 Any director, officer or solicitor of the Supervisor and any other person authorised in that behalf by the Supervisor and any Director or the Secretary or solicitor of the Borrower or any other person authorised in that behalf by the Borrower may attend any meeting and all such persons shall have the right to speak at the meeting.

6. **Chairman**

- 6.1 A person nominated in writing by the Supervisor shall preside at every meeting and if no such person is nominated or if at any meeting the person nominated is not present within fifteen minutes after the time appointed for holding the meeting the Holders present and eligible to vote thereat shall choose one of their number to be chairman and failing such choice the Borrower may appoint the chairman.

7. **Adjournment**

- 7.1 The Chairman may with the consent of any meeting at which a quorum is present and shall if so directed by the meeting adjourn the meeting from time to time and from place to place.



- 7.2 No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

8. **Person on Register**

- 8.1 In the case of Registered Securities the persons registered as Holders in the Register and no other person or persons shall be recognised and treated as the legal holders of the Securities therein mentioned whether such persons are or are not in fact the owners thereof.

9. **Authority to Vote**

- 9.1 In the case of Registered Securities, a Holder (being an individual) may vote personally or by his representative and a Holder (being a Corporation) may vote by its representative;

- 9.2 In this Schedule "representative" means:

- (a) in the case of a Holder being an individual a person appointed by an instrument by way of proxy or by Power of Attorney;
- (b) in the case of a Holder being a Corporation or corporation sole either:
  - (i) a person appointed by an instrument by way of proxy or by Power of Attorney; or
  - (ii) a person authorised pursuant to clause 10 of the First Schedule of the Companies Act, or in the case of a corporation sole a person authorised pursuant to its constitution.

- 9.3 "Proxy Closing Time" means 48 hours (or such other period as the Supervisor may approve and is specified in the proxies as the latest time for lodging of proxies) before the time of the relevant meeting of Holders.

- 9.4 The following persons shall, except as may be otherwise provided by regulation 13.8, be exclusively entitled to vote in person or by representative in respect of the Registered Securities mentioned:

- (a) the persons registered as at the Proxy Closing Time as Holders in the respective Registers in respect of the Registered Securities recorded as owned by them respectively;
- (b) the persons who are entitled to receive notice of the meeting pursuant to regulation 3.3.1(d) in respect of the Registered Securities devolving upon them respectively;



For the purpose of establishing voting entitlements at a meeting, the Register shall be closed as of close of business on the business day immediately preceding the day on which the Proxy Closing Time falls and shall remain closed until after the relevant meeting has been closed or adjourned.

9.5 The following persons shall be exclusively entitled to be present at a meeting of Holders, to be counted in a quorum, and the vote thereat in respect of Bearer Securities namely:

- (a) the Bearer of the Bearer Security Certificate upon presentation thereof at the meeting concerned or any adjournment thereof of the Supervisor or to such person as the Supervisor shall direct;
- (b) such other person as may be appointed or nominated by such Bearer in such manner as may be prescribed in the conditions of issue of the Bearer Security and endorsed on the relevant Bearer Security Certificate, or failing such prescription as may be approved by the Supervisor and notified to the Bearer Holders in the notice of meeting given pursuant to regulation 3.1.

9.6 For the purposes of this Second Schedule a person appointed or nominated in the manner referred to in regulation 9.2 shall be entitled to attend meetings of Holders, be counted in a quorum, vote, join in any demand for a poll and exercise all such other powers in relation to the Securities in respect of which he has been so appointed or nominated as though he were in relation thereto the Holder present in person.

## 10. Proxies

10.1 The holders of Registered Securities may appoint proxies.

10.2 An instrument of proxy shall be in the following form or a form as near thereto as circumstances admit or in such other form as the Supervisor shall approve and need not be witnessed:

I/We, ..... of ..... being a Holder of \$..... in nominal amount of [First Ranking Stock/description of other Security held] of ..... hereby appoint ..... of ..... or failing him, ..... of ....., or failing him the Chairman of the meeting as my/our proxy vote for me/us and on my/our behalf at the meeting of Holders [or the relevant Class thereof] of the Company to be held on 20 , and at any adjournment thereof.

I/We authorise my/our proxy to vote \*in favour of/against the resolution(s).

Signed this                      day of                      20 .

Signature of Holder(s) .....

\* Strike out whichever is not desired. If neither "in favour of" nor "against" is struck out, the proxy will vote as he thinks fit.

- 10.3 The instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney duly authorised in writing or if the appointer is a Corporation either under seal or under the hand of an officer or attorney so authorised or of any director, general manager, investment manager or other person who appears to have authority to appoint a proxy on behalf of such Corporation.
- 10.4 A person appointed to act as a proxy need not be a Holder and a holder of a proxy shall have the right to speak at the meeting.
- 10.5 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 credited by a Notary Public or in such other manner as the Supervisor shall approve such be deposited at such place as the Supervisor or the Borrower with the approval of the Supervisor may in the notice convening the meeting direct, or if no such place is appointed then at the registered office of the Borrower, not later than Proxy Closing Time and in default the instrument of proxy shall not be treated as valid **PROVIDED ALWAYS** that the Supervisor may in its absolute discretion accept as valid any instrument of proxy notwithstanding that such instrument of any such power of attorney or other authority is received or produced at a place other than that specified above or out of time.
- 10.6 A proxy shall unless the contrary is stated thereon be valid as well for any adjournment of the meeting as for the meeting to which it relates. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy shall be valid after the expiration of twelve months from the date of its execution but this provision shall not be construed or apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.
- 10.7 An instrument of proxy in favour of the chairman of the meeting (howsoever expressed) shall be valid and effectual as though it were in favour of a named person and shall constitute the person or persons who chair the meeting or meetings for which the proxy is used (whether an adjournment or not) the lawful proxy or proxies of the appointer.
- 10.8 **Right of Proxies:** A person appointed proxy shall have the right to demand or join in demanding a poll and shall (except to the extent to which the proxy is specially directed to vote for or against any proposal) have the power generally to act at the meeting for the Holder concerned.
- 10.9 **Validity of Votes by Representatives:** A vote given in accordance with the terms of an instrument of proxy or power of attorney (or other form) shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or power of attorney or of the authority under which the proxy was executed or the transfer of the Security in respect of which the vote is given

provided that no intimation in writing of such death insanity revocation or transfer is received by a Borrower at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

## **11. Attorneys**

- 11.1 Any holder may by power of attorney appoint an attorney (who need not be a Holder) to vote and act on his behalf at any meeting. An attorney shall be entitled to produce evidence of his appointment at any time before the time appointed for the holding of or at the meeting or adjourned meeting for the taking of a poll at which he proposes to vote. Such Attorney as so empowered may appoint a proxy for the Holder granting the power of attorney.

## **12. Corporate Representatives**

- 12.1 A person authorised pursuant to Clause 10 of the First Schedule of the Companies Act by the Holder being a Corporation to act for it as its representative at any meeting shall be entitled to exercise the same powers on behalf of that Corporation as that corporation could exercise if it were an individual Holder.
- 12.2 A representative appointed pursuant to Clause 10 of the First Schedule of the Companies Act shall be entitled to produce evidence of his appointment at any time before the time appointed for holding of or at the meeting or adjourned meeting or for the taking of a poll at which he proposes to vote.

## **13. Voting**

- 13.1 A resolution put to the vote of a meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or the Supervisor or any representative of the Supervisor or by one or more Holders holding or representing not less than 5 percent in nominal amount of the Securities (other than Security Stock) for the time being outstanding or by any holder of Security Stock of the appropriate Class represented at the meeting. Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 13.2 If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 13.3 In the case of an equality of votes whether on a show of hands or on a poll the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to the votes (if any) to which he may be entitled as a Holder or on behalf of Holders.
- 13.4 A poll demanded on the election of a chairman on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (not being more than thirty days from the date of the meeting) and place as the chairman may direct. The result of such poll



shall be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.

- 13.5 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 13.6 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 his votes or cast all votes he uses in the same way.
- 13.7 On a show of hands each person present at the meeting and entitled to vote (whether personally or by representative) shall have one vote only. On a poll every Holder (including any holder of Security Stock) who is present in person or by representative shall be entitled to one vote for every nominal \$1.00 of Securities of which he is the holder **PROVIDED ALWAYS** that any Securities for the time being held by the Charging Group Member or any Related Company shall not whilst so held confer any right to vote.
- 13.8 In the case of joint Holders the vote of the senior who tenders a vote whether in person or by representative shall be accepted to the exclusion of the votes of the other joint Holders and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.

#### 14. **Special Resolution**

- 14.1 The expression "Special Resolution" means, unless the context expressly otherwise requires, a resolution passed at a meeting of First Ranking Stockholders duly convened and held in accordance with the provisions herein contained, at which persons holding First Ranking Stock with a combined nominal value of no less than 75% (subject to such other percentage and requirements specified from time to time in the FMCA for a Special Resolution) of the nominal value of the First Ranking Stock held by those persons entitled to vote and who vote on the question voted in favour of the resolution. The expression "Special Resolution" referring to all Holders, or any other Class of Holders, shall have a corresponding meaning in relation to meetings of all Holders or such Class of Holders.
- 14.2 Without limiting the rights powers and discretions conferred on the Supervisor by the Trust Deed and subject to the FMCA, the FMC Regulations, regulation 15 below and to the proviso to this regulation 14.2, a meeting of First Ranking Stockholders shall in addition to all other powers which by the Trust Deed are specified as exercisable by Special Resolution have the following powers exercisable by Special Resolution namely:
  - 14.2.1 power to sanction either unconditionally or upon any conditions:-
    - (a) the release of a Borrower from the payment of all or any part of the moneys to which the Trust Deed relates; or



- (b) the release of any Charging Group Member from its guarantee and obligations to the Supervisor and any charge created by or pursuant to the Trust Deed; or
  - (c) the surrender or release of the whole or any part of the Charged Assets;
- 14.2.2 power to sanction the exchange of Stock for or the conversion of Stock into shares, stock, debentures, debenture stock or other obligations or securities of a Charging Group Member or any other corporation formed or to be formed;
- 14.2.3 power to postpone the day when the Principal Moneys of the Stock shall become payable and to suspend or postpone or, with the concurrence of the Company, to accelerate the payment of interest on Stock;
- 14.2.4 power to sanction any alteration release modification waiver variation or compromise or any arrangement in respect of the rights of the Holders against the Company and/or the Charging Subsidiaries or against their respective properties howsoever such rights shall arise;
- 14.2.5 power to assent to any alteration or addition to the provisions contained in the Trust Deed or the conditions attaching to the Stock proposed or agreed to by the Borrower and to authorise the Supervisor to concur in and execute any supplemental trust deed embodying any such alteration or addition;
- 14.2.6 power to give any sanction assent release or waiver of any breach or default by the Company or any Charging Subsidiary under any of the provisions of the Trust Deed;
- 14.2.7 power to authorise the Supervisor or any Receiver appointed by it where it or he shall have entered into possession of the Charged Assets or any part thereof to give up possession of the same to the Company or the Charging Subsidiaries either unconditionally or upon any condition;
- 14.2.8 subject to the Companies Act and the FMCA power to discharge release or exonerate the Supervisor from all liability in respect of any act or commission or omission for which the Supervisor has or may become responsible under the Trust Deed;
- 14.2.9 power to sanction any scheme for the reconstruction of the Company or any Charging Subsidiary for the amalgamation of the Company or any Charging Subsidiary with any other Corporation where such sanction is necessary;
- 14.2.10 subject to the provisions of the Trust Deed power to remove any Supervisor and to approve the appointment of or appoint a new Supervisor;
- 14.2.11 power to authorise the Supervisor to concur in and execute any supplemental deed or other document embodying such sanction or approval assent release waiver direction or request.

**PROVIDED HOWEVER** that no alteration modification variation or addition shall be made which is prejudicial to the rights and interests of any holder of First Ranking Security Stock unless the Holder thereof shall have signified its approval thereto by notice in writing to the Supervisor to that effect.

## 15. Resolution Binds Holders

15.1 Subject to the FMCA and the FMC Regulations, a Special Resolution passed at a meeting of First Ranking Stockholders duly convened and held in accordance with these presents subject to regulation 15.2 shall be binding upon all the Holders whether present or not present at the meeting and each of the Holders and the Supervisor (subject to the provisions of its indemnity contained in the Trust Deed) shall be bound to given effect thereto accordingly and the passing of any such resolution shall as between the Supervisor and the Holders be conclusive evidence that the circumstances justify the passing thereof the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution **PROVIDED ALWAYS THAT** a Resolution which affects a particular Holder or Class of Holder only as opposed to the rights of the Holders generally shall not be binding on such Holder or Class of Holders unless such Holder agrees or such Class of Holders agree as provided in regulation 15.2 below or otherwise to be bound by the terms of any such resolution.

15.2 A Special Resolution of First Ranking Stockholders to the extent that it:

- (a) sanctions any alteration to the rights of any other Class of Holders to receive the Principal and interest of their Securities in accordance with the order of distribution set out in the Trust Deed;
- (b) sanctions any alteration to the right of any other Class of Holders to recover interest on or repayment of their Securities in accordance with the terms of issue thereof;
- (c) sanctions or directs waiver by the Supervisor of any breach by the Company of its obligations in regard to payment of interest on or Principal of any other Class of Holders;
- (d) relates to the exercise or non-exercise or manner of exercise by the Supervisor of any of its trusts, obligations or powers which are exercisable by virtue exclusively of breaches of the matters mentioned in paragraph (c) above (there being no breach of any other provisions of the Trust Deed and no other event of default under the Trust Deed having occurred);
- (e) otherwise affects the rights and interest of any other Class of Holders exclusively;

shall be no force and effect unless it is or has been approved or sanctioned by a Special Resolution of the Class of Holders affected.

- 15.3 A meeting of any Class of Holders other than First Ranking Stockholders shall have power by Special Resolution:
- (a) to sanction any compromise or arrangement proposed to be made between the Company and the relevant Class of Holders affected;
  - (b) to sanction any alteration, abrogation, modification or waiver of the rights of the relevant Class of Holders affected against the Company or any Charging Subsidiary;
  - (c) to sanction those matters which if passed by a Special Resolution of first Ranking Stockholders would require approval or sanction (before binding the relevant Class of Holders affected) pursuant to regulation 15.2;
  - (d) to do anything stated in regulation 14.2, as if the references therein to First Ranking Stockholders and Stock were references to the Holder and Securities concerned.

## 16. Minutes

16.1 Minutes of all resolutions and proceedings at every meeting shall be made by the Supervisor or if the Supervisor shall not be present at any 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 Supervisor at the expense of the Charging Group and any such minutes as aforesaid if purporting to be signed by the Chairman of the meeting at which such resolutions were passed or proceeding had or by any persons appointed by the said Chairman of the meeting for the purpose or by the Chairman of the next succeeding meeting of Holders shall be prima facie evidence of the matters therein stated and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to be duly passed and had. Copies of such minutes shall be furnished by the Supervisor to the Borrower as early as possible after the holding of the meeting to which they refer.

16.1.1 A resolution which in the opinion of the Supervisor affects one Class only of Securities shall be deemed to have been duly passed if passed at a separate meeting of the Holders of the Securities of that Class.

16.1.2 A resolution which in the opinion of the Supervisor affects all or any two or more Classes of Security but does not give rise to a conflict of interest between the holders of Securities of any of the Classes so affected shall be deemed to have been duly passed if passed at a single meeting of the holders of Securities of the Classes so affected.

16.1.3 To all such meetings as aforesaid all the preceding provisions of this Schedule shall mutatis mutandis apply as though references therein to security, Holders, and Stockholders were references to the Securities of the Class in question and to the holders of such Securities respectively.

## 17. Resolution in lieu of meeting



- 17.1 A written resolution is as valid as if it had been passed at a meeting of Holders or a Class of Holders if it is signed by Holders who hold Securities with a combined nominal value of no less than 75% of the nominal value of the Securities held by Holders who are entitled to vote and who vote on the question.
- 17.2 A written resolution that is signed by the persons specified in regulation 17.1 is as effective for the purposes of the FMCA and this Deed as it would be if passed by resolution at a meeting of the Holders or Class of Holders.
- 17.3 A written resolution under this regulation may consist of 1 or more documents in similar form (including letters, electronic mail, or other similar means of communication) each signed by or on behalf of 1 or more of the persons specified in regulation 17.1.
- 17.4 Each Borrower in relation to which a written resolution is proposed in respect of its Securities or Holders thereof must ensure:
- (a) that the proposed resolution is dated with the date on which the proposed resolution is first sent to a person entitled to vote for the purpose of signing (the “circulation date”); and
  - (b) that the proposed resolution is sent to every person entitled to vote; and
  - (c) as far as is reasonably practicable, that the proposed resolution is sent under paragraph (b) on the circulation date; and
  - (d) that the proposed resolution sent under paragraph (b) is accompanied by a statement of the effect of regulation 17.5.
- 17.5 A proposed resolution lapses if it is not passed under this regulation within 3 month after the circulation date.
- 17.6 The accidental omission to send a proposed resolution or statement under regulation 17.4 to a person entitled to vote does not invalidate a resolution passed under this regulation 17.
- 17.7 The Borrower must, within 5 working days after a resolution is passed under this regulation, send a copy of the resolution to every person entitled to vote who did not sign the resolution and on whose behalf the resolution was not signed.

**END OF DEED**



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