

# Master Trust Deed

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**PARTIES**

Kiwi Property Group Limited

**Issuer**

Public Trust

**Supervisor**

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**DEED** dated 30 June 2014 (as amended and restated on 1 December 2016 and as further amended and restated on 30 October 2023)

## **PARTIES**

**KIWI PROPERTY GROUP LIMITED** a company incorporated in New Zealand under the Companies Act ("**Issuer**")

**PUBLIC TRUST** ("**Supervisor**")

## **INTRODUCTION**

- A. This Deed provides for the establishment of a bond programme ("**Programme**") under which the Issuer may from time to time issue debt securities in New Zealand.
- B. Each Tranche of Bonds issued by the Issuer will be constituted by, and issued on terms set out in, this Deed as supplemented by the relevant Supplemental Trust Deed made between the Issuer and the Supervisor. The terms of any such Supplemental Trust Deed may modify the terms of this deed in relation to the relevant Tranche of Bonds.
- C. The FMC Act requires the appointment of a supervisor in respect of the Retail Bonds and the execution by the Issuer and the Supervisor of a trust deed.
- D. The Supervisor has agreed, at the request of the Issuer, to act as supervisor for the Holders of each Retail Series and, to the limited extent expressly provided in this Deed, for the Holders of each Wholesale Series, on the terms and conditions of this Deed applicable to that Series.
- E. The obligations of the Issuer in respect of the Bonds (including the payment by the Issuer of amounts due on the Bonds) are guaranteed by the Guarantors.

## **COVENANTS**

### **1. INTERPRETATION**

#### **1.1 Definitions:** In this Deed, unless the context otherwise requires:

**"Agency Agreement"** means, in relation to any Series, the registrar and paying agency agreement (however described) between the Issuer and the person appointed as the registrar, paying agent and, if applicable, the Calculation Agent for that Series.

**"Amortisation Date"** means, in respect of an Amortising Bond, each date (other than the Maturity Date) for the repayment of part of the Principal Amount of that Amortising Bond, being the dates recorded as such in the Register in respect of that Amortising Bond.

**"Amortising Bond"** means a Bond (whether a Fixed Rate Bond, Floating Rate Bond, or a Zero Coupon Bond or otherwise) the Principal Amount, or part of the Principal Amount, of which is repayable on the scheduled Amortisation Dates for that Bond.

**"Approved Issuer Levy"** means, in relation to any payment of interest (as defined in section 86F of the Stamp and Cheque Duties Act 1971) under any Bond, the levy payable by the Issuer in accordance with section 86J of the Stamp and Cheque Duties Act 1971.

**"Auditor"** means the auditor appointed to perform the statutory audit of the Financial Statements of the Group.

**"Authorised Officers"** means, in relation to the Issuer, any person who is a director, chief executive officer, chief financial officer, company secretary or general counsel of the Issuer (or such officer of the Issuer howsoever designated as may from time to time replace or succeed such officer), and any other officer of the Issuer formally appointed by the Issuer's Directors or their duly authorised delegates and notified in writing to the Supervisor.

**"Bank Facility"** means the senior facilities agreement dated 22 December 2014 between Kiwi Property Holdings Limited as borrower, Kiwi Property Group Limited as parent, the initial guarantors named therein, Commonwealth Bank of Australia as arranger, the initial lenders named therein and New Zealand Permanent Trustees Limited as security trustee.

**"Bank Lenders"** means the Lenders for the time being under and as defined in the Bank Facility and/or any facility agent or other representative acting on their behalf.

**"Base Rate"** means, in relation to an Interest Period, either:

(a) **Bill rate:**

- (i) if the Interest Period is one, two, three, four, five, or six months, the reference rate specified in the relevant Supplemental Trust Deed for a Tranche ("**Reference Rate**") (rounded, if necessary, to the nearest two decimal places) as displayed at or about 11:00am or such other time as specified in the relevant Supplemental Trust Deed for a Tranche ("**Specified Time**") on the first day of that Interest Period on the Reuters, Bloomberg or other screen page as specified in the relevant Supplemental Trust Deed for a Tranche ("**Screen Page**") for bank bills having a term approximately equal to that Interest Period; or
- (ii) if the Interest Period is longer than one month but shorter than six months, and not two, three, four, or five months, the rate resulting from straight line interpolation (rounded, if necessary, to the nearest two decimal places) between the Reference Rates as displayed at or about the Specified Time on the first day of that Interest Period on the Screen Page for bank bills having a term:
  - (aa) shorter than, but closest to, that Interest Period; and
  - (bb) longer than, but closest to, that Interest Period; or
- (iii) (in either case) if:
  - (aa) there are no such Reference Rates displayed for bank bills having the relevant term; or
  - (bb) fewer than four persons are displayed on the Screen Page as quoting such a rate,

then the average (rounded, if necessary, to the nearest two decimal places) of the rates quoted to the Calculation Agent for the relevant Tranche by each of the Reference Banks (or such one or more of them as are quoting) as being its buy rate for bank bills having a term approximately equal to the relevant Interest Period at or about that time on that date; or

- (b) **Other specified rate:** any other reference rate as may be specified in the Supplemental Trust Deed for a Tranche.

**"Bond"** means a bond, note or other instrument by whatever name called and constituted by, and subject to the terms and conditions set out in, this Deed (as supplemented by the relevant Supplemental Trust Deed for a Tranche), and includes an Amortising Bond, a Fixed Rate Bond, a Floating Rate Bond or a Zero Coupon Bond or combination thereof.

**"Bond Moneys"** means, in relation to a Bond at any time, the Principal Amount, interest and other moneys payable on, or in relation to, that Bond to the Holder of that Bond at the direction of the Supervisor at that time under or pursuant to this Deed and a reference to **"Bond Moneys"** includes any part of them.

**"Business Day"** means a day (other than a Saturday or Sunday) on which registered banks are generally open for business in Wellington and Auckland, and shall also include such other city or cities specified in the Supplemental Trust Deed for the relevant Series.

**"Calculation Agent"** means, in relation to any Series, the person appointed by the Issuer from time to time (in consultation with the Supervisor) to calculate Interest Rates or amounts due on the Bonds and, if none is appointed, means the Registrar for the relevant Series.

**"Charging Group"** means the Issuer and each Guarantor.

**"Charging Group Member"** means a member of the Charging Group.

**"Class"** means Bonds which constitute a separate category of Bonds with such categories being:

- (a) in relation to matters affecting a Series only, that Series; or
- (b) any category of Bonds having substantially the same rights, privileges, limitations and conditions, which in the reasonable opinion of the Issuer (in consultation with the Supervisor) at any particular time, for any particular purpose, constitutes a separate class of Bonds,

and **"Class of Holders"** means the Holders of those Bonds.

**"Companies Act"** means the Companies Act 1993.

**"Conditions"** means, in relation to a Tranche, the terms and conditions applicable to that Tranche set out in the Supplemental Trust Deed for that Tranche and (as modified by that Supplemental Trust Deed) this deed and shall include the provisions of the relevant Security Documents.

**"Consolidated Group"** means:

- (a) each Charging Group Member; and
- (b) each other Subsidiary of the Issuer.

**"Consolidated Group Member"** means a member of the Consolidated Group.

**"Date of Enforcement"** means the date on which a Holder or the Supervisor makes a declaration pursuant to clause 12.1.

**"this Deed"** means this deed and, where used or falling to be interpreted in relation to a particular Tranche, includes the Supplemental Trust Deed for that Tranche and relates to this deed as modified and supplemented by that Supplemental Trust Deed, and (for the avoidance of doubt) **"this deed"** in all other contexts means this deed alone.

**"Default Interest"** has the meaning given in clause 6.8.

**"Derivative Contract"** means an interest rate or currency swap, futures contract, hedging contract, option contract, forward exchange contract, forward rate agreement, financial risk management contract, or other agreement or instrument substantially similar in nature to any one or more of the foregoing.

**"Director"** means a director of the Issuer for the time being and includes an alternate director acting as a director of the Issuer.

**"Directors' Report"** means a report signed by two Directors in the form set out in schedule 2, or such other form as the Issuer and the Supervisor may agree (whether in any relevant Supplemental Trust Deed or otherwise).

**"Dollars"** and **"\$"** means the lawful currency of New Zealand.

**"Event of Default"** means any of the events specified in clause 12.1.

**"Event of Review"** means the event specified in clause 12.2.

**"Finance Debt"** means any indebtedness, present or future, actual or contingent for or in respect of money borrowed or raised by any means or any financial accommodation whatever (including acceptances, deposits, financial leases, debt factoring with recourse, sale and repurchase agreements and redeemable preference shares) and for the deferred purchase price of assets and services, but excludes, for the avoidance of doubt (other than for the purposes of the definition of Subordinated Debt) Subordinated Debt.

**"FMA"** means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011.

**"FMC Act"** means the Financial Markets Conduct Act 2013.

**"FMC Regulations"** means the Financial Markets Conduct Regulations 2014.

**"Financial Markets Supervisors Act"** means the Financial Markets Supervisors Act 2011.

**"Financial Statements"** means, at any date, in respect of the Group, consolidated financial statements of the Group as at that date which comply with NZ GAAP.

**"First Interest Accrual Date"** means the first date from which interest will accrue in respect of a particular Tranche as set out in the Supplemental Trust Deed for that Tranche and, if no such date is specified, means the Issue Date.

**"Fixed Establishment"** has the meaning given to that term in the Income Tax Act 2007.

**"Fixed Rate Bond"** means a Bond bearing a fixed rate of interest.

**"Floating Rate Bond"** means a Bond bearing interest at a margin over the Base Rate.

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

**"Gearing Ratio"** means the ratio set out in clause 11.6.

**"Gearing Ratio Breach"** and **"Gearing Ratio Notice"** have the meanings given in clause 12.2.

**"Group"** means the Issuer and each of its Subsidiaries.

**"GSD"** means the global security deed dated 5 November 1998 between the Guarantors named therein and the Security Trustee.

**"Guarantee"** means the guarantee given by each "Guarantor" under the GSD.

**"Guarantor"** means each "Guarantor" as defined in the GSD.

**"Holder"** means, in relation to a Bond at any time, the person whose name is recorded in the Register in respect of that Bond as the holder of that Bond at that time.

**"Interest Payment Date"** means:

- (a) in relation to a Floating Rate Bond, the last day of each Interest Period for that Floating Rate Bond or such other date as is specified in the Supplemental Trust Deed in relation to the Tranche of which that Floating Rate Bond forms part and recorded as such in the Register in respect of that Floating Rate Bond;
- (b) in relation to a Fixed Rate Bond, the quarterly, semi-annual or annual dates (or such other dates) specified in the Supplemental Trust Deed in relation to the Tranche of which that Fixed Rate Bond forms part and recorded as such in the Register in respect of that Fixed Rate Bond; and
- (c) in relation to any other Bond, the dates specified in the Supplemental Trust Deed in relation to the Tranche of which that Bond forms part and recorded as such in the Register in respect of that Bond.

**"Interest Period"** means, in relation to a Floating Rate Bond, a period determined in accordance with clause 7.1(a) in respect of that Bond.

**"Interest Rate"** means, in relation to a Bond, the rate of interest (if any) payable in respect of that Bond (which may be a fixed rate or a margin over the Base Rate) specified in the relevant Supplemental Trust Deed and recorded as such in the Register in respect of that Bond.

**"Issue Date"** means, in relation to a Bond, the date on which that Bond is issued, being the date specified in the relevant Supplemental Trust Deed and recorded as such in the Register in respect of that Bond.

**"Issue Price"** in relation to a Bond, has the meaning given in the relevant Supplemental Trust Deed.

**"Issuer Obligations"** has the meaning given to it in the FMC Act.

**"Liquidation"** includes receivership, compromise, arrangement, amalgamation, statutory management, administration, reconstruction, winding up, dissolution, removal from the register, assignment for the benefit of creditors, bankruptcy or death and the term **"Liquidated"** shall be construed accordingly.

**"Listed"** means listed and quoted on the NZX Debt Market operated by NZX or any alternative or successor recognised stock exchange and **"Listing"** has a corresponding meaning.

**"Listing Rules"** means the listing rules of NZX or, if the relevant Bonds are listed on an alternative or successor exchange, the listing rules of that exchange, in each case as in force from time to time applicable to the Issuer and the relevant Bonds.

**"Margin"** means, in relation to a Floating Rate Bond, the margin specified at the time of issue and recorded as such in the Register in respect of that Floating Rate Bond.

**"Maturity Date"** means, in relation to a Bond, the date for the repayment of that Bond, being the date specified in the relevant Supplemental Trust Deed and recorded as such in the Register in respect of that Bond.

**"Minimum Principal Amount"** means, in relation to a Tranche, the minimum Principal Amount for subscription (and, if so specified in the relevant Supplemental Trust Deed for that Tranche for transfer and/or holding) of the Bonds forming part of that Tranche, being the amount specified as such in clause 2.10 of this deed.

**"NZ GAAP"** means generally accepted accounting practice as defined in section 8 of the Financial Reporting Act 2013.

**"NZClear"** means the securities clearing and settlement facility operated by the Reserve Bank of New Zealand and known as the NZClear System and includes any securities clearing and/or settlement facility which replaces or supersedes it from time to time.

**"NZX"** means NZX Limited.

**"NZX Debt Market"** means the market operated by NZX on which listed debt securities are traded.

**"Offer Document"** means in relation to any Series:

- (a) that is a Retail Series, the product disclosure statement or other disclosure document required by the FMC Act (or such other document required by law which may replace a product disclosure statement or other disclosure document required by the FMC Act) relating to that Series; and
- (b) that is a Wholesale Series, the information memorandum, offering circular or prospectus or other offering document (if any) relating to that Series,



in each case, which have been prepared by, or on behalf and with the approval of, the Issuer (in respect of a Retail Series, in consultation with the Supervisor) in relation to the relevant Series and shall include (in each case) all documents to be distributed with or which form part of, and all supplements or amendments to, the relevant document.

**"PPSA"** means the Personal Property Securities Act 1999.

**"Principal Amount"** means, in relation to a Bond, the amount (other than interest or an amount in the nature of interest) payable on redemption or repayment of that Bond, being the amount recorded as such in the Register in respect of that Bond, or, in relation to an Amortising Bond, the principal amount thereof for the time being outstanding, as reduced in accordance with clause 6.5.

**"Properties"** means all the land and improvements thereon legally and/or beneficially owned by any member of the Group from time to time.

**"QFP Offer"** means an offer of financial products that would require disclosure under Part 3 of the FMC Act but for the application of the quoted financial products exclusion under clause 19 of Schedule 1 to the FMC Act.

**"Record Date"** means, in relation to a payment due on a Bond, 5:00pm on the tenth calendar day before the due date for that payment, or such other date provided for in the Supplemental Trust Deed for the relevant Bonds.

**"Reference Banks"** means ANZ Bank New Zealand Limited, ASB Bank Limited, Bank of New Zealand and Westpac New Zealand Limited or any successor of any of the same or any replacement Reference Bank reasonably selected by the Issuer in consultation with the Supervisor.

**"Register"** means, in relation to a Series, the register of Bonds maintained by the Registrar for that Series in accordance with the provisions of this Deed and the relevant Agency Agreement.

**"Registrar"** means, in respect of any Series, the person named in the relevant Agency Agreement and specified in the Supplemental Trust Deed for that Series as the registrar and/or Calculation Agent and/or paying agent for that Series (as the case may be), or any successor agent appointed under the relevant Agency Agreement in relation to that Series.

**"Regulated Offer"** means a regulated offer within the meaning of that term in the FMC Act, or a QFP Offer.

**"Retail Series"** means a Series of Bonds which may, in accordance with the relevant Conditions be offered under a Regulated Offer, and **"Retail Bond"** means a Bond which is part of a Retail Series and **"Retail Holder"** means a Holder of a Retail Bond.

**"Secured Bonds"** means Bonds which are expressed in the relevant Supplemental Trust Deed to have the benefit of the security interest and guarantee granted under, and to be subject to the security arrangements provided for in, the Security Documents for the relevant Series.

**"Security Documents"** means, in relation to any Series of Secured Bonds, the documents described as such in the Supplemental Trust Deed for that Series.

**"Security Trust Deed"** means the security trust deed dated on or about 30 June 2014 between, among others, the Guarantors under the GSD, the Supervisor, the Bank Lenders (or their representative or agent) and the Security Trustee.

**"Security Trust Deed Charging Group"** means the Issuer and each "Guarantor" as defined in the Security Trust Deed.

**"Security Trustee"** means the security trustee from time to time under the Security Trust Deed.

**"Series"** means a Tranche of Bonds together with any further Tranche or Tranches of Bonds which are:

- (a) expressed to be consolidated and form a single series; and
- (b) identical in all respects except for the respective Issue Dates, First Interest Accrual Dates, Issue Prices and/or denominations.

**"Special Resolution"** has the meaning set out in schedule 1.

**"Statement"** means, in respect of any Listed Bonds, a statement issued by the Issuer (or the Registrar on its behalf) to a Holder in relation to the Bonds held by that Holder, if applicable, in compliance with the Listing Rules.

**"Subordinated Debt"** means:

- (a) any Finance Debt of any Consolidated Group Member in respect of which any payment of any part is conditional on no Event of Default subsisting and:
  - (i) if the relevant Consolidated Group Member is not being Liquidated it is and will immediately after that payment satisfy the Solvency Test (as defined in section 4 of the Companies Act 1993); and
  - (ii) if the relevant Consolidated Group Member is in the course of being Liquidated that payment is postponed until all other liabilities of that Consolidated Group Member (other than any Subordinated Debt) are paid or satisfied in full; and
- (b) any other Finance Debt designated as Subordinated Debt for the purposes of the Bank Facility.

**"Subsidiary"** means a subsidiary within the meaning of section 2 of the Financial Reporting Act 2013.

**"Substituted Obligor"** has the meaning given in clause 22.2.

**"Substitution Documents"** has the meaning given in clause 22.2.

**"Supervisor"** means Public Trust or any replacement supervisor appointed under this deed or pursuant to the FMC Act or FMC Regulations.

**"Supervisor Powers"** means, in relation to a Bond, the trusts, powers, authorities and discretions vested in the Supervisor by this Deed, or by law, in relation to that Bond.

**"Supplemental Trust Deed"** means a deed supplemental to this deed entered into by the Issuer and the Supervisor pursuant to clause 2.5 constituting and setting out the terms and conditions of a Tranche.

**"Total Assets"** has the meaning given in the Security Trust Deed.

**"Total Tangible Assets"** has the meaning given in the Security Trust Deed.

**"Tranche"** means Bonds issued pursuant to a particular Supplemental Trust Deed and forming part of a Series.

**"Transaction Documents"** means, in relation to a Tranche, this deed, the relevant Supplemental Trust Deed, the relevant Agency Agreement, the Security Trust Deed, the Security Documents and each other document specified as such in the relevant Supplemental Trust Deed.

**"Valuer"** means:

- (a) Colliers through either CIVAS Limited or Colliers International (Wellington Valuation) Limited;
- (b) Jones Lang LaSalle Limited;
- (c) CBRE Limited;
- (d) Bayleys Valuations Limited;
- (e) Savills (NZ) Limited; or
- (f) any other registered valuer approved by the Supervisor (such approval not to be unreasonably withheld or delayed and will be deemed to be given five Business Days following the date of a request by the Issuer if the Supervisor has not declined approval within that time period).

**"Wholesale Series"** means a Series of Bonds which is expressed in the relevant Supplemental Trust Deed to be "Wholesale Bonds" and offered other than by way of a Regulated Offer, and **"Wholesale Bond"** means a Bond which is part of a Wholesale Series and **"Wholesale Holder"** means a Holder of a Wholesale Bond.

**"Zero Coupon Bond"** means a Bond in respect of which no interest is payable issued by the Issuer at a discount to its Principal Amount.

1.2 **References:** Except to the extent that the context otherwise requires, any reference in this Deed to:

an **"authorisation"** includes:

- (a) any consent, authorisation, registration, filing, agreement, notarisisation, certificate, permission, licence, approval, authority or exemption from, by or with a governmental agency; or
- (b) in relation to anything which will be proscribed or restricted in whole or part by law if a governmental agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of such period without such intervention or action.

a "**clause**" or "**schedule**" is a reference to a clause of, or schedule to, this deed.

the "**dissolution**" of any person includes the bankruptcy, winding up or liquidation, removal from the register of that person, and any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business.

any "**governmental agency**" includes any government or any governmental, semi-governmental or judicial entity or authority, or legislative body, or any person or body charged with the administration of any law. It also includes any self-regulatory organisation established under statute or any stock exchange.

"**indebtedness**" includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal, surety or otherwise) relating to the payment or repayment of money.

a "**law**" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute or other legislative measure, in each case of any jurisdiction whatever and "**lawful**" and "**unlawful**" shall be construed accordingly.

something having a "**material adverse effect**" on a person is a reference to it having a material adverse effect on the consolidated financial condition or operations of that person and its Subsidiaries taken together which materially adversely affects the ability of that person to perform or comply with its payment obligations under this Deed or any Bond.

"**outstanding**" means, in relation to Bonds issued by the Issuer, all Bonds other than those which have been:

- (a) redeemed or repaid in full in accordance with the Conditions applicable to those Bonds; or
- (b) purchased and cancelled in accordance with the Conditions applicable to those Bonds,

provided that, for the purposes of (1) ascertaining the right to attend and vote at any meeting of the Holders, and (2) the exercise of any discretion, power or authority which the Supervisor is required, expressly or impliedly, to exercise in or by reference to the interests of the Holders, those Bonds which are beneficially held by or on behalf of any Group member and not cancelled shall (unless no longer so held) be deemed not to remain outstanding.

"**payment**" includes satisfaction of a monetary obligation.

"**person**" includes an individual, firm, company, corporation or unincorporated body of persons, organisation or trust, and any state, government or governmental agency, in each case whether or not having a separate legal personality.

"**related company**" has the meaning given in section 2(3) of the Companies Act.

a "**security interest**" includes a security interest (as construed and defined in the Personal Property Securities Act 1999), mortgage, lien, pledge, any interest in land of a security nature, any other security arrangement creating in effect security for the payment of a monetary obligation or the observance of any other obligation, and any

other arrangement having like economic effect over any property, assets or revenues, and "**unsecured**" means not subject to a security interest.

"**supervisor**" has the meaning given to it in the FMC Act.

"**tax**" includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called (including, for the avoidance of doubt, Approved Issuer Levy), imposed or levied by any governmental agency, together with any interest, penalty, charge, fee or other amount imposed or made on or in respect of any of the foregoing.

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

1.3 **Cross-references:** In relation to any Tranche, a cross-reference to any clause of this deed shall, where that clause is amended or substituted by the Supplemental Trust Deed in relation to that Tranche, be deemed to be a cross-reference to that clause as so amended or substituted.

1.4 **Miscellaneous:**

- (a) The introduction to and headings in this deed are inserted for convenience only and shall be ignored in construing this deed.
- (b) Unless the context otherwise requires, words denoting only the singular number shall include the plural and vice versa and words denoting any gender shall include all genders.
- (c) References to any legislation or to any provision of any legislation shall be deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted and, unless the context otherwise requires, shall also include any legislative instruments issued under any such legislation or provision and, in the case of the FMC Act, any frameworks and methodologies under that Act.
- (d) References to any document (however described) shall include references to such document as modified, novated, supplemented, varied or replaced from time to time.
- (e) References to any party to this deed or any other document or any Holder shall include its successors or permitted assigns.
- (f) References to a time of day are references to New Zealand time unless otherwise stated.
- (g) Anything which may be done at any time may also be done from time to time.
- (h) Unless the context otherwise requires, anything which is required by this Deed to be done on, or as at, a day which is not a Business Day is to be done on, or as at, the next Business Day.

## 2. ISSUE AND FORM OF BONDS

2.1 **Power to issue Bonds:** Bonds may be issued by the Issuer under this deed at the times, in the amounts, to the persons, on the terms and conditions and at the prices from time to time determined by the Issuer.

2.2 **Form of Bonds:** Without limitation to clause 2.1, Bonds may be issued on terms such that the Principal Amount is a fixed amount or a reducing amount and/or that interest (if the Bond is interest-bearing) will be calculated by reference to a specific interest rate (which may be a fixed rate or a margin over the Base Rate). In addition, Bonds shall, in any event, be subject to the relevant Supplemental Trust Deed.

2.3 **Wholesale Bonds and Retail Bonds:** Bonds shall be issued on the basis that the relevant Series:

- (a) may be offered or sold pursuant to a Regulated Offer (being Retail Bonds); or
- (b) may not be offered or sold to any person to whom the offer is required by law to be made as a Regulated Offer (being Wholesale Bonds),

in each case, as specified in the selling restrictions in the relevant Supplemental Trust Deed and/or Offer Document.

2.4 **Listing:** Bonds may be Listed or unlisted as specified in the relevant Supplemental Trust Deed or Offer Document or as otherwise provided in respect of any Series.

2.5 **Supplemental Trust Deed:**

- (a) Bonds shall be constituted by this deed as supplemented by the relevant Supplemental Trust Deed and issued in a Series. Each Tranche which forms part of a Series shall be subject to the terms and conditions set out in the Supplemental Trust Deed for that Tranche and (as modified by that Supplemental Trust Deed) this deed.
- (b) In respect of a Series comprising two or more Tranches, the Supplemental Trust Deeds relating to that Series will be substantially identical except for the respective Issue Dates, First Interest Accrual Dates, Issue Prices and/or denominations.
- (c) To the extent that the Supplemental Trust Deed for a Tranche modifies this deed, or in the event of any conflict between the provisions of that Supplemental Trust Deed and those of this deed, that Supplemental Trust Deed shall prevail over this deed in relation to that Tranche.
- (d) The provisions of the relevant Supplemental Trust Deed, this deed and the relevant Security Documents read together in accordance with this clause 2.5 shall constitute the Conditions for the Bonds of the relevant Tranche.

2.6 **Creation and issue:** Bonds of a Tranche are constituted when the Supplemental Trust Deed for that Tranche has been signed by the Issuer and the Supervisor. Bonds are issued and created by the Registrar entering in the Register for the relevant Tranche the particulars of that Bond, substantially as specified in schedule 3.

2.7 **Provisions applicable to Bonds:** The Bonds shall be issued and held with the benefit of and subject to the applicable Conditions, all of which are binding upon the Issuer, the

Supervisor and the Holders. The Holders shall be deemed to have notice of the applicable Conditions.

**2.8 Enforcement of Holders' rights:**

- (a) The Supervisor holds its rights and benefits under this Deed and the Security Trust Deed in trust for, and for the benefit of, the Retail Holders and, only to the extent expressly set out in this Deed and in the relevant Supplemental Trust Deed for a Wholesale Series, the Wholesale Holders of a Wholesale Series.
- (b) No Retail Holder or such Wholesale Holder shall be entitled to enforce any of those rights or remedies under this Deed directly against the Issuer unless the Supervisor fails to enforce such rights or remedies within a reasonable period after having become bound to do so in accordance with this Deed and having regard to the relevant provisions of the Security Documents.
- (c) Wholesale Holders (other than those referred to in paragraph (a)) may enforce any of their rights or remedies under this Deed directly against the Issuer.

**2.9 Form of Bonds:** Each Bond shall:

- (a) be in uncertificated book entry form;
- (b) be denominated in New Zealand dollars (unless otherwise specified in the relevant Supplemental Trust Deed); and
- (c) have a face value of \$1.00 or such other amount as may be specified in the relevant Supplemental Trust Deed.

**2.10 Minimum Principal Amount:** Each Tranche shall have a Minimum Principal Amount for holdings of Bonds of that Tranche of \$5,000 and thereafter minimum multiples of \$1,000 for such holdings, unless specified otherwise in the relevant Supplemental Trust Deed for that Tranche.

**3. STATUS OF BONDS**

**3.1 Status of Bonds generally:** The Bonds are and will at all times be direct, unsubordinated and unconditional indebtedness of the Issuer.

**3.2 Status of Bonds:** The Bonds of any Series rank and will at all times rank equally without any preference or priority among themselves and:

- (a) in relation to Secured Bonds of any Series, will have the ranking provided for in the relevant Security Documents (as such ranking may be affected by general laws in relation to security interests relating to priority and preferential creditors); and
- (b) in relation to unsecured Bonds of any Series, will rank at least equally with all present and future unsubordinated and unsecured indebtedness of the Issuer (except indebtedness preferred solely by operation of law),

subject, in each case, to laws affecting creditors' rights generally and equitable principles of general application.

3.3 **Secured Bonds:** Bonds expressed in the relevant Supplemental Trust Deed to be Secured Bonds shall have the benefit of the security interest and guarantee given, and shall be subject to any security arrangements provided for, in the relevant Security Documents.

#### 4. TITLE AND TRANSFER

4.1 **Certificates:** At the request of a Holder, or otherwise as required by the FMC Act or any other applicable law, the Issuer shall procure the Registrar of the relevant Bonds to issue to that Holder a certificate or notice of registration in relation to the Bonds held by that Holder, such certificate or notice to be in the form agreed between the Issuer and the Registrar of the relevant Bonds or, in respect of any Listed Bonds, a Statement complying with the Listing Rules (if applicable). A certificate, notice of registration or Statement issued in respect of a Bond will not constitute a document of title. Entitlement will be determined solely by entry in the Register for the relevant Series and, in the case of the beneficial interest in Bonds lodged in NZClear, the records of NZClear.

4.2 **Form of transfer:** A Holder may transfer any Bond held by it by:

- (a) a written instrument of transfer in any commonly used form that complies with the standard form and procedures of the Registrar; or
- (b) means of the settlement system operated by NZX (in respect of any Series of Bond that is listed on any exchange operated or owned by NZX); or
- (c) instructing the Registrar to transfer the Bond into the name(s) of the transferee(s) through NZClear; or
- (d) any other method of transfer of marketable securities that is not contrary to any law and that may be operated in accordance with any Listing Rules (if applicable) and that is approved by the Issuer.

4.3 **Evidence:** Each instrument of transfer as referred to in clause 4.2 must be accompanied by:

- (a) any evidence (including legal opinions) that the Issuer or the Registrar reasonably require to prove the title of the transferor, the transferor's right to transfer the Bonds or the identity of the transferor and/or the transferee; and
- (b) if the form of the transfer is executed by some other person on behalf of the transferor or, in the case of the execution of the form of transfer on behalf of a corporation by its officers, the authority of that person to so execute that transfer,

subject, in each case, to clause 5.11.

4.4 **Partial transfers:** A Holder may transfer part of its interest in a holding of Bonds. However, no transfer of any part of its interest may be effected if such transfer would result in the transferor or the transferee holding or continuing to hold Bonds with an aggregate Principal Amount of less than the applicable Minimum Principal Amount (or minimum multiple thereafter).



4.5 **Fees:** The Issuer shall, and shall procure that each Registrar will, make no service charge to the Holders for:

- (a) the registration of any holding of Bonds issued by the Issuer; or
- (b) the transfer of registered title to any Bonds issued by the Issuer.

The Issuer and each Registrar may, however, require the payment of any taxes and other governmental charges payable as a result of any transfer.

4.6 **Selling restrictions:**

- (a) Each Holder shall only offer for sale or sell any Bond in conformity with all applicable laws and regulations in any jurisdiction in which it is offered, sold or delivered.
- (b) Without limiting the generality of clause 4.6(a), Bonds which are expressed in the relevant Supplemental Trust Deed to be part of a Wholesale Series may be subject to such selling restrictions as are set out in the relevant Supplemental Trust Deed and in any event shall not be offered or sold by the Issuer or any Wholesale Holder to any person to whom the offer would need to be made by way of a Regulated Offer.
- (c) No Offer Document or any advertisement or other offering material in respect of any Bond may be published, delivered or distributed in or from any country or jurisdiction except under circumstances which will result in compliance with all applicable laws and regulations.

4.7 **Indemnity for breach of selling restrictions:** Each Holder indemnifies the Issuer, the Supervisor and any arranger, lead manager, dealer or organising participant (other than in respect of itself) in respect of any Tranche of Bonds, for any loss suffered by any one or more of them by reason of any breach of the selling restrictions set out in clause 4.6.

## 5. REGISTER

5.1 **Register:** The Issuer shall, at all times while Bonds are outstanding, cause the Registrar for each Series to maintain the Register for that Series in New Zealand, which must record, in respect of each Bond, the information specified in schedule 3 or such other information agreed between the Issuer and the Registrar for the relevant Bonds.

5.2 **Register to be audited:** The Issuer must ensure that each Register is audited or reviewed by a qualified auditor in accordance with all legal requirements.

5.3 **Disclosure and Inspection:** The Issuer shall, in relation to each Series, ensure that, if a Holder so requests, the Registrar of the relevant Bonds makes available for inspection, and provides copies of or extracts from, the Register of that Series which relates to the Bond(s) registered in the name of that Holder and all other information and matters required by the FMC Act and other applicable laws. The Issuer and the Supervisor may, at all reasonable times during the office hours of the relevant Registrar and subject to any applicable laws, inspect and take extracts from each Register without payment of any fee.

5.4 **Register conclusive:** Except as ordered by a court of competent jurisdiction, the Issuer, the Supervisor and each Registrar are each entitled to recognise the Holder of a Bond as the absolute owner of the Bond and shall not be bound by any actual or

constructive notice of any trust (express, implied or constructive), encumbrance, security interest or other adverse interest to which any Bond may be subject. No recognition of any trust (express, implied or constructive), encumbrance, security interest or other adverse interest shall be entered on any Register. In the event of any conflict between any certificate or notice of registration issued in respect of a Bond and a Register, that Register shall prevail.

5.5 **Correction of errors:** Each Registrar may, on such evidence as appears to it to be sufficient, correct errors and remedy omissions in the relevant Register.

5.6 **Co-ownership Bonds:**

(a) Where two or more persons are registered as Holders of the same Bond(s) by virtue of any application for Bonds, memorandum of transfer or other instrument, then, unless the contrary is expressed in the application, memorandum, or other instrument, those persons will be deemed to hold the Bond(s) as joint tenants with right of survivorship.

(b) If two or more persons apply (on an application for any Bonds or by memorandum of transfer or other instrument), to be registered as Holders as tenants in common, the Registrar for the relevant Series may, after notifying the persons of its intention to do so, divide the Bonds into parcels which represent each such person's share. If the Bonds cannot be divided into shares each of which share would comply with the applicable Minimum Principal Amounts (and any minimum multiples thereafter), the Registrar of the relevant Bonds may refuse to accept the application, memorandum of transfer or other instrument (as the case may be).

5.7 **Acquisition of Bonds by operation of law:** When the right to any Bond is acquired by any person in any manner other than by way of a transfer under this Deed (including without limitation, whether on the dissolution, death or bankruptcy of the relevant Holder, or under a writ of execution) the Registrar of the relevant Bonds, on application by or on behalf of that person and on being satisfied that such person is legally entitled to be registered as the Holder of that Bond, will enter that person's name in the Register as the Holder of that Bond accordingly.

5.8 **Tax details:** Each Holder shall give written notice to the Registrar:

(a) of its country of residency for taxation purposes; and

(b) if not resident in New Zealand for taxation purposes, of whether the Holder is engaged in business in New Zealand through a Fixed Establishment in New Zealand, and if so, whether the Bonds are held in connection with such Fixed Establishment, and

(c) any other information reasonably required by the Issuer for taxation purposes.

5.9 **Notification by Holders:** Any change of name or address of any Holder or any change in any other information required to be inserted in any Register in respect of any Holder shall immediately be notified by the Holder to the Registrar of the relevant Bonds in writing by the Holder, or if a joint holding by all the joint Holders (and, for the avoidance of doubt, this clause does not place any obligations on the Issuer).

5.10 **Register compliance:** The Issuer shall comply with, and shall use all reasonable endeavours to ensure that each Registrar complies with, all statutory requirements and the requirements of this Deed relating to the keeping of each Register and the details

entered in each Register. Without limiting the generality of the foregoing, the Register in respect of any Retail Series outstanding shall be audited by the Auditors annually within four months of the end of each financial year of the Issuer and at such other times as the Supervisor may request in writing if the Supervisor has reasonable grounds for believing that the requirements of this clause 5 are not being complied with in relation to the Register for any Retail Series.

- 5.11 **Reliance on documents:** The Issuer and the Registrar shall be entitled to accept and assume the authenticity and genuineness of any instrument of transfer or other document and will not incur any liability for registering any instrument of transfer which is subsequently discovered to be a forgery or otherwise defective, unless the Issuer or the Registrar had actual notice of such forgery or defect at the time of registration of such instrument of transfer.
- 5.12 **No liability:** No Registrar will be liable for any breach by the Issuer of any representation, obligation, undertaking, including the non-payment of any money due, nor will any Registrar be liable for any negligent act, error or omission on the part of the Issuer, nor for acting in accordance with any instruction or direction of the Issuer or with the consent or approval of the Issuer.

## **6. PAYMENT OF PRINCIPAL AMOUNT AND INTEREST**

6.1 **Determination of Principal Amount:** The Principal Amount of each Bond shall be the amount specified in the relevant Supplemental Trust Deed and recorded as such in the Register in respect of that Bond, which may be the par or face value or the amount calculated by the Registrar for that Bond by reference to the formula specified in the relevant Supplemental Trust Deed and recorded in the Register in respect of that Bond.

### **6.2 Payment of Principal Amount of Retail Bonds:**

- (a) Subject to clause 6.2(b), the Issuer shall, on the Maturity Date of each Retail Bond, pay or cause to be paid to, or to the order of, the Supervisor the Principal Amount of that Retail Bond (or the balance thereof in respect of any Amortising Bond) in accordance with the Conditions applicable to that Retail Bond.
- (b) Notwithstanding clause 6.2(a), the Issuer shall, on the Maturity Date of each Retail Bond, unless and until otherwise requested by the Supervisor, pay or cause to be paid to, or to the order of, the relevant Retail Holder the Principal Amount of that Retail Bond. Such payment shall operate as a payment to the Supervisor in satisfaction (to the extent of the amount paid) of the Issuer's obligations under clause 6.2(a).

### **6.3 Payment of interest and other amounts on Retail Bonds:**

- (a) Subject to clause 6.3(b), the Issuer shall, as and when due and payable in accordance with the Conditions applicable to each Retail Bond, pay or cause to be paid to, or to the order of, the Supervisor all interest and other amounts payable in respect of that Retail Bond in accordance with the Conditions applicable to that Retail Bond.
- (b) Notwithstanding clause 6.3(a), the Issuer shall, as and when due and payable in accordance with the Conditions applicable to each Retail Bond, unless and until otherwise requested by the Supervisor, pay or cause to be paid to, or to the order of, the relevant Retail Holder all interest and other amounts payable

in respect of that Retail Bond in accordance with the Conditions applicable to that Retail Bond. Such payment shall operate as a payment to the Supervisor in satisfaction (to the extent of the amount paid) of the Issuer's obligations under clause 6.3(a).

- 6.4 **Payments in respect of Wholesale Bonds:** The Issuer shall:
- (a) on the Maturity Date of each Wholesale Bond, pay or cause to be paid to, or to the order of, the relevant Wholesale Holder the Principal Amount of that Wholesale Bond in accordance with the Conditions applicable to that Wholesale Bond; and
  - (b) as and when due and payable in accordance with the Conditions applicable to each Wholesale Bond, pay or cause to be paid to, or to the order of, the relevant Wholesale Holder all interest and other amounts payable in respect of that Wholesale Bond in accordance with the Conditions applicable to that Wholesale Bond.
- 6.5 **Principal Amount of Amortising Bonds:** The Issuer shall, on each Amortisation Date of each Amortising Bond, pay, or cause to be paid to, or to the order of, the relevant Holder, the portion of the Principal Amount of that Amortising Bond as set out in respect of that Amortisation Date in the Register in respect of that Amortising Bond in accordance with the Conditions applicable to that Bond.
- 6.6 **Interest:** Subject to the Conditions applicable to a Bond, the Issuer shall pay interest on each Interest Payment Date:
- (a) on each Floating Rate Bond for each Interest Period, at the rate per annum equal to the aggregate of the Base Rate for that Interest Period (as determined by the Calculation Agent for the relevant Series) and the Margin for that Floating Rate Bond; and
  - (b) on each Fixed Rate Bond, at the Interest Rate for that Fixed Rate Bond.
- 6.7 **Non-payment:** Each Bond will cease to bear interest from its Maturity Date unless payment of the Principal Amount is improperly withheld or refused. In such event, interest will continue to accrue (after, as well as before, any judgment) up to but excluding the date on which payment in full of the Principal Amount is made in accordance with clause 6.8.
- 6.8 **Default interest:** If any amount payable in respect of a Bond or any other amount due to any person under this Deed is not paid on its due date, interest ("**Default Interest**") shall accrue on the unpaid amount (net of any interim or progress payments made) (after, as well as before, judgment) at the rate specified in the applicable Supplemental Trust Deed or, if no rate is specified, determined by the Calculation Agent to be (in the case of a Floating Rate Bond) the aggregate of 2%, the Base Rate and the Margin or (in the case of a Fixed Rate Bond) the aggregate of 2% and the relevant fixed rate, which shall be determined at monthly intervals thereafter until the unpaid amount (net of any interim or progress payments) is paid and shall be compounded monthly until paid. For the avoidance of doubt, this clause 6.8 shall not apply in relation to payments of interest on any Bonds, the interest or other payments in respect of which have been suspended in accordance with the Conditions of those Bonds.

## 7. CALCULATION OF INTEREST

### 7.1 Floating Rate Bonds:

- (a) **Interest Periods:** Each Interest Period in relation to a Floating Rate Bond shall be a period of one, two, three, four, five or six months' duration (as specified by the Issuer at the time of issue of that Bond and entered in the Register for the relevant Series) and:
- (i) the first Interest Period will commence on (and include) the First Interest Accrual Date and end on (but exclude) the next Interest Payment Date and each subsequent Interest Period will commence on (and include) the Interest Payment Date of the previous Interest Period and end on (but exclude) the next Interest Payment Date;
  - (ii) if an Interest Period would otherwise end on a day which is not a Business Day, it will be extended to the next Business Day unless the result of that extension would be to carry the Interest Period over into another calendar month, in which event the Interest Period shall end on the immediately preceding Business Day;
  - (iii) where an Interest Period commences on the last day of a calendar month or on a day for which there is no numerically corresponding day in the month in which that Interest Period would otherwise end, the Interest Period shall (subject to paragraphs (ii) and (iv)) end on the last day of that last mentioned month; and
  - (iv) if the final Interest Period would otherwise extend beyond the Maturity Date, it will end on the Maturity Date.
- (b) **Basis for calculation:** Interest shall be calculated on the Principal Amount of the Floating Rate Bond, on the basis of the number of days in the relevant Interest Period and a year of 365 days. Interest shall accrue from day to day and shall be paid to the Holder in arrears on the Interest Payment Date for that Interest Period.

### 7.2 Fixed Rate Bonds:

- (a) Subject to paragraphs (b) and (c), interest shall be calculated on the Principal Amount of each Fixed Rate Bond and shall be payable in arrears in equal quarterly, semi-annual, annual or other instalments on each Interest Payment Date for that Fixed Rate Bond.
- (b) In respect of any Fixed Rate Bond having a short or long first interest period as provided for in the Conditions, on the first Interest Payment Date of such Bond the Interest payable shall be equal to the Interest Rate on the Principal Amount of that Bond on the basis of the number of days elapsed from, and including, the First Interest Accrual Date of that Bond to, but excluding, the first Interest Payment Date, and a year of 365 days.
- (c) In respect of any Fixed Rate Bond having a short or long interest period between the Interest Payment Date immediately preceding the Maturity Date and the Maturity Date as provided for in the Conditions, on the Maturity Date of such Bond the Interest payable shall be equal to the Interest Rate on the Principal Amount of that Bond on the basis of the number of days elapsed from, and including, the Interest Payment Date immediately preceding the

Maturity Date of that Bond to, and including, the Maturity Date, and a year of 365 days.

## 8. PAYMENTS

8.1 **Payment to Holder:** Payment of the Principal Amount of, and interest (if any) on, a Bond (less any amount required to be deducted in accordance with clause 9) shall be made to the person whose name appears in the Register for the relevant Series as the Holder of the Bond on the Record Date in respect of the relevant payment. If more than one person is so named in the relevant Register, payment will be made to the first person so named.

### 8.2 **Method of payment:**

- (a) If the Issuer pays the Principal Amount of any Bond in accordance with clause 6.2(b), all payments in respect of that Bond held by a Holder shall be paid by the Registrar by direct credit to a bank account specified by that Holder by written notice from time to time or, in the absence of such specification, by cheque sent to the address of the Holder as recorded in the Register for the relevant Series, unless the Conditions of any Bond specify otherwise. A Holder may at any time amend any notice so given, provided that no amendment of a notice shall have effect unless another address or bank account is specified by that Holder.
- (b) No notice or amendment of a notice given under clause 8.2(a) will have effect in respect of any payment unless received by the Registrar on or before the Record Date for that payment. Any notice given under clause 8.2(a) will be deemed to be automatically cancelled upon transfer of all of a Bond or, in the case of transfer of part of a Bond, in respect of the part transferred. A notice from one of several Holders of the same Bonds shall be deemed to be given by all such Holders.
- (c) If, for whatever reason, at any time a Holder has provided neither a current address nor current details of a bank account to the Registrar, any payments in respect of any Bond to that Holder shall be deemed to be unclaimed money for the purpose of clause 8.4.

8.3 **Business Day:** Subject to clause 7.1, if any Interest Payment Date or the Maturity Date of a Bond is not a Business Day for that Bond, the due date for the payment to be made on that date will be the next following Business Day, and all other provisions of this Deed and the relevant Agency Agreement will be read and construed accordingly.

### 8.4 **Unclaimed payments:**

- (a) **Retail Bonds:** In respect of any Retail Bonds, if any payment made by the Issuer to any Retail Holder of that Retail Bond to the address, or into the bank account, last specified by that Retail Holder to the Issuer or the Registrar is returned unclaimed, the amount concerned will (unless the Registrar or the Issuer has in the meantime received notice of a change of address or bank account to be entered in the Register for the relevant Retail Series) be retained by the Registrar for the relevant Retail Series to be held by it for the Retail Holder concerned without any liability to invest or pay interest on that amount. Any money not claimed within a period of six months from the original date of payment must be returned to the Issuer. The Issuer will have no liability in respect of the unclaimed amount if it remains unclaimed five years after the

original date of payment, except where such Retail Holder produces evidence satisfactory to the Issuer of its entitlement to such amount. If the amount concerned is not claimed within five years after the original date of payment, then the amount concerned is taken to be forfeited to the Issuer for the Issuer's benefit and shall be no longer be treated as being an unclaimed amount.

- (b) **Wholesale Bonds:** In respect of any Wholesale Bonds, if any payment made by the Issuer to any Wholesale Holder to the address, or into the bank account, last specified by that Wholesale Holder to the Issuer or the Registrar is returned unclaimed, the amount concerned will (unless the Registrar or the Issuer has in the meantime received notice of a change of address or bank account to be entered in the Register for the relevant Wholesale Series) be returned to the Issuer unless it is otherwise agreed between the Issuer and the Registrar for the relevant Wholesale Bonds that such unclaimed monies are to be retained by the Registrar. The Issuer will have no liability in respect of the unclaimed amount if it remains unclaimed five years after the original date of payment, except where such Wholesale Holder produces evidence satisfactory to the Issuer of its entitlement to such amount. If the amount concerned is not claimed within five years after the original date of payment, then the amount concerned is taken to be forfeited to the Issuer for the Issuer's benefit and shall be no longer be treated as being an unclaimed amount.

- 8.5 **Reinstatement:** If any payment made to a Holder by, or on behalf of, the Issuer is subsequently rescinded, avoided or otherwise restored to the Issuer, that payment will be deemed not to have discharged or affected the liability of the Issuer in respect of which that payment was made. In that event the relevant Holder and Issuer will be restored to the position in which each would have been, and be entitled to exercise all the rights which each would have had, if such payment had not been made.

## 9. TAXES

- 9.1 **Deductions or withholdings:** All sums payable under a Bond or under this Deed must be paid:

- (a) free of any restriction or condition;
- (b) free and clear of, and (except to the extent required by law or as provided in this clause 9) without any deduction or withholding on account of, any taxes; and
- (c) (except to the extent required by law or as provided in this clause 9) without deduction or withholding on account of any other amount whether by way of set-off or otherwise.

- 9.2 **Non-resident withholding tax:** Where New Zealand non-resident withholding tax must be deducted from payments of interest (or payments deemed by law to be interest) to any Holder, unless otherwise stated in the relevant Offer Document or unless the relevant Holder notifies the Issuer that it elects that non-resident withholding tax be deducted from payments to it instead of Approved Issuer Levy (and has not, at least five Business Days prior to the relevant payment, revoked such notice), if the Issuer is lawfully able to pay Approved Issuer Levy in respect of any payment of interest (or deemed interest) to Holders, and elects to do so in respect of any Series, the Issuer, or the Registrar for the relevant Series on its behalf, shall pay the Approved Issuer Levy to the appropriate authority and shall deduct and retain for its own benefit an amount equal

to the amount so paid from the interest (or deemed interest) payable to those Holders in lieu of deducting New Zealand non-resident withholding tax from that payment.

- 9.3 **Resident withholding tax:** Where New Zealand resident withholding tax must be deducted from payments of interest (or payments deemed by law to be interest) to any Holder, the Issuer, or the Registrar for the relevant Series on its behalf, will deduct resident withholding tax unless the relevant Holder establishes to the satisfaction of the Issuer (or, if applicable, the Registrar on behalf of the Issuer) that the Holder has RWT-exempt status (as defined in section YA 1 of the Income Tax Act 2007) on or before the Record Date for the relevant payment.
- 9.4 **No gross-up:** The Issuer will not be required to and will not make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made in respect of the Bonds under clauses 9.2 or 9.3. If, in respect of any Bond, the Registrar for the relevant Series or the Issuer becomes liable to make any payment of, or on account of, tax payable by any Holder (including, if applicable, any other person who beneficially derives interest or deemed interest under the relevant Bond), then the Registrar for the relevant Series and the Issuer shall be indemnified by the relevant Holder (or other person) in respect of such liability. Any moneys paid by the Registrar for the relevant Series or the Issuer in respect of such liability may be recovered from the Holder as a debt due to the Registrar for the relevant Series or the Issuer and may be withheld from any further payments to that Holder. Nothing in this clause 9.4 will prejudice or affect any other right or remedy of the Registrar for the relevant Series or the Issuer.
- 9.5 **Maximum rate:** Deductions or withholdings in respect of taxes will be made at the maximum rates from time to time applicable unless a Holder (or, if applicable, any person who beneficially derives interest under the relevant Bond) provides evidence or a statement to the Issuer or the Registrar for the relevant Series (acceptable to it) that a lesser rate or an exemption is applicable.
- 9.6 **Tax status:** The Issuer and the Registrar for the relevant Series shall be entitled for the purposes of this clause 9 to rely, without further enquiry, upon any evidence produced or statement made by, or on behalf of, a Holder in relation to that Holder's tax status, tax residency or address, and to regard the Holders entered in the Register as the only beneficial owners of, or the only persons who beneficially derive interest under, the relevant Bonds.

## 10. REPRESENTATIONS AND WARRANTIES

- 10.1 **Representations and warranties:** The Issuer represents and warrants to the Supervisor and the Holders that:
- (a) **Status:** it is a company duly incorporated and validly existing under the laws of New Zealand;
  - (b) **Power and corporate authority:** it has power to enter into and perform its obligations under the Transaction Documents;
  - (c) **Authorisations:** it has all necessary authorisations and has taken all necessary corporate and other action to authorise the execution and performance by it of the Transaction Documents;
  - (d) **Binding obligations:** its obligations under the Transaction Documents and the Bonds (once issued) are legal, valid, binding and enforceable against it, in



each case in accordance with its terms, subject to applicable bankruptcy, re-organisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject also (as to enforceability) to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law;

- (e) **No violation:** the execution and performance by it of its obligations under the Transaction Documents do not (and the Bonds when issued, will not) violate any applicable law or its constitutional documents or to the best of the Issuer's knowledge, any agreement, security document or other instrument to which it is a party or which is binding on it or any material part of its assets; and
- (f) **Solvency test:** it satisfies the solvency test (as defined in section 4 of the Companies Act).

10.2 **Supplemental Trust Deed:** In respect of a Series, the Issuer shall make such further representations and warranties as are set out in the Supplemental Trust Deeds for that Series.

10.3 **Repetition:**

- (a) The representations and warranties contained in clause 10.1 shall be deemed to be repeated for the benefit of the Supervisor and the Holders on the Issue Date and each Interest Payment Date of each Bond.
- (b) In respect of a Series, the representations and warranties referred to in clause 10.2 shall be deemed to be repeated for the benefit of the Supervisor and the Holders of that Series on the Issue Date and each Interest Payment Date (unless specified in the relevant Supplemental Trust Deed) of each Bond forming part of that Series.

## 11. UNDERTAKINGS

11.1 **Positive undertakings:** The Issuer undertakes to the Holders and the Supervisor that, for so long as any Bonds of the Issuer are outstanding, it will:

- (a) **Notify Event of Default:**
  - (i) promptly upon becoming aware of the occurrence of any Event of Default, Event of Review or a breach of clause 11.6 notify the Supervisor and the Wholesale Holders (via the Registrar) of the same; and
  - (ii) if it has reasonable grounds to believe that it has breached, may have breached or is likely to breach in any material respect, any of its Issuer Obligations or the terms of this Deed or the relevant Supplemental Deed relating to Retail Bonds or the terms of an offer of Retail Bonds, as soon as practicable, notify the Supervisor in writing of the breach or possible breach and the steps (if any) that it has taken or intends to take in light of the breach or possible breach, and the date by which the steps were taken or are to be taken;
- (b) **Corporate existence:** maintain its corporate existence and will not amalgamate, merge or consolidate with any person unless the resulting or surviving entity assumes, to the satisfaction of the Supervisor and, in the case

of any Wholesale Series, the Wholesale Holders, the obligations of the Issuer under the relevant Bonds and each Transaction Document;

- (c) **Financial Statements:** ensure that all Financial Statements delivered to the Supervisor under clause 11.3(a) and (b):
  - (i) are prepared in accordance with NZ GAAP;
  - (ii) give a true and fair view of the financial position and performance of the Group, and the results of operations of the Group, as at the date, and for the period ending on the date, to which the financial statements are made up; and
  - (iii) are signed by two directors of the Issuer and are accompanied by all documents and reports required by law to be annexed to them;
- (d) **Compliance with laws:** in respect of each Retail Series issued by the Issuer, comply with the provisions of the FMC Act and the FMC Regulations (as the case may be) applicable to that Series and, in respect of each Series issued by the Issuer, comply (other than where failure to do so would not have a material adverse effect) with all other applicable laws;
- (e) **Authorisations:** obtain, effect and promptly renew from time to time all material authorisations required under the law of the jurisdiction in which it is incorporated to enable it to perform and comply fully with the Conditions for each Series or required on its part for the validity or enforceability of this Deed or any Transaction Document to which it is a party;
- (f) **Quotation:** if the Offer Document for any Series of Bonds indicates that those Bonds are intended to be Listed, use its best endeavours to ensure that those Bonds are, within a reasonable time, and in any event not later than 10 Business Days after the Closing Date, quoted on the NZX Debt Market and that such quotation is maintained; and
- (g) **Annual reports:** if requested by a Retail Holder of Bonds, send copies to that Holder of the Group's annual report within a reasonable time after that annual report is distributed to unitholders or shareholders (as the case may be) of the Group but in any event, not later than 60 days after such date.

11.2 **Additional Undertakings:** In respect of each Series, the Issuer undertakes to the Holders of that Series and the Supervisor that it will, for so long as any Bonds of that Series are outstanding:

- (a) **Transaction Documents:** comply in all material respects with and perform its obligations under each Transaction Document for that Series to which it is a party;
- (b) **Agency Agreement:** comply in all material respects with and perform its obligations under the Agency Agreement for that Series and use reasonable endeavours to ensure that the Registrar for that Series also does so;
- (c) **Registrar:** give notice to the Holders of that Series, and where that Series is a Retail Series the Supervisor, of any resignation or removal of the Registrar for that Series and the appointment of any replacement Registrar promptly following such event, provided that so long as any Bond is outstanding, any

resignation or removal of the Registrar shall not be effective until a new Registrar is duly appointed; and

- (d) **Register:** use reasonable endeavours to:
  - (i) ensure that a Register for that Series is maintained; and
  - (ii) cause the Registrar for that Series to keep the Register for that Series pursuant to the Agency Agreement for that Series.

11.3 **Reports and information:** The Issuer covenants with the Holders of each Series and (in respect of Retail Series only) the Supervisor that, so long as any Bonds of the Issuer are outstanding, the Issuer will deliver or cause to be delivered to the Supervisor:

- (a) **Annual financial statements:** not later than three months after the end of each of the Group's financial years, a copy of the latest consolidated Financial Statements of the Group, made up as at the last day of that financial year and duly audited;
- (b) **Interim financial statements:** not later than three months after the end of each of the Group's financial half-years, a copy of the latest consolidated Financial Statements of the Group, for the preceding half-year, made up as at the last day of that half-year;
- (c) **Directors' Report:** not later than the times of delivery of the latest Financial Statements for the Issuer pursuant to clauses 11.3(a) or 11.3(b), a separate Directors' Report in relation to each Series signed by two Directors stating the matters referred to therein as at the end of and in respect of such year or half-year, as the case may be;
- (d) **Contravention or possible contravention of Issuer Obligations:** if the Issuer has reasonable grounds to believe that it has contravened, may have contravened, or is likely to contravene any of its Issuer Obligations in a material respect, as soon as practicable:
  - (i) a report of the contravention or possible contravention to the Supervisor; and
  - (ii) advice as to the steps (if any) that the Issuer has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken;
- (e) **Insolvent:** if the Issuer becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become, insolvent (as defined in the FMC Act), as soon as practicable:
  - (i) a report containing all information relevant to that matter that is in the possession or under the control of the Issuer and that was obtained in the course of, or in connection with, the performance of its functions as Issuer; and
  - (ii) advice as to the steps (if any) that the Issuer intends to take in respect of that matter and the date by which the steps are to be taken;

- (f) **Notices to Holders:** in respect of each Series issued by the Issuer, send copies to the Supervisor of all notices or other information given by it to Holders of that Series generally or (for any Listed Bonds) to NZX;
- (g) **Material litigation:** upon becoming aware of the same, notice of any litigation that is likely to be adversely determined and, if so determined, would have a material adverse effect;
- (h) **Other information:** upon written request within a reasonable time specified by the Supervisor and signed by at least two directors of the Issuer on behalf of all of the directors of the Issuer, such information relating to the Issuer or to the Group, or to the Issuer's or the Group's business or financial condition (including any forward-looking reports), as may reasonably be required by the Supervisor for the purposes of the discharge of the duties, trusts and powers vested in the Supervisor under this deed or imposed on it by law;
- (i) **Auditors' report:** at the same time as the audited latest Financial Statements for the Group are provided in accordance with clause 11.3(a), a separate report by the Auditors in respect of each Retail Series stating:
  - (i) whether, in the course of performing their duties as Auditors, they have become aware of:
    - (aa) any non-payment of interest or any breach of the provisions of this Deed, and if so giving particulars thereof; or
    - (bb) any matter which, in their opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Supervisor by this Deed, by law or by the FMC Act, and if so giving particulars thereof;
  - (ii) whether they, as Auditors, have audited the Register for each Retail Series issued by the Issuer for whom they act as auditors, and if not whether another firm (and which firm if any) audited the Register for each Retail Series, and to the extent that the Auditors have audited the Register for a Retail Series, whether the Register for that Retail Series has been duly maintained;
  - (iii) whether their audit has disclosed any matter, and if so giving particulars thereof, calling in their opinion for further investigation by the Supervisor in the interests of the Retail Holders;
  - (iv) that they have perused the Directors' Report given since the last report by the Auditors (or the date of this deed, whichever is the later), and that, so far as matters which they have observed in the performance of their duties as auditors are concerned, nothing has come to their attention to show that the statements made in the Directors' Report are not reasonable and the statement as to facts made in the Directors' Report are not fairly stated; and
  - (v) as disclosed in the performance of their duties as Auditors (including as a result of an audit of the Register, if appointed to perform such role, referred to in (ii) above), the aggregate Principal Amount of Bonds in each Retail Series on issue and outstanding;

- (j) **Annual valuations:** on or before 30 June of every year, valuations, or as the case may be updated valuations, of the material Properties prepared by a Valuer as at 31 March of that year;
- (k) **Inspection:** The Issuer must:
  - (i) at the request in writing of the Supervisor, make available for its inspection the whole of the accounting and other records of the Issuer; and
  - (ii) give to the Supervisor the information that it requires with respect to those records; and
- (l) **Offer Documents:** in respect of each Wholesale Series issued by the Issuer, copies of any Offer Document prepared by the Issuer in respect of such Series, for information purposes only.

#### 11.4 **Appointment of Auditor:**

- (a) **Consultation with Supervisor:** For so long as any Retail Series is outstanding, the Issuer must:
  - (i) before recommending the appointment or reappointment of a person as an Auditor:
    - (aa) consult with the Supervisor on the appointment or reappointment; and
    - (bb) ensure that any comments of the Supervisor concerning the proposed auditor are brought to the attention of the person or persons appointing or reappointing the Auditor;
  - (ii) notify the Supervisor if the Auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditor for resigning from appointment or declining to accept appointment or reappointment; and
  - (iii) not attempt to prevent a person who has resigned from appointment as the Auditor, or declined to accept appointment or reappointment as the Auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.
- (b) **Specified Engagement:** For so long as any Retail Series is outstanding, the Issuer must, before recommending the appointment or reappointment of a person as the Auditor:
  - (i) give the Supervisor an opportunity to be a party to an assurance engagement carried out by an auditor in relation to the Issuer's compliance with this Deed for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the powers or duties of the Supervisor; and
  - (ii) consult with the Supervisor on the nature and scope of any such engagement.

- (c) **Terms of Appointment:** For so long as any Retail Series is outstanding, the Issuer must ensure that the following terms are included in the terms of appointment of an auditor in its capacity as Auditor:
- (i) that the Auditor will, at the beginning of the audit, review, or engagement, give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, in order to allow the Supervisor an opportunity to raise any issues or concerns relevant to the exercise or performance of the powers or duties of the Supervisor; and
  - (ii) that the Auditor will give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, to discuss matters arising in the performance of the audit, review, or engagement and to answer any questions the Supervisor may have concerning the audit, review, or engagement.
- 11.5 **Negative undertakings:** The Issuer undertakes to the Holders and the Supervisor that, for so long as any Bonds of the Issuer are outstanding:
- (a) **Offer Document:** it and each Group member shall not issue an Offer Document in respect of an issue of Retail Bonds pursuant to this Deed without first consulting with the Supervisor, and not include any statement in any Offer Document, or any advertisement (as defined in the FMC Act) for any Bonds, expressly referring to the Supervisor, without the prior consent of the Supervisor; or
  - (b) **Business:** the Group shall not make any substantial change to the general nature of its core business from that being carried on by it at the date of this deed.
- 11.6 **Gearing Ratio:** The Issuer undertakes to the Holders of Bonds and the Supervisor in respect of such Holders that it will, for so long as any Bonds of the Issuer are outstanding, ensure that at all times, total Finance Debt of the Consolidated Group does not exceed 50% of the Total Tangible Assets of the Consolidated Group.
- For the purpose of this clause:
- (a) any unrealised indebtedness or exposure of the Consolidated Group in respect of a Derivative Contract before its close-out will be excluded from Finance Debt; and
  - (b) any unrealised amount that is owing to the Consolidated Group under a Derivative Contract before its close-out will be excluded from the Total Tangible Assets.
- 11.7 **Wholesale Series information:** The Issuer covenants with the Wholesale Holders that, so long as any Wholesale Bonds are outstanding, it will deliver to the Wholesale Holders the financial statements referred to in clauses 11.3(a) or 11.3(b) and such other information as may be specified in the Supplemental Trust Deed for those Wholesale Bonds.
- 11.8 **Changes to NZ GAAP:** If there is any change to NZ GAAP which, in the reasonable opinion of the Supervisor and the Issuer, alters the manner in which the financial ratio in clause 11.6 is calculated or the economic effect of such calculation, the Supervisor and the Issuer agree to discuss in good faith for a period of 20 Business Days any necessary

adjustment which may be required to such financial ratio to ensure that it remains, in substance, unaffected by the change to NZ GAAP. If the Issuer and the Supervisor fail to agree on the appropriate adjustments to the affected financial ratio within such 20 Business Days, then any references to NZ GAAP in this Deed or any other Transaction Document will be deemed to be a reference to NZ GAAP as at the date of this Deed.

11.9 **Governance:** The Issuer must comply with:

- (a) all applicable laws relating to governance matters;
- (b) its constitution as is in force from time to time;
- (c) the applicable terms of the Transaction Documents from time to time; and
- (d) subject to the terms of any applicable waiver or ruling, the governance requirements prescribed by the rules of any stock exchange on which it is listed or has securities quoted.

## 12. DEFAULT AND REVIEW

12.1 **Events of Default:** If any of the following occurs in respect of the Issuer or, as applicable, any Guarantor, whether or not within the control of the Issuer or that Guarantor:

- (a) **Non-payment:** default is made by the Issuer in the payment when due of:
  - (i) the Principal Amount of any Bonds on the Maturity Date or other scheduled date for repayment and the default continues for a period of 10 Business Days after the date when due; or
  - (ii) any interest on the relevant Interest Payment Date and the default continues for a period of 3 Business Days after the date when due; or
  - (iii) any other amount due in respect of any Bond and the default continues for a period of 10 Business Days after the date when due; or
- (b) **Other breach:** default is made by:
  - (i) the Issuer in the performance or observance of any undertaking contained in this Deed applicable to any Bond (other than those referred to in clauses 11.6, 12.1(a) or 12.2);
  - (ii) any Guarantor in the performance or observance of any undertaking contained in the Guarantee,and:
  - (aa) in respect of any such default which is capable of being remedied, is not performed or observed within the period of 30 days after the Issuer or, as applicable, that Guarantor becoming aware of that default; and
  - (bb) such default has or is likely to have, in the reasonable opinion of the Supervisor, a material adverse effect; or

- (c) **Misrepresentation:** any representation, warranty or statement made or deemed to be repeated by the Issuer in this Deed or, as applicable, by any Guarantor in the Guarantee is or was untrue or incorrect in a material respect when made or deemed to be repeated and, in respect of any such misrepresentation which is capable of being remedied, such misrepresentation is not remedied within 60 days of the Issuer or, as applicable, that Guarantor becoming aware of that misrepresentation; or
- (d) **Cross-acceleration:** any borrowed money indebtedness of the Issuer (other than in respect of the Bonds) or any Guarantor in aggregate in excess of \$10,000,000 (or its equivalent in other currencies) is required to be repaid prior to its stated maturity by reason of a default (however described) by the Issuer or that Guarantor; or
- (e) **Guarantee:** the Guarantee is terminated or any provision thereof amended or waived, in a manner materially adverse to the interests of the Holders other than in accordance with the Security Trust Deed; or
- (f) **Cessation of business or dissolution:** the Issuer or any Guarantor ceases or threatens to cease to carry on all or substantially all of its business or operations, or an application or an order is made, or a resolution is passed or proposed, for the dissolution of the Issuer or any Guarantor except, in each case either for the purpose of, and followed by, an amalgamation or solvent reconstruction on terms previously approved in writing by the Bank Lenders and the Supervisor (in accordance with clause 16.10), provided that an application or order being made will not constitute an Event of Default if it is:
  - (i) being made by a person other than the Issuer or the relevant Guarantor or any of their respective officers; and
  - (ii) being challenged by the Issuer or the relevant Guarantor; and
  - (iii) discharged within 30 days; or
- (g) **Insolvency:**
  - (i) the Issuer or any Guarantor is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts; or
  - (ii) a moratorium is declared in respect of any indebtedness of the Issuer or any Guarantor; or
- (h) **Insolvency proceedings:** any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Issuer or any Guarantor;
  - (ii) a composition, assignment or arrangement with any creditor of the Issuer or any Guarantor;



- (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Issuer or any Guarantor or any material Property; or
- (iv) enforcement of any Security over any material Property, the value of which exceeds in aggregate \$10,000,000 (or its equivalent in other currencies),

or any analogous procedure or step is taken in any jurisdiction unless (except in the case of paragraph (iii) above) the legal proceedings are, or other procedure or step is:

- (v) being taken or carried out by a person other than the Issuer or the relevant Guarantor, or any of their respective officers; and
  - (vi) being challenged by the Issuer or the relevant Guarantor; and
  - (vii) discharged within 30 days; or
- (i) **Statutory management:** a statutory manager is appointed to the Issuer or any Guarantor pursuant to the Corporations (Investigation and Management) Act 1989, or a recommendation is made by any governmental agency to the FMA supporting such an appointment; or
  - (j) **Creditors' process:** any expropriation, attachment, sequestration, distress or execution step or proceeding is taken which affects any material Property in respect of indebtedness for borrowed money having an aggregate amount of at least \$10,000,000 (or its equivalent in other currencies) and is not discharged within 30 days; or
  - (k) **Gearing Breach:** any Gearing Breach is not remedied within 6 months of the date the Gearing Notice was required to be delivered subject to and in accordance with clause 12.2; or
  - (l) **Supplemental Trust Deed:** (in relation to any Bond) any event occurs which is specified in the Conditions for that Bond as an Event of Default,

then at any time thereafter, provided that event is continuing unremedied by the Issuer or, as the case may be, any Guarantor:

- (A) **Wholesale Series:** a Wholesale Holder:
  - (1) may, without prejudice to any other remedies which that Holder may have, where that Event of Default occurs under clause 12.1(a) in relation to a Bond held by that Holder, declare all (but not some only) of the Bonds held by that Holder to be immediately due and payable by notice in writing to the Issuer (who must provide a copy to the Supervisor); or
  - (2) where that Event of Default occurs under any other paragraph of this clause 12.1, subject to any negotiation provisions (including any negotiation period) contained in the relevant Supplemental Trust Deed and the Holders of the Wholesale Bonds issued by the Issuer (or in the case of clause 12.1(l), the Holders of the Bonds of the relevant Wholesale Series) resolve by Special Resolution to do so, a Wholesale Holder may, without prejudice to any other remedies which

that Holder may have, declare all (but not some only) of the Bonds held by that Holder to be immediately due and payable by notice in writing to the Issuer; and

- (B) **Retail Series:** the Supervisor may in its discretion, and shall immediately in the case of any Event of Default under clause 12.1(a)(i) or (ii) or clause 12.1(k) or upon being directed to do so by a Special Resolution passed by Holders of the Retail Bonds issued by the Issuer, declare the Bonds of each Retail Series issued by the Issuer to be immediately due and payable by notice in writing to the Issuer.

12.2 **Event of Review:** In relation to any Series of Bonds, if:

- (a) there is a breach of the Gearing Ratio in clause 11.6 by reference to any Directors' Report delivered on any date ("**Gearing Breach**"); and
- (b) such Gearing Breach is not remedied within six months of the date on which that Directors' Report was required to be delivered pursuant to clause 11.3(c);

then (within 20 Business Days from the date by which the Gearing Breach was to be remedied) the Issuer shall give notice to the Supervisor and to all Holders of Bonds ("**Gearing Notice**") of the Gearing Breach including a plan by the Issuer to remedy the breach (by selling assets, effecting a capital restructuring and/or otherwise). If the Gearing Breach is not remedied within 6 months of the date the Gearing Notice was required to be delivered, this shall constitute an Event of Default pursuant to clause 12.1(k).

12.3 **Distribution of funds in respect of Bonds:** Subject to the provisions of the relevant Security Documents, all moneys received by the Supervisor in respect of Bonds from the Issuer or any Guarantor on or after the Date of Enforcement shall (subject to payment of any debts or liabilities having priority to the moneys due to Holders pursuant to those Bonds) be held and applied:

- (a) first, subject to any direction made by any court, in payment of all amounts due to the Supervisor under this Deed (including all expenses, losses and liabilities sustained or incurred by the Supervisor under this Deed, all fees payable to the Supervisor under this Deed, and any Default Interest on each such amount);
- (b) secondly, in or towards payment to the Holders of each Series of Bonds, rateably in proportion to the Bond Moneys owing to them in respect of the Bonds held by them and according to the ranking of each such Series; and
- (c) thirdly, the surplus (if any) of such moneys, in payment to the Issuer or to such other persons (including a liquidator of the Issuer) as may be lawfully entitled thereto.

## 13. APPOINTMENT OF SUPERVISOR

13.1 **Appointment:** The Issuer appoints the Supervisor, and the Supervisor accepts appointment, as supervisor for the Holders on the terms and conditions of this Deed including, without limitation, with responsibility for the following functions:

- (a) acting on behalf of the Retail Holders in relation to:
- (i) the Issuer;

- (ii) any matters connected with this Deed or the terms of a Regulated Offer of Bonds; and
  - (iii) any contravention or alleged contravention of the Issuer Obligations; and
- (b) supervising the Issuer's performance:
  - (i) of its Issuer Obligations; and
  - (ii) in order to ascertain whether the assets of the Issuer that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the Bond Moneys in respect of Retail Bonds as they become due; and
- (c) performing or exercising any other functions, duties, and powers conferred or imposed on the Supervisor by or under the FMC Act, the Financial Markets Supervisors Act or this Deed.

13.2 **Hold in trust:** The Supervisor shall hold the following in trust for the benefit of the Retail Holders:

- (a) the right to enforce the Issuer's duty to repay, or to pay interest, under the terms of the Bonds;
- (b) any charge or security for repayment; and
- (c) the right to enforce any other duties that the Issuer, any Guarantor and any other person have under;
  - (i) the terms of the Bonds; or
  - (ii) the provisions of this Deed or the FMC Act in relation to the Bonds.

13.3 **Duties of Supervisor:** The Supervisor:

- (a) must:
  - (i) act honestly in acting as supervisor under this Deed;
  - (ii) in exercising its powers and performing its duties as supervisor, act in the best interest of the Retail Holders;
  - (iii) exercise reasonable diligence in carrying out its functions as supervisor;
- (b) must do all things it has the power to do to cause any contravention or alleged contravention of the Issuer Obligations in respect of the Bonds to be remedied unless it is satisfied that the contravention will not have a material adverse effect on the Retail Holders;
- (c) subject to any court order made under section 210 of the FMC Act, must act in accordance with any direction given by a Special Resolution of Retail Holders that is not inconsistent with any enactment, rule of law or this Deed in relation to:

- (i) seeking a remedy to a contravention or alleged contravention of the Issuer Obligations in respect of the Bonds; and
  - (ii) any other matter connected with the Supervisor's functions; and
- (d) in exercising its powers and performing its duties as supervisor, must exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor (as that term is defined in the FMC Act) would exercise in the same circumstances.

13.4 **No delegation:** The Supervisor must not delegate any of its functions under clause 13.1 (except as expressly permitted by the FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act).

#### 14. SUPERVISOR'S FEES, EXPENSES AND INDEMNITIES

14.1 **Fees:** The Issuer shall pay to the Supervisor such fees as may from time to time be agreed between them in writing.

14.2 **Expenses:**

- (a) The Issuer shall pay or cause to be paid all expenses (including legal fees on a full indemnity basis and travelling expenses) reasonably incurred by or on behalf of the Supervisor in connection with the preparation, signing and (if applicable) registration of this deed.
- (b) The Issuer shall pay all expenses (including legal fees on a full indemnity basis and travelling expenses) reasonably incurred by or on behalf of the Supervisor in connection with:
  - (i) the preparation, signing and (if applicable) registration of each Supplemental Trust Deed and each Offer Document relating to Bonds to be issued by the Issuer;
  - (ii) the convening and holding, and carrying out of any directions or resolutions, of any meeting of Holders in accordance with the terms and conditions of this Deed in respect of the Bonds issued by the Issuer; or
  - (iii) any waiver, consent or other action requested by the Issuer.

14.3 **Enforcement:** The Issuer shall pay all expenses (including legal fees on a full indemnity basis and travelling expenses) reasonably and properly incurred by the Supervisor in connection with the enforcement or preservation of, or attempted enforcement or preservation of, any right under a Transaction Document or otherwise in the exercise of any Supervisor Power in relation to Bonds issued by the Issuer, including taking of any expert advice deemed reasonably necessary or expedient by the Supervisor.

14.4 **Indemnity by Issuer:** Without prejudice to the right of indemnity by law given to trustees or supervisors, the Supervisor or any of its officers, directors, employees or agents shall be indemnified by the Issuer for all expenses, losses and liabilities reasonably sustained or incurred in carrying out the Supervisor Powers or otherwise for any action taken, or omitted to be taken, in accordance with the provisions of the Transaction Documents in relation to Bonds issued by the Issuer, other than:

- (a) in the case of a Wholesale Series, a claim arising out of a wilful default, negligence or wilful breach of trust; and
  - (b) in the case of a Retail Series, a claim for indemnification that is not permitted by clause 18.1.
- 14.5 **Indemnity by Holders:** Subject to clause 18.1, the Supervisor is not required to take any action or exercise any Supervisor Power or comply with any request or direction pursuant to this Deed (whether or not it is expressed to be bound to do so) unless it has first been indemnified to its satisfaction by the Holders against all expenses, losses and liabilities it may reasonably sustain or incur by so doing.
- 14.6 **Payments:** The fees, expenses, indemnities and other amounts payable under this Deed to the Supervisor form part of the Bond Moneys and shall be payable by the Issuer and the Holders (as the case may be) at the times agreed (or in the absence of agreement, on demand) and if not paid when due shall carry Default Interest under clause 6.8 until paid.
- 15. SUPERVISOR'S POWERS**
- 15.1 **General powers:** The powers, authorities and discretions conferred on the Supervisor by this Deed shall be in addition to any powers, authorities and discretions which may from time to time be vested in trustees or supervisors by law in relation to Bonds and to any powers, authorities and discretions which may from time to time be vested in the Supervisor as the Holder of any Bond or the security for any Bond.
- 15.2 **Wholesale issues:** The Supervisor shall have no powers or duties in relation to any Wholesale Series except:
  - (a) the powers and duties explicitly set out in the Conditions for any Wholesale Bonds; and
  - (b) where any authorisation or direction in respect of the taking of any action or other matter may, under the provisions of this Deed or any relevant Conditions, be given to the Supervisor by a Special Resolution or ordinary resolution of the Holders of Wholesale Bonds, the Supervisor may act in reliance upon such authorisation or (as the case may be) shall act in accordance with any such direction, and shall not be responsible for any costs, damages, expenses, liabilities or inconvenience that may result from the action so taken in reliance thereon, provided that the Supervisor shall not be so bound to act unless first indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, damages, expenses and liabilities which it may incur by so doing.
- 15.3 **Retail Series:** In relation to each Retail Series the Supervisor shall, in addition to any powers provided by law, have the following powers and duties, subject to the terms of the Supplemental Trust Deeds in relation to the relevant Series:
  - (a) **Monitoring role:** The Supervisor must exercise reasonable diligence to ascertain whether or not the Issuer has breached the Conditions of any Retail Bonds or the terms of any offer of Retail Bonds but, until it has received notice to the contrary from the Issuer, the Auditors or any Holder, is entitled to assume that no such breach has occurred. The Supervisor shall exercise reasonable diligence to ascertain whether or not the assets of the Group that are or may be available are sufficient or likely to be sufficient to discharge the

payment obligations of the Issuer in respect of the Retail Bonds as they become due.

- (b) **Applications to court:** Having regard to any other powers or remedies available to it under this Deed or at law for the protection of the interests of Retail Holders and to all other circumstances relevant to the general interests of such Holders, the Supervisor may apply to the court for an order:
- (i) under section 208 of the FMC Act, if the Supervisor is satisfied that:
    - (aa) the Issuer and any Guarantor are unlikely to be able to pay any amounts payable in relation to one or more Retail Series as and when due;
    - (bb) the Issuer is insolvent (as defined in the FMC Act) or the financial position or management of the Issuer is otherwise inadequate;
    - (cc) there is significant risk that the interests of Retail Holders will be materially prejudiced for any other reason; or
    - (dd) the provisions of this Deed are no longer adequate to give protection to the interests of any of the relevant Holders of Retail Bonds; or
  - (ii) under section 210 of the FMC Act and within 20 Business Days (or with leave of the court, within any longer period) after the passing of a Special Resolution of Retail Holders, directing it not to comply with a Special Resolution of Retail Holders,

and it may support or oppose any application to the court made by or at the instance of the FMA or any Retail Holder (where applicable). Subject to clause 18.1, the Supervisor shall be indemnified by the Issuer against all expenses incurred in relation to any such application or proceedings, provided that the Supervisor must consult with the Issuer prior to making any such application before the Date of Enforcement.

- (c) **Material breach:** If any breach of the Conditions of any Retail Bonds or the terms of any offer of Retail Bonds occurs which the Supervisor acting reasonably (and after consultation with the Issuer) considers will materially adversely affect the ability of the Issuer to meet its payment obligations to the Supervisor or any Retail Holder or any circumstances occur which results in such a breach which the Supervisor reasonably considers (following reasonable consultation with the Issuer) is materially prejudicial to the interests of any Retail Holders, the Supervisor shall be entitled in its absolute discretion to require the Issuer to report to the Retail Holders the circumstances and the nature of such breach and any other relevant information concerning the Issuer which the Supervisor has received in relation to this Deed and which it reasonably considers to be material to those Holders, and invite those Holders to indicate to the Supervisor their preferences as to any exercise or non-exercise of the Supervisor Powers under this Deed. If the Issuer fails to give that report within 30 days the Supervisor shall be entitled to do so itself. The Supervisor must do all things it has the power to do to cause such breach to be remedied, unless it is satisfied that the breach will not materially adversely affect the Holders.

- (d) **Represent Holders:** The Supervisor may, either of its own volition or pursuant to any directions or in accordance with any policy given or indicated by any meeting of Retail Holders, represent and act on behalf of those Holders in any matter concerning them generally, including pursuant to the Security Trust Deed.
- (e) **Investment:** Any moneys held by the Supervisor which are subject to the trusts created by this Deed may, at the discretion of the Supervisor, be invested in the name of the Supervisor or its nominee in any investment whatsoever, with power to vary such investments for others of a like nature and to deal with, or dispose of, such investments. The income arising from all such investments made by the Supervisor will belong to the person in respect of whom such moneys are held by the Supervisor.
- (f) **Power to engage an expert:** The Supervisor, in performing its functions under this Deed, may engage an expert (including, but without limitation to, an auditor, investigating accountant, valuer or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of that expert to:
  - (i) determine the financial position of the Issuer or the Group (as the case may be); or
  - (ii) review the business, operation, or management systems, or the governance, of the Issuer or the Group (as the case may be).

If an expert is engaged under this clause 15.3(f), the Issuer must provide reasonable assistance to the expert to allow the expert to provide such assistance, and (without limiting clause 14) the fees and expenses of the expert, which must be reasonable in the circumstances, shall be paid by the Issuer.

- (g) **Power to remedy breach:** The Supervisor's powers to remedy any breach of this Deed are subject to any other provision of this Deed which is inconsistent with the exercise of such powers.

## 16. EXERCISE OF SUPERVISOR'S POWERS

- 16.1 **Discretion:** Except as otherwise expressly provided in this Deed, the Supervisor:
  - (a) has absolute discretion as to the exercise of the Supervisor Powers and as to the conduct of any action, proceeding or claim (provided it has acted within sections 112 and 113 of the FMC Act); and
  - (b) may refrain from exercising any Supervisor Power until directed by Special Resolution of Holders or of the affected Class of Holders to do so.
- 16.2 **Reliance:** The Supervisor shall be entitled without liability for loss, to obtain, accept and act on, or to decline and elect not to act on:
  - (a) any communication or document (including any fax or email) reasonably believed by it to be genuine and correct;
  - (b) any resolution which the Supervisor reasonably believes to have been properly passed at any meeting of Holders or affected Class of Holders;

- (c) advice and statements of lawyers, accountants and other experts reasonably selected by it or by the Issuer;
- (d) a certificate signed by or on behalf of the Issuer as to any matters of fact which might reasonably be expected to be within the knowledge of the Issuer or that any particular transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of Holders generally or of any Class of Holders generally, as sufficient evidence of such fact or the expediency or desirability of such transaction, step or thing; and
- (e) the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this Deed (including a Directors' Report), as conclusive evidence of the facts stated therein.

**16.3 Delegation:**

- (a) Subject to sub-clause (b) below, the Supervisor, whenever it reasonably believes it expedient in the interests of the relevant Holders to do so, may:
  - (i) delegate at any time to any person any of the Supervisor Powers which cannot conveniently be exercised by it or through its employees, upon such terms and conditions it thinks fit provided that any such delegation shall not relieve the Supervisor of its responsibilities under this Deed or under the FMC Act (including, but without limitation to, its responsibilities under section 111 of that Act); and
  - (ii) authorise any person as it thinks fit to act as its representative at any meeting.
- (b) Notwithstanding any provision of this Deed, the Supervisor shall not delegate any of its functions set out in clause 13.1, except as expressly permitted by the FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act.

**16.4 Supervisor's consent:** Any consent given by the Supervisor for the purposes of this Deed may be given on such terms and conditions (if any) as the Supervisor acting reasonably thinks fit.

**16.5 Subscribers' money:** The Supervisor shall not be responsible for monitoring the application by the Issuer of the money paid by purchasers of the Bonds.

**16.6 Safe custody:** The Supervisor may hold or place this Deed and any other documents with any bank or any person whose business includes the undertaking of safe custody of documents or with any lawyer or firm of lawyers (in each case reasonably considered by the Supervisor to be of good repute) and the Supervisor is not responsible for or required to insure against any loss incurred in connection with that deposit.

**16.7 Fiduciary relationship:**

- (a) The Supervisor and any of its related companies and officers may:
  - (i) be a Holder, or a holder of shares or other securities of the Issuer, any associated company of the Issuer; or



- (ii) act in any representative capacity for a Holder or any holder of such shares or other securities,

either on their own account or as executor, administrator, trustee, supervisor, receiver, committee, guardian, attorney or agent or in any other fiduciary, vicarious or professional capacity, and, by doing so, will not be deemed to breach this Deed or obligations imposed or implied by law arising out of the fiduciary relationship between the Supervisor and the Holders.

- (b) The Supervisor and any of its related companies and officers may (without having to account to the Issuer or any Holder for any profits arising therefrom):

- (i) make any contracts or enter into any transactions with the Issuer, any associated company of the Issuer in the ordinary course of business;
- (ii) undertake any insurance, financial or agency service for any of them; or
- (iii) accept or hold the office of trustee or supervisor for the holders of any securities (whether secured or unsecured) issued by the Issuer or by any other entity,

and may accept fees or other consideration for such services, and will not be prevented from doing any of the foregoing by reason of its fiduciary capacity.

16.8 **Confidentiality:** Unless ordered to do so by law, court order or the Conditions, the Supervisor shall not be required to disclose to any Holder any confidential financial or other information made available to the Supervisor by the Issuer.

16.9 **Listing Rules:** Subject to compliance by the Supervisor with its obligations under the FMC Act and FMC Regulations, the Supervisor shall not be required to monitor compliance by the Issuer or any other party with the Listing Rules and, in the absence of notice to the contrary from the Issuer or NZX, shall be entitled to assume that the Issuer is so complying. In the event of non-compliance with the Listing Rules, the Supervisor, in determining the action to be taken or not taken by it, shall be entitled to have regard to the actions of NZX, as relevant, in relation to that non-compliance by the Issuer.

16.10 **Solvent reorganisation:** If the Supervisor receives notice in writing from the Issuer or any Guarantor of a proposal for an amalgamation or solvent reconstruction (each a "**reorganisation**") of the Issuer or that Guarantor, together with reasonable details of the terms of such reorganisation, the Supervisor shall give its approval in writing to such reorganisation provided that such notice is accompanied by the following documents and evidence to the reasonable satisfaction of the Supervisor:

- (a) evidence that the Bank Lenders (by way of the requisite majority) have approved the reorganisation or will do so subject to conditions (in which case the Supervisor may make its approval conditional on the satisfaction or waiver of those conditions);
- (b) evidence that the reorganisation will not cause the credit rating of the Bonds (if any) as at the date of the notice to be downgraded or withdrawn;
- (c) confirmation that the surviving or succeeding entity will be bound by this Deed;
- (d) confirmation that the reorganisation will have no negative impact on any material Properties; and

- (e) confirmation that the reorganisation will not have a material adverse effect.

For the avoidance of doubt, the confirmations in paragraphs (c) and (d) may be in the form of, or supplemented by, a legal opinion from a reputable law firm as to the relevant matters.

## 17. REPLACEMENT OF SUPERVISOR

17.1 **Resignation or removal of Supervisor:** Subject to the appointment and acceptance of a successor Supervisor as provided in this clause 17:

- (a) the Supervisor may resign at any time by giving not less than 90 days' written notice to the Issuer;
- (b) the Issuer may remove the Supervisor from office by giving not less than 90 days' written notice to the Supervisor;
- (c) the Holders may remove the Supervisor from office by giving not less than 90 days' written notice to the Issuer and Supervisor upon the passing of a Special Resolution of Holders to that effect; or
- (d) the FMA or the Issuer may remove the Supervisor from office pursuant to Part 2 of the Financial Markets Supervisors Act.

17.2 **Requirements for resignation and removal:** The Supervisor may not:

- (a) be removed or resign under clause 17.1(a), 17.1(b) or 17.1(c) unless:
  - (i) all functions and duties of its position have been performed;
  - (ii) another licensed supervisor (as defined in the FMC Act) has been appointed, and accepted the appointment, in its place; or
  - (iii) the court consents; or
- (b) be removed by the Issuer under clause 17.1(b) or 17.1(d) without the FMA's consent.

17.3 **Appointment of new Supervisor:** If any of the circumstances in clause 17.1 (a) - (d) occur, the Issuer will, subject to clauses 17.2(a)(i) and (iii) and 17.2(b) (where applicable), have the right to appoint a successor Supervisor, which must be a person who is entitled by law to act as the Supervisor under the Financial Markets Supervisors Act and who has accepted that appointment.

17.4 **Approval by Special Resolution:** Where at any time there are Bonds outstanding under this Deed, then the removal of the Supervisor pursuant to clause 17.1(b), and the appointment of any successor Supervisor pursuant to clause 17.3, shall be subject to approval by a Special Resolution of Holders.

17.5 **Failure to appoint Supervisor:** Other than where the successor Supervisor requires approval pursuant to clause 17.4, if a successor Supervisor has not been appointed by the Issuer or has not accepted an appointment within 60 days after any such notice, then the retiring Supervisor may, on behalf of the Issuer, appoint a successor Supervisor. In circumstances where the successor Supervisor requires approval by a Special Resolution of the Holders, any failure of the Issuer to appoint or have approved

a successor Supervisor will entitle the Holders, by a Special Resolution, to appoint a new Supervisor.

17.6 **Successor Supervisor:** Upon the acceptance of any appointment under this clause 17 by a successor Supervisor:

(a) the successor Supervisor will succeed to, and become vested with, all the rights, powers and obligations of the retiring Supervisor under the Transaction Documents and, as from that time, the retiring Supervisor shall be discharged from its rights, powers and obligations; and

(b) the retiring Supervisor must transfer to the successor Supervisor all moneys, investments, property and books held by the Supervisor under this Deed.

17.7 **Execution of documents:** Upon the acceptance of any appointment under this clause 17 by a successor Supervisor, the successor Supervisor shall execute all such documents which are necessary or appropriate and in such form as may be required by the other parties to the Transaction Documents, such that the successor Supervisor is bound by all the covenants on the part of the Supervisor under the Transaction Documents from the date of such appointment. Any appointment of a successor Supervisor has no effect until such documents are executed by the successor Supervisor.

17.8 **Notice:** The Issuer shall notify all Holders of the Bonds issued by the Issuer of the appointment of any new supervisor as soon as reasonably practicable following such appointment.

## 18. LIABILITY OF SUPERVISOR

18.1 **Supervisor not indemnified:** No provision of this Deed shall have the effect of exempting the Supervisor from, or indemnifying the Supervisor against:

(a) liability for wilful breach of trust where the Supervisor fails to show the degree of care and diligence required of the Supervisor having regard to the Supervisor Powers and the provisions of this Deed; or

(b) any failure to properly perform its duties under clauses 13.3(a) and (d).

18.2 **Duty of care:** Notwithstanding any other provision of this deed but subject to the provisions of any Supplemental Trust Deed, the Supervisor does not assume any duty of care to the Issuer, any creditors of the Issuer or any other person other than the Holders (subject to and in accordance with this Deed) in exercising the Supervisor Powers, and shall not be liable to any person (including the Issuer and any Holders) in any way except for wilful default, negligence or wilful breach of trust where the Supervisor has failed to show the degree of care and diligence required of it having regard to the provisions of this Deed.

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

## 19. BENEFIT OF DEED

19.1 The Issuer acknowledges, in relation to each Series and the Holders of the Bonds of that Series, that this Deed (including, for the avoidance of doubt, the Supplemental Trust

Deeds for that Series) is made for the benefit of, and subject to clause 2.8 is intended to be enforceable by, any person who is from time to time a Holder of the Bonds of that Series, the Registrar for that Series, and the Supervisor.

## 20. AMENDMENTS

20.1 **Limited right to amend:** Except as provided in this clause 20 the Issuer may not cancel, vary or amend any provision of this Deed while any Bonds are outstanding. Any amendment to this Deed must be in writing signed by the Issuer and the Supervisor.

### 20.2 Amendments affecting Retail Holders:

- (a) **Right to amend:** In the case of an amendment affecting Retail Holders, the provisions of this Deed may not be amended or replaced unless the amendment or replacements is made:
  - (i) with the consent of the Supervisor; or
  - (ii) (despite anything to the contrary in this Deed or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to this Deed) under section 109 of the FMC Act, sections 22(7) or 37(6) of the Financial Markets Supervisors Act or any other power to amend or replace this Deed under an enactment.
- (b) **Supervisor consent:** Subject to clause 13.3(c), the Supervisor must not consent to an amendment to, or a replacement of, this Deed unless:
  - (i) either:
    - (aa) the amendment or replacement is approved by, or is contingent on approval by, the Retail Holders; or
    - (bb) the Supervisor is satisfied that the amendment or replacement does not have a material adverse effect on the Retail Holders; and
  - (ii) the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that this Deed, as amended or replaced, will comply with sections 104 to 106 of the FMC Act on the basis set out in the certificate.
- (c) **Retail Holder consent:** The approval of the Retail Holders for the purposes of clause 20.2(b)(i)(aa) must be the approval of a Special Resolution of:
  - (i) the Retail Holders; or
  - (ii) each Class of Retail Holders that is or may be adversely affected by the amendment or replacement.
- (d) **Notice of amendments:** Notice of any modification or addition to this Deed relating to or affecting any Retail Bonds or to the terms and conditions of any Retail Bonds shall be provided to the Retail Holders of such Retail Bonds affected by the amendment within 10 Business Days of the amendment being

made, unless the Supervisor notifies the Issuer that such notification is not required to be provided to the Retail Holders of such Retail Bonds.

20.3 **Amendments affecting Wholesale Holders:**

(a) **Limited right to amend:** In the case of an amendment affecting (in the opinion of the Issuer) Wholesale Holders only, except as provided in clause 20.3(b) and 20.3(c) the Issuer may not cancel, vary or amend any provision of this Deed while any Wholesale Bonds are outstanding. Any amendment to this Deed must be in writing signed by the Issuer and the Supervisor.

(b) **Amendment without consent:**

(i) In relation to each Class, the provisions of this Deed may be amended without the consent of the Holders of that Class where such amendment (in the opinion of the Issuer):

- (aa) is of a minor, formal, administrative or technical nature;
- (bb) is to cure any ambiguity or to correct or supplement any defective or inconsistent provision;
- (cc) is to comply with the requirements or a modification of the requirements of any applicable law or any applicable Listing Rules;
- (dd) is necessary for the purpose of obtaining or maintaining a quotation of any Bonds on any market operated by NZX or any other stock exchange in New Zealand or elsewhere;
- (ee) is in respect of any of the provisions for reporting to the Supervisor under this Deed or in respect of clauses 14 and 16; or
- (ff) is otherwise necessary or desirable in the interests of the Holders or the relevant Class of Holders;

and, in any such case, the Issuer is of the opinion that such amendment will not have a material adverse effect on the Holders generally.

(ii) Notice of any such amendment, including a description of the amendment, shall be provided by the Issuer to the Holders within 10 Business Days of the amendment being made, unless the Supervisor and the Issuer agree that such notification is not required to be provided to the Holders or that it would be appropriate to give notice of the amendment in some other manner.

(c) **Amendment approved by Special Resolution:** Without limiting clause 20.3(b)(i) but subject to clause 20.3(b)(ii), the provisions of this Deed may be amended if the amendment has been approved by a Special Resolution of the Wholesale Holders or the relevant Class of Wholesale Holders and notified in accordance with this Deed.

(d) **Compliance Certificate:** Where any amendment is made under clauses 20.3(b) and 20.3(c), the Supervisor must certify, or obtain a certificate from a lawyer, that:

- (i) in relation to any amendment made under clause 20.3(b), the Supervisor is satisfied that such amendment does not have a material adverse effect on the Holders; or
- (ii) in relation to any amendment made under clause 20.3(c), such amendment has been approved by, or is contingent on a Special Resolution of the relevant Class of Holders.

20.4 **Notice:** Notice of any proposed variation under clause 20.2(c) and 20.3(c) shall be given by the Issuer to each Holder or if it affects one or more Classes of Holders but not all Classes of Holders, to the Holders of each affected Class of Holders not less than 14 days before the date on which it is intended that such variation take effect, but the non-receipt of notice by any such Holder shall not affect the validity of any such variation.

20.5 **Lodging of amendments with FSP Registrar:** Within five Business Days after any amendment is made under clause 20.2, the Issuer must ensure that notice of such amendment, and a copy of any certificate given under clause 20.2(b)(ii) is lodged with the FSP Registrar.

20.6 **FMA approval:** Notwithstanding anything in this clause 20, the FMA may approve certain amendments to or replacement of this Deed pursuant, but without limitation, to section 109 of the FMC Act or sections 22(7) or 37(6) of the Financial Markets Supervisors Act.

## 21. WAIVER

21.1 **Temporary Variation:** In addition to, and not in abrogation of or substitution for, clause 20 (but subject to any applicable law and except to the extent expressly provided otherwise in the Conditions applicable to any Bond) the Supervisor in respect of any Retail Series, or in respect any Wholesale Series the relevant Wholesale Holders by Special Resolution may, with the consent of the Issuer, temporarily vary the provisions of this Deed applicable to the relevant Bonds, for such period and on such terms as:

- (a) may be deemed appropriate provided that the Supervisor shall be satisfied that the interests of the affected Retail Holders generally will not be materially and adversely prejudiced thereby; or
- (b) may be agreed by the Supervisor pursuant to and in accordance with clause 21.3.

21.2 **Waivers:** Subject to clause 20 (if applicable) and any applicable law and except to the extent expressly provided otherwise in the Conditions for any Bonds, the Supervisor in respect of any Retail Series if it is satisfied that the interests of the Retail Holders generally will not be materially prejudiced thereby, and shall if so directed by a Special Resolution of Retail Holders, or in respect any Wholesale Series the relevant Wholesale Holders by Special Resolution, may waive, in whole or in part for a specified period or indefinitely and on such terms and conditions (if any) as may be deemed expedient, any breach or anticipated breach by the Issuer of this Deed or any Conditions of any Bonds.

21.3 **Exemptions:** Except to the extent expressly provided otherwise in the Conditions for any Bonds and subject to clause 20 (if applicable), if:

- (a) the Issuer is granted an exemption, or an exemption is applicable to the Issuer, in relation to any obligation imposed upon the Issuer by or pursuant to the FMC Act, the Companies Act, the Financial Reporting Act 2013, or any other applicable law which is materially the same as or analogous to any obligation of the Issuer under this Deed or any Bonds; and
- (b) two Authorised Officers certify that such amendment, temporary variation or waiver will not have a material adverse effect on the Issuer or be or become materially and adversely prejudicial to the general interests of Holders,

then the Supervisor in respect of any Retail Series, or in respect of any Wholesale Series the relevant Wholesale Holders by Special Resolution, may agree to amend or temporarily vary this Deed or the Conditions for the relevant Bonds or waive any breach or anticipated breach of such obligation in a manner which is consistent with the relevant exemption.

## 22. FURTHER AND SUBSTITUTED ISSUERS

22.1 **Further issuers:** The Issuer shall be entitled to nominate any wholly-owned Subsidiary to be the issuer of the Bonds of a particular Series by so providing in the Supplemental Trust Deed for that Series, provided that the new issuer enters into the relevant Supplemental Trust Deed and agrees to become bound by the terms of the Transaction Documents and, where that Series is a Retail Series, the Bonds issued by the new issuer are guaranteed by the Issuer and otherwise on terms satisfactory to the Supervisor (acting reasonably).

22.2 **Substituted issuers:** The Issuer may, without the consent of the Holders of any Series but in respect of any Retail Series, subject to the Supervisor's consent, substitute any wholly-owned Subsidiary ("**Substituted Obligor**") in place of the Issuer (or of any previous substitute under this clause 22.2) as the principal debtor under this Deed and the Bonds either generally or in relation to one or more Series, but only if:

- (a) the Substituted Obligor succeeds to and becomes bound by all the terms and conditions of the Transaction Documents for the relevant Series by entering into such agreements and documents ("**Substitution Documents**"), each in form and substance satisfactory to:
  - (i) (where the relevant Series is a Retail Series) the Supervisor, as the Supervisor (acting reasonably) may deem appropriate;
  - (ii) (where the relevant Series is a Wholesale Series) the Holders of that Wholesale Series, as those Holders (acting reasonably) may deem appropriate and, if the Conditions relating to that Wholesale Series explicitly set out powers and duties of the Supervisor, the Supervisor as the Supervisor (acting reasonably) may deem appropriate;
- (b) (where the relevant Series is a Retail Series) such amendments are made to any other documents (including any Offer Document in respect of the relevant Bonds) as the Supervisor may reasonably deem appropriate;
- (c) two directors of the Substituted Obligor certify that the Substituted Obligor will be solvent immediately after such substitution;

- (d) the Issuer (or any such previous Substituted Obligor) and the Substituted Obligor comply with such other reasonable requirements as:
  - (i) (where the relevant Series is a Retail Series) the Supervisor may direct and which the Supervisor reasonably considers are in the interests of the Retail Holders generally; or
  - (ii) (where the relevant Series is a Wholesale Series) the Holders of that Wholesale Series by Special Resolution may direct and, if the Conditions relating to that Wholesale Series explicitly sets out powers and duties of the Supervisor, the Supervisor (acting reasonably) may deem appropriate;
- (e) prior to the substitution being effected, the Substituted Obligor warrants and represents to the Holders that:
  - (i) it has obtained all necessary authorisations for such substitution;
  - (ii) it has obtained all necessary authorisations for the performance by it of its obligations under the relevant Transaction Documents and the relevant Bonds and that they are in full force and effect; and
  - (iii) the obligations assumed by it are its legal, valid and binding obligations, enforceable against it in accordance with their terms, subject to laws affecting creditors' rights generally and equitable principles of general application; and
- (f) legal opinions in form and substance reasonably satisfactory to:
  - (i) (where the relevant Series is a Retail Series) the Supervisor; or
  - (ii) (where the relevant Series is a Wholesale Series) the Holders of that Wholesale Series and, if the Conditions relating to that Wholesale Series explicitly set out powers and duties of the Supervisor, the Supervisor as the Supervisor (acting reasonably) may deem appropriate,

have been delivered to the Supervisor or the relevant Holders, as the case may be, confirming that, following such substitution:

- (iii) the Transaction Documents and the Bonds will constitute legal, valid and binding obligations of the Substituted Obligor, enforceable against it in accordance with their terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and equitable principles of general application;
- (iv) the Substituted Obligor is validly incorporated in its jurisdiction of incorporation;
- (v) all necessary authorisations are in full force and effect; and
- (vi) amounts payable to the Holders of the relevant Series will not be reduced by the existence of any applicable taxes (by deduction from such amounts or otherwise) except for such taxes (if any) in respect



of which the Substituted Obligor has agreed to make compensating payments to those Holders.

22.3 **Release of substituted issuer:** Any Substitution Document entered into pursuant to clause 22.2 shall, if so expressed, release the Issuer from any or all of its obligations under the Bonds and the Transaction Documents for the relevant Series with effect as of the date of substitution. Notice of any substitution pursuant to clause 22.2 shall be given to the Holders of the relevant Series within 14 days of the execution of the Substitution Documents and compliance with the other requirements of clause 22.2.

22.4 **Completion of substitution:** After notice has been given in accordance with clause 22.3:

- (a) the Substituted Obligor shall be deemed to be the principal debtor and to have all the rights, powers and obligations of the Issuer under the Transaction Documents for the relevant Series (including, for the avoidance of doubt, all responsibility for any breach of this Deed by the Issuer) as if the Substituted Obligor were originally named in those Transaction Documents in place of the Issuer; and
- (b) this Deed and the Conditions of the relevant Bonds shall be deemed to be amended as necessary to give effect to the substitution.

## 23. MEETINGS AND RESOLUTIONS OF BONDHOLDERS

23.1 **Meetings:** Meetings of Holders and any Class of Holders are to be convened and held in accordance with the provisions of schedule 1.

23.2 **Resolutions of Holders:** Any matter relating to this Deed or the Bonds may be agreed or approved by the relevant Class of Holders by signing (in any number of counterparts) a memorandum in writing, recording the matter so agreed or approved in accordance with regulation 16 of Schedule 1.

23.3 **FMC Regulations:** Regulation 78 and Schedule 11 of the FMC Regulations (other than clauses 2 and 5 of that Schedule) do not apply to this Deed.

## 24. NOTICES

24.1 **Writing:** Each notice or other communication to be given or made under this Deed to any person must:

- (a) **Writing:** be given or made in writing by email, letter or by public notice (including, but not limited to, a leading daily newspaper of general circulation in New Zealand) and be signed by the sender or an authorised officer of the sender;
- (b) **Address:** be given or made to the recipient at the address or email address (if not via public notice), and marked for the attention of the person (if any), from time to time designated by the recipient to the other for the purposes of this Deed or the Bonds; and

(c) **Deemed delivery:** not be effective until received by the recipient, and any such notice or communication shall be deemed to be received:

- (i) (if given or made by letter) when left at the address of the recipient or 5 Business Days after being put in the post (by airmail if to another country), postage prepaid, and addressed to the recipient at that address;
- (ii) (if given or made by email) on completion of transmission to the relevant email address; or
- (iii) (if given or made by public notice) upon the release, circulation or publishing of that notice,

provided that:

- (iv) any notice or communication received or deemed received after 5:00pm on a Business Day in the place to which it is sent, or on a day which is not a Business Day in that place, shall be deemed not to have been received until the next Business Day in that place; and
- (v) if a Holder has no registered address within New Zealand and has not supplied to the Issuer an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand or an electronic address, then notices for that Holder shall be posted to such physical address or sent electronically to such electronic address, and shall be deemed to have been received by that Holder 24 hours after the time of posting or sending.

(d) **Email:** A notice, request, certificate, approval, demand, consent or other communication to be given or made under this Deed may only be given or made by email where the recipient has agreed in writing that that communication, or communications of that type, may be given or made by email.

24.2 **Initial address and numbers:** The initial addresses and person (if any) designated for the purposes of this Deed, are set out below:

(a) **Kiwi Property Group Limited:**

Physical address:  
Level 7, Vero Centre  
48 Shortland Street

Auckland 1010

Mailing address:  
PO Box 2071  
Shortland Street  
Auckland 1140

Telephone: (09) 359 4000  
Email address: steve.penney@kp.co.nz  
Attention: Chief Financial Officer

(b) **Public Trust:**

Physical address:  
SAP Tower  
Level 16  
151 Queen Street  
Auckland 1010

Mailing address:  
Private Bag 5902  
Wellington 6140

Telephone: 0800371471  
Email address: cts.enquiry@publictrust.co.nz  
Attention: General Manager

(c) **The Holders:**

The address of each Holder last entered in the Register.

24.3 **Joint Holders:** In the case of joint holders of Bonds a notice given to the Holder whose name stands first in the Register in respect of such holding shall be sufficient notice to all the joint holders.

**25. GENERAL**

25.1 **Registration of deed:** If the Issuer proposes to issue a Retail Series, it shall promptly, at its own cost, register this deed, the relevant Supplemental Trust Deeds in respect of that Series and any amendment to this deed or such Supplemental Trust Deeds as required by applicable laws and shall pay all costs and expenses incidental to doing so.

25.2 **Waivers and remedies:** Time shall be of the essence of this Deed but no delay in acting, or failure to act, by a Holder is a waiver of any of that Holder's rights, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights provided in this Deed do not exclude any rights provided by law.

25.3 **Partial invalidity:** An invalid provision in this Deed shall not affect the enforceability of the remaining provisions of this Deed.

25.4 **Further issues:** The Issuer may from time to time, without the consent of the Holders, issue Bonds or issue or guarantee other debt obligations on such other terms and conditions as the Issuer may think fit.

25.5 **Documents:** Copies of this deed, the relevant Supplemental Trust Deed, the Offer Documents relating to Bonds held by the relevant Holder and the Agency Agreement in relation to the relevant Series and any other Transaction Document in relation to the relevant Series will be made available by the Issuer for inspection during usual business hours by any Holder at the office of the Issuer (or such other office as the Issuer may notify the Holders from time to time) which, at the date of this deed, is as specified in clause 24.2(a). Each Holder will be deemed to have notice of the provisions of this Deed and each other Transaction Document in relation to the relevant Series.

25.6 **Survival:** The indemnities given in this Deed will survive the repayment of all the Bonds and the termination of this Deed.

25.7 **Remedies cumulative:** The rights, powers and remedies provided in this Deed are cumulative and not exclusive of any rights, powers or remedies provided by law.

25.8 **Counterparts:** This deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this deed by signing any such counterpart (by fax or otherwise).

## 26. GOVERNING LAW

26.1 **Governing law:** This deed shall be construed and take effect as a contract and declaration of trust made in New Zealand and shall be governed by New Zealand law.

26.2 **Submission to jurisdiction:** The Issuer and the Supervisor submit to the non-exclusive jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this Deed.

## 27. RELEASE

27.1 Upon being indemnified to its satisfaction pursuant to clause 14 and upon proof being given to the reasonable satisfaction of the Supervisor that all sums owing or outstanding in respect of the Bonds or otherwise under this Deed have been paid or satisfied or that provision for such payment or satisfaction has been made and upon payment or retention of all costs, charges and expenses incurred by, or payable to, the Supervisor in relation to this Deed and the remuneration of the Supervisor and all other money payable hereunder the Supervisor shall, at the request and cost of the Issuer, execute a deed of release of this Deed and shall thereupon retire.

**SIGNED AS A DEED**

***[Execution blocks intentionally deleted]***

## SCHEDULE 1

### MEETINGS OF HOLDERS

#### 1. DEFINITIONS

1.1 In these provisions:

**"Appointed Time"** means the day and time at which any meeting of Holders or the taking of a poll of Holders (not at a meeting of Holders) is due to be held.

**"Proxy Closing Time"** means 48 hours before the Appointed Time of the relevant meeting of Holders or taking of a poll of Holders.

**"regulation"** means a clause of this schedule.

**"Representative"** means:

(a) in the case of an individual Holder, a person appointed by an instrument of proxy or by power of attorney or, in the event of the death of a Holder, the personal representative of that Holder;

(b) in the case of a Holder which is a corporation or corporation sole either:

(i) a person appointed by an instrument of proxy or by power of attorney;  
or

(ii) a person authorised by the directors of the corporation, or in the case of a corporation sole, a person authorised pursuant to its constitution.

**"Special Resolution"** means a resolution passed by Holders holding Bonds with a Principal Amount of no less than 75% of the Principal Amount of Bonds held by those persons who are entitled to vote and who vote on the question.

**"Working Day"** has the meaning given to it in the Legislation Act 2019.

1.2. **Classes:** In this schedule, references to **"Bonds"** and **"Holders"** are references to the Bonds of the relevant Class of Bonds only and the Holders of the Bonds of the relevant Class of Bonds only.

#### 2. CONVENING

2.1 **Meeting required by law:** The Issuer shall, whenever required to do so pursuant to the Companies Act, the FMC Act or any other applicable law, convene a meeting of the Holders.

2.2 **By Holders:** The Issuer shall, at the request in writing of Holders holding not less than 5% of the aggregate Principal Amount of the Bonds issued by the Issuer, convene a meeting of the Holders of the Bonds issued by the Issuer. The request must state the nature of the business proposed to be dealt with at the meeting concerned.

2.3 **By Issuer:** The Issuer may at any time of its own volition convene a meeting of the Holders of Bonds.

- 2.4 **By Supervisor:** In relation to any Class of Retail Bonds, the Issuer shall, at the request in writing of the Supervisor, (after such consultation with the Issuer which is reasonable in the circumstances as to the nature of the business the subject of the proposed meeting) convene a meeting of Holders of that Class of Retail Bonds.
- 2.5 **Place of meeting:** Each meeting will be held in Auckland or at such other place or in such manner (including, but not limited to, use of video conferencing technology) as designated by the Issuer.
- 2.6 **Regulations:** Meetings of Holders shall be convened and held in accordance with the provisions of this schedule or such supplemental rules or procedures for meetings, and/or variations to the rules and procedures applying to such meetings set out in this schedule, as the Supervisor and the Issuer may agree from time to time.

### 3. NOTICE OF MEETINGS

- 3.1 **Persons to be notified:** The Issuer must ensure that written notice of the time and place of a meeting is sent to the following persons at least 15 Working Days before the meeting:
- (a) every Holder entitled to receive notice of the meeting;
  - (b) the Supervisor; and
  - (c) every director and an Auditor of the Issuer.
- 3.2 **Contents of notice:** The notice must state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Holder to form a reasoned judgment in relation to it;
  - (b) the text of any Special Resolution to be submitted to the meeting; and
  - (c) the right of a Holder to appoint a proxy.
- 3.3 **Special Resolutions:** If a Special Resolution is to be submitted to the meeting:
- (a) a draft of the proposed notice of the meeting must be given to the Supervisor at least 10 Working Days before the notice is given under regulation 3.1 (or any lesser period approved by the Supervisor); and
  - (b) the notice of the meeting must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution (but only if the Supervisor has provided those comments in writing to the Issuer at least 5 Working Days before the notice is given under regulation 3.1 or any lesser period approved by the Issuer).
- 3.4 **Irregularity in notice:** An irregularity in a notice of a meeting is waived if:
- (a) all the Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Holders agree to the waiver;  
or

- (b) the Supervisor indicates at the meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Holders.

3.5 **Accidental omission:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Holder does not invalidate the proceedings at that meeting.

3.6 **Adjourned meeting:** If a meeting of Holders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

#### 4. QUORUM

4.1 **Quorum required:** No business may be transacted at a meeting of Holders if a quorum is not present.

4.2 **Quorum for Special Resolution:** A quorum for a meeting of Holders at which a Special Resolution is to be submitted is present if Holders or their proxies are present who hold Bonds with a combined Principal Amount of no less than 25% of the Principal Amount of Bonds held by those Holders who are entitled to vote on the business to be transacted at the meeting.

4.3 **Quorum for other business:** A quorum for any other business at a meeting of Holders is present if:

- (a) at least 2 Holders or their Representatives are present; or
- (b) Holders or their Representatives holding at least 10% in Principal Amount of the Bonds are present,

whichever is greater.

4.4 **Quorum not present:** Despite regulations 4.1 to 4.3, if a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called under regulation 2.2, the meeting is dissolved; and
- (b) in the case of any other meeting, the meeting is adjourned to the day that is 10 Working Days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Supervisor may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Holders or their proxies present are a quorum.

4.5 **Audio, visual or electronic communication:** To avoid doubt, a Holder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

#### 5. CHAIRMAN

5.1 **Wholesale Series:** At a meeting of Wholesale Holders a person appointed, by a resolution of Holders, from the Holders or any Representatives present will preside as



chairman at a meeting.

- 5.2 **Retail Series:** A person nominated by the Supervisor shall preside at every meeting of Holders. If no such person is nominated or if at any meeting the person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Holders or Representatives present shall appoint a person to be chairman of the meeting.

## 6. RIGHT TO ATTEND AND SPEAK

6.1 Any:

- (a) director, officer or solicitor, auditor or accountant of the Issuer or any Guarantor;
- (b) person appropriately authorised by the Issuer or any Guarantor;
- (c) director, officer or solicitor of the Supervisor;
- (d) person appropriately authorised by the Supervisor;
- (e) Holder; or
- (f) the Registrar,

may attend any meeting and all such persons will have the right to speak at the meeting.

## 7. ADJOURNMENT

7.1 **Chairman may adjourn:** The chairman of the meeting may, with the consent of the meeting at which a quorum is present, and will, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

7.2 **Business at adjourned meeting:** No business will be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

## 8. ONLY PERSONS ON REGISTER RECOGNISED BY COMPANY

8.1 The persons named as Holders in the Register at the Proxy Closing Time will be recognised and treated as the legal owners of the Bonds whether those persons are or are not in fact the beneficial owners of those Bonds.

## 9. AUTHORITY TO VOTE

9.1 **Voting:** An individual Holder may vote personally or by his Representative and a Holder which is a corporation may vote by its Representative. A Holder may appoint more than one Representative, each such Representative being authorised to act on behalf of the Holder in respect of a specified Principal Amount of Bonds.

9.2 **Entitlement:** The persons named in the Register as Holders at the Proxy Closing Time, or the Representative(s) or the personal representatives or assignees in bankruptcy of

any such Holder will be exclusively entitled to vote in person or by Representative in respect of the Bonds recorded as owned by them.

## 10. PROXIES

10.1 **In writing:** The instrument appointing a proxy must be in writing signed by the appointer or his attorney or, if the appointer is a corporation, either by an authorised officer or attorney or by any director, general manager, investment manager or other person who appears to have authority to appoint a proxy on behalf of the corporation.

10.2 **Proxy need not be Holder:** A person appointed to act as a proxy need not be a Holder. A holder of a proxy will have the right to speak at the meeting.

10.3 **Deposit of proxy:** The instrument appointing a proxy, and, if applicable, the power of attorney or other authority under which it is signed or a copy of such power or authority certified by a solicitor or in any other manner approved by the Issuer, must be deposited at the place appointed by the Issuer in the notice convening the meeting (or, if no such place is appointed, then at the registered office of the Issuer) not later than the Proxy Closing Time. An instrument of proxy which is not so deposited will not be treated as valid unless the Issuer, in its absolute discretion, elects to accept any instrument of proxy notwithstanding that that instrument, or any power of attorney or other authority, is received or produced at a place other than that specified above or out of time.

10.4 **Form of proxy:** An instrument of proxy may be in any usual or common form or in any other form approved by the Issuer and the Supervisor and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution.

10.5 **Proxy valid for meeting:** An instrument of proxy, whether in a usual or common form or not, will, unless the contrary is stated thereon, not need to be witnessed and will be valid for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any provisions contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 12 months from the date of its execution notwithstanding any provision to the contrary in the instrument, but this provision will not be construed to apply to the appointment of an attorney or Representative otherwise than by an instrument of proxy.

10.6 **Proxy in favour of chairman:** An instrument of proxy in favour of:

- (a) the managing director or chief executive officer of the Issuer or any Guarantor;
- (b) the chairman; or
- (c) the chairman of the meeting,

(however expressed) will be valid and effectual as though it were in favour of a named person and will, in the case of paragraph (a) above, constitute the person holding the office of the managing director of the Issuer or that Guarantor or, in the case of paragraphs (b) and (c) above, the person who chairs the meeting for which the proxy is used (whether on adjournment or not) the lawful proxy of the appointer.

## 11. HOLDER MAY APPOINT ATTORNEY

- 11.1 Except where a Holder is the Issuer or any other member of the Group, any Holder may by power of attorney appoint an attorney (who need not be a Holder) to vote and act on his behalf at any meeting. An attorney will be entitled to produce evidence of his appointment at any time before the Appointed Time. An attorney who is so empowered may exercise the Holder's right to appoint a proxy.

## 12. CORPORATE REPRESENTATIVES

- 12.1 **Authority:** A Representative of a Holder which is a corporation or a corporation sole will, until his authority is revoked, be entitled to exercise the same powers on behalf of the corporation as that corporation could exercise if it were an individual Holder and will be entitled to produce evidence of his authority to act at any time before the Appointed Time of, or at, the meeting or adjourned meeting or for the taking of a poll at which the Representative proposes to vote.
- 12.2 **Right to act:** A Representative will have the right to demand or join in demanding a poll and will (except and to the extent to which the Representative is specially directed to vote for or against any proposal) have power generally to act at the meeting for the Holder concerned.

## 13. VOTING PROCEDURE AND POLLS

- 13.1 **Show of hands:** A resolution (other than a Special Resolution) put to the vote of a meeting will be decided on a show of hands unless a poll is demanded (before or on the declaration of the result of the show of hands) by:
- (a) the chairman of the meeting; or
  - (b) the Issuer or any representative of the Issuer; or
  - (c) one or more Holders holding or representing not less than 5% in aggregate Principal Amount of the Bonds.

A declaration by the chairman of the meeting that a resolution has been carried by the requisite majority or lost will be conclusive evidence of that fact unless a poll is demanded or required. A poll is required for a Special Resolution.

- 13.2 **Number of votes:** On a show of hands each person present at the meeting and entitled to vote (whether personally or as a Representative) will have one vote only. On a poll every Holder who is present in person or by a Representative will have one vote for every \$1 of Principal Amount of the Bonds of which that person is the Holder, provided that where a Holder holds Zero Coupon Bonds, for the purposes of calculating that Holder's voting entitlement in this regulation 13.2, the Principal Amount of those Zero Coupon Bonds is to be construed as a reference to the net present value of those Zero Coupon Bonds (as calculated by the Registrar for the relevant Series by adjusting, on a straight line basis, the Principal Amount of the relevant Bond by a proportion of any discount to that Principal Amount applicable to such Bond on its Issue Date) as at the date of the meeting. On a poll votes may be given either personally or by Representative and a person entitled to more than one vote need not use all their votes or cast all the votes they use in the same way.
- 13.3 **Poll:** If a poll is demanded it will be taken in the manner directed by the chairman of the meeting and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.

- 13.4 **Election of chairman:** A poll demanded on the election of a chairman of the meeting or on a question of adjournment will be taken immediately. A poll demanded on any other question will be taken either immediately or at a time within 30 days from the date of the meeting and in a place appointed by the chairman. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 13.5 **No disturbance:** The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question in relation to which the poll has been demanded.
- 13.6 **Joint Holders:** In the case of joint Holders the vote of the senior who tenders a vote whether in person or by Representative will be accepted to the exclusion of the vote of the other joint Holders and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.
- 13.7 **Disqualification:** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other authority will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Bonds in respect of which the vote is given, provided that no written notice of such death, insanity, liquidation, revocation or transfer is received by the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, attorney or authority is used.
- 13.8 **Voting by Issuer:** Notwithstanding any other regulation, any Bonds held by or on behalf of the Issuer or any other member of the Group shall not confer any right to vote for the period that they are so held.

#### 14. SPECIAL RESOLUTIONS

- 14.1 **Powers:** A meeting of Holders will, in addition to all other powers which by this Deed are specified as exercisable by Special Resolution, have the following powers exercisable by Special Resolution namely power to:
- (a) sanction either unconditionally or upon any conditions the release of the Issuer from the payment of all or any part of the moneys payable pursuant to this Deed or the Bonds;
  - (b) sanction any request from the Issuer for the exchange of the Bonds for, or the conversion of the Bonds into, shares, stock, debentures, debenture stock or other obligations or securities of the Issuer or any other company formed or to be formed;
  - (c) postpone or, with the concurrence of the Issuer, to accelerate the day when the Principal Amount of any Bonds becomes payable and to suspend or postpone for a time the payment of interest on any Bonds;
  - (d) sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement relating to the rights of the Holders against the Issuer or its assets however those rights arise;
  - (e) assent to any amendment to the terms of this deed or the relevant Supplemental Trust Deed proposed or agreed to by the Issuer (and, where

required, the Supervisor) and to authorise the Supervisor to execute any Supplemental Trust Deed embodying any such amendment;

- (f) give any sanction, assent, release or waiver of any breach or default by the Issuer or the Supervisor under any of the provisions of this deed or the relevant Supplemental Trust Deed;
- (g) sanction any scheme for the reconstruction of the Issuer or for the amalgamation of the Issuer with any other corporation where such sanction is necessary;
- (h) subject to section 113 of the FMC Act , discharge, release or exonerate the Supervisor from all liability in respect of any act of commission or omission for which the Supervisor has or may become responsible under this Deed;
- (i) subject to the provisions of this Deed and any applicable laws, remove any Supervisor and to approve the appointment of or appoint a new Supervisor;
- (j) consent to, approve, authorise and direct the Supervisor in respect of any of the matters referred to in any of the foregoing paragraphs of this regulation 14.1, or as to any other matter which may be necessary to carry out and give effect to any Special Resolution; and
- (k) authorise or direct the Supervisor and, if required, the Issuer to execute any supplemental deed or other document embodying such sanction, authority or approval, assent, release, waiver, direction or request.

14.2 **Binding on Holders:** A Special Resolution passed by Holders in accordance with this schedule will be binding upon all the Holders whether or not they were present or entitled to be present at the relevant meeting, or signed the relevant resolution pursuant to regulation 16, as the case may be, and all Holders will be bound to give effect to that resolution. The passing of any such resolution will, as between the Issuer and the Holders, be conclusive evidence that the circumstances justify the passing thereof. Notwithstanding the foregoing:

- (a) a resolution which affects a particular Holder only, rather than the rights of all Holders generally, or of a particular Class of Holders generally, will not be binding on such Holder unless such Holder agrees to be bound by the terms of such resolution;
- (b) a resolution which affects one Class only of Bonds is deemed to have been duly passed if passed at a properly convened and held meeting of the Holders of that Class or pursuant to regulation 16;
- (c) a resolution which affects more than one Class of Bonds, but does not give rise to a conflict of interest between the Holders of any of the Classes so affected, is deemed to have been duly passed if passed at a single properly convened and held meeting of the Holders of all Classes so affected or pursuant to regulation 16; and
- (d) a resolution which affects more than one Class of Bonds and gives or may give rise to a conflict of interest between the Holders of any of the Classes so affected is deemed to have been duly passed if passed at separate properly convened and held meetings of the Holders of each Class so affected or pursuant to regulation 16.

- 14.3 **Reliance on advice:** The Issuer and the Supervisor may rely on, and the Holders and the Registrar for the relevant Class shall be bound by, a legal opinion from a leading law firm in New Zealand to the effect that a resolution affects one Class only or, if it affects more than one Class of Bonds, does not give rise to a conflict of interest, for the purposes of determining the meeting or meetings which need to be held for the purposes of regulation 14.2.

## 15. MINUTES TO BE KEPT

- 15.1 Minutes of all resolutions and proceedings at every meeting will be made by the Issuer or, if the Issuer is not present at the meeting, by a person appointed by the chairman of the meeting. Minutes must be entered in books from time to time provided for that purpose by the Issuer. Any such minutes, if signed or apparently signed by the chairman of the meeting at which a resolution was passed or proceedings had or by the chairman of the next meeting of Holders, will be prima facie evidence of the matters recorded in those minutes. Until the contrary is proved every meeting in respect of which minutes have been made will be deemed to have been properly held and convened and all resolutions passed or proceedings had at that meeting to have been properly passed and had.

## 16. RESOLUTIONS IN WRITING

- 16.1 **Special Resolution:** Anything that may be done by Holders by a resolution or Special Resolution passed at a meeting of Holders may be done by a resolution in writing signed by Holders holding Bonds with a Principal Amount of no less than 75% of the Principal Amount of Bonds held by those persons who are entitled to vote and who vote on the question.
- 16.2 **Counterparts:** Any such resolution may consist of several documents in similar form, each signed by one or more Holders.
- 16.3 **Execution:** Any such resolution may be signed by a Holder, or an agent or attorney of the Holder duly authorised in writing, or if the Holder is a company, by a director, or by an attorney so authorised by the company.

## SCHEDULE 2

### FORM OF DIRECTORS' REPORT

1. This report is given by the Directors of [ ] ("**Issuer**") pursuant to clause 11.3(c) of the Master Trust Deed dated 30 June 2014 (as most recently amended and restated on [●] 2023) between the Issuer and Public Trust as supervisor ("**Trust Deed**") in connection with senior, secured bonds issued pursuant to the terms of the Trust Deed.
2. Unless the context otherwise requires, terms defined in the Trust Deed have the same meaning herein.
3. We, the undersigned, hereby state that as at the last day of the financial {year} {half-year} ending on { } ("**Reporting Date**"), to the best of our knowledge and belief having made all due inquiries, and, during the immediately preceding financial {year} {half-year}:
  - 3.1 {Here state any matter, or state if there is no matter, which has arisen relating to the Issuer which would materially and adversely affect the ability of the Issuer to perform its payment obligations under the Trust Deed and the Bonds or which would adversely affect the Holders};
  - 3.2 the Issuer has observed and complied with all provisions expressed to be binding upon it under the Trust Deed and any relevant Supplemental Trust Deed in respect of the Bonds, including the payment of all interest on, and the Principal Amount in respect of, the Bonds;  
  
{If the Issuer has not so complied and observed all of its payment obligations under the Trust Deed or any Supplemental Trust Deed set out the particulars of the contravention and proposals to remedy the same}
  - 3.3 no Event of Default or Event of Review has occurred;  
  
{If any Event of Default or Event of Review has occurred set out the particulars of the Event of Default or Event of Review and, if appropriate, details of how it has been, or is proposed to be, remedied.}
  - 3.4 the Principal Amount of Bonds (if any) which have been repaid on maturity is \${ } , details of which are set out below:  
  
{set out details of Bonds which have been repaid on maturity in the immediately preceding financial year}
  - 3.5 all interest due on the Bonds has been paid;
  - 3.6 all Bonds which have fallen due for repayment have been repaid;
  - 3.7 each Register in respect of a Series has been duly maintained in accordance with the Trust Deed;  
  
{If any Register in respect of a Series has not been duly maintained set out the particulars of the failure to maintain}
  - 3.8 no new Subsidiaries have been created;  
  
{or if any have been created, provide details}
  - 3.9 no event of default is subsisting under the Bank Facility;

{If any Guarantor has not so complied and observed its banking covenants set out the particulars of the contravention and proposals to remedy the same}

{Here state any enforcement action taken in relation to any Guarantor's banking covenants};

4. We, the undersigned, hereby confirm that to the best of our knowledge and belief having made all due inquiries the Issuer will be able to meet any liabilities due or anticipated to become payable in the next 12 months from the Reporting Date under the Trust Deed or any relevant Supplemental Trust Deed.
5. As at the Reporting Date:
  - 5.1 the aggregate Principal Amount of the Bonds outstanding is \${ };
  - 5.2 the amount of any unpaid interest relating to the outstanding Bonds is \${ }; and
  - 5.3 the Gearing Ratio is { }.

This report is given on the day of 20{ }

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Director

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Director



**SCHEDULE 3****PARTICULARS OF BONDS IN REGISTER**

1. Series number and Tranche number
2. Type of Bond
3. Issue Date
4. First Interest Accrual Date
5. Early repayment date (if applicable)
6. Maturity Date
7. Principal Amount
8. Name, address and (where known) tax residency of Holder
9. Minimum Principal Amount
10. Interest Rate
11. Interest Period (if relevant)
12. Interest Payment Dates
13. Details of the account to which payments in respect of the Bond are to be made
14. Transfers of the Bond
15. Cancellation of the Bond
16. Details of any resident withholding tax exemption certificates held by Holder
17. Any other information required or permitted by law