



NGĀTI WHĀTUA ŌRĀKEI



Trust Deed

Ngati Whatua Orakei Whai Rawa Limited
(as Issuer)

The New Zealand Guardian Trust Company
Limited (as Supervisor)

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Date: 27 June 2018

PARTIES

Ngati Whatua Orakei Whai Rawa Limited (company number 678327) (the *Issuer*)

The New Zealand Guardian Trust Company Limited (company number 115240) (the *Supervisor*)

INTRODUCTION

- A** Ngati Whatua Orakei Trustee Limited, as trustee of the Ngāti Whātua Ōrākei Trust (*the Trust*), has requested that the Issuer issue deposits credited as paid up to each Registered Hapū Member who is registered as such on the Record Date and has completed an application in the prescribed form, of an amount specified by the Ngati Whatua Orakei Trustee Limited per Registered Hapū Member, with adjustments for withholding tax rates.
- B** Each Deposit will be made on the terms set out in this deed.
- C** The Supervisor has agreed, at the request of the Issuer, to act as Supervisor for the Depositors on the terms and conditions of this deed.

IT IS AGREED:

1 INTERPRETATION

1.1 Definitions

In this deed, unless the context otherwise requires:

Auditor means a qualified auditor for the time being of the Issuer.

Authorised Officers means a Director, a chief executive officer, chief financial officer, or treasurer 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 appointed by the Directors, or their duly authorised delegates appointed as an Authorised Officer for the purposes of this deed and notified in writing to the Supervisor.

Basic Rate means, in relation to Deposits, an interest rate equal to BKBM plus a margin set by the Issuer when the Deposits are issued, or such other rate as may apply in accordance with clause 4.8 (*Changes to interest rates*).

Bonus Rate means, in relation to Deposits, an interest rate of BKBM plus a margin set by the Issuer when the Deposits are issued, or such other rate as may apply in accordance with clause 4.8 (*Changes to interest rates*).

BKBM means, for any Interest Period, the FRA settlement rate (rounded upwards, if necessary, to the nearest three decimal places) administered by the New Zealand Financial Markets Association (or any other person which takes over the



administration of that rate) for bank accepted bills having a tenor closest to that Interest Period as displayed on page BKBM of the Thomson Reuters Screen or Bloomberg equivalent (or its or their respective successor page) at or around 10:45 a.m. on the first day of that Interest Period. If such page or service ceases to be available, the Issuer may specify another page or service displaying the relevant rate.

Common Provisions Deed means the agreement dated 22 May 2015 that the Subsidiaries are a party to, which sets out the financial covenants that must be met under clause 4.4 of that deed, as may be updated and agreed between the relevant parties of that deed from time to time.

Companies Act means the Companies Act 1993.

Conditions has the meaning given to it in clause 2.1(a).

Date of Enforcement means the date on which the Indebtedness becomes due and payable.

delivering party has the meaning given to it in clause 25 (*Delivery*).

Deposit means a deposit issued by the Issuer and subject to the terms and conditions set out in this deed and the Conditions.

Deposit Date means, in respect of each Deposit, the date on which that Deposit is issued in accordance with clause 2.1 (*Power to issue Deposits*).

Deposit Moneys means, in respect of a Depositor at any time:

- (a) the Total Principal Amount;
- (b) Interest; and
- (c) other moneys (if any) payable to the Depositor or at the direction of the Supervisor at that time under or pursuant to this deed, and

a reference to *Deposit Moneys* includes any part of them.

Deposit Moneys Payment Date in any year, means, in relation to a Deposit, 31 March or 30 September, or such other regular payment dates as the Issuer may notify to Depositors from time to time.

Depositor means in relation to any Deposit at any time, the Registered Hapū Member whose name is recorded in the Register as the person to which that Deposit is owed.

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 substantially in such form as the Issuer and the Supervisor may agree in writing from time to time.

Distribution has the meaning given to such term in the Companies Act, and includes any reduction of capital, any acquisition by a company of any share in itself or in its holding company, and any financial assistance provided by a company to enable another person to acquire any such share.

EBIT means in relation to each 12 month period, the total amount of consolidated earnings of the Issuer and its Subsidiaries before tax for that period but excludes:

- (a) Interest Expense and abnormal items;
- (b) extraordinary items;
- (c) equity-accounted profits and losses taken into account in determining earnings;
- (d) unrealised gains and losses on revaluation of assets and on interest hedging contracts;
- (e) any write back of any provisions made in any previous periods;
- (f) amortisation of prepaid Lease rentals (if any); and
- (g) any earnings of Eastcliffe Ōrākei Retirement Care LP and Eastcliffe Ōrākei Management Services LP.

Event of Default has the meaning given to it in in clause 9.1 (*Events of Default*).

Excluded Property means:

- (a) the property located at 95 Aotea Street as contained and comprised in Certificate of Title NZ43A/1137 (North Auckland registry);
- (b) the property located at 9 Brenton Place, Ōrākei, as contained and comprised in Certificate of Title NA102D/762 (North Auckland registry);
- (c) the property known as "Wakakura" as contained and comprised in Certificates of Title NA547719 and 547720 (North Auckland registry);
- (d) the property located at 223 Kohimaramara Road as contained and comprised in Certificate of Title 132397 (North Auckland registry); and
- (e) the Eastcliffe Retirement Village Property.

Facilities Agreements means all cash advance facility agreements under which funds are advanced to the Issuer and its Subsidiaries other than:



(a) agreements with an affiliate (including for the avoidance of doubt the Trust and Whai Maia Charitable Trust 1 and Whai Maia Charitable Trust 2); and

(b) Deposits.

Financial Capability Training means the financial capability and awareness training run by the Trust or one of its affiliates from time to time.

Financial Hardship means, in relation to a Depositor, financial hardship as determined by the Issuer in each case in accordance with any policies or guidelines set by the Issuer, which may include requiring that the Depositor provides evidence substantiating the financial hardship being suffered by the Depositor.

Financial Reporting Act means the Financial Reporting Act 2013.

Financial Statements means, with respect to a person or group of persons, financial statements of that person or group of persons within the meaning of section 6 or 7 (as appropriate) of the Financial Reporting Act.

FMA means the Financial Markets Authority.

FMCA means the Financial Markets Conduct Act 2013.

FMC Regulations means the Financial Markets Conduct Regulations 2014.

Indebtedness means all Deposit Moneys and all other moneys (if any) payable to or at the direction of the Supervisor or to any Depositor or the Supervisor under or pursuant to this deed or the terms of any Deposit.

Information Brochure means the information brochure issued by the Trust in connection with the Deposits.

Initial Deposit means the first Deposit made by, or on behalf of, a Depositor.

Initial Principal Amount means the principal amount of an Initial Deposit as entered in the Register.

Intangible Assets means assets which in accordance with NZ GAAP, are classified as intangible assets in financial statements.

Interest means any interest which has accrued in accordance with clause 4 (*Interest*).

Interest Cover Ratio means, on any Test Date, the ratio of A to B, where:

"A" is EBIT; and

"B" is Interest Expense;



Interest Expense means in respect of any 12 month period, the aggregate amount of interest paid by the Issuer and its Subsidiaries under Facilities Agreements;

Interest Period has the meaning given to it in clause 4.2.

Leases means each of the leases (in each case as renewed from time to time) of the Property;

LVR means in respect of the Issuer and its Subsidiaries, at any time, the ratio of A to B, where:

"A" is the aggregate at that time of:

- (i) The principal amount outstanding in respect of all loans that the Issuer and its Subsidiaries have under Facilities Agreements; and
- (ii) any interest, fees, or other amounts due and payable under the loans referred to above but unpaid; and

"B" is the Property Value at that time;

Material Adverse Change means a material adverse change in the Issuer's ability (taken together) to repay the Deposit Moneys in accordance with this deed.

Ngāti Whātua Ōrākei Trust Deed means the trust deed dated 3 November 2011 and establishing the Trust (as amended from time to time).

Non-Resident Depositor means:

- (a) a Depositor; or
- (b) (where applicable) any person beneficially deriving an interest in a Deposit, who is not Tax resident in New Zealand.

NZ GAAP means generally accepted accounting practice in New Zealand as defined in section 8 of the Financial Reporting Act.

NZ\$ means the lawful currency of New Zealand.

Partial Withdrawal has the meaning given to it in clause 5.1 (*Payments of Deposit Moneys*).

Permitted Disposal means a disposal:

- (a) in respect of which the Supervisor has given its prior written consent;
- (b) of inventory made in the ordinary course of business;



- (c) of property where the proceeds of disposal are used to purchase replacement property comparable or superior as to type, value or quality;
- (d) of obsolete assets no longer required for the purpose of the Issuer's business or operations;
- (e) of property, other than inventory, in the ordinary course of ordinary business on an arm's length basis;
- (f) which involves the payment of cash, or any Distribution, not prohibited by the terms of this agreement;
- (g) which involves the allotment or issue of share capital;
- (h) of property required by law;
- (i) which is the creation of a Permitted Security;
- (j) by way of sale and leaseback in respect of any asset for fair value and on arm's length commercial terms, provided the aggregate book value of all such property subject to the sale and lease back arrangements does not exceed five per cent (5%) of the Total Tangible Assets; or
- (k) of assets where the book value of all assets disposed under this subparagraph (k) does not exceed ten per cent (10%) of the Total Tangible Assets in any financial year of the Issuer.

Permitted Security means a Security Interest:

- (a) arising by operation of law or statute in the ordinary course of business, or securing Taxes or other governmental or regulatory levies, duties or imposts, or any Security Interest in the nature of a contractor's, supplier's or vendor's lien, so long as (in each of the foregoing cases) the payment of the money secured thereby is not in default or the liability therefor of the Issuer is being contested by appropriate proceedings;
- (b) created over any asset acquired, constructed, repaired, maintained or improved, for the sole purpose of financing or refinancing the cost of such acquisition, construction, repair, maintenance or improvement, or over the land upon which such asset is situated, provided that any Security Interest created pursuant to this paragraph secures no more than the fair value of the asset (as acquired, constructed, maintained or improved) as at the time such Security Interest is created;
- (c) over any assets acquired by the Issuer after the date of this deed, which existed at the date of, and was not created in anticipation of, the acquisition thereof by the Issuer, provided that such Security Interest does not exist for a period of more than 60 days after such acquisition;



- (d) created in substitution for any Security Interest otherwise permitted hereunder;
- (e) created or permitted to subsist with the prior written consent of the Supervisor; or
- (f) in addition to and separately from the Security Interests permitted above, any Security Interest of any nature over any assets to secure any indebtedness if and to the extent that the aggregate principal amount of the indebtedness so secured by all such Security Interests created or permitted to subsist by this paragraph (f) (but other than any Security Interests attaching only to assets which are not included in the Total Tangible Assets) does not exceed 5 per cent (5%) of the Total Tangible Assets.

PPSA means the Personal Property Securities Act 1999.

Property means the real property owned by the Issuer and its Subsidiaries but excluding the Excluded Property at all times;

Property Value means the total aggregate values of the Property as evidenced by the most recent valuation of the Property;

Record Date means the record date for the issue of Deposits as described in Recital A as notified by the Issuer to the Supervisor.

Register means the register of Deposits maintained in accordance with the provisions of this deed.

Registered Hapū Member means each person who is a Member of Ngāti Whātua Ōrākei and who is recorded as such on the Ngāti Whātua Ōrākei Register (as those terms are defined in the Ngāti Whātua Ōrākei Trust Deed).

Relevant Company has the meaning given to it in clause 14.6 (*Fiduciary relationship*).

Security Interest means a mortgage, charge, pledge, lien, hypothecation, title retention arrangement or any security interest as defined in section 17(1)(a) of the PPSA. It includes retention of title, a flawed asset arrangement and a deposit of money by way of security or credit support or any other arrangement which, in each case, is intended to give one creditor priority over another or other creditors with respect to an asset, but does not include an interest in any asset or property that is created or provided for by:

- (a) (i) a transfer of an account receivable or chattel paper;
 - (ii) a lease for a term of more than one year; or
 - (iii) a commercial consignment,
- that does not secure payment or performance of an obligation;



- (b) any rights or obligations (whether arising by the operation of law, by contract or otherwise) of, or in the nature of, set-off, netting, combination, consolidation or retention of accounts, banker's lien or analogous rights or obligations in relation to or affecting any credit balances or other financial obligations owing to the Issuer;
- (c) a security interest taken in collateral by a seller to the extent that it secures the obligation to pay all or part of the purchase price of that collateral, where that collateral is purchased in the ordinary course of business of the buyer; or
- (d) any arrangement that is, or in the nature of, an outright or absolute assignment or transfer (however described) of cash, deposits, financial instruments, securities or other monetary assets to a person as collateral for, or to secure payment or performance of an obligation under, any derivative or hedging arrangement entered into between the Issuer and any such person.

Special Resolution means a resolution approved by Depositors holding Deposits with a combined nominal value of no less than 75% of the nominal value of the Deposits held by those persons who are entitled to vote and who vote on the matter at issue.

Statement of Financial Position means a statement of financial position of the Issuer prepared as at any date in accordance with NZ GAAP and consistent with the accounting principles and practices applied in the most recent annual audited statement of financial position of the Issuer, provided always that:

- (a) if, at any time when preparing any Statement of Financial Position, the Issuer desires to make any material change in any accounting principle or practice applied in the most recent annual audited statement of financial position as aforesaid, such change shall only be made if the same is approved in writing by the Auditor; and
- (b) in the case of all Statements of Financial Position other than those prepared as at an annual balance date of the Issuer, normal year end adjustments need not be made and those items normally included by way of note need not be included.

Subsequent Deposit means a Deposit which is not an Initial Deposit.

Subsequent Principal Amount means the principal amount of a Subsequent Deposit as entered in the Register.

Subsidiary means a subsidiary within the meaning of section 5 of the Companies Act.

Substituted Obligor has the meaning given to it in clause 20.1 (*Substitution*).

Substitution Documents has the meaning given to it in clause 20.1(a).

Supervisor means The New Zealand Guardian Trust Company Limited or any replacement Supervisor appointed under this deed.

Tax includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called, imposed or levied by any governmental agency, in each case together with any interest, penalty, charge, fee or other amount imposed or made on or in relation to any of the foregoing.

Test Date means the last day of each financial quarter of the Issuer and its Subsidiaries.

Total Principal Amount means, in respect of each Depositor, the sum of the Initial Principal Amount and all Subsequent Principal Amounts (if any) in relation to the Deposit or Deposits (as applicable) held in the name of that Depositor, but shall exclude any such amount that has been repaid to the Supervisor or to the relevant Depositor.

Total Tangible Assets means, at any date, the aggregate value on a consolidated basis of all property of the Issuer other than Intangible Assets, calculated on a consolidated basis in accordance with NZ GAAP.

Trust has the meaning given to it in Recital A.

Trust Powers means, in relation to a Deposit, the trusts, powers, authorities and discretions vested in the Supervisor by this deed and, where relevant, by law.

Unclaimed Amount has the meaning given to it in clause 5.6 (*Unclaimed payments*).

Withdrawal Notice has the meaning given to it in clause 5.1 (*Payments of Deposit Moneys*).

1.2 References

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

authorisation means:

- (a) an authorisation, consent, approval, agreement, notarisation, certificate, permission, authority, licence, exemption, filing, lodgement or registration; or
- (b) in relation to anything which will be fully or partly prohibited or restricted 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 that period without intervention or action.

business day means a day (other than a Saturday or Sunday) on which registered banks are generally open for business in Auckland.

debt security has the meaning given to it in the FMCA.

dissolution means, in relation to a person:

- (a) the bankruptcy, winding-up or liquidation of that person;

- (b) the removal from any relevant register applicable to that person;
- (c) any amalgamation under the Companies Act where that person is not the surviving entity; and
- (d) any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business.

expenses includes all expenses, losses, claims, costs (including legal costs on a solicitor and own client basis), disbursements, Taxes, out of pocket expenses, and audit, investigative or administrative costs.

governmental agency means any government or any governmental, semi-governmental, regulatory or judicial entity, agency or authority (including a local authority), or legislative body, or any person or body charged with the administration of any law and also includes any stock exchange or self-regulatory organisation established under statute.

indebtedness includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint, several or joint and several, and as principal, surety or otherwise) for the payment or repayment or delivery of money.

issuer obligation means an obligation imposed on the Issuer under this deed, the terms of the offer, the FMCA (to the extent applicable) or any court order relating to the Deposits.

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.

payment includes satisfaction of a monetary obligation.

person includes an individual, firm, organisation, a body corporate, any association of persons (whether corporate or not), a trust and a state and any governmental agency (in each case whether or not having separate legal personality).

qualified auditor shall be construed in accordance with the FMCA.

written and *in writing* includes all means of reproducing words, figures and symbols in a tangible and permanently visible form including, without limitation, by facsimile transmission.

1.3 Cross references and Statutory definitions

- (a) Unless inconsistent with specific definitions contained in this deed, words defined in the Companies Act, the FMCA or the Financial Reporting Act have the same meanings in this deed. In the case of conflict, the definitions in the FMCA prevail over those in the Companies Act and the Financial Reporting Act,



and the definitions in the Financial Reporting Act prevail over those in the Companies Act.

- (b) Expressions that are utilised in connection with accounting functions or reporting or in the description of either of them in this deed shall bear the respective meanings accepted in respect of or ascribed to them in the preparation of the latest financial statements of the Issuer.

1.4 Construction

In this deed, unless the context requires otherwise:

- (a) *Headings*: headings are inserted for convenience only, and do not affect interpretation;
- (b) *Singular and plural*: the singular includes the plural and vice versa;
- (c) *Clauses and schedules*: references to clauses, sub-clauses, paragraphs and schedules are to the clauses, sub-clauses and paragraphs of, and schedules to, this deed;
- (d) *Legislation*: a reference to legislation or to a provision of legislation includes any amendments, and re-enactments of it, a legislative provision substituted for it and a statutory regulation, a rule, order or instrument made under or issued pursuant to it;
- (e) *Agreements or document*: reference to any deed (including this deed), agreement or other instrument are to be read as referring to that deed, agreement or other instrument as from time to time modified, supplemented, novated or replaced from time to time;
- (f) *Time*: a reference to a time of day is a reference to New Zealand time unless otherwise stated; and
- (g) *Successors and assigns*: a reference to a particular party or person includes that party's or person's executors, administrators, successors, substitutes and permitted assigns.

2 DEPOSITS

2.1 Power to issue Deposits

- (a) The Issuer may issue a Deposit under this deed only on the terms and conditions specified in the Information Brochure (*the Conditions*) and the further terms and conditions specified in this deed.
- (b) A Deposit is made by the Issuer entering in the Register the particulars of that Deposit, which shall include, without limitation:
 - (i) the principal amount of that Deposit;
 - (ii) the name of the Depositor;



- (iii) the withholding tax rate applicable to the Depositor; and
- (iv) the address of the Depositor.

2.2 Enforcement of Depositors' rights

- (a) The Supervisor holds the following in trust for the benefit of the Depositors:
 - (i) the right to enforce the Issuer's duty to pay the Deposit Moneys under this deed and the terms of the Deposits;
 - (ii) the right to enforce any other duties that the Issuer, and any other person, has under the terms of the Deposits, or the provisions of this deed or the FMCA in relation to the Deposits.
- (b) No Depositor shall be entitled to enforce any of its 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.

2.3 Certificates

At the request of a Depositor, or if otherwise as required by the FMCA or any other applicable law, the Issuer shall issue to that Depositor a confirmation, certificate, statement or notice of holding in relation to the Deposit held by that Depositor, such confirmation, certificate, statement or notice to be provided in the manner required by the FMCA and any other relevant law (to the extent applicable), or otherwise in a form approved by the Supervisor.

2.4 Validity of Deposits

- (a) No Depositor shall be obliged to enquire whether any Deposit has been accepted, or any borrowing or liabilities (actual or contingent) incurred, in contravention of any provision of this deed.
- (b) Each Depositor shall be entitled to the benefit of the provisions of this deed notwithstanding that it may subsequently be determined that any Deposit or any borrowing made or liabilities (actual or contingent) incurred in respect of any such Deposit was in breach of any provision of this deed.
- (c) This clause 2.4 (*Validity of Deposits*) shall not prejudice the Supervisor's rights under this deed against the Issuer in relation to any breach of this deed.

2.5 Alteration of terms and conditions applicable to Deposits

- (a) The Issuer may, from time to time, with the consent of the Supervisor or the relevant Depositor, and provided that the alteration does not:
 - (i) breach the Conditions; or
 - (ii) adversely affect the repayment terms of any Deposit,alter the terms and conditions applicable to a Deposit.



- (b) Details of any such alteration shall be:
 - (i) recorded in the Register; and
 - (ii) notified to each affected Depositor.

2.6 No transfer

Deposits shall not be transferrable, except that a Deposit may be transferred by operation of law subject to clause 4.6.

3 REGISTER

3.1 Register

The Issuer shall set up and maintain a Register in New Zealand, which must record in respect of each Deposit:

- (a) the information required by law (including the information required under section 217(1) of the FMCA as if the Deposit had been offered in a regulated offer under that Act); and
- (b) any other information agreed between the Issuer and the Supervisor.

3.2 Register may be in electronic form

The Register may be in electronic form.

3.3 Disclosure and Inspection

- (a) The Issuer shall disclose to a Depositor who so requests any information held on the Register which relates to the Deposits held in the name of that Depositor and all other information and matters required by applicable law.
- (b) The Supervisor may, at all reasonable times during office hours and subject to any applicable law, inspect and take extracts (including electronic copies) from the Register.
- (c) The Issuer will make available for inspection and provide copies of or extracts from, the Register to the extent required by, and in accordance with, the FMCA, the FMC Regulations and any other applicable law.

3.4 Register conclusive

- (a) Except as ordered by a court of competent jurisdiction, the Issuer and the Supervisor are each entitled to recognise the Depositor of a Deposit as the absolute owner of all interests in that Deposit and shall not be:
 - (i) bound by any actual or constructive notice of any trust (express, implied or constructive), encumbrance, security interest or other adverse interest to which any interest in a Deposit may be subject; or
 - (ii) required to enter on any Register any recognition of any trust (express, implied or constructive), encumbrance, security interest or other adverse interest to which any interest in a Deposit may be subject.



- (b) In the event of any conflict between any confirmation, certificate, statement or notice of holding issued in respect of a Deposit and a Register, the Register shall prevail.

3.5 Correction of errors

The Issuer may, on such evidence as appears to it to be sufficient, correct errors and remedy omissions in the Register, including due to any fraud.

3.6 Acquisition of Deposits by operation of law

When the right to any Deposit is acquired by any person in any manner (whether on the dissolution, death or bankruptcy of the relevant Depositor, or under a writ of execution, or otherwise) the Issuer, on application by or on behalf of that person and on being satisfied that such person is legally entitled to be registered as the Depositor of that Deposit, will promptly enter that person's name in the Register as the Depositor of that Deposit accordingly. The Issuer may retain any Deposit Moneys payable in respect of a Deposit acquired in this manner until such entry is made in the Register.

3.7 Notification by Depositors

Any change of name or address of any Depositor or any change in any other information required to be inserted in any Register in respect of any Depositor shall immediately be notified to the Issuer in writing by the Depositor.

3.8 Register compliance

The Issuer shall comply with all applicable statutory requirements and the requirements of this deed relating to the Register. Without limiting the generality of the foregoing, the Register shall be audited in accordance with the requirements of the FMCA and FMC Regulations (to the extent they are applicable) from time to time, including any applicable auditing and assurance standards (as defined by reference to section 6 of the FMCA) by the Auditor (or such other qualified auditor that is acceptable to the Supervisor).

3.9 Reliance on documents

The Issuer shall be entitled to accept and assume the authenticity and genuineness of any document and will not incur any liability for registering any document which is subsequently discovered to be a forgery or otherwise defective, unless the Issuer had actual notice of such forgery or defect at the time of registration of the Deposit relating to such document.

4 INTEREST

4.1 Interest accrues daily

For each Deposit, interest shall accrue on its Total Principal Amount on and from the Deposit Date. Interest shall accrue on a daily basis and shall be calculated on the basis of the actual number of days elapsed or to elapse and a year of 365 days.

4.2 Interest periods

Interest on each Deposit shall be calculated by reference to successive periods ending on the last date of each calendar quarter (each an *Interest Period*), with the first Interest Period beginning on the Deposit Date.

**4.3 Applicable interest rate for first year**

Up to and excluding the first anniversary of the Deposit Date in respect of a Deposit, interest shall accrue at the Basic Rate.

4.4 Applicable interest rate after first year

In respect of a Deposit, provided that the Deposit (or part of the Deposit) is not withdrawn before the first anniversary of the Deposit Date, interest shall accrue at the Bonus Rate from and including the first anniversary of the Deposit Date in respect of that Deposit.

4.5 Interest rate on due but unpaid amounts

Subject to the other provisions of this deed, interest shall continue to accrue at the Bonus Rate on any Deposit Moneys which have become due for payment but which have not been paid.

4.6 Interest Capitalisation

The interest (if any) which accrues in respect of a Deposit under this clause 4 during each Interest Period shall be capitalised on the last day of such Interest Period. The amount of any interest so capitalised shall itself bear interest in each subsequent Interest Period.

4.7 Interest records

The Issuer shall keep such records of the interest which accrues under this clause 4 in respect of each Deposit as are necessary to allow the Issuer to account for and pay such interest.

4.8 Changes to interest rates

The Issuer may change the Basic Rate, the Bonus Rate or both of them on a Deposit from time to time at its sole discretion, with effect from a Deposit Moneys Payment Date, provided the Issuer gives the Depositors notice of any such change at least one month prior to the last date a Depositor may give a written demand pursuant to clause 5.1(a) in respect of a Deposit for that Deposit Moneys Payment Date.

5 PAYMENTS TO DEPOSITORS**5.1 Payments of Deposit Moneys**

- (a) Subject to the remainder of this clause 5.1, Deposit Moneys shall be payable on the Deposit Moneys Payment Date next following a written demand by the relevant Depositor, in the form required from time to time by the Issuer (a *Withdrawal Notice*).
- (b) Subject to clause 5.1(e), no Deposit Moneys shall be payable on or before the first anniversary of the relevant Deposit Date.
- (c) A Withdrawal Notice must be for:
 - (i) all Deposit Moneys in respect of the relevant Depositor; or
 - (ii) a lesser amount (a *Partial Withdrawal*), provided that the remaining Deposit Moneys in respect of the relevant Depositor are:

- i. not less than \$250; and
 - ii. in multiples of \$250.
- (d) A Depositor who is under eighteen (18) years of age may not withdraw a Deposit until:
 - (i) he or she has reached eighteen (18) years of age; and
 - (ii) has completed Financial Capability Training.
- (e) The Issuer, in its sole discretion, may grant an exception to either or both of the restrictions in paragraphs (a) and (b) above in such circumstances specified by the Issuer. The initial such circumstances shall be:
 - (i) home purchases; or
 - (ii) Financial Hardship.

The Issuer may change such circumstances with effect from a Deposit Moneys Payment Date, provided the Issuer gives the Depositors notice of any such change at least one month prior to the last date a Depositor may give a written demand pursuant to clause 5.1(a) in respect of a Deposit for that Deposit Moneys Payment Date.
- (f) In the case of a Partial Withdrawal, if the Issuer has accepted more than one Deposit in respect of the relevant Depositor then the Issuer may allocate the Partial Withdrawal to one or more of those Deposits at its discretion.
- (g) The Issuer may, in its sole discretion and provided that it gives the Depositor or the Supervisor (as applicable) fourteen (14) days' notice of its intention to do so, repay all Deposit Moneys owing to any Depositor at any time.

5.2 Payment to Depositor

A payment of Deposit Moneys (less any amount required to be deducted in accordance with clause 6 (*Taxes*)) shall be made to the person whose name appears in the Register for the Deposit as the Depositor of the Deposit on the date which is ten (10) business days before the relevant Deposit Moneys Payment Date.

5.3 Method of payment

- (a) Deposit Moneys shall be paid by the Issuer by direct credit to a bank account specified by the Depositor by written notice from time to time or, in the absence of such specification, by cheque sent to the address of the Depositor as recorded in the Register.
- (b) No notice or amendment of a notice given under clause 5.3(a) will have effect in respect of any payment unless received by the Issuer on or before the twentieth business day before the relevant Deposit Moneys Payment Date.



- (c) If, for whatever reason, at any time a Depositor has provided neither a current address nor current details of a bank account to the Supervisor, clause 5.6 (*Unclaimed payments*) shall apply.

5.4 Receipt of payments

- (a) If payment is made to a bank account of a Depositor, that payment shall be deemed to have been received by that Depositor on the relevant Deposit Moneys Payment Date if an irrevocable instruction for the making of that payment by electronic transfer is given, being an instruction which would reasonably be expected to result, in the ordinary course of banking business, in the funds the subject of the transfer reaching the bank account of the Depositor on or before that Deposit Moneys Payment Date, even if the funds the subject of the transfer do not actually reach that bank account on that date.
- (b) No further amount will be payable in respect of a Deposit as a result of funds the subject of such electronic transfer not reaching the bank account of the relevant Depositor on the relevant Deposit Moneys Payment Date.
- (c) Nothing in paragraphs (a) or (b) above shall in any way limit or prejudice the Issuer's obligation to pay any amount to a Depositor under or pursuant to this deed.

5.5 Business day

If any Deposit Moneys Payment Date is not a business day, the due date for the payment to be made on that date will be the next business day.

5.6 Unclaimed payments

In respect of any Deposit, if any payment made by the Issuer to any Depositor to the address, or into the bank account, last specified by that Depositor to the Issuer is returned unclaimed (or address or bank account details are not provided as set out in clause 5.3(c)), the amount concerned (*the Unclaimed Amount*) will (unless the Issuer has in the meantime received notice of a change of address or bank account) be retained by the Issuer to be held by the Issuer for the Depositor concerned without any liability to invest or pay interest on that amount. The Issuer shall have no liability in respect of any Unclaimed Amount if it remains unclaimed for six years after the original Deposit Moneys Payment Date.

6 TAXES

6.1 Deductions or withholdings

- (a) All sums payable in respect of a Deposit or under this deed must be paid without set-off or counterclaim and free and clear of, and without deduction of or withholding on account of any Tax unless such a withholding or deduction is required by law or permitted by this clause 6 (*Taxes*).
- (b) If any such deduction has been made and the amount of the deduction has been accounted for by the Issuer and the balance of the Interest has been paid to the relevant Depositor, the full amount payable to such Depositor shall be deemed to have been duly paid and satisfied.



6.2 Withholding tax

New Zealand resident withholding tax will be deducted from payments of interest (or payments deemed by law to be interest) to any Depositor other than a Non-Resident Depositor. Non-resident withholding tax will be deducted from payments of interest (or payments deemed by law to be interest) to any Non-Resident Depositor.

6.3 No gross-up; indemnity

- (a) 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 Deposits under clause 6.2 (*Withholding tax*).
- (b) If, in respect of any Deposit, the Issuer or the Supervisor becomes liable to make any payment of, or on account of, Tax payable by any Depositor (including, if applicable, any other person who beneficially derives interest under the relevant Deposit), then the relevant Depositor shall indemnify the Issuer or the Supervisor (as appropriate) in respect of such liability. Any moneys paid by the Issuer or the Supervisor (as appropriate) in respect of such liability may be recovered from the Depositor as a debt due to the Issuer or the Supervisor (as appropriate) and may be withheld from any further payments to that Depositor.
- (c) Nothing in this clause 6.3 (*No gross-up; indemnity*) will prejudice or affect any other right or remedy of the Issuer or the Supervisor.

6.4 Maximum rate

Deductions or withholdings of non-resident or resident withholding tax will be made, at the Issuer's election, either at the rate specified by a Depositor or at the maximum rates from time to time applicable unless a Depositor (or, if applicable, any person who beneficially derives interest under the relevant Deposit) provides evidence to the Issuer that a lesser rate or an exemption is applicable.

6.5 Tax status

- (a) The Issuer shall be entitled for the purposes of this clause 6 (*Taxes*) to rely, without further enquiry, upon any evidence produced or statement made by, or on behalf of, a Depositor in relation to that Depositor's Tax status or Tax residency, and to regard the Depositors entered in the Register as the only beneficial owners of, or the only persons who beneficially derive interest under, the relevant Deposits.
- (b) If the Depositor notifies the Issuer in writing that another person beneficially derives interest under a Deposit, the Depositor shall confirm whether it should be treated as a Non-Resident Depositor for the purpose of this clause 6 (*Taxes*) due to the Tax residency of that other person, and the Issuer shall proceed accordingly.

6.6 Tax details

Each Depositor shall, if required by the Issuer, give written notice to the Issuer of:

- (a) its country of residency for Taxation purposes;



- (b) if not resident in New Zealand for Taxation purposes, whether the Depositor is engaged in business in New Zealand through a branch or other fixed establishment (as that term is defined in the Income Tax Act 2007) in New Zealand;
- (c) if relevant, equivalent details regarding any person beneficially deriving the interest under the Deposit; and
- (d) any other information requested by the Issuer in order to determine the payment or withholding obligations of the Issuer. A Depositor must also notify the Issuer at least ten (10) business days before any Deposit Moneys Payment Date of any change in circumstances from those previously notified that could affect the payment or withholding obligations of the Issuer.

7 REPRESENTATIONS AND WARRANTIES

7.1 Issuer representations and warranties

The Issuer represents and warrants to the Supervisor and the Depositors on the date of this deed that:

- (a) *Status*: the Issuer is a company duly incorporated and validly existing under the laws of New Zealand;
- (b) *Power*: the Issuer has power to enter into and perform its obligations under this deed and to take the Deposits;
- (c) *Authorisations*: the Issuer has all necessary authorisations and has taken all necessary corporate and other action to authorise the entry into, execution and delivery of this deed and the performance of all the obligations expressed to be binding on the Issuer in this deed;
- (d) *Binding obligations*: each of the Issuer's obligations under this deed and the Deposits (once issued) are legal, valid, binding and enforceable against the Issuer, in each case in accordance with the obligation's terms, subject to applicable laws affecting creditors' rights generally and subject also (as to enforceability) to equitable principles of general application;
- (e) *No violation*: to the best of the Issuer's knowledge, the execution, delivery and performance by it of the Issuer's obligations under this deed do not (and the Deposits when issued will not) violate:
 - (i) any law applicable to the Issuer;
 - (ii) the Issuer's constitution; or
 - (iii) any agreement or other instrument binding upon the Issuer or any material part of the Issuer's assets,any breach of which would reasonably be expected to have a Material Adverse Change; and



- (f) *No Event of Default*: no Event of Default has occurred and is continuing.

8 UNDERTAKINGS

8.1 General undertakings

The Issuer undertakes to the Depositors and the Supervisor that the Issuer will, for so long as any Deposit is outstanding:

- (a) *Covenant to repay Deposits and other amounts owing*: subject to clause 5.1(f), pay to the Depositors and to the Supervisor, when due, the Indebtedness;
- (b) *Notify Event of Default*: promptly, and in no event later than two (2) business days after it becomes known to the Directors of the Issuer, notify the Supervisor of the occurrence of any Event of Default;
- (c) *Maintain corporate existence*: do all things necessary to maintain the Issuer's corporate existence in New Zealand and will not change its place of incorporation or move the Issuer's principal place of business outside New Zealand;
- (d) *Financial statements*: ensure that all financial statements delivered to the Supervisor under clause 8.2(a) and 8.2(b):
- (i) are prepared in accordance with NZ GAAP; and
 - (ii) are signed by two Directors and are accompanied by all documents and reports required by law to be annexed to those financial statements;
- (e) *FMCA and other laws*: comply with any applicable provisions of the FMCA, the FMC Regulations and any other applicable regulations made under the FMCA (including any applicable exemption notices) and with all other applicable laws in relation to the Deposits;
- (f) *Authorisations*: obtain, effect and promptly renew from time to time all material authorisations or exemptions required under New Zealand law to enable the Issuer to perform and comply fully with the Conditions or required on the Issuer's part for the validity or enforceability of this deed;
- (g) *Changes to the Common Provisions Deed*: notify the Supervisor as part of the Directors' Report required under clause 8.2(b) of any changes to the interest cover ratio or loan to value ratio permitted under the Common Provisions Deed.
- (h) *Notices*: send to the Depositors such statements or notices as may be required pursuant to this Deed and applicable law;
- (i) *Contravention or possible contravention of Issuer obligations*: if the Issuer has reasonable grounds to believe that the Issuer has contravened, may have



contravened, or is likely to contravene any of its issuer obligations in a material respect, as soon as practicable:

- (i) report the contravention or possible contravention to the Supervisor; and
 - (ii) advise the Supervisor of 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;
- (j) *Serious Financial Problems:* if the Issuer becomes aware of information on the basis of which the Issuer could reasonably form the opinion that the Issuer is, or is likely to become, insolvent (as defined in the FMCA), as soon as practicable:
- (i) disclose to the Supervisor 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) advise the Supervisor of 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.

8.2 Reports and information

The Issuer covenants with the Supervisor that, so long as any Deposit is outstanding, the Issuer shall deliver or cause to be delivered to the Supervisor:

- (a) *Annual Report and Financial Statements:* not later than 120 days after the end of each of the Issuer's financial years, a copy of the latest annual report, including the Financial Statements of the Issuer for the preceding financial year, prepared as at the last day of that financial year and duly audited;
- (b) *Directors' Report:* at the time of delivery of the latest annual report and Financial Statements pursuant to clause 8.2(a), a Directors' Report signed by two Directors, stating the matters referred to therein as at the end of and in respect of such year;
- (c) *Notices to Depositors:* copies of all notices or other information given by the Issuer to Depositors;
- (d) *Material Litigation:* upon becoming aware of same, notice of any litigation that is likely to be adversely determined and, if so determined, would have a Material Adverse Change;
- (e) *Other information:* (to the extent lawfully entitled to do so) any other information which the Supervisor may reasonably request with respect to the business, assets or financial condition of the Issuer, including for the avoidance of doubt, information reasonably requested that would enable the Supervisor to confirm the Issuer's compliance with clause 8.3;



- (f) *Auditors report:* at the same time as the audited latest Financial Statements are provided in accordance with clause 8.2(a), a report by the Auditor. The Issuer shall use all reasonable assistance to ensure that the report is in a form agreed between the Issuer and the Supervisor from time to time; and
- (g) *Register Audit:* if the Auditor has not audited the Register, a report from another qualified auditor acceptable to the Supervisor confirming whether or not the Register has been duly maintained in accordance with the requirements of clause 3 (*Register*).

8.3 Restriction on borrowings

The Issuer undertakes to the Depositors and the Supervisor that, for so long as a Deposit is outstanding, the Issuer shall ensure that:

- (a) the Issuer's Interest Cover Ratio shall on each Test Date be greater than or equal to the interest cover ratio permitted under the Common Provisions Deed; and
- (b) the Issuer's LVR shall be no greater than the loan to value ratio percentage permitted under the Common Provisions Deeds at any time.

8.4 Negative Undertakings

The Issuer undertakes to the Depositors and the Supervisor that, for so long as any Deposit is outstanding, it shall not:

- (a) *Negative Pledge:* create or permit to subsist any security interest over the whole or any part of its assets other than Permitted Security;
- (b) *Distributions:* make any Distribution to any person if an Event of Default has occurred and is continuing or if the making of the Distribution would result in the occurrence of an Event of Default;
- (c) *Business:* make or permit any material change to the core business of the Issuer from that being carried on by the Issuer as at the date of this deed; or
- (d) *Disposals:* either by a single transaction or a series of transactions, whether related or not and whether voluntary or involuntary, dispose of any part of its property other than a Permitted Disposal.

8.5 Appointment of Auditor

For so long as any Deposit is outstanding, the Issuer must, before recommending the appointment or reappointment of a person as an auditor of the Issuer:

- (a) consult with the Supervisor on such appointment or reappointment and the nature and scope of any assurance engagement in relation to the Issuer's compliance with this deed;
- (b) ensure that any comments of the Supervisor concerning the proposed Auditor are brought to the attention of the persons appointing or reappointing the Auditor;



- (c) give the Supervisor an opportunity to be a party to the assurance engagement 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 Supervisor's powers or duties;
- (d) ensure that the terms of appointment of the Auditor, whether the Auditor is conducting an audit, review or other engagement, include that:
 - (i) 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 Supervisor's powers or duties; and
 - (ii) 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.

8.6 Resignation

For so long as any Deposit is outstanding, the Issuer must notify the Supervisor if the Auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditor for resigning its appointment or declining to accept appointment or reappointment. The Issuer must not attempt to prevent any person who has resigned its appointment as an auditor, or declined to accept an appointment or reappointment as an auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.

9 REPAYMENT OF INDEBTEDNESS ON DEFAULT

9.1 Events of Default

The Indebtedness shall become immediately due and payable if any of the following occurs in respect of the Issuer or whether or not the event is within the control of the Issuer:

- (a) *Non-payment*: subject to any terms of the Deposit relating to suspension of payments, default is made by the Issuer in the payment of the Indebtedness which is not remedied within ten (10) business days after the Issuer becoming aware of that default;
- (b) *Other breach*: default is made by the Issuer in the performance or observance of any material undertaking contained in this deed applicable to the Deposits (other than that referred to in clause 9.1(a))

and:



- (i) in respect of any such default which is capable of being remedied, is not performed or observed within the period of thirty (30) business days after the Issuer becoming aware of that default; and
 - (ii) such default is, or is likely to be, in the reasonable opinion of the Supervisor, materially prejudicial to the Depositors;
- (c) *Cross acceleration*: indebtedness for or in respect of any borrowed money of the Issuer (other than in respect of the Deposits) in excess of NZ\$100,000 (or its equivalent in any other currency or currencies) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described) by the Issuer;
- (d) *Misrepresentation*: any representation, warranty or statement made by the Issuer in this deed is not correct in all material respects when made and in respect of any such misrepresentation which is capable of being remedied, such misrepresentation is not remedied within twenty (20) business days after the earlier of:
 - (i) the Supervisor notifying the Issuer of the misrepresentation; and
 - (ii) the date on which the Issuer becomes aware of that misrepresentation;
- (e) *Cessation of business or dissolution*: the Issuer 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 except, in each case, for the purpose of, and followed by, an amalgamation or solvent reconstruction on terms previously approved in writing by the Supervisor, 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 (as applicable) or any of their officers;
 - (ii) being challenged by the Issuer; and
 - (iii) discharged within thirty (30) business days;
- (f) *Insolvency*: the Issuer is unable or admits inability to pay its debts as they fall due, is declared or becomes insolvent or is deemed under any applicable law to be unable to pay its debts when they fall due;
- (g) *Creditor's compromise*: the Issuer:
 - (i) commences negotiations or takes any proceeding or other step with a view to the general re-adjustment, re-scheduling or deferral of all of its indebtedness (or any material part of its indebtedness) which the Issuer would otherwise be unable to pay when due;



- (ii) proposes in writing or makes a general assignment or an arrangement or composition with, or for the benefit of, the Issuer's creditors or any group or class thereof;
 - (iii) files a petition for suspension of payments or other relief of debtors; or
 - (iv) a moratorium is agreed or declared in respect of or affecting all or any material part of the indebtedness of the Issuer;
- (h) *Receiver:* either:
- (i) an encumbrancer takes possession of the whole or any material part of the assets of the Issuer; or
 - (ii) a receiver, manager, statutory manager, inspector, supervisor, administrator or other similar person is appointed or any application is made for such appointment in respect of the whole or any material part of the Issuer's assets and the application is not withdrawn or, as the case may be, the appointment is not discharged within fourteen (14) days of being made or appointed;
- (i) *Statutory Management:* a statutory manager is appointed to the Issuer under the Corporations (Investigation and Management) Act 1989;
- (j) *Avoidance or repudiation:*
- (i) this deed ceases to have effect (in whole or in any material part) or is or becomes void, voidable, illegal, invalid or unenforceable in any material respect (other than by reason of any waiver); or
 - (ii) the Issuer repudiates or does or causes to be done an act, omission, matter or thing evidencing an intention to repudiate this deed;
- (k) *Change in control:* there is a change in control of the Issuer such that the Issuer is no longer controlled by the Ngati Whatua Orakei Trustee Limited, without the prior written consent of the Supervisor (such consent not to be unreasonably withheld or delayed),

(each of the events or circumstances in (a) to (k) being an *Event of Default*).

9.2 Distribution of funds in respect of Deposits

All moneys received by the Supervisor in respect of the Deposits on or after the Date of Enforcement shall (subject to payment of any debts or liabilities having priority to the moneys due to Depositors pursuant to those Deposits) 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, all Indebtedness owing to the Supervisor and any interest on each such amount);

- (b) secondly, in or towards payment to the Depositors of the Deposit Moneys, on a pari passu basis; 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.

9.3 Order of Payment of Indebtedness

All moneys available for payments under clause 9.2 (*Distribution of funds in respect of Deposits*) shall be applied:

- (a) first on account of interest; and
- (b) second on account of principal,

provided that if the Supervisor considers it expedient in the interests of Depositors generally to do so, the whole or any part of the Total Principal Amounts may be paid before any payment is made on account of interest.

9.4 Supervisor's powers to postpone distribution

If the amount of the funds at any time available under Clause 9.2 (*Distribution of funds in respect of Deposits*) is less than ten per cent (10%) of the cumulative Total Principal Amounts of all of the Deposits, the Supervisor may, at its discretion, invest those funds in accordance with clause 12.2(f) and such investments with the resulting income thereof may be accumulated until the accumulations together with any other funds for the time being under the control of the Supervisor and applicable for the purpose amount to a sum sufficient to pay ten per cent (10%) of the cumulative Total Principal Amounts of all of the Deposits as aforesaid and then such accumulations and funds shall be applied in the manner specified in Clause 9.2 (*Distribution of funds in respect of Deposits*).

9.5 Notice of Distribution

The Supervisor shall give not less than ten (10) business days' notice to the Depositors of the day, place and time fixed for any payment to them under clause 9.2 (*Distribution of funds in respect of Deposits*) and, after the day so fixed, the Depositors shall be entitled to interest only on the balance (if any) of the money owing on the Deposits held by them after deducting the amount (if any) payable in respect thereof on the day so fixed.

10 APPOINTMENT OF SUPERVISOR

10.1 Appointment

The Issuer appoints the Supervisor, and the Supervisor accepts appointment, as supervisor and trustee for the Depositors on the terms and conditions contained in this deed. The Supervisor shall hold in trust for the benefit of all Depositors the right to enforce any obligations or duties that the Issuer and any other person has under a Deposit, this deed and (where applicable) the FMCA, including the right to



enforce the Issuer's obligation to repay a Depositor any Deposit Moneys, in accordance with the terms of this deed. For the avoidance of doubt, the Supervisor is the licensed supervisor for the debt securities for the purposes of the FMCA.

10.2 Warranty

The Supervisor represents and warrants to the Issuer and the Depositors that it is licensed (as that term is defined in the FMCA) and that licence covers the supervision of all Deposits issued under this deed.

11 SUPERVISOR'S FEES, EXPENSES AND INDEMNITIES

11.1 Fees

The Issuer shall pay to the Supervisor such fees (plus goods and services tax (if any)) as may be from time to time agreed by the Issuer and the Supervisor in writing.

11.2 Expenses

The Issuer shall pay all out of pocket expenses (including legal fees on a full indemnity basis and travelling expenses) reasonably and properly incurred by or on behalf of the Supervisor in connection with:

- (a) the preparation, execution and (if applicable) registration of this deed;
- (b) the exercise of any Trust Power, including the taking of any expert advice deemed reasonably necessary or expedient by the Supervisor in connection with the exercise of such Trust Power; and
- (c) any waiver, consent or other action requested by the Issuer.

11.3 Indemnity by Issuer

Subject to clause 15.1 (*Supervisor not indemnified*), and without prejudice to the right of indemnity by law given to supervisors or trustees, but subject to any limitations placed on such rights of indemnity by law, the Issuer shall indemnify the Supervisor (and each of its officers, directors, employees and agents) for all expenses and liabilities (and for the avoidance of doubt excluding income tax on the Supervisor's remuneration) reasonably sustained or incurred in carrying out the Trust Powers or otherwise for any action taken, or omitted to be taken, in accordance with the provisions of this deed, other than a claim arising out of a wilful default, fraud, gross negligence or wilful breach of trust.

11.4 Payments to Supervisor

The fees, expenses, indemnities and other amounts payable under this deed to the Supervisor (excluding for the avoidance of doubt amounts payable in respect of the Deposits) form part of the Indebtedness and shall be payable by the Issuer and the Depositors (as the case may be):

- (a) at the times agreed; or
- (b) in the absence of agreement, on demand; and



- (c) if not paid when due, shall carry interest at the Basic Rate until paid.

12 SUPERVISOR'S POWERS

12.1 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 supervisors or trustees by law in relation to Deposits.

12.2 Powers in relation to Deposits

In relation to each Deposit, the Supervisor shall, in addition to any powers provided by law, have the following powers and duties:

- (a) *General Duties:* the Supervisor:
- (i) is responsible for acting on behalf of the Depositors in relation to the Issuer, any matter connected with this deed or the terms of the offer of a Deposit and any contravention or alleged contravention of the issuer obligations in respect of a Deposit;
 - (ii) is responsible for supervising the Issuer's performance of its issuer obligations and in order to ascertain whether or not the assets of the Issuer that are or may be available, are sufficient or likely to be sufficient to discharge the payment obligations of the Issuer in respect of Deposits as they become due; and
 - (iii) is responsible for performing and exercising any other functions, duties and powers conferred or imposed on the Supervisor by this deed, the FMCA and the Financial Markets Supervisors Act 2011 (to the extent they are applicable).
- (b) *Standard of care:* the Supervisor must:
- (i) act honestly in acting as a supervisor;
 - (ii) in exercising its powers and performing its duties as a supervisor, act in the best interests of the Depositors;
 - (iii) exercise reasonable diligence in carrying out its functions as a supervisor;
 - (iv) in exercising its powers and performing its duties as a supervisor, exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor (as those terms are defined in the FMCA) would exercise in the same circumstances; and
 - (v) do all the things it has the power to do to cause any contravention referred to in section 111(1)(a)(iii) of the FMCA (to the extent it is applicable) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on the Depositors as a class).



The Supervisor is not indemnified under this deed for a breach of any of the duties referred to in clauses 12.2(b)(i) to 12.2(b)(iv).

- (c) *Applications to court:* If, after due inquiry and after consultation with the Issuer, the Supervisor is of the reasonable opinion that:
- (i) the Issuer is unlikely to be able to pay any amounts payable in relation to one or more Deposits as and when due; or
 - (ii) that the provisions of this deed are no longer adequate to give protection to the interests of any of the Depositors,

then, and whenever the Supervisor, acting reasonably, considers it in the best interests of the Depositors having regard to any other powers or remedies available to the Supervisor under this deed or at law for the protection of the interests of such Depositors and to all other circumstances relevant to the general interests of such Depositors, the Supervisor may apply to the court pursuant to section 207 of the FMCA (to the extent it is applicable):

- (iii) for an order that the Trust Powers be exercised under the direction of the court; or
- (iv) for directions or any other order in relation to the extent of or, the carrying out of, the Trust Powers; or
- (v) for any other order under section 207, 208 or 210 of the FMCA.

The Supervisor may support or oppose any application to the court made by or at the instance of any Depositor. Subject to clause 15.1 (*Supervisor not indemnified*), the Supervisor shall be indemnified by the Issuer against all expenses incurred in relation to any such application or proceedings, but only if the Supervisor has consulted with the Issuer prior to making any such application.

- (d) *Material breach:* If any breach of this deed occurs, then, unless the Supervisor is satisfied that the breach will not have a material adverse effect on the Depositors as a class, the Supervisor shall be entitled, in its absolute discretion, to require the Issuer to report to the Depositors 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 the Supervisor reasonably considers to be material to those Depositors, and invite those Depositors to indicate to the Supervisor their preferences as to any exercise or non-exercise of the Trust Powers under this deed. If the Issuer fails to give that report within thirty (30) days, the Supervisor shall be entitled to do so itself.
- (e) *Represent Depositors:* The Supervisor may represent and act on behalf of Depositors in any manner concerning Depositors generally.



- (f) *Investment:* Any moneys held by the Supervisor which are subject to the trusts created by this deed may, at the Supervisor's sole discretion, be invested in the name of the Supervisor or its nominee in any investments whatsoever, with power to vary those investments for others of a similar nature and from time to time to deal with or dispose of them or any part of them. The income arising from all such investments made by the Supervisor will belong to the person on behalf of whom such money is held by the Supervisor.
- (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.
- (h) *Power to engage expert:* The Supervisor may engage an expert (for example, an auditor, investigating accountant, valuer or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert:
- (i) to determine the financial position of the Issuer; or
 - (ii) to review the business, operation, management systems or the governance of the Issuer.

Where the Supervisor engages an expert pursuant to this clause 12.2(h), the Issuer shall provide reasonable assistance to the expert to provide the assistance and (without limiting clause 11.2(b)) the fees and expenses of the expert which are reasonable in the circumstances, shall be paid by the Issuer.

13 EXERCISE OF SUPERVISOR'S POWERS

13.1 Discretion

Except as otherwise expressly provided in this deed, and subject to the proper performance of its duties in accordance with clauses 12.2(b)(i) to 12.2(b)(iv), the Supervisor:

- (a) has absolute and uncontrolled discretion as to the exercise or non-exercise of the Trust Powers and as to the conduct of any action, proceeding or claim (provided it has acted with reasonable care and diligence);
- (b) may refrain from exercising any Trust Power; and
- (c) will not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise of any Trust Power.



13.2 Reliance

The Supervisor shall be entitled, without liability for loss, to obtain, accept and act on, or (other than as provided for by clause 13.1 (*Discretion*)) to decline and elect not to act on:

- (a) any communication or document (including any fax or email) reasonably believed by the Supervisor to be genuine and correct;
- (b) advice and statements of lawyers, accountants and other experts reasonably selected by the Supervisor or the Issuer;
- (c) a certificate signed by or on behalf of the Issuer by at least two Authorised Officers, 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 the Depositors generally, as sufficient evidence of such fact or the expediency or desirability of such transaction, step or thing; and
- (d) the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this deed, as conclusive evidence of the facts stated therein.

13.3 Depositors' moneys

The Supervisor shall not be responsible for monitoring the application by the Issuer of the money paid by any Depositor in respect of a Deposit.

13.4 Delegation

The Supervisor, whenever the Supervisor thinks it expedient in the interests of the relevant Depositors to do so, may:

- (a) where permitted to do so by the FMCA (to the extent it is applicable to the Deposits) or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011, delegate at any time to any person any of the Trust Powers which cannot conveniently be exercised by the Supervisor or through the Supervisor's employees, upon such terms and conditions the Supervisor thinks fit provided any such delegation shall not relieve the Supervisor of the Supervisor's responsibilities under this deed; and
- (b) authorise any person the Supervisor thinks fit to act as the Supervisor's representative at any meeting.

13.5 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.

13.6 Fiduciary relationship

Nothing in this deed prohibits the Supervisor, its holding company, any of its Subsidiaries or any of the Subsidiaries or its holding company (each a *Relevant Company*) or the directors or officers of each *Relevant Company* from:

- (a) being a Depositor or a holder of shares or other securities of the Issuer or any associated company of the Issuer; or
- (b) acting in any representative capacity for a Depositor or any such holder of shares or other securities.

Without limitation, the Relevant Company may so act on its own account or as executor, administrator, receiver, committee, guardian, attorney or agent or in any other fiduciary, vicarious or professional capacity. In doing so, it will not be deemed to be a breach of this deed or obligations imposed or implied by law arising out of the fiduciary relationship between the Supervisor and the Depositors.

The Relevant Company will not by reason of its fiduciary capacity be prevented from:

- (a) making any contracts or entering into any transactions with the Issuer or any associated company of the Issuer in the ordinary course of the business of the Relevant Company;
- (b) undertaking any insurance, financial or agency service for the Issuer or any associated company of the Issuer; or
- (c) accepting or holding the office of trustee for the holders of any securities (whether secured or unsecured) issued by the Issuer or by any other entity.

The Relevant Company will not be accountable to the Issuer or to any other company or the Depositors for any profits arising from any such contracts, transactions or offices.

13.7 Confidentiality

The Supervisor shall not (except to the extent required by the Conditions or law or by court order) be required to disclose to any Depositor any confidential financial or other information made available to the Supervisor by the Issuer.

13.8 Binding on all Depositors

Any action taken by the Supervisor in accordance with this deed is binding on all of the Depositors or all of the relevant Depositors (as the case may be).

13.9 No obligation to consult

Except where expressly required otherwise in this deed, the Supervisor is not obliged to consult with the Depositors before giving any consent, approval or agreement or making any determination under this deed.

13.10 Knowledge of Event of Default

The Supervisor:

- (a) may assume that the Issuer is complying with this deed; and
- (b) is not taken to have knowledge of the occurrence of an Event of Default,



unless any of the Supervisor's officers having responsibility for the transaction actually become aware of the relevant non-compliance or Event of Default or the Supervisor has received written notice from a Depositor or the Issuer stating that the non-compliance or Event of Default has occurred and describing such Event of Default.

14 REPLACEMENT OF SUPERVISOR

14.1 Resignation or removal of Supervisor

Subject, in the case of resignation or removal under clause 14.1(a) or, 14.1(b) below, to clause 14.2 (*Requirements for retirement and removal*):

- (a) the Supervisor may resign at any time by giving not less than 90 days' written notice (or such lesser period of notice as the Issuer may agree in writing) to the Issuer;
- (b) the Issuer may remove the Supervisor from office by giving not less than 90 days' written notice (or such lesser period of notice as the Supervisor may agree in writing) to the Supervisor; or
- (c) the Supervisor may be removed by the FMA or the Issuer under Part 2 of the Financial Markets Supervisors Act 2011.

14.2 Requirements for retirement and removal

The Supervisor may not:

- (a) be removed or resign under clause 14.1(a) or 14.1(b) unless:
 - (i) all functions and duties of the position have been performed;
 - (ii) another licensed supervisor has been appointed, and accepted the appointment, in the Supervisor's place; or
 - (iii) the court consents; and
- (b) be removed by the Issuer under clause 14.1(b) without the FMA's consent.

14.3 Appointment of a new Supervisor

Upon such a notice of resignation or removal being given, the Issuer will, subject to clause 14.2, have the right to appoint a successor Supervisor, which must be a person who is authorised to act as a supervisor under section 103(1)(b) of the FMCA.

14.4 Failure to Appoint Supervisor

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.

14.5 Successor Supervisor

Where an appointment under this clause 14 (*Replacement of Supervisor*) is accepted 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 this deed and, as from that time, the retiring Supervisor shall be discharged from its rights, powers and obligations;
- (b) the retiring Supervisor must transfer to the successor Supervisor all moneys, investments, property and books held by the Supervisor under this deed; and
- (c) the successor and retiring Supervisors shall execute all such documents which are necessary or appropriate, such that the successor Supervisor is bound by all the covenants on the part of the Supervisor under this deed from the date of such appointment.

14.6 Notice

The Issuer agrees to notify all Depositors of the appointment of any new supervisor as soon as reasonably practicable following such appointment.

15 LIABILITY OF SUPERVISOR

15.1 Supervisor not indemnified

The Supervisor's rights to be indemnified in relation to the performance of the Supervisor's licensee obligations (as defined in section 4 of the Financial Markets Supervisors Act 2011) under this deed in respect of Deposits are available only in relation to the proper performance of its duties in accordance with clauses 12.2(b)(i) to 12.2(b)(iv) (inclusive) and no other provision of this deed that is contrary to the foregoing shall have any effect.

15.2 Duty of Care

Notwithstanding any other provision of this deed, but subject to clause 15.1 and the provisions of any applicable law, the Supervisor shall not be liable to any person (including the Issuer and any Depositor) in any way except for wilful default, fraud, gross negligence or wilful breach of trust where the Supervisor has failed to show the degree of care and diligence required of the Supervisor having regard to the provisions of this deed.

15.3 Limitation of Supervisor's liability

Subject to any applicable laws and without prejudice to any powers of and protections available to trustees, the Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction given to the Supervisor by Depositors.

16 BENEFIT OF DEED

The Issuer acknowledges, in relation to each Deposit and the Depositor of that Deposit, that this deed is made for the benefit of, and (subject to clause 2.2

(*Enforcement of Depositors' rights*) is intended to be enforceable by, any person who is from time to time a Depositor of a Deposit and the Supervisor.

17 AMENDMENTS

17.1 Limited right to amend

Except as provided in clause 2.5 (*Alteration of terms and conditions applicable to deposits*) and this clause 17 (*Amendments*), the Issuer may not cancel, vary or amend any provision of this deed while any Deposits are outstanding. Any amendment to this deed must be:

- (a) in writing signed by the Issuer and the Supervisor (and the Supervisor must, where required by the FMCA, provide or, where applicable, obtain the certificates required under section 108(2)(b) of the FMCA); or
- (b) made under section 109 of the FMCA or 22(7) or 37(6) of the Financial Markets Supervisors Act 2011 (to the extent any one or more of them is applicable) or under any other power to amend this deed under any other applicable law; or
- (c) approved by a meeting of Depositors, held in accordance with the FMCA where it is applicable.

17.2 Amendments without consent

The provisions of this deed may be amended without the consent of the Depositors where:

- (a) the Supervisor is satisfied that such amendment does not have a material adverse effect on Depositors; or
- (b) such amendment is agreed to by the Supervisor pursuant to clause 19.3 (*Statutory Exemptions*).

Notice of any material amendment shall be provided to Depositors within twenty (20) business days of the amendment being made.

18 WAIVER

18.1 Waivers

Subject to clause 17 (*Amendments*) and any applicable law, and except to the extent expressly provided otherwise in the Conditions for any Deposit, by notice to the Issuer, the Supervisor may waive any breach or anticipated breach by the Issuer either wholly or in part for a specified period or indefinitely and on such other terms and conditions as:

- (a) the Supervisor deems expedient provided that the Supervisor must be satisfied that the waiver will not have a material adverse effect on Depositors, and provided further that no such waiver shall prejudice the rights of the Supervisor or the Depositors in respect of any such breach; or

- (b) may be agreed by the Supervisor pursuant to clause 18.3 (*Statutory Exemptions*).

18.2 Temporary Variation

In addition to, and not in abrogation of or substitution for, clause 17 (*Amendments*) (but subject to any applicable law and except to the extent expressly provided otherwise in the Conditions for any Deposit) the Supervisor may, in respect of any Deposit, temporarily vary the provisions of this deed for such period and on such terms as:

- (a) the Supervisor may deem appropriate; or
- (b) may be agreed by the Supervisor pursuant to clause 18.3 (*Statutory Exemptions*),

provided that, in either case, the Supervisor must be satisfied that the temporary variation will not have a material adverse effect on Depositors and the Supervisor must provide or, where applicable, obtain the certificates required under section 108(2)(b) of the FMCA (to the extent it is applicable).

18.3 Statutory Exemptions

In relation to each Deposit, subject to any applicable law, and except to the extent expressly provided otherwise in the Conditions for that Deposit, if 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 Financial Reporting Act, the FMCA or the FMC Regulations which is materially the same as or analogous to any obligation of the Issuer under this deed or any Deposit, then provided two Authorised Officers of the Issuer certify that such amendment, temporary variation or waiver will not have a Material Adverse Change, the Supervisor may in respect of that Deposit agree to amend or temporarily vary this deed or the Deposit or waive any breach or anticipated breach of such obligation in a manner which is consistent with the relevant exemption.

19 SUBSTITUTION

19.1 Substitution

The Issuer may, with the consent of the Supervisor but without the consent of the Depositors, substitute any person incorporated in New Zealand (*a Substituted Obligor*) in place of the Issuer (or of any previous substitute under this clause) as the principal debtor under this deed and the Deposits either generally or in relation to one or more Deposits if:

- (a) the Substituted Obligor succeeds to and becomes bound by all the terms and conditions of this deed by entering into such agreements and documents (*Substitution Documents*), each in form and substance satisfactory to the Supervisor, as the Supervisor may reasonably deem appropriate;
- (b) such amendments are made to any other documents as the Supervisor may reasonably deem appropriate;



- (c) any two Authorised Officers of the Substituted Obligor certify that the Substituted Obligor will be solvent immediately after the substitution;
- (d) prior to the substitution being effected, the Substituted Obligor warrants and represents to the Supervisor for the benefit of Holders that:
 - (i) the Substituted Obligor has obtained all necessary authorisations for the substitution;
 - (ii) the Substituted Obligor has obtained all necessary authorisations for the performance by it of its obligations under this deed and the relevant Deposits and that they are in full force and effect; and
 - (iii) the obligations assumed by the Substituted Obligor are legal, valid and binding obligations, enforceable against the Substituted Obligor in accordance with their terms, subject to laws affecting creditors' rights generally and equitable principles of general application;
- (e) legal opinions (in form and substance reasonably satisfactory to the Supervisor) have been delivered to the Supervisor confirming that, following the substitution:
 - (i) the Deposits will constitute legal, valid and binding obligations of the Substituted Obligor, enforceable against the Substituted Obligor 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;
 - (ii) the Substituted Obligor is validly incorporated in its jurisdiction of incorporation;
 - (iii) all necessary authorisations are in full force and effect; and
 - (iv) the Substituted Obligor will not be required by law to withhold or deduct an amount on account of Tax from any payment under the relevant Deposit, other than an amount equal to the amount that would have been withheld or deducted by the Issuer if the substitution had not occurred, or such other withholding or deduction in respect of which the Substituted Obligor has agreed to compensate the Depositor of the relevant Deposit; and
- (f) the Issuer (or such previous Substituted Obligor) and the Substituted Obligor comply with such other reasonable requirements as the Supervisor may direct in writing in the interests of the Depositors of the relevant Deposits, provided that, for the avoidance of doubt, such direction shall not extend to the Issuer (or such previous Substituted Obligor) remaining the issuer of the relevant Deposits.

**19.2 Release of substituted issuer**

Any Substitution Document entered into pursuant to clause 19.1 (*Substitution*) will, if so expressed, release the Issuer from any or all of the Issuer's obligations under the Deposits. Notice of the substitution must be given to the Depositors within fourteen (14) days after the execution of the Substitution Documents and compliance with the other requirements of clause 19.1 (*Substitution*).

19.3 Completion of Substitution

After notice has been given in accordance with clause 19.1 (*Substitution*):

- (a) the Substituted Obligor is taken to be the principal debtor and to have all the rights, powers and obligations of the Issuer as if the Substituted Obligor were originally named in place of the Issuer in respect of the relevant Deposits; and
- (b) this deed and the terms of the relevant Deposits are taken to be amended as necessary to give effect to the substitution.

20 NOTICES**20.1 Notice to Depositors**

A notice to be given under this deed to a Depositor may be given to the Depositor by:

- (a) personally leaving the notice at the Depositor's last entered address on the Register;
- (b) sending the notice addressed to the Depositor at the Depositor's last entered address on the Register by ordinary prepaid post, or, if that address is outside New Zealand, by airmail or prepaid post; or
- (c) electronic communication which the Issuer has been advised is acceptable to the Depositor.

20.2 A Depositor must notify the Issuer of any change to the Depositor's address or electronic address and the Register shall be altered accordingly.

20.3 Any notice given to Depositors by the Issuer in relation to the Deposits must be copied to the Supervisor by the Issuer, provided that, where notices are given to Depositors in substantially the same form but with personalised details in respect of each Depositor, it shall be sufficient to provide the Supervisor with a sample of such a notice.

20.4 A notice shall not be effective until received by the Depositor, and any such notice or communication shall be deemed to be received:

- (a) (if given or made by letter) when left at the address of the Depositor, three (3) business days after being put in the post and posted to an address in New Zealand and ten (10) business days after being put in the post (and sent via airmail) if posted to an address outside New Zealand, postage prepaid, and properly addressed to the Depositor at that address;



- (b) (if given or made by email) when dispatched in tangible, readable form by the sender to the email address advised by the Depositor from time to time;
- (c) (if given or made by fax) upon production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the Depositor; or
- (d) (if given or made by public notice) upon the release, circulation or publishing of that notice,

provided that any notice or communication received or deemed received after 5.00pm on a business day in the place to which such notice 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.

20.5 Notice where no address

If any Depositor has no address on the Register and has not supplied to the Issuer an address for the giving of notices, or if any two notices sent to a Depositor are returned to the Issuer on consecutive occasions, then, despite anything contained elsewhere in this deed, until the Depositor gives notice in writing to the Issuer of some other address, the address of the Depositor for all purposes of this deed will be deemed to be the registered office of the Issuer.

20.6 Calculation of notice periods

Where a given number of days' notice or notice extending over any other period is required to be given, the day of giving the notice or the day upon which the notice will expire (but not both) shall be reckoned in the number of days or other period.

20.7 Notice to the Issuer or the Supervisor

Any certificate, notice, communication or information required by this deed to be given by the Issuer to the Supervisor or by the Supervisor to the Issuer must be given in writing or by facsimile communication or electronic communication acceptable to the recipient and addressed to an appropriate person within the party to whom the certificate, notice, communication or information is intended to be given at the recipient's registered office or other usual place of business (or such other address as may from time to time be notified by one party to the other as the address for service of notices pursuant to this deed) and must be signed by a duly authorised officer on behalf of the party giving the certificate, notice, communication or information.

21 MEETINGS

21.1 Meetings generally

The Issuer may (and, if required by the FMCA to call meetings, shall) convene a meeting of Depositors by giving notice in accordance with the FMCA and FMC Regulations. A meeting of Depositors shall be conducted in accordance with the requirements of the FMCA, the FMC Regulations and any other law, subject (where permitted) to any additions or changes expressly prescribed in this deed.



21.2 Attendance at meetings and right to be heard

The Issuer and the Auditor and their duly appointed representatives may attend and address any meeting of Depositors (including any adjourned meeting).

21.3 Validity of proxy's vote

A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or attorney or of the authority under which the proxy or attorney was executed unless notice in writing of such death, insanity or revocation as aforesaid shall have been received by the Issuer before the commencement of the meeting or adjourned meeting at which the proxy or attorney is used.

21.4 Special Resolutions binding on all Depositors

A Special Resolution passed by the required majority at a meeting of Depositors shall be binding upon all the relevant Depositors, whether present or not present at such a meeting, and each of the Depositors and the Supervisor and the Issuer shall be bound to give effect thereto accordingly.

22 MISCELLANEOUS

22.1 Registration of deed

The Issuer shall promptly, at its own cost, register this deed to the extent required by the FMCA and/or any applicable law and shall pay all costs and expenses incidental to doing so.

22.2 Waivers and remedies

Time shall be of the essence of this deed but no delay in acting, or failure to act, by a Depositor is a waiver of any of that Depositor's rights, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that right, power or remedy, or the exercise of any other right, power or remedy.

22.3 Partial Invalidity

A provision of this deed has no effect to the extent that such provision contravenes, or is inconsistent with, the FMCA, the FMC Regulations (to the extent they are applicable) or any term implied into this deed by the FMCA or the FMC Regulations (other than where such contravention, or inconsistency, is permitted by the FMCA or the FMC Regulations). An invalid provision in this deed shall not affect the enforceability of the remaining provisions of this deed.

22.4 Further issues

Subject to the terms of this deed, the Issuer may from time to time, without the consent of the Depositors, issue Deposits or issue or guarantee other debt obligations on such other terms and conditions as the Issuer may think fit.

22.5 Documents

The Issuer must make copies of this deed available for inspection during usual business hours by any Depositor at the registered office of the Issuer (or such other office as the Issuer may notify the Depositors from time to time) which, at the date of this deed, is as specified at clause 20.5 (*Notice where no address*).



22.6 Survival

Clause 6.6 (*Unclaimed payments*) of this deed and the indemnities given in this deed will survive the repayment of all the Deposits and the termination of this deed.

22.7 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.

22.8 Counterparts

This deed may be executed in any number of counterparts, all of which together constitute one and the same instrument. Any party may execute this deed by executing any such counterpart.

23 RELEASE

Upon being indemnified to the Supervisor's reasonable satisfaction pursuant to clause 11.3 (*Indemnity by Issuer*) and upon proof being given to the reasonable satisfaction of the Supervisor that all sums owing or outstanding in respect of the Deposits 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 as Supervisor.

24 GOVERNING LAW AND JURISDICTION

24.1 Governing law

This deed shall be governed by New Zealand law.

24.2 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.

25 DELIVERY

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this deed will be delivered by a party (the *delivering party*), immediately on the earlier of:

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

**26 CONTRACT AND COMMERCIAL LAW ACT 2017**

Subject to clause 2.2(b), this deed is legally enforceable as between the Issuer, the Supervisor and the Depositors and shall take effect as a contract (as well as a deed) to the extent provided in this deed and shall be enforceable for the benefit of every Depositor. The benefit so extended to Depositors is intended to be limited by, and enforceable subject to, the rights of parties to this deed to vary or discharge benefits or obligations as provided in this deed without the consent of any Depositor, other than as so provided.

IN WITNESS WHEREOF this deed is executed and delivered by the parties as of the date first written above.



EXECUTION PAGE

The Issuer

Ngati Whatua Orakei Whai Rawa Limited by:

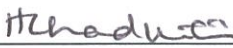


Director



Director

Executed in the name and under the seal of **The New Zealand Guardian Trust Company Limited** by



Authorised Signatory
Helen Mary Chadwick

Print Name



Authorised Signatory
VANJA NADINE THOMAS

Print Name **VANJA NADINE THOMAS**

in the presence of:


Witness Signature

Print Name

Witness Occupation

Place of residence

WITNESS TO BOTH SIGNATURES:

Full Name: Shobhita Chaturvedi
Residential Address: Auckland
Occupation: Operations Administrator
Signature: 

ACT1500