

# DEBENTURE

between

THE AUCKLAND CITY COUNCIL

and

THE TRUSTEES EXECUTORS AND AGENCY COMPANY  
OF NEW ZEALAND LIMITED  
as Security Agent



AUCKLAND CITY



**SIMPSON GRIERSON**  
**LAW**

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### SCHEDULE

- PART I SECURITY CERTIFICATE (no nominal amount)
- PART II SECURITY CERTIFICATE (with nominal amount)
- PART III GLOBAL SECURITY CERTIFICATE (no nominal amount)
- PART IV GLOBAL SECURITY CERTIFICATE (with nominal amount)

THIS DEED dated the 9<sup>th</sup> day of July 1998

BETWEEN THE AUCKLAND CITY COUNCIL a City Council duly constituted as a Territorial Authority under the Local Government Act 1974 (included in the term the "Council")

AND THE TRUSTEES EXECUTORS AND AGENCY COMPANY OF NEW ZEALAND LIMITED (the "Security Agent")

## INTRODUCTION

- A. The Council has the power, subject to the Act, to borrow money, and incur obligations, by way of Loans and Incidental Arrangements from time to time in such amounts and upon such terms and conditions and for such of its lawful purposes as it considers appropriate, and to provide security for such.
- B. The Council proposes to create, and give the benefit of, certain such security in accordance with the provisions of this Deed.
- C. The Security Agent has agreed, at the request of the Council and for the consideration expressed or referred to in this Deed, to act as Security Agent for the purposes of this Deed for the benefit of the Security Holders on the terms and conditions contained in this Deed.

## WITNESSES AS FOLLOWS:

### 1. INTERPRETATION

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

#### 1.1 General:

- 1.1.1 **Money:** All references to money in this Deed shall, unless the contrary is stated, be deemed to be references to New Zealand currency.
- 1.1.2 **Conversion:** Where, for any purpose under this Deed and where consistent with the Act, it is necessary or desirable to determine the equivalent in one currency of an amount in another currency, such equivalent shall be determined in such manner as the Council adopts and is acceptable to the Auditors having regard to prevailing commercial practices and to the policies in such regard adopted in the latest audited financial statements of the Council.



**1.2 Definitions:**

"Act" means the Local Government Act 1974;

"Annual Plan" means the report prepared and adopted by the Council under section 223D of the Act for each forthcoming financial year of the Council;

"Annual Report" means the report prepared and adopted by the Council under section 223E of the Act at the end of each financial year of the Council;

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

"Charged Assets" means:

- (a) all rates from time to time made by the Council under the Rating Act, and all rates revenue in respect thereof;
- (b) each special rate arising under section 122ZE of the Act in relation to any Secured Money, and the rates revenue from each such special rate; and
- (c) each Loans Act Special Rate (if any), and the rates revenue from each Loans Act Special Rate, in each case to the extent that such is able by law to be the subject of the charges pursuant to this Deed,

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

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

"Enforcement Event" means any of the events listed in clause 9.1;

"Existing Debt" means, subject to clause 14.7, each debt obligation of the Council entered into under the Loans Act in respect of which a Global Security Certificate is issued by the Council pursuant to clause 14.1, as such remains outstanding from time to time, and includes all interest and other incidental obligations in respect thereof;

"Facility" means any loan, advance, accommodation, bill, stock or note issuance, acceptance, endorsement or discount, guarantee, indemnity, letter of credit, bond, stock, note, bill, exchange, swap, rate, or other financial facility, agreement, liability, obligation or arrangement which, in any case, constitutes a Loan or an Incidental Arrangement and in respect of which the

money or other liabilities or obligations owing or which may become owing thereunder is, or is proposed to be, referred to in a Security Certificate as having the benefit of this Deed;

**"Global Security Certificate"** means a Security Certificate issued by the Council under Section 3 evidencing that the person or persons named therein are for the time being Security Holders in respect of the Secured Money referred to therein from time to time;

**"Incidental Arrangement"** has the same meaning as in the Act;

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

**"Loan"** has the same meaning as in the Act;

**"Loans Act"** means the Local Authorities Loans Act 1956;

**"Loans Act Special Rate"** means each special rate deemed by sections 45(1) or 47 of the Loans Act and/or section 55(1) of the Rating Act to have been made in respect of any debt obligations of the Council entered into under the Loans Act, as may exist at the date of this Deed and as from time to time existing thereafter;

**"Majority Security Holders"** means a Security Holder or Security Holders holding at the relevant time in aggregate 75% or more of the aggregate of the Priority Amounts of all Security Certificates or, in respect of an adjourned meeting of Security Holders (arising where the preceding meeting was adjourned because holders of less than 75% of the aggregate of the Priority Amounts of all Security Certificates were present or represented), means a Security Holder or Security Holders holding in aggregate more than 50% of the aggregate of Priority Amounts of those Security Certificates held by Security Holders present or represented at that adjourned meeting, provided that, for the purposes of this definition the Priority Amount of any Security Certificate:

- (a) may be ascertained by reference to a certificate given for that purpose pursuant to clause 12.6.1;
- (b) may include the amount under any committed Facility which, at the relevant time, is certified by the Security Holder to be undrawn or unutilised but which the Security Holder is contractually obliged to permit the Council to draw or utilise (upon which certificate the Security Agent shall be entitled to rely),

subject, in the case of a Security Certificate to which clause 2.3.3(b) applies, to the provisions of clause 2.3.3(b) as if clause 2.3.3(b)(i) included

a reference to the amount stated in any certificate as referred to in paragraphs (a) or (b) of this definition;

**"Principal Administrative Officer"** means the principal administrative officer (within the meaning of the Act), from time to time, of the Council, and includes a reference to any person to whom any right or obligation of such principal administrative officer has lawfully been delegated;

**"Priority Amount"**, in relation to a Security Certificate and the holder thereof, has the meaning set out in clause 2.3.3, and for the purposes of the definition of Majority Security Holders has the modified meaning as provided for in that definition;

**"Rating Act"** means the Rating Powers Act 1988;

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

**"Receiverships Act"** means the Receiverships Act 1993;

**"Reference Date"** means the date as at which a calculation is to be made for the purposes of this Deed, as the case may require;

**"Register"** means the register of Security Certificates to be kept by the Council pursuant to Section 5;

**"Registered Address"** means, in respect of a Security Holder, the address in New Zealand for the time being recorded in the Register and **"Registered Facsimile Number"** means the facsimile number for the time being recorded in the Register;

**"Secured Money"** means the principal and interest payable on, or in respect of, any Facility and, to the extent that such constitutes a Loan or an obligation under an Incidental Arrangement, all other money owing or payable to or at the direction of the Security Agent or any Receiver or any Security Holder under this Deed or the terms of issue of any Security Certificate;

**"Secured Obligations"** means the obligations of the Council under this Deed and any Security Certificate;

**"Security Agent"** means the person or persons for the time being holding office as security agent under this Deed;

**"Security Certificate"** or **"Certificate"** means an instrument in writing for the purposes of this Deed issued by the Council under Section 2 in, or substantially in, the applicable form set out in the Schedule evidencing

(subject to the Register and the provisions of this Deed) the agreement by the Council to extend the benefit of this Deed (but subject to the obligations, limitations and restrictions provided for in this Deed) to a Security Holder in respect of one or more Facilities, and for the time being outstanding and uncanceled, (and, where the context requires, includes a reference to a Global Security Certificate) and, in relation to any Secured Money in respect of which a Security Certificate has not been issued in physical form, includes a reference to the Security Certificate which would otherwise have been issued in respect of that Secured Money;

"Security Holders" or "holders" means those persons from time to time, and for the time being, (as evidenced by the Register) to whom the benefit of this Deed is extended (subject to the obligations, limitations and restrictions provided for in this Deed) by virtue of a Security Certificate for so long as they have a current Facility (other than a person who is obliged under clause 2.14 to surrender their Security Certificate), and includes their respective successors and personal representatives, and for the purposes of any Global Security Certificate "holder" shall have the meaning contained in Part III or Part IV (as the case may be) of the Schedule;

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

1.3 **Construction:** Any reference to:

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

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

a "charge" has the same meaning as in the Act, but (including for the avoidance of doubt) excludes:

- (a) a security interest arising by operation of law or statute or securing taxes or other governmental or regulatory levies, duties or imposts, or any security interest in the nature of a contractor's, supplier's or vendor's lien or any arrangement as to reservation of title; and
- (b) rights of set-off or combination or consolidation of accounts arising by operation of law or in agreements relating to



indebtedness or any trust or similar arrangement commonly encountered in financial contracts or contracts of suretyship;

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

a **"company"** means any company or body corporate wherever incorporated or domiciled and where the context so admits shall include an individual;

**"conditions"** in respect of any Security Certificate shall be to the conditions applicable to that Security Certificate as referred to in clause 2.5;

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

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

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

**"month"** means calendar month;

**"nominal amount"** in respect of a Security Certificate means the amount, if any, recorded as such on, or in respect of, that Security Certificate, and in respect of a Global Security Certificate, means the amount, if any, entered, or deemed to be entered, in the Register as the nominal amount of each holder in the schedule relating to such Global Security Certificate or the aggregate of those nominal amounts, as the case may be;

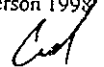
**"owing"** includes unpaid;

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

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

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

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



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

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

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

a gender includes each other gender;

the singular includes the plural, and vice versa;

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

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

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

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

time means a reference to New Zealand time.

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

1.5 **Security Agent's Actions:**

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

1.5.2 **Discretion:** Subject to clause 1.5.1, and except to the extent otherwise expressly required by this Deed or by law, the Security

Agent may exercise any decision in respect of, or pursuant to, this Deed in its own discretion.

**1.5.3 Seek Directions:** Notwithstanding clauses 1.5.1 and 1.5.2, the Security Agent may as regards any exercise of a decision in respect of, or pursuant to, this Deed, seek instructions from and be bound by any directions given by the Majority Security Holders pursuant to clause 8.17.

**1.6 Council Powers:** Subject to the Act and the Public Bodies Contracts Act 1959, where this Deed confers any right or obligation on the Council, the right or obligation may be exercised under delegated authority from the Council by any committee or sub-committee, member or officer of the Council.

## 2. SECURITY CERTIFICATES

### 2.1 Issue:

**2.1.1 Benefit of Deed:** The Council may from time to time in accordance with the provisions of this Deed, and in compliance with the Act, extend to a person, in respect of one or more Facilities made, or to be made, available by that person to the Council, the benefit of this Deed (but subject to the obligations, limitations and restrictions provided for in this Deed) by issuing to that person a Security Certificate as continuing security in respect of such Facility or Facilities.

**2.1.2 Registration:** The issuing of a Security Certificate will be effected and evidenced by particulars of the Security Certificate being entered in the Register by the Council.

**2.1.3 Nominal Amount:** A Security Certificate may state a nominal amount in Dollars.

**2.1.4 Details to Security Agent:** The Council will promptly after the issue thereof provide to the Security Agent details of each Security Certificate issued.

**2.1.5 Other Indebtedness:** Nothing in this Deed shall in any way restrict the right of the Council, and the Council shall at all times be free (but subject to the Act), to undertake or issue obligations or indebtedness ranking subordinate to the indebtedness and obligations of the Council in respect of the Secured Money.

**2.1.6 Council Interests:** No person in, or in respect of, which the Council has an interest shall be precluded from at any time



purchasing, re-purchasing, subscribing for, acquiring, holding, selling or otherwise disposing of, any Security Certificate, Facility or Secured Money.

2.2 **Ranking:** To the fullest extent permitted by law, the Security Certificates and the Secured Money secured pursuant thereto shall, subject to the terms of such Security Certificates and to clause 2.3, as to the security created by this Deed rank pari passu as between themselves as to payment of Secured Money even though created or issued at different dates or carrying interest at different rates or maturing or payable or redeemable at different times or on demand or in different currencies or with, or without, the knowledge of any other Security Holder, or otherwise.

2.3 **Priority:** Each Security Certificate shall at all times be held upon and subject to the following conditions:

2.3.1 **Transferable:** it shall be transferable to the same extent as the Facility to which it relates;

2.3.2 **Priority:** notwithstanding anything to the contrary contained or implied in this Deed, in any distribution to the Security Holders pursuant to the provisions of Section 12 each Security Holder shall, in respect of that Security Certificate, be entitled to payment pari passu with other Security Holders in respect of not more than the Priority Amount in respect of that Security Certificate;

2.3.3 **Priority Amount:** the Priority Amount in respect of a Security Certificate shall at any date be:

(a) in respect of a Security Certificate which does not (or is not deemed to) state a nominal amount, the aggregate amount (as finally determined) of all amounts (of whatever nature) owing under the Facilities in respect of which the Security Certificate was issued (as may be set out or referred to in the Security Certificate); or

(b) in respect of a Security Certificate which states (or is deemed to state) a nominal amount, the lesser of:

(i) the aggregate amount (as finally determined) of all amounts (of whatever nature) owing under the Facilities in respect of which the Security Certificate was issued (as may be set out or referred to in the Security Certificate); or

(ii) the nominal amount stated (or deemed to be stated) in that Security Certificate;



- 2.3.4 **Excess over Nominal Amount:** the amount of the excess of the amount referred to in clause 2.3.3(b)(i) over the amount referred to in clause 2.3.3(b)(ii) shall rank for payment subsequent to the Priority Amounts of other Security Holders, but *pari passu* with any amounts as referred to in this clause 2.3.4 in respect of other Security Holders.
- 2.4 **Form:** The Council shall, at the request of a Security Holder, subject to Section 3 issue to, or for the account of, each Security Holder one or more Security Certificates in, or to the effect of, the applicable form set out in the Schedule or in accordance with clause 5.3, or in such other form consistent with this Deed as the Council and a Security Holder may agree.
- 2.5 **Terms of Issue:** Each Security Certificate shall be, and be deemed to be, held with the benefit of and subject to the provisions of this Deed (including the Schedule, as applicable), any paying agency arrangements which the Council may from time to time put in place in respect of payments relating to any Secured Money and any conditions (including those stipulated in any Facility application form or other issuing or offer documentation in respect of the Security Certificate or the Secured Money secured thereby) not inconsistent with this Deed as may be required by the Council. Those provisions and conditions, or such of them as are applicable to the respective Security Certificate and Secured Money, shall be binding on the Council and, by its acceptance of the Security Certificate, the Security Holder and all persons claiming through them respectively, each of whom shall be deemed to have notice thereof.
- 2.6 **Execution:** Security Certificates shall be executed by the Council either by the Principal Administrative Officer on behalf of the Council or in such other manner (including by way of facsimile execution) as the Council may approve.
- 2.7 **Passing of Title:** Notwithstanding anything to the contrary contained or implied in this Deed, title to any Security Certificate shall pass only upon registration by the Council of an instrument of transfer in compliance with this Deed.
- 2.8 **Validity:** No Security Holder, nor the Security Agent, shall be concerned or obliged to enquire whether any Security Certificate has been issued in contravention of any provision of this Deed nor, subject to section 122ZG(5) of the Act, shall the validity of any Security Certificate be affected by knowledge of such contravention.
- 2.9 **Deemed Validity:** Subject to the Act and to any other limitations arising by law, each Security Certificate, the entry on the Register in respect of which, or other evidence, indicates that it has been issued or was intended to be issued under this Deed, shall (without prejudice to the right of the



Council to correct any error) be validly issued even though it may subsequently be determined that the issue of such Security Certificate was in breach of any provision of this Deed, but without prejudice to the Security Agent's rights under this Deed in respect of such breach.

- 2.10 Exclusion of Interests:** The Security Holders are to be regarded as the beneficial owners of the Security Certificates registered in their names respectively, and are to be regarded as exclusively entitled thereto, and all persons and the Council may act accordingly. The Council shall not, except as ordered by a court of competent jurisdiction, be bound to enter in the Register or recognise any trust, equity, right, title, interest (including security interest) or claim affecting the ownership of any Security Certificate or the security represented thereby.
- 2.11 Limitation on Enforcement:** No Security Holder shall be entitled to enforce any rights under this Deed or in respect of any Security Certificate or otherwise in respect of any Secured Money directly against the Council other than if the Security Agent wrongly fails to enforce such rights after having become bound to do so in accordance with the provisions of this Deed.
- 2.12 Benefit:** No Security Holder shall be entitled to the benefit of this Deed without also accepting the obligations, limitations and restrictions provided for in this Deed.
- 2.13 Replacement:** The Council may with the consent of, or at the request of, the Security Holder concerned execute and deliver to that Security Holder:
- 2.13.1 Loss:** (subject to provision to the Council of such evidence and indemnities as it may require) a Security Certificate in replacement of a lost, destroyed, wrongly cancelled or damaged Security Certificate;
  - 2.13.2 Correction:** a Security Certificate in replacement of any issued in an incorrect form or for an incorrect amount or containing incorrect terms or conditions;
  - 2.13.3 Substitution:** several Security Certificates in substitution for one Security Certificate, or vice versa;
  - 2.13.4 Changed Indebtedness:** where the indebtedness or other obligation secured by a Security Certificate has been increased or repaid or otherwise discharged in part, a replacement Security Certificate for a greater or lesser nominal amount (where applicable) than the original Security Certificate;



- 2.13.5 **Change of Name:** (subject to provision to the Council of proper proof of the relevant change of name) a Security Certificate to record the change of name of any Security Holder; and
- 2.13.6 **Exchange:** a Security Certificate in exchange for all, or the relevant part, of a Global Security Certificate in accordance with Section 3.
- 2.14 **Surrender:** A Security Holder may at any time, and must at the request of the Council if:
- 2.14.1 **Repaid:** all Secured Money and Secured Obligations owed to it as secured by the relevant Security Certificate have been fully and finally paid or satisfied or performed, as the case may be, and it is under no obligation to make available to the Council any further credit, advance or facility which if provided would constitute or give rise to Secured Money or Secured Obligations under or by virtue of the relevant Security Certificate; or
- 2.14.2 **Release:** the Security Agent releases the Charged Assets pursuant to clause 15.4,

surrender its Security Certificate to the Council for cancellation. If a Security Holder fails to surrender any Security Certificate when obliged, then the Council may by notice to the Security Holder and by entry in the Register cancel such Security Certificate.

- 2.15 **Breach by Security Holder:** Each Security Holder shall be liable to the Council and to the Security Agent, as the case may be, for any losses, damages, liabilities, costs, expenses (including legal costs) or claims suffered or incurred by the Council or the Security Agent arising from any breach by that Security Holder of any provisions of this Deed or that Security Holder's Security Certificate.

### 3. GLOBAL SECURITY CERTIFICATES

- 3.1 **Form:** Security Certificates may be issued in the form of Global Security Certificates, which will (subject to the terms of the Facility in respect of which the Global Security Certificate is issued) at the request of the holders be exchangeable without charge in whole or in part for individual Security Certificates of the same aggregate nominal amount (where applicable) in accordance with this Section 3. Any such exchange shall reduce the aggregate nominal amount or Priority Amount (as the case may be) of the relevant Global Security Certificate by an amount equivalent to the aggregate nominal amounts or Priority Amounts (as the case may be) of such individual Security Certificates so issued in exchange. Notwithstanding the preceding provisions of this clause 3.1, the Council

shall not be obliged to (but may) effect any such exchanges in respect of a Global Security Certificate as referred to in clause 14.1.

- 3.2 **Issue:** Global Security Certificates shall be issued in, or to the effect of, the form set out in Part III or Part IV (as may be applicable) of the Schedule or in accordance with clause 5.3, or such other form consistent with this Deed as the Council, the Security Agent and a Security Holder may agree.
- 3.3 **Rights of Security Holders:** Security Holders on whose accounts any Global Security Certificate has been issued shall, pending exchange pursuant to clause 3.1, be entitled to the same rights, and be subject to the same conditions, obligations, limitations and restrictions, under this Deed as if such exchange had occurred.

#### 4. PAYMENTS

- 4.1 **Payment to Holders:** The Council shall:
- 4.1.1 **Enforcement:** except after the Security Agent has acted pursuant to clause 10.1 or where a Receiver has been appointed; or
- 4.1.2 **Request/Law:** unless and until requested otherwise by the relevant Security Holder or prevented by law,
- pay all Secured Money to the relevant Security Holders in accordance with the terms of the relevant Facilities.
- 4.2 **Payment to Security Agent:** In the situation referred to in clause 4.1.1 the Council shall, unless prevented by law, pay all Secured Money to the Security Agent.
- 4.3 **Payments by Council:** Notwithstanding any of the provisions of this Deed or of any Security Certificate, any payment by or on behalf of the Council of any Secured Money outstanding from time to time made to (in the circumstances referred to in clause 4.2) the Security Agent for, or for the intended benefit of, Security Holders shall, to the extent of such payment, satisfy all obligations of the Council (including to the respective Security Holder) to make such payment.

#### 5. REGISTER OF SECURITY CERTIFICATES

- 5.1 **Register:** The Council shall establish and maintain, in accordance with the this Deed, a separate register of Security Certificates to be kept at the Council's principal office from time to time.
- 5.2 **Provisions as to Register:** In respect of the Register:



**5.2.1 Details:** the following details shall be entered in the Register in respect of each Security Certificate (as applicable):

- (a) the nominal amount (where applicable) for the time being, and brief details of the Facility or Facilities in respect of which it was issued;
- (b) the number and date (if any);
- (c) all subsequent transfers or changes of ownership of which the Council has received notice;
- (d) the names and addresses of the Security Holders and the date at which such names are entered on the Register;
- (e) where the Security Certificate is no longer outstanding, particulars of its redemption, purchase, cancellation or expiry;
- (f) any other additional matters to be entered in the Register in accordance with conditions required by the terms of any particular Security Certificate or by law; and
- (g) any other particulars as may be required by the Council or the Security Agent;

**5.2.2 Replacement/Exchanges:** there shall be entered in the Register details of any replacement Security Certificates issued pursuant to clause 2.13, or any Security Certificate issued in exchange for all, or the relevant part, of a Global Security Certificate in accordance with Section 3;

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

**5.2.4 Closure:** the Council may from time to time close the Register for any period or periods not exceeding 30 consecutive days;



5.2.5 **Evidence:** the Register shall, in the absence of manifest error, be conclusive evidence of the matters entered therein.

5.3 **Form:** The Register or any Security Certificate may be kept in book form, or in the form of a paper or card record, or by computer or any device by means of which information is recorded or stored. If the Register or any such Security Certificate is kept by computer or any such device:

5.3.1 **Deemed Entry:** the recording or storing of any information therein shall be deemed to be the entry thereof in the Register or in respect of the Security Certificate;

5.3.2 **Deemed Extract:** any material subsequently derived from information so recorded or stored shall be deemed to be an extract from the Register or the Security Certificate, as the case may be; and

5.3.3 **Back Ups:** the Council shall be responsible for ensuring the security and maintenance of the information on the Register and shall ensure that back up copies of such information are made and stored at regular intervals and otherwise as appropriate.

## 6. CHARGES BY COUNCIL

6.1 **Charge:**

6.1.1 **Charged Assets:** To secure the due payment of the Secured Money and its performance of and compliance with the Secured Obligations, in each case to the extent that such constitutes or represents, or is an obligation under, a Loan or Incidental Arrangement, the Council charges in favour of the Security Agent on behalf of the Security Holders (or such of them as in any case may by law be entitled to the benefit of such charge in relation to their Secured Money as determined according to this Deed) all its right, title and interest (present and future, legal and equitable) in and to its Charged Assets with the intent that the Charged Assets shall, to the fullest extent permitted by law, be charged as security for the due payment of all of the Secured Money and the performance of and compliance with the Secured Obligations.

6.1.2 **Continuing Security:** Each such charge by the Council is and shall be a continuing security for the payment, as provided for in clause 6.1.1, of the Secured Money.

6.2 **Floating Charge:** Each charge by the Council pursuant to clause 6.1 as regards its Charged Assets is a floating charge and accordingly until the



Date of Enforcement the Council shall be in no way hindered or prevented from dealing with (whether or not in the ordinary course of its activities) all or any part of its Charged Assets and the Security Agent shall, at the request of the Council, execute and deliver all documents which may reasonably be necessary or desirable to permit such dealing by the Council.

**6.3 First Charge:** Each charge by the Council pursuant to clause 6.1 is, subject to any charge existing at the date of this Deed and to any prior charge created pursuant to clause 6.4, a first charge.

**6.4 Other Charges:** The Council covenants with the Security Agent that, without the prior written consent of the Security Agent, it will not, for so long as any Secured Money is outstanding, create, allow to come into existence or permit to subsist any charge, other than any charge existing at the date of this Deed, over all or any part of its Charged Assets ranking:

**6.4.1 Competing:** in priority to, or pari passu with, the charges in favour of the Security Agent under this Deed; or

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

**6.5 Further Assurance:**

**6.5.1 Assurances:** The Council shall, to the extent permitted by law, execute and do all registrations, assurances and things which the Security Agent may reasonably require for perfecting the security intended to be created by this Deed and shall, to the extent permitted by law, from time to time and at all times after the Date of Enforcement execute and do all registrations, assurances and do such things (including in respect of the levying of rates once made) which the Security Agent may reasonably require for facilitating the realisation of the Charged Assets and for exercising all the rights conferred on the Security Agent or any Receiver by this Deed.

**6.5.2 Execution:** Without limiting the generality of clause 6.5.1, the Council shall, to the extent permitted by law following the Date of Enforcement, execute all mortgages, transfers, conveyances, assignments and assurances of the Charged Assets whether to the Security Agent or its nominees and shall, to the extent permitted by law, perform or cause to be performed all acts and things requisite or reasonably desirable according to law for the purpose

of giving effect to the carrying out or exercise of any of the said rights and shall, to the extent permitted by law, give all notices, orders and directions which the Security Agent may reasonably consider expedient.

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

## 7. COVENANTS BY COUNCIL

- 7.1 **Continuing Covenants:** The Council covenants with the Security Agent that it shall, subject to the Act and to its rights to withhold information pursuant to the Information and Meetings Act, at all times at which any Secured Money is outstanding:

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

7.1.2 **Records:** procure that the accounting documents (within the meaning of section 223H(3) of the Act) and other records of the Council are audited in accordance with the Public Finance Act 1977 and are (subject to section 122ZM(2)(f) of the Act) at all reasonable times (whether kept at its principal office or any other place or places in New Zealand) open for inspection by the Security Agent and any Receiver, or any person properly appointed by the Security Agent or the Receiver;

7.1.3 **Notify of Enforcement Event:** notify the Security Agent immediately in writing of the occurrence of any Enforcement Event giving full details of any action that has been taken (or is to be taken) as a result; and

7.1.4 **Refund Expenditure:** permit the Security Agent or any Receiver or other person properly appointed by the Security Agent under this Deed, after giving at least five business days notice to the Council, and the Council having within that time failed itself to take appropriate action, to make any payments that may in the reasonable opinion of the Security Agent be rendered necessary or expedient by reason of any default on the part of the Council in performing any of the covenants contained in this Deed in that regard, and will on demand repay to the Security Agent all money expended by the Security Agent for any such purpose and,



pending such repayment, all money so expended (with interest not exceeding the overdraft rate the Security Agent is charged by its principal banker) shall, to the extent permitted by law, from the date of expenditure be a charge on the Charged Assets and form part of the Secured Money and the Council will to the extent permitted by law, on demand, pay, satisfy and obtain the release of any liabilities to which the Security Agent or any such person may become subject consequent on the execution of any of the Security Agent's rights conferred by this Deed.

- 7.2 **Reporting Covenants:** The Council covenants with the Security Agent that it shall, subject to the Act and to its rights to withhold information pursuant to the Information and Meetings Act, at all times at which any Secured Money is outstanding, except as otherwise permitted by the Security Agent:
- 7.2.1 **Annual Plan and Annual Report:** as soon as each are adopted by the Council within the terms of sections 223D, 223E, 122K and 122R of the Act respectively, and in any event within 20 business days of each such adoption, deliver to the Security Agent a copy of each of the Annual Plan and the Annual Report for the forthcoming, and previous, financial years respectively and (where not already delivered to the Security Agent) the most recent Long-term Financial Strategy and the Borrowing Management Policy (within the meaning of those sections, in each case whether or not incorporated in any other document);
- 7.2.2 **Variations in Policy:** as soon as the Council has approved and adopted any material variation in any such Annual Plan, Long-term Financial Strategy or Borrowing Management Policy (but, for the avoidance of doubt, not its treasury management policy), provide details of that variation to the Security Agent;
- 7.2.3 **Information on Request:** on request by the Security Agent, provide to the Security Agent or a Receiver, any information which the Security Agent reasonably requires with respect to matters relating to the accounting documents (within the meaning of section 223H(3) of the Act) of the Council, other records of the Council, the Charged Assets and to the financial position of the Council; and
- 7.2.4 **Furnish Copy of Register:** provided the Register is not closed at the relevant time, furnish upon request to the Security Agent a copy of the Register.



## 8. PROVISIONS RELATING TO SECURITY AGENT

### 8.1 Authority:

- 8.1.1 Appointment:** Each Security Holder, by accepting the benefit of this Deed, irrevocably appoints and authorises the Security Agent to act as its security representative under this Deed with such powers as are expressly delegated to the Security Agent by this Deed together with such other powers as are reasonably incidental to such powers. The Security Agent shall have no duties or responsibilities except those expressly provided for in this Deed.
- 8.1.2 Specific Powers:** Without limiting the generality of clause 8.1.1, the Security Agent will act as agent for the Security Holders in enforcing or attempting to enforce this Deed, and exercising the security rights of the Security Holders against the Council under the Security Certificates.
- 8.1.3 Effect:** Any action taken, or omitted to be taken, by the Security Agent under or for the purposes of this Deed (or purportedly so) shall be binding on all Security Holders.

### 8.2 Remuneration:

- 8.2.1 General:** The Council shall pay to the Security Agent by way of remuneration for its services as Security Agent such remuneration as shall from time to time be agreed between the Council and the Security Agent.
- 8.2.2 Expenses:** The Council shall also, to the extent permitted by law, pay on demand all expenses (including travelling expenses and expenses incurred in the taking of any expert advice deemed necessary or expedient by the Security Agent) reasonably incurred by or on behalf of the Security Agent in connection with:
- (a) the exercise by the Security Agent of any right or duty conferred by this Deed on the Security Agent;
  - (b) any breach or default in the observance or performance by the Council of any provision of this Deed;
  - (c) any application under the provisions of this Deed for its consent to, or approval or execution of, any act, document or matter;
  - (d) any action taken by or required of the Security Agent under this Deed; and

- (e) any other expenses agreed by the Council from time to time.

**8.2.3 Payment:** All expenses incurred and payments made by the Security Agent or any Receiver in the lawful exercise of the rights conferred by this Deed, and all remuneration payable to the Security Agent or to any Receiver, shall be payable by the Council promptly following demand and, while unpaid following demand, shall, to the extent permitted by law, be a charge on the Charged Assets and form part of the Secured Money, and shall be satisfied before any payment is made to the Security Holders in respect of the Secured Money.

**8.3 Powers of Investment:**

**8.3.1 Investments:** Any money held by the Security Agent may to the extent permitted by law, at the discretion of the Security Agent, be invested in the name of the Security Agent or its nominee in, for so long as the Council may have any interest therein pursuant to clause 8.3.2, any investment in which a trustee would be authorised to invest trust funds, with power to vary such investments for others of a like nature and to deal with, or dispose of, such investments.

**8.3.2 Income:** The income arising from all such investments made by the Security Agent shall until the Date of Enforcement belong to the Council. If the event which caused the security created by this Deed to become enforceable no longer exists (whether by remedy or waiver of any default or otherwise) and as a result such security is no longer enforceable all income arising from all such investments shall belong to the Council.

**8.4 Applications to Court:** The Security Agent may, on or at any time after the security created by this Deed has become enforceable (but subject to clause 10.3), apply to a court for an order that the rights contained in this Deed be exercised under the direction of the court and for the appointment of a Receiver of all or any part of the Charged Assets and for any other order or direction in relation to the execution and administration of the rights contained in this Deed as the Security Agent may deem expedient. The Security Agent may in its capacity as Security Agent assent to, approve of or oppose any application to a court made by or at the instance of any of the Security Holders and shall, to the extent permitted by law, be indemnified by the Council against all reasonable costs, charges and expenses incurred by and in relation to any such application or proceedings (except where a successful claim alleges, or relates to, any fraud, wilful default, negligence or wrongful action or omission by the Security Agent).



**8.5 Waiver by Security Agent:** Except in respect of any event referred to in clause 9.1.1(a) or 9.1.1(b), the Security Agent may, subject to any direction pursuant to clause 10.1, at any time and from time to time by notice in writing to the Council waive, in whole or in part, for a specified period or indefinitely and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Council of any provision expressed or implied in this Deed provided that the Security Agent, unless so directed, is satisfied that the interests of the Security Holders will not be materially prejudiced thereby, but such waiver shall not prejudice the rights of the Security Agent or the Security Holders in respect of any other breach.

**8.6 Supplemental Powers of Security Agent:** To facilitate the discharge of its duties under this Deed:

**8.6.1 Reliance:** the Security Agent may, without liability for loss, obtain, rely and act on, or decline and elect not to act on:

(a) the opinion or advice of, or any information obtained from, any barrister, solicitor, valuer, stockbroker, surveyor, auctioneer, chartered accountant or other expert whether obtained by the Council, any Security Holder or by the Security Agent or otherwise, and although the same may subsequently be found to contain some error or not be authentic;

(b) a certificate signed by the Principal Administrative Officer on behalf of the Council as to any fact or matter prima facie within the knowledge of such person or that any particular dealing, transaction, step or thing is expedient or commercially desirable or not detrimental to the interests of the Security Holders as sufficient evidence of such fact or matter or the expediency of such dealing, transaction, step or thing; or

(c) the statements contained in any certificate, resolution or report given under this Deed as conclusive evidence of the facts stated therein;

**8.6.2 Directions:** the Security Agent may, without liability for loss, act or rely on any direction or purported direction of the Majority Security Holders which the Security Agent believes to have been properly made even though it may afterwards appear that such direction was not properly made;

**8.6.3 Title:** the Security Agent shall not be bound or concerned to examine or enquire into, or be liable for any defects or failure in, the title of the Council to the Charged Assets, whether such

defects or failure might have been discovered upon an examination or enquiry and remedied or not;

**8.6.4 Delegation:** without limiting the Security Agent's right to seek and act on advice pursuant to clause 8.6.1, the Security Agent, whenever it thinks it expedient in the interests of the Security Holders to do so, may (to the extent permitted by law):

- (a) delegate (with the prior written approval of the Council, except where the security created by this Deed has become enforceable) at any time, to any person, any of the rights vested in the Security Agent by this Deed which cannot conveniently be exercised by it or through its employees, upon such terms and conditions and under such regulations (including power to sub-delegate) as the Security Agent may think fit;
- (b) instead of acting through its permanent employees employ, with the prior written approval of the Council (which shall not be unreasonably withheld), in the carrying out of any of the rights vested in the Security Agent by this Deed and pay, at the expense of the Security Agent, an agent to transact all business and do all acts required to be done under this Deed including the receipt and payment of money;
- (c) in addition to the exercise of the rights contained in clause 8.4, apply to a court for directions in relation to any question arising, either before or after the Date of Enforcement;

**8.6.5 No Deemed Knowledge:** the Security Agent may assume that the Council is performing its obligations under this Deed and in respect of any Security Certificate or Secured Money, and shall not be deemed to have knowledge of the occurrence of an Enforcement Event unless and until the Security Agent has received written notice from a Security Holder or the Council stating that an Enforcement Event has occurred and describing it, or the officers of the Security Agent having responsibility for the administration of this Deed otherwise become actually aware that an Enforcement Event has occurred.

**8.7 Indemnity:**

**8.7.1 Indemnification:** Without prejudice to any right of indemnity by law given to the Security Agent, the Security Agent and every Receiver, attorney, manager, agent or other person appointed by the Security Agent pursuant to this Deed shall (subject to the



provisions of the Act and the Receiverships Act) be indemnified out of the Charged Assets in respect of all liabilities and expenses incurred in the execution or purported execution of the rights of this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted, or in any way relating to the provisions of this Deed, other than a claim arising out of a wilful default, negligence or breach of duty on the part of the Security Agent or any such attorney, manager, agent or other person.

**8.7.2 Retention:** The Security Agent may retain and pay out of any money in its hands arising pursuant to this Deed all sums necessary to effect such indemnity and also the remuneration and disbursements of the Security Agent as provided for in this Deed, and the Security Agent shall, to the extent permitted by law, have a charge on the Charged Assets for all money payable to it under this clause 8.7 or otherwise however properly arising out of or in connection with this Deed.

**8.7.3 Security Agent Not Liable:** Except in respect of wilful default, negligence or breach of duty on the part of the Security Agent or any attorney, manager, agent or other person appointed by the Security Agent, the Security Agent shall not be liable to any person except to the extent of the Charged Assets available to meet such liability.

**8.8 Other Relationships:**

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

**8.8.2 Own Account:** Without limiting the generality of clause 8.8.1, it is expressly declared that the Security Agent may so act on its own account or as executor, administrator, trustee, receiver, committee, attorney or agent or in any fiduciary, vicarious or professional capacity and the acting in such capacity shall not be deemed a breach of any of the obligations under, or arising in respect of, this Deed or otherwise imposed or implied by law arising out of the relationship between the Security Agent and the Council, or the Security Agent and the Security Holders as the case may be.



- 8.8.3 Other Transactions:** The Security Agent shall not by reason of its role as Security Agent be precluded from making any contracts or entering into any transactions with the Council or with itself as Security Agent in the ordinary course of the business of the Security Agent or from undertaking any insurance, financial or agency service with the Council or for itself as Security Agent, and the Security Agent shall not be accountable either to the Council or the Security Holders for any profits arising from such contracts, transactions or services.
- 8.8.4 No Deemed Knowledge:** The Security Agent shall not be deemed to have knowledge of any matter if that knowledge is obtained when it is acting on its own account in a capacity other than as Security Agent.
- 8.9 Represent Security Holders:** The Security Agent may at any time, either of the Security Agent's own volition or pursuant to any direction or in accordance with any policy given or indicated by the Majority Security Holders, represent Security Holders in any investigation, negotiation, action, transaction or proceedings concerning the interests of the Security Holders generally in the affairs of the Council or in the enforcement of the rights of the Security Holders or any of them, and in particular in obtaining legal, accountancy or other professional advice as to the rights of the Security Holders or the Security Agent, the duties of the Security Agent and the liabilities of the Council and in enforcing the rights of the Security Holders or the Security Agent by any demand, action or proceeding.
- 8.10 Retirement:** The Security Agent may without assigning any reason therefor, and shall if requested to do so by the Majority Security Holders or the Council, retire at any time by giving 60 days (or such shorter period as the Council may agree) notice in writing to the Council of its intention to do so, subject to the due appointment of a new Security Agent previously approved in writing by the Council and the transfer to such new Security Agent of the money, records and investments held by the Security Agent under this Deed.
- 8.11 Notice to Security Holders:** Upon receipt of a notice given under clause 8.10, the Council shall promptly give notice of such to Security Holders appearing in the Register as at the date of receipt.
- 8.12 Appointment of New Security Agent:**
- 8.12.1 Power to Appoint:** The power of appointing a new Security Agent or Security Agents of this Deed shall be vested in the Council, but no Security Agent shall be appointed unless such appointment is first approved by the Majority Security Holders.



- 8.12.2 Failure to Appoint:** In the event that the Council, within 30 days of receiving notice of the Security Agent's intention to retire, fails to exercise the power vested in it by this Deed after receiving the approval referred to in clause 8.12.1 for appointing a new Security Agent or new Security Agents or fails to receive any approval for any proposed new Security Agent, then in either case the Majority Security Holders may exercise such power to the exclusion of the Council.
- 8.13 Duty of Care:** None of the provisions of this Deed shall in any case in which the Security Agent has failed to exercise the level of care, skill and diligence required of the Security Agent at law, relieve the Security Agent from, or indemnify the Security Agent against, any liabilities which by virtue of any legislation or rule of law would otherwise attach to it in respect of any negligence, wilful default, or wilful breach of undertaking or breach of duty for which it may be liable in relation to this Deed.
- 8.14 Majority Security Holders:** Whenever any matter in this Deed requires, or the Security Agent seeks (which it may do at any time) a decision, consent, approval, acceptance, agreement, request, direction or opinion of the Majority Security Holders, or is to be done at the request, or in accordance with the directions, of the Majority Security Holders, such shall be evidenced by minutes of a meeting as referred to in clause 15.5 or by one or more written notices each signed by one or more Security Holders (constituting in aggregate the Majority Security Holders) which shall be given to the Security Agent who shall then advise the Council of such notice and provide to the Council a copy of such decision, consent, approval, acceptance, agreement, request, direction or opinion.
- 8.15 Actions of Majority Security Holders:** Whenever the Council requires a decision, consent, approval, acceptance or agreement of the Majority Security Holders on any matter in this Deed, or the Council requires the Majority Security Holders to request any matter, or the Council requires the Majority Security Holders to give directions or to give an opinion on any matter in this Deed, it shall give a notice to that effect to the Security Agent (which notice may request the convening of a meeting of Security Holders) who shall then advise all such Security Holders accordingly and request the appropriate action.
- 8.16 Indemnity by Security Holders:** If the Security Agent receives a direction or request by the Majority Security Holders in accordance with the provisions of this Deed, the Security Agent shall not be bound to comply with it unless the Security Agent has first been indemnified to its satisfaction against any actions, proceedings, claims and demands to which the Security Agent may be rendered liable and all costs, charges, damages and expenses which it may incur by doing so.

- 8.17 **Determinations Binding:** Where this Deed provides for, or the Security Agent requests, a decision, consent, approval, acceptance, agreement, request, direction, opinion or other action:
- 8.17.1 **Majority:** of or by the Majority Security Holders, the making or giving of such by the Majority Security Holders shall bind all Security Holders and the Security Agent accordingly; or
- 8.17.2 **Generally:** of or by Security Holders generally (but without specific reference to the Majority Security Holders), the making or giving of such by the Majority Security Holders shall nevertheless bind all Security Holders and the Security Agent accordingly except where this Deed expressly requires otherwise.
- 8.18 **Security Agent not Trustee:** The Security Agent shall not, by reason of this Deed or any matter relating to this Deed, be deemed to be a trustee for the benefit of any Security Holder or to have any fiduciary duty except as expressly provided in this Deed or to the minimum extent necessary to give effect to this Deed. The Security Agent is not, in any respect, an agent of the Council.
- 8.19 **Independent Assessment:** Each Security Holder shall make, independently and without reliance on the Security Agent, its own investigations into the affairs and financial condition of the Council and the nature and extent of its rights and obligations under this Deed, and its own analysis and decisions as to taking, or omitting to take, any action under such Facilities to which it may be a party.
- 8.20 **Not Bound to Give Notice:** The Security Agent shall not be bound to give notice to any person of the execution of this Deed.
- 8.21 **Disclosure and Confidentiality:** The Security Agent may disclose a information (other than the commercial details of any Facility) it receives from, or in respect of, the Council in its capacity as Security Agent pursuant to this Deed to Security Holders or to any person referred to in clause 8.6.1(a). Subject to this right, the Security Agent and each Security Holder shall treat, and maintain, as confidential all information which it receives from, or in respect of, the Council pursuant to this Deed.

## 9. ENFORCEMENT

- 9.1 **Enforcement Events:** Subject to clause 8.5 and Section 10, the security created by this Deed shall become enforceable following the occurrence of any one or more of the following events, and while such is continuing unremedied or unwaived:
- 9.1.1 **Non-Payment:** if:

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

**9.1.2 Receivership:** if a receiver, or receiver and manager, is appointed of (or the Council requests any such appointment), or an encumbrancer takes possession of or exercises its powers of sale in respect of, all or any material part of the Charged Assets unless the Council demonstrates to the satisfaction of the Security Agent acting on the instructions of the Majority Security Holders that such appointment or taking of possession or exercising of power will not have a material adverse effect on the ability of the Council to repay the Secured Money when such is due and payable;

**9.1.3 Material Default:** if any material default not otherwise referred to in the preceding provisions of this clause 9.1 is made by the Council in the performance or observance of any other material covenant, condition or other provision binding upon the Council under this Deed (whether or not the Security Agent has waived any prior similar default) and such default continues for more than 30 days after receipt by the Council of a notice in writing from the Security Agent specifying the default and requiring such to be remedied.

## 10. SECURITY AGENT'S POWERS OF ENFORCEMENT

**10.1 Security Agent's Powers to Act:** At any time after the security created by this Deed has become enforceable (but subject to clause 10.3 and to the Act), and while it remains enforceable, the Security Agent may, upon receiving written direction from the Majority Security Holders to do so, take one or more of the following steps:

- 10.1.1 **Accelerate:** subject to the conditions or limitations applicable to any particular Facility, declare the whole or any affected part of the Secured Money to have become immediately due and payable, whereupon such money shall forthwith become due and payable;
  - 10.1.2 **Take Possession:** enter into or take possession of all or any part of the Charged Assets;
  - 10.1.3 **Realise:** either with or without taking possession sell, call in, collect and convert into money all or any part of the Charged Assets in such manner and for such consideration as the Security Agent thinks fit;
  - 10.1.4 **Meeting:** call a meeting of the Security Holders to enable the Majority Security Holders to determine what action (if any) the Security Agent should take in the circumstances.
- 10.2 **Decrystallisation:** At any time after the floating charge created by this Deed has taken effect as a fixed charge in respect of any part of the Charged Assets, it shall resume the status of a floating charge in respect of that part of the Charged Assets which the Security Agent gives notice to that effect to the Council.
- 10.3 **Notice of Exercise of Powers:** The powers conferred by clause 10.1 shall be exercisable by the Security Agent without further notice to the Council, but before calling up and demanding repayment of the Secured Money or appointing a Receiver or making any such entry or taking possession or making any sale, calling in, collection or conversion (the "powers of conversion") the Security Agent shall, except where it certifies in writing to the Council that, in the opinion of the Majority Security Holders, delay would imperil the interests of Security Holders or except upon the happening of any one or more of the events referred to in clauses 9.1.1(a), 9.1.1(b), 9.1.2 or 9.1.3, give written notice of its intention to the Council and shall not call up and demand the repayment of the Secured Money, enforce the security created pursuant to this Deed, appoint a Receiver or enter upon or take possession of any part of the Charged Assets or exercise the powers of conversion until the expiration of 14 days after the giving of such notice or if within such period the breach or event so specified is remedied to the reasonable satisfaction of the Security Agent acting on the instructions of the Majority Security Holders or the Security Agent notifies the Council in writing that the particular breach or event relied upon no longer in the opinion of the Majority Security Holders detrimentally affects the security created by this Deed, provided however that if the Security Agent has appointed a Receiver in accordance with this clause 10.3, no further notice shall be required before exercising any other powers of conversion.

#### 10.4 Power After Entry:

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

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

10.4.2 **Expenses:** The Security Agent shall by and out of the proceeds and income of the Charged Assets pay and discharge the expenses incurred in and about the exercise of any of the powers under clause 10.1 and Section 11, or otherwise in respect of the Charged Assets, and shall pay and apply the residue of the said proceeds and income in the manner provided in Section 12 with respect to the money to arise under the powers of conversion. The Security Agent may for any such purpose, and for the purpose of payment to the Security Agent of all sums for the time being owing to it (whether by way of remuneration or otherwise) advance, borrow or raise money on the security of all or any part of the Charged Assets in priority to the Secured Money and at the rate of interest, and on the terms, which the Security Agent thinks fit.

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## 11. APPOINTMENT OF RECEIVER

- 11.1 Appointment and Removal:** At any time after the security created by this Deed has become enforceable, but subject always to clause 10.3 and to the Act (and in particular sections 122ZM(2)(e) and (q)), the Security Agent may in its discretion and shall forthwith (subject to the provisions of clause 8.16) upon request in writing of the Majority Security Holders, (and without any further notice to or consent on the part of the Council) appoint in writing one or more Receivers (whether severally, jointly or both) of all or any part of the Charged Assets with power from time to time to remove any Receiver so appointed and in case of removal, retirement or death to appoint another in his or her place. Any such Receiver may be appointed either before or after the Security Agent has entered into or taken possession of all or any part of the Charged Assets.
- 11.2 Rights of Receiver:** Following an appointment of a Receiver, the Receiver shall (subject to the provisions of the Act, and except where precluded or limited by law) have power to do all or any of the following which are not specifically excluded by his or her appointment:
- 11.2.1 Take Possession:** take possession of, demand, collect, or get in all or any part of the Charged Assets and exercise the rights conferred on Receivers by the Act (and, in particular, sections 122ZF and 122ZM(3)) in respect of the Charged Assets;
  - 11.2.2 Deal with Charged Assets:** deal with and exploit all or any part of the Charged Assets in any manner;
  - 11.2.3 Dispose of Charged Assets:** dispose of or concur in the disposal of all or any part of the Charged Assets and any interest in the Charged Assets generally upon such terms and conditions as the Receiver may consider necessary or expedient;
  - 11.2.4 Acquire Property:** acquire an asset or an interest in an asset for inclusion in the Charged Assets;
  - 11.2.5 Appoint Agents:** appoint and employ officers, managers, employees, advisers, contractors or agents for any purpose and on the terms which the Receiver may consider necessary or expedient;
  - 11.2.6 Borrow Money:** advance money to, or borrow or raise money from, any person with or without a charge or other security interest over or affecting the Charged Assets;
  - 11.2.7 Settle Disputes:** bring, defend, submit to arbitration, negotiate, compromise, abandon or settle a claim or a proceeding, or make an arrangement or compromise, in relation to the Charged Assets;

- 11.2.8 Execute Documents:** (subject to the Act, and in particular, to section 122ZM(2)(g)) execute or do, or cause or authorise to be executed or done, on behalf of or in the name of the Council or otherwise and under the common seal of the Council or otherwise, all agreements, acts or things which the Receiver may reasonably consider necessary or expedient in relation to the Charged Assets;
- 11.2.9 Give Receipts:** give a receipt for money paid to or an asset received by the Security Agent or Receiver (which receipt shall effectively discharge the payer or the person delivering that asset);
- 11.2.10 Delegate:** delegate any of the rights conferred upon the Receiver under this Deed, the Act or by law;
- 11.2.11 Authorise Transactions:** generally carry out, or cause or authorise to be carried out, any transaction, scheme or arrangement whatever in relation to the Charged Assets which the Receiver may consider necessary or expedient; and
- 11.2.12 Incidental Rights:** do or omit to do anything incidental to the rights contained in this clause 11.2.

The above rights of a Receiver, together with those referred to below, are in addition to and not in substitution for the rights conferred on receivers under statute or at law and are at all times subject to any restrictions imposed from time to time by the Act, including sections 122ZN(1) and (4).

- 11.3 Withdrawal:** The Security Agent may at any time give up possession of any Charged Assets and may at any time discontinue any receivership.
- 11.4 Receiver Agent of the Council:** A Receiver is, to the extent permitted by the Act, to be the agent of the Council, and the Council is to be solely responsible for his or her acts and defaults (including misconduct, negligence or default), but without prejudice to the Council's rights against the Receiver.
- 11.5 Receiver's Remuneration:** The remuneration of a Receiver may be fixed by the Security Agent (and may be, or include, a reasonable commission calculated by reference to the gross amount of all money received by the Receiver). Such remuneration is to be payable by the Council and, to the extent permitted by law, is to form part of the Secured Money and will accordingly be secured by the Charged Assets.

**11.6 The Security Agent and a Receiver: Any Receiver:**

- 11.6.1 Rights:** shall unless otherwise directed by the Security Agent, have such rights as are conferred upon the Security Agent by this Deed and are capable of being exercised by the Receiver as the Security Agent may think expedient, and if the Security Agent thinks expedient may have the power to sub-delegate the same;
- 11.6.2 Directions:** shall in the exercise of his or her rights comply with any directions given by the Security Agent;
- 11.6.3 Payment:** shall (except as otherwise directed by the Security Agent) pay all money he or she receives to the Security Agent to be applied by the Security Agent on the basis set out in Section 12;
- 11.6.4 Application:** is to apply, for the purposes of this Deed, all money received from the Security Agent arising from the Charged Assets and the Security Agent may determine what funds the Receiver shall keep in hand;
- 11.6.5 Borrow:** may, for the purpose of defraying any costs, losses, charges or expenses (including his or her remuneration) which shall be incurred by him or her in the exercise of rights vested in him or her, and for all or any other purposes of this Deed raise and borrow money by way of any Loan or Incidental Arrangement on the security of all or any part of the Charged Assets either in priority to the Secured Money and the security created by this Deed as may be permitted by the Act or otherwise, at such rate or rates of interest and generally on such terms and conditions as he or she thinks fit (and no person lending any such money shall be concerned to enquire as to the propriety or purpose of the exercise of this power or to see to the application of any money so raised or borrowed) and for those purposes may execute and do all such assurances and things as he or she thinks fit **PROVIDED ALWAYS THAT** a Receiver shall not exercise any such power without first obtaining the written consent of the Security Agent thereto but the Security Agent shall incur no responsibility or liability to the lender or otherwise by reason of its giving or refusing such consent whether absolutely or subject to any limitation or condition.

- 11.7 Security Agent's Right to Sell Concurrently:** The Security Agent may, upon such terms as it thinks proper, join in exercising its rights under this Deed with any other secured creditor of the Council and in particular may on such terms as it thinks proper join in appointing a common Receiver of all or any part of the Charged Assets, subject to the Security Agent retaining such priority as is enjoyed by it in respect of the Charged Assets but with

liberty for the Security Agent to make any arrangement it thinks proper for the purpose of ensuring the respective priorities.

- 11.8 No Liability as Mortgagee in Possession:** The Security Agent or any Receiver shall not be liable, by reason of an entry into possession of all or any part of the Charged Assets, to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on reallocation or for any default or omission for which a mortgagee in possession might be liable.
- 11.9 Protection of Third Parties:** No person dealing with the Security Agent or any Receiver, or their respective agents, shall be concerned to enquire:
- 11.9.1 Enforceability:** whether the security created by this Deed has become enforceable;
  - 11.9.2 Right Exercisable:** whether any right exercised or purported to be exercised pursuant to this Deed has become exercisable;
  - 11.9.3 Money Due:** whether any money remains due upon the security of this Deed;
  - 11.9.4 Conditions:** as to the necessity or expediency of the conditions subject to which any sale shall be made;
  - 11.9.5 Propriety:** otherwise as to the propriety or regularity of any exercise of the powers of conversion; or
  - 11.9.6 Application:** as to the application of any money paid to the Security Agent or to any Receiver.

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

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

## 12. APPLICATION OF PROCEEDS OF ENFORCEMENT

**12.1 Application:** Subject always to the Act and, in respect of any Loans Act Special Rate, such provisions of the Loans Act and the Rating Act as may be applicable, all money arising from each exercise of the powers of conversion, and all money received under any rights conferred by this Deed upon a Receiver or upon the Security Agent after the security created by this Deed has become enforceable and the Security Agent has determined or become bound to enforce the same, shall be held and applied in the following order:

**12.1.1 Remuneration and Costs:** (subject to any direction made by any court under section 34(2) of the Receiverships Act) in or towards payment or retention of all remuneration payable to the Receiver as provided in this Deed and the costs incurred by the Receiver, and the costs of obtaining appointment of the Receiver incurred by the Security Agent or any other person who has incurred them; then

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

**12.1.3 Essential Services:** in or towards payment or retention of those amounts (if any) required to enable the Receiver to provide those services specified in section 122ZN(1) of the Act as are applicable; then

**12.1.4 Prior Charges:** in or towards payment of, or provision for, any debts or liabilities (if any) secured by any charge or security interest having priority over the security created by this Deed in respect of the Secured Money, in accordance with their respective priorities; then

**12.1.5 Security Agent:** in or towards payment of, or provision for, all amounts owing to the Security Agent (including by way of indemnity) under this Deed; then

**12.1.6 Priority Amounts:** in or towards payment to the Security Holders, *pari passu* in proportion to the amounts actually or contingently owing to them, of their respective Priority Amounts in respect of their respective Security Certificates (whenever issued), as in any case entitled thereto **PROVIDED ALWAYS** that:

- (a) before making any such payment, the Security Agent shall, in the case of each Security Holder but subject to the following provisions, set aside an amount (or the

proper proportion thereof in the event of the amount available for distribution and application in accordance with this clause in respect of the abovementioned amounts owing to the Security Holders respectively being less than one hundred cents in the dollar) equal to the aggregate of the contingent liabilities (if any) which are determinate or limited in amount forming part of that Security Holder's Priority Amount, but so that the amount set aside under this paragraph (a) in respect of any Security Holder shall not, when aggregated with money paid by the Security Agent to the Security Holder on account of principal, exceed the Priority Amount for the relevant Security Certificate;

(b) in the event of all or part of a contingent liability being indeterminate or unlimited in amount, the Security Agent shall, subject to the following provisions, set aside as referred to above such amount as shall be nominated by the relevant Security Holder as its reasonable estimate of that contingent liability or the proper proportion thereof (in the event of the amount available for distribution and application in accordance with this clause in respect of the abovementioned amounts owing to the Security Holders respectively being less than one hundred cents in the dollar) as the case may be but so that the amount set aside under this paragraph (b) in respect of any Security Holder shall not, when aggregated with money paid by the Security Agent to the Security Holder on account of principal, exceed the Priority Amount for the relevant Security Certificate;

(c) any amount set aside in accordance with these provisos shall be held by the Security Agent and applied in the following manner:

(i) each time all or part of a contingent liability becomes an absolute ascertained liability the Security Agent shall pay to the relevant Security Holder the amount or a proportionate part of such absolute and ascertained liability as referred to above as if the same had been a debt presently payable to such holder at the Date of Enforcement;

(ii) each time any portion of the amount set aside pursuant to these provisos is no longer required for the purposes of paragraph (i) above then it shall become available for distribution and

payment as otherwise provided in this clause 12.1; then

- 12.1.7 Excess Amounts:** in or towards payment to the relevant Security Holders of any amount of each Security Holder's Secured Money as referred to in clause 2.3.4 (and in accordance with that clause), as in any case entitled thereto; then
- 12.1.8 Subsequent Charges:** in or toward payment of, or provision for, any debts or liabilities secured by any charge or security interest ranking subsequent to the security created by this Deed, as in any case entitled thereto; then
- 12.1.9 Council:** to, or for the benefit of, the Council as it may direct.
- 12.2 Payment of Principal Before Interest:** If the Security Agent considers it expedient in the interests of Security Holders, payments may, subject to the Act, be made on account of principal before interest, or the whole of the interest, has been paid, but such alteration in the order of payment shall not prejudice the right of Security Holders to receive the whole amount to which they would have been entitled if the ordinary order of payment had been observed or any lesser amount which the sum ultimately realised from the security created by this Deed would be sufficient to pay.
- 12.3 Production of Security Certificates:** Upon any payment being made under any of the provisions of clauses 12.1 or 12.2, any relevant Security Certificate shall be produced to and endorsed by the Security Agent or the Council with details of the payment. The Security Agent or the Council may in any particular case dispense with such production and endorsement upon such indemnity (if any) being given as it considers sufficient.
- 12.4 Security Holders Certificate:**
- 12.4.1 Evidence:** For the purposes of clauses 12.1 and 12.2, a certificate from any Security Holder as to the Secured Money (or as to any component thereof) at any time of that Security Holder shall in the absence of manifest error be prima facie evidence of the amount of such Secured Money, or component thereof, as the case may be.
- 12.4.2 Information:** For the purposes of the Council or the Security Agent making any determination or calculation pursuant to this Deed, the Council or the Security Agent may require any Security Holder to provide it with a certificate or other information giving details of all amounts owing and secured by such Security Holder's Security Certificate as at any date including, where a contingent or indeterminate liability is so secured, the Security Holder's reasonable estimate of that contingent or indeterminate

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

**12.5 Postponement of Distribution:** If the amount of the money at any time available under clause 12.1 for payment of the Secured Money is less than ten percent of the amount of the Secured Money, the Security Agent may at its discretion invest that money upon any of the investments authorised in this Deed with power from time to time to vary such investments, and such investments (with the resulting income) may be accumulated until the accumulations together with any other funds for the time being under the control of the Security Agent and applicable for the purpose amount to a sum sufficient to pay at least ten percent of the amount of the Secured Money.

**12.6 Certificates of Indebtedness:**

**12.6.1 Determinations:** For the purposes of determining the appropriate payment to be made to any Security Holder pursuant to clause 12.1, or the composition of the Majority Security Holders, the Security Agent may (but need not) require any Security Holder to provide it with a certificate giving details of all amounts secured by the Security Holder's Security Certificate as at any date including, where a contingent or indeterminate liability is so secured, the Security Holder's reasonable estimate of that contingent or indeterminate liability. The Security Agent shall be entitled to rely upon the accuracy and correctness of any such certificate.

**12.6.2 Information:** Each Security Holder shall also provide the Security Agent with whatever information it may require for the purpose of this clause 12.6. The Security Agent shall incur no liability in so acting or for the consequences of so acting should any such certificate or information prove to have been incorrect, or for failing to request or obtain any such certificate or information.

### **13. ALTERATIONS**

**13.1 Security Agent May Concur in Certain Alterations:** The provisions of this Deed may be added to or varied by deed executed by the Council and the Security Agent:

**13.1.1 Without Consent:** without the consent of the Security Holders, if in the opinion of the Security Agent it is necessary or desirable:

- (a) to correct a manifest error or omission, or it is of a minor, formal or technical nature; or
- (b) to facilitate the expedient issue of Security Certificates by the Council; or
- (c) to facilitate the expedient issue of types of Security Certificate not specifically provided for in this Deed; or
- (d) to comply with, or as a result of the coming into effect of, any legislation; and

in any case it is not, nor is it likely to become, prejudicial in the opinion of the Security Agent to the general interests of the Security Holders; or

**13.1.2 With Consent:** with the consent of the Majority Security Holders,

**PROVIDED ALWAYS THAT,** subject to clause 15.4, no variation or addition shall be made in the conditions of any Security Certificate (as distinct from the provisions of this Deed) without the consent in writing of the holder.

**13.2 Temporary Variation:** The Majority Security Holders may agree in writing with the Council and the Security Agent to temporarily vary or suspend compliance with any of the provisions of this Deed, on such terms and conditions and for such period as shall be agreed, and any such agreement shall be binding on the Council, the Security Agent and the Security Holders and shall be notified by the Security Agent to all Security Holders, but shall have effect in accordance with the terms of such agreement.

## 14. EXISTING DEBT

**14.1 Global Security Certificate:** The Council will issue a Global Security Certificate as security for the Existing Debt as at the date of such Certificate.

**14.2 Benefit:** Upon the issuing of a Global Security Certificate pursuant to clause 14.1, the Existing Debt and the holders thereof for the time being will, to the fullest extent possible, be intended to be given the benefit of the provisions of this Deed as apply to Existing Debt, but subject to the obligations, limitations, restrictions and provisions of this Deed (including

clause 14.7), the Act and other law relevant to the Existing Debt and borrowings by a local authority in New Zealand, including in relation to their entitlement to the Charged Assets. Notwithstanding the preceding provisions of this clause, no Existing Debt, nor the holder thereof, shall be entitled to the benefit of this Deed without also accepting the obligations, limitations and restrictions herein and therein provided.

- 14.3 Assumed Security Holders:** Notwithstanding clause 14.2, the Security Agent and the Council shall be entitled to assume that the holders of the Existing Debt are Security Holders in terms of this Deed and have the rights conferred on them in accordance with the terms hereof and thereof, subject to:
- 14.3.1 Election:** (in relation to any individual holder of Existing Debt) clause 14.7;
- 14.3.2 Court Direction:** (to the extent applicable) the terms of any order or direction from a court in relation to the execution and administration of the arrangements rights contained in this Deed applicable to the Existing Debt or the entitlements under this Deed.
- 14.4 Limitation of Security Agent's Liability:** Prior to any order or directions as referred to in clause 14.3.2 being given, the Security Agent and the Council shall have no liability for acting on the assumption that such holders are Security Holders or, after any such order or directions are given, acting in accordance with such orders or directions. The Council shall not be required to, but may (to the extent permitted by law), make an application for any order or directions as referred to in clause 14.3.2.
- 14.5 Orders and Directions:** The Security Agent shall only be required to consider making an application for order or directions referred to in clause 14.3.2 in relation to any necessary matter or issue (as determined by the Security Agent) arising from the interpretation of this Deed, the convening and holding of any meeting of Security Holders, a payment to be made to the Security Agent relating to the Secured Money, enforcement of the security under this Deed or the entitlement of Security Holders to distribution of assets upon such enforcement or any other matter or circumstance determined by the Security Agent or the Council as being incidental thereto. Prior to such matter or issue arising, the Security Agent shall have no obligation to consider obtaining such an order or directions or incur any liability as a result.
- 14.6 Security Agent's Indemnity:** To the fullest extent permitted by law, the Security Agent shall be indemnified by the Council against all reasonable costs, charges and expenses incurred by and in relation to any such application or proceeding.

14.7 **Holder's Election:** Nothing in this Deed is intended to prejudice or derogate from the rights to which holders of Existing Debt were entitled prior to the execution of this Deed, however (but only to the extent permitted by relevant law) where the holder of any debt obligation of the Council which would otherwise constitute Existing Debt (or any person acting, or purporting to act, on such holder's behalf):

14.7.1 **Indications:** indicates to the Council or the Security Agent; or

14.7.2 **Determination:** is otherwise determined by the Council and the Security Agent, or by any court, to have evidenced an intention or made an election,

that such holder either:

14.7.3 **Decline Benefits:** does not wish such debt obligation to be Secured Money or otherwise to be covered by, or to have the benefit of, this Deed; or

14.7.4 **Exercise of Rights:** wishes or proposes to, or does, exercise any rights which such holder may have under the Loans Act or the Rating Act in respect of such debt obligation,

then, from and at all times after the date of such notice or determination, as the case may be, such debt obligation shall cease to be, or be considered to be, Secured Money or Existing Debt, or to be covered or secured by the Global Security Certificate referred to in clause 14.1, for the purposes of this Deed and the holder shall cease to be a Security Holder or holder in respect of such debt obligation.

## 15. MISCELLANEOUS PROVISIONS

### 15.1 Notices:

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

- (a) any Security Holder, shall be given or made to its Registered Address or in the case of a Security Holder having a Registered Facsimile Number, its Registered Facsimile Number;

- (b) the Council, shall be given or made to the Council's address or facsimile number stipulated or otherwise advised in accordance with clause 15.1.2;
- (c) the Security Agent, shall be given or made to the Security Agent's address or facsimile number stipulated or otherwise advised in accordance with clause 15.1.2.

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

**15.1.3 Joint Holders:** In the case of joint holders of a Security Certificate, a notice given to any Security Holder in the Register in respect of such holding shall be sufficient notice to all the joint holders.

**15.1.4 Council:** Any notice to be given by the Council may, where authorised by the Council, be given on its behalf by the Security Agent.

**15.2 Authenticity of Notices:** The recipient of a notice shall be entitled to rely on, without the need to carry out any investigation or make further inquiry, any notice which purports to have been given by any person pursuant to clause 15.1 and shall not be liable to that person or any other person in any way should any such notice subsequently be proved not to have been authorised by that person or to have been made, given or signed by someone other than an officer, employee, agent or attorney of that person or any solicitor.

**15.3 Registration of Deed:** The Council shall immediately at its own cost register or procure the registration and recording of this Deed as may be required by law or as may be necessary to give it full legal effect.

**15.4 Release of Deed:** Upon the Security Agent being reasonably satisfied that:

- 15.4.1 **Payment/Satisfaction:** all Security Holders have been paid or satisfied in respect of the Secured Money; or
- 15.4.2 **Provision:** provision for such payment or satisfaction has been made in accordance with the provisions of this Deed; or
- 15.4.3 **Replacement:** the Majority Security Holders accept that the security created by this Deed, and the Secured Obligations, are to be replaced with security of a form not materially less favourable to the Security Holders,

and upon payment or retention of all costs, charges and expenses incurred by or payable to the Security Agent or any Receiver in relation to this Deed, and the remuneration of the Security Agent and of any Receiver, the Security Agent shall at the request and cost of the Council surrender, release or transfer to the Council, or as it may direct, the Charged Assets or such part thereof as may remain charged in the Security Agent's favour freed and discharged from the security created by this Deed and from the Secured Money and release and discharge the Council from the Secured Obligations. Nothing in this clause shall limit or prejudicially affect the rights of the Council to any release of the Charged Assets pursuant to Section 6.

- 15.5 **Meetings:** Any meeting (including an adjourned meeting) of Security Holders, or the Majority Security Holders, for the purposes of clauses 8.14, 8.15 or 10.1.4 or otherwise (without prejudice to any other provision of this Deed):
  - 15.5.1 **Notice:** may, and shall if requested by the Council, be convened by the Security Agent by notice in writing to the Security Holders giving such period of notice as the Security Agent considers appropriate;
  - 15.5.2 **Place:** shall be held in such place, or by telephone conference, as the Security Agent may reasonably determine in consultation with the Council;
  - 15.5.3 **Minutes:** shall have minutes taken thereof by the Security Agent (or its nominee) as to all proceedings and decisions (which, upon being signed correct by or on behalf of the Security Agent, shall be prima facie evidence of the matters stated in them);
  - 15.5.4 **Rules:** shall be chaired by a person appointed by the Security Agent and be conducted pursuant to such rules, not being inconsistent with this Deed, as the Security Agent may reasonably stipulate in consultation with the Council;

**15.5.5 Deemed Valid:** shall be deemed to have been duly convened and held, and the decisions made thereat valid, unless the contrary is proved; and

**15.5.6 Not Invalidated:** shall not be, and the decisions made thereat shall not be, invalidated by the accidental omission to give notice to, or the non-receipt of notice by, any Security Holder,

**PROVIDED THAT:**

- (a) (subject to the Security Agent's obligations under clause 1.5.1) where an Enforcement Event has occurred, the Security Agent shall not be obliged to act on a request of the Council made pursuant to clause 15.5.1;
- (b) where the Security Agent is seeking the directions of the Majority Security Holders, or where an Enforcement Event has occurred, the Security Agent shall not be obliged to consult with the Council under clauses 15.5.2 and 15.5.4; and
- (c) the Council is permitted to attend all meetings of Security Holders, except where the Security Agent stipulates otherwise (which it may do in its sole discretion).

**15.6 Written Directions:** Notwithstanding clause 15.5, where the Security Agent seeks or is required to seek the instructions of the Majority Security Holders, the Security Agent may notify all Security Holders of the relevant issue and act on the written directions of Security Holders constituting in aggregate the Majority Security Holders, without the need to convene or hold a meeting.

**15.7 Partial Invalidity:** If any provision of this Deed or of any Security Certificate shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

**15.8 Absence of Crown Guarantee:** Neither the Secured Money nor the Secured Obligations are guaranteed by the Crown unless expressly authorised pursuant to section 59 of the Public Finance Act 1989.

**15.9 Governing Law and Submission to Jurisdiction:** This Deed, and each Security Certificate, is governed by and to be construed in accordance with, the laws of New Zealand and the Council, the Security Agent and each Security Holder submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters or disputes arising in respect of this Deed or any Security Certificate.

IN WITNESS OF WHICH this Deed has been executed.

THE COMMON SEAL of the )  
AUCKLAND CITY )  
COUNCIL was affixed to this )  
Deed at the Office of and in )  
pursuance of a resolution )  
of the Council, in the presence of: )



[Signature]  
~~Mayor/Deputy Mayor/Chief Executive~~  
CHAIRMAN FINANCE AND PROPERTY

[Signature]  
~~Chief Executive/City Secretary~~  
COMMITTEE MANAGER

Address: Level 5, Bledisloe House  
24 Wellesley Street  
Auckland

Facsimile: (09) 307 7600  
For: Funds Manager

SIGNED by the Local Board of )  
THE TRUSTEES EXECUTORS )  
AND AGENCY COMPANY OF )  
NEW ZEALAND LIMITED by: )

[Signature]  
Director James Raymond Minto  
[Signature]  
Authorised Signatory Clynton Neil Hardy

in the presence of:

[Signature]  
Signature

Lynette Rona Garmonsway

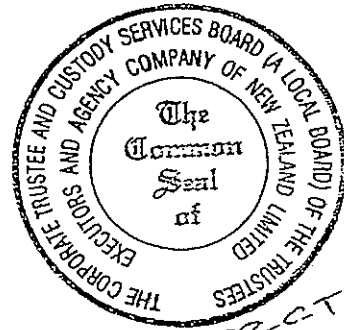
Full Name

Personal Assistant  
Occupation

Wellington  
Address

Address: Telstra Business Centre  
191 Queen Street  
P O Box 4197  
Auckland

Facsimile: (09) 303 0155  
For: Corporate Business Manager



98-CT350  
(2/3)

SCHEDULE

PART I

*(Security Certificate - no nominal amount)*



AUCKLAND CITY

Security Certificate No: [            ]

THE AUCKLAND CITY COUNCIL  
(the "Council")

Principal Office: [                            ]

SECURITY CERTIFICATE

This Security Certificate is issued pursuant to a deed of debenture (the "Deed") dated [                    ] between the Council and The Trustees Executors and Agency Company of New Zealand Limited (as Security Agent for the Security Holders) and is issued with the benefit and subject to the provisions of the Deed and the conditions endorsed on and/or otherwise applicable to this Certificate (included in the term the "conditions").

THIS IS TO CERTIFY THAT

1. [name of holder] (the "holder") will, upon registration pursuant to the Deed, be the registered holder of this Certificate;
2. THIS Certificate is issued by way of continuing security for the liabilities of the Council to the holder under or arising in respect of [*describe Facility/liabilities (which may include all liabilities)*];

*[\*The description of the relevant Facility/liabilities in the above brackets may be varied to suit the particular circumstances for which the Certificate is issued.]*

all in accordance with the Deed (including the conditions).

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

[Execution Block]

NOTES:

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

[Conditions]

*[endorsement of certificate of registration for purposes of section 106 Companies Act 1955]*



SCHEDULE

PART II

*(Security Certificate - with nominal amount)*



AUCKLAND CITY

Security Certificate No: [            ]

THE AUCKLAND CITY COUNCIL  
(the "Council")

Principal Office: [            ]

SECURITY CERTIFICATE

This Security Certificate is issued pursuant to a deed of debenture (the "Deed") dated [            ] between the Council and The Trustees Executors and Agency Company of New Zealand Limited (as Security Agent for the Security Holders) and is issued with the benefit and subject to the provisions of the Deed and the conditions endorsed on and/or otherwise applicable to this Certificate (included in the term the "conditions").

**THIS IS TO CERTIFY THAT**

1. [name of holder] (the "holder") will, upon registration pursuant to the Deed, be the registered holder of this Certificate having a nominal amount of \$[            ];
2. SUBJECT to the provisions of clause 3 of this Certificate, this Certificate is issued by way of continuing security for the liabilities of the Council to the holder under or arising in respect of [*describe Facility/liabilities (which may include all liabilities)*];

*[\*The description of the relevant Facility/liabilities in the above brackets may be varied to suit the particular circumstances for which the Certificate is issued.]*

3. THIS Certificate is issued on the special condition that at any date this Certificate shall secure as the Priority Amount not more than the lesser of:
  - (a) the aggregate amount (as finally determined) of all amounts (of whatever nature) referred to in clause 2 of this Certificate; or



**CONDITIONS**  
**(Applicable to Parts I and II)**

1. **SUBJECT** as herein provided, the Security Holder is entitled *pari passu* and rateably with the holders of all other Security Certificates to the benefit of, and is subject to, the provisions of the Deed (including the conditions).
2. **EVERY** Security Holder shall, as a condition precedent to receiving payment of the amount of the Secured Money secured by the Security Holder's Security Certificate following the Date of Enforcement produce, in the case of part payment, and surrender, in the case of payment in full, such Certificate to the Council or, in case of contemplated payment by the Security Agent, to the Security Agent as the case may require **PROVIDED ALWAYS** that this condition shall not preclude payment by the Council or the Security Agent without production of such Certificate if the Council or the Security Agent so elects. Upon payment in part, the Certificate shall be, or be deemed to be, endorsed accordingly and returned to the Security Holder, and upon payment in full, the Certificate shall be deemed to have been cancelled and surrendered to the Council. This condition shall not apply if the Security Agent requires payment to it of the Secured Money in respect of any Security Certificate in accordance with the provisions of the Deed.
3. **EVERY** Security Holder will be recognised by the Council and the Security Agent as entitled to its Security Certificate and to the Secured Money secured thereby free from any equity, security interest, set-off or cross-claim or counter-claim between the Council and the original or any intermediate holder of the Security Certificate (not being the Security Holder).
4. **THIS** Certificate may be transferred to the same extent as the Facility to which it relates and every instrument of transfer must be left at the principal office of the Council for registration accompanied by this Certificate and such other evidence as the Council may require to prove the title of the transferor or its right to transfer this Certificate. 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 Council will register the transfer and will recognise the transferee as the Security Holder entitled to the transferred amount of this Certificate. The transferor shall be deemed to remain the owner of this Certificate until the name of the transferee is entered in the Register in respect thereof.
5. **THE** Council and the Security Agent, will recognise only the Security Holder as the absolute owner of this Certificate and the Secured Money secured hereby and, except as ordered by a court of competent jurisdiction or by statute, shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which this Certificate or such Secured Money may be subject. The receipt of such Security Holder, or in the case of joint Security Holders the receipt of any of them, of any of the Secured Money or the compliance with the payment directions of the Security Holders or any one of joint Security Holders, shall be a good discharge to the Council and the Security Agent notwithstanding any notice it may have whether express or otherwise of the right, title, interest (including security interest) or claim of any other person to or in respect of this Certificate or such Secured Money. No notice of any trust express, implied or constructive, nor of any security interest, shall be entered on the Register in respect of this Certificate or such Secured Money.
6. **JOINT** holders of any Security Certificate shall not be entitled to duplicate Certificates in respect thereof and the Certificate in respect of a joint holding may be delivered to such one of the joint holders as the Council may select.
7. **ANY** person becoming entitled to a Security Certificate as a result of the death, bankruptcy or liquidation of any Security Holder may (subject to the conditions as to transfer applicable to the