

Dated

23 November

2016

**DEED OF AMENDMENT AND
RESTATEMENT OF TRUST DEED**

The Issuer

**THE ROMAN CATHOLIC BISHOP OF THE
DIOCESE OF HAMILTON TRADING AS THE
CATHOLIC DEVELOPMENT FUND ("CDF")**

The Supervisor

**COVENANT TRUSTEE SERVICES LIMITED
("SUPERVISOR")**

This Deed is dated 23 November 2016

PARTIES

- (1) **THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF HAMILTON TRADING AS THE CATHOLIC DEVELOPMENT FUND** ("the "CDF")
- (2) **COVENANT TRUSTEE SERVICES LIMITED** ("the "Supervisor")

BACKGROUND

- A. The CDF has offered debt securities from time to time since 1980, acting in reliance on the Securities Act (Charitable and Religious Purposes) Exemption Notice 2003 ("the "**2003 Notice**") until 30 November 2013 and subsequently in reliance on the Securities Act (Charity Debt Securities) Exemption Notice 2013.
- B. The terms of the 2003 Notice required the CDF to enter into a trust deed in accordance with the requirements of the Securities Act 1978, and the CDF entered into such a trust deed, with Perpetual Trust Limited as trustee on 11 April 2007 (the "**Existing Trust Deed**"). The Supervisor became the trustee under a deed dated 27 November 2012.
- C. The Existing Trust Deed must be amended to reflect the requirements for trust deeds in the Financial Markets Conduct Act 2013 ("**FMC Act**") and the Financial Markets Conduct Regulations 2014. In addition the Existing Trust Deed is being amended to be consistent with the regulatory regime for non-bank deposit takers under the Non-bank Deposit Takers Act 2013 in the event that the CDF subsequently wishes to establish itself as a non-bank deposit taker.
- D. The Existing Trust Deed enables the Supervisor to concur with the CDF in making any modification or addition to the Existing Trust Deed:
 - (i) under clause 11.1(b) of the Existing Trust Deed if the amendments are necessary or desirable for the more convenient, economic or advantageous working management or administration of the CDF; or
 - (ii) under clause 11.1(c) of the Existing Trust Deed if the amendments are necessary in view of legislation imposed by any lawful authority affecting the CDF.
- E. The Supervisor, as is evidenced by its execution of this deed, has concurred with the CDF in making the alterations and additions to the Existing Trust Deed effected by this deed.

By this deed the parties agree as follows:

1. DEFINITIONS

In this deed, unless the context requires otherwise:

- 1.1 **Effective Date** means 1 December 2016 or such other date the CDF elects as the effective date for the CDF's offer of Debt Instruments for the purposes of Clause 19 of Schedule 4 of the FMC Act.

- 1.2 **Existing Trust Deed** shall have the meaning given to that term in paragraph B of the Background.
- 1.3 **Restated Deed** means the Existing Trust Deed as amended and restated by this deed and attached as the Schedule to this deed.
- 1.4 Terms defined in the Existing Trust Deed shall have the same meanings when used in this deed.

2. **AMENDMENT AND RESTATEMENT**

The parties agree that with effect from the Effective Date, the Existing Trust Deed will for all purposes be amended and restated in the form set out in the Restated Deed.

3. **EFFECT OF AMENDMENT AND RESTATEMENT**

The amendments to the Existing Trust Deed in the Restated Deed will not limit or prejudice in any way any of the parties' rights and obligations under the Existing Trust Deed that arose or accrued prior to the Effective Date.

4. **COUNTERPARTS AND FACSIMILE EXECUTION**

This deed may be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument when transmitted to the other party under this clause 4. The transmission by facsimile or scanning by a party to the other party of a signed counterpart copy of this deed, or facsimile or scanned copy of this deed, shall be deemed proof of signature of the original and the signed facsimile or scanned copy so transmitted shall be deemed an original.

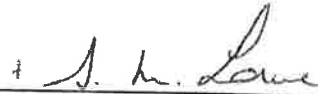
5. **GOVERNING LAW**

This deed is governed by and is to be construed in accordance with New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

EXECUTION

Executed as a Deed

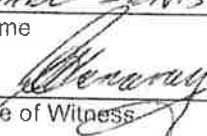
**SIGNED by BISHOP STEPHEN MARMION LOWE
THE ROMAN CATHOLIC BISHOP OF THE DIOCESE
OF HAMILTON TRADING AS THE CATHOLIC
DEVELOPMENT FUND**


BISHOP STEPHEN MARMION LOWE

and sealed with his seal of office in the presence of:



Authorised Signatory
MICHAEL DENIS HANARAY

Print Name


Signature of Witness
CHARTERED ACCOUNTANT

Occupation
HAMILTON

City/Town of Residence

SIGNED by COVENANT TRUSTEE SERVICES LIMITED by

_____ Authorised Signatory	_____ Authorised Signatory
_____ Print Name	_____ Print Name
_____ Witness to both signatures	
_____ Print Name	
_____ Occupation	
_____ Address	

EXECUTION

Executed as a Deed

**SIGNED by BISHOP STEPHEN MARMION LOWE
THE ROMAN CATHOLIC BISHOP OF THE DIOCESE
OF HAMILTON TRADING AS THE CATHOLIC
DEVELOPMENT FUND**

BISHOP STEPHEN MARMION LOWE

and sealed with his seal of office in the presence of:

Authorised Signatory

Print Name

Signature of Witness

Occupation

City/Town of Residence

SIGNED by COVENANT TRUSTEE SERVICES LIMITED by

SCross

Authorised Signatory

Carol A. Cook

Authorised Signatory

Stephanie Cross

Print Name

Carol Anne Cook

Print Name

Witness to both signatures

Rachel Magowan

Print Name

Corporate Trust Advisor

Occupation

Auckland

Address



SCHEDULE

Dated 11 April 2007 and amended and restated
as at 23 November 2016

TRUST DEED

Issuer

**THE ROMAN CATHOLIC BISHOP OF THE
DIOCESE OF HAMILTON TRADING AS THE
CATHOLIC DEVELOPMENT FUND ("CDF")**

Supervisor

**COVENANT TRUSTEE SERVICES LIMITED
("SUPERVISOR")**

THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF HAMILTON TRADING AS THE CATHOLIC
DEVELOPMENT FUND

CERTIFICATE OF COMPLIANCE

(Section 103(1)(a)(ii) of the Financial Markets Conduct Act 2013)

We refer to the Deed of Amendment and Restatement dated 23 November 2016 of a Trust Deed dated 11 April 2007 (as supplemented and amended from time to time) ("**Trust Deed**") between The Roman Catholic Bishop of the Diocese of Hamilton Trading as the Catholic Development Fund ("**Issuer**") and Covenant Trustee Services Limited ("**Supervisor**").

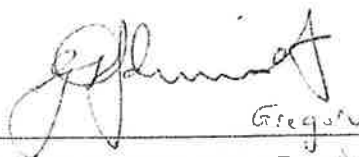
This is a certificate for the purposes of Section 103(1)(a)(ii) of the Financial Markets Conduct Act 2013 ("**FMCA**").

In our respective capacities as Issuer and Supervisor, we certify that the Trust Deed complies with sections 104 to 106 of the FMCA on the basis that:

- (a) The Trust Deed contains the provisions required by sections 104 and 105 of the FMCA; and
- (b) We have received legal advice in a form satisfactory to us that confirms that the Trust Deed complies with sections 104 to 106 of the FMCA.

DATED the 23rd day of November 2016

SIGNED:


Gregory Schmidt

For and on behalf of The Roman
Catholic Bishop of the Diocese of
Hamilton Trading as the Catholic
Development Fund as Issuer


Carol Anne Cook

For and on behalf of Covenant Trustee
Services Limited as Supervisor

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1.2 **Existing Trust Deed** shall have the meaning given to that term in paragraph B of the Background.

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5. **GOVERNING LAW**

This deed is governed by and is to be construed in accordance with New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

"**Bishop**" means the person from time to time holding the office of Bishop of the Diocese of Hamilton in accordance with the laws, practices, or usages of the Roman Catholic Church in New Zealand, and includes an Archbishop of the Diocese of Hamilton, and being a corporation sole pursuant to the Bishops Empowering Act.

"**Bishops Empowering Act**" means the Roman Catholic Bishops Empowering Act 1997.

"**book value**", in relation to an item, means:

- (a) the amount shown for that item in the Financial Statements of the CDF; or
- (b) in a calculation required to be made on a consolidated basis, the amount shown for that item in the consolidated Financial Statements for the Charging Group, in accordance with the Regulations.

"**Business Day**" means any day (other than a Saturday or a Sunday) on which banks are open for the transaction of general banking business in Auckland and Wellington and Christchurch, New Zealand.

"**Capital Ratio**" means the ratio of the Charging Group's capital to an amount representing the degree of the following types of risk to which the Charging Group is exposed:

- (a) credit risk;
- (b) market risk; and
- (c) operational risk.
- (d) calculated in accordance with the Regulations.

"**Cash and Securities**" means, at any date and in relation to the Charging Group, the aggregate of cash, bank endorsed commercial bills, government securities and any other assets which under GAAP would be considered liquid assets which would be disclosed if the consolidated Financial Statements of the Charging Group were prepared as at that date in accordance with GAAP.

"**CDF Certificate**" means a certificate signed by the General Manager jointly with a member of the Finance Council, pursuant to this Deed.

"**CDF Funds**" means the amount by which Total Tangible Assets exceeds Total Liabilities.

"**Certificate**" means a certificate or other written acknowledgement of a Debt Instrument issued by the CDF evidencing that the Person named is the Holder of the amount of the Debt Instrument stated in the certificate.

"**Charging Group**" means the CDF and each Charging Subsidiary (if any).

"**Charging Subsidiary**" means any Subsidiary which shall at any time become a Charging Subsidiary as provided by this Deed provided that it has not been discharged from liability under this Deed.

"**Commencement Date**" means the date that this Deed is entered into.

"**Committed Facilities**" means, in relation to a Charging Group, the committed funding facilities provided to any member or members of the Charging Group.

"Companies Act" means the Companies Act 1993.

"Contingent Liability" means the contingent liability of any member of the Charging Group under any guarantee, indemnity, letter of credit or suretyship, or any other obligation whatever called and of whatever nature to pay, to purchase, to provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services, or otherwise) for the payment or discharge of, or to indemnify against the consequences of default in the payment of, any obligation or indebtedness, any dividend or other payment in respect of shares or Debt Instrument, or on the insolvency or because of the financial condition, of any other Person which is for the benefit of a Person other than such member of the Charging Group.

"Credit Rating" means a credit rating that complies with section 23 of the NBDT Act 2013.

"Credit Rating Exemption Notice" means the Non-bank Deposit Takers (Credit Ratings Minimum Threshold) Exemption Notice 2016.

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

"Debt Instruments" means any and all secured debt obligations by whatever name called, constituted and issued by the CDF pursuant to this Deed (including those outstanding as at the Effective Date under the Existing Trust Deed) from time to time and for the time being outstanding and uncanceled and includes the Principal represented thereby issued under clause 3.1 of this Deed.

"Debt Instrument Indebtedness" means all moneys (including interest and fees) payable on the Debt Instruments and all other moneys payable to any Holders or to or at the direction of the Supervisor on behalf of any Holder under or pursuant to the terms and conditions thereof or of this Deed.

"Effective Control" of an entity means:

- (a) control of the composition of the board of directors of that entity;
- (b) control of more than half the voting rights attaching to shares in that entity; or
- (c) control of more than half the issued capital of that entity (excluding any part which carries no right to participate beyond a specified amount in the distribution of either profit or capital).

"Effective Date" has the same meaning as in the Deed of Amendment and Restatement of Trust Deed in relation to this Deed.

"Event of Default" means, subject to clause 11.2 (Acceleration), any of the events or circumstances set out in clause 11.1 (Events of Default).

"Exchange" means as the context requires, NZX Limited or any securities market operated by it, or any alternative or substitute market or other arrangement in New Zealand on or through which any shares, debt instruments or other investments may be freely traded.

"Exposure" means the Maximum Loss that the Charging Group could incur as a result of a Person or a Single Group failing to discharge its obligations under a contract to which the

Charging Group is a party (but excludes any deposits with, or credit balances with, a Bank or any other amounts payable or owing by any Bank).

"**Finance Council**" means the Finance Council of the Hamilton Catholic Diocese.

"**Financial Reporting Act**" means the Financial Reporting Act 2013.

"**Financial Statements**" means financial statements or group financial statements as applicable, as defined in sections 6 and 7 of the Financial Reporting Act 2013 including any report and auditors report attached to or intended to be read with any of those statements as applicable.

"**FMA**" means the Financial Markets Authority.

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

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

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

"**GAAP**" means, at any time, New Zealand generally accepted accounting practice as defined in Section 8 of the Financial Reporting Act.

"**General Manager**" means the General Manager of the Hamilton Catholic Diocese.

"**Holder and Holders**" means (as the case may be) the holders of Debt Instruments, by class or collectively as appropriate, and includes their personal representatives.

"**in writing**" and "**written includes**" words written, printed, typewritten, lithographed, telexed, cabled, transmitted by facsimile or otherwise represented or reproduced in visible form by any other means.

"**Liabilities**" means liabilities which should be classified as such by GAAP but does not include Contingent Liabilities.

"**Liquid Assets**", means in relation to the Charging Group on any date, the aggregate of:

- (a) Cash and Securities of the Charging Group; and
- (b) the Undrawn Committed Facility Amount of the Charging Group.

"**Listed Securities**" means any shares, debt instruments or other investments held by any of the Charging Group which are listed for quotation on any recognised exchange in New Zealand or Australia.

"**Majority**" means in relation to each class of Debt Instrument:

- (a) where the total number of Holders of that class is not more than five, all Holders of that class; and
- (b) where the total number of Holders of that class is more than five, Holders of that class not being less than five in number and holding more than one-half of the Principal amount of that class of Debt Instrument.

"**Major Security Holder**" means a holder for the time being of Debt Instruments where the Principal amount thereof is equal to or greater than 10% of the aggregate Principal amount of all Debt Instruments outstanding for the time being.

"**Maximum Loss**" means the loss to which the Charging Group is exposed, without taking into account the value of collateral, guarantees, indemnities, other support arrangements and any potential recoveries.

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

"**Notice**" has the meaning given to that word in clause 22 (Notices).

"**Other Readily Fundable Assets**" means the aggregate of the Value of the Charging Group's fixed assets (other than Real Property) which would be disclosed in the relevant Financial Statements if they were prepared as at the Reference Date.

"**Other Tangible Assets**" means the aggregate on the Reference Date of the Value of all Tangible Assets not being Readily Realisable Assets, Other Readily Fundable Assets or Real Property.

"**outstanding**" means, in relation to Debt Instruments, all the Debt Instruments issued other than:

- (a) any Debt Instruments which have been repaid or redeemed pursuant to the terms and conditions of issue of such Debt Instruments; or
- (b) any Debt Instruments in respect of which the date for repayment or redemption pursuant to their terms and conditions has occurred and the repayment or redemption moneys for which (including all interest accrued thereon to the date for such repayment or redemption) have been duly paid to or to the order of the Supervisor or to any relevant paying agent and remain available for payment; or
- (c) any Debt Instruments which have become void pursuant to their terms and conditions; or
- (d) any Debt Instruments which have been purchased and cancelled pursuant to their terms and conditions;

and (for certainty) it is declared that where any Debt Instrument Certificate, or other certificate evidencing the issue of Debt Instruments has been replaced in whole or in part by a new certificate issued in respect of such Debt Instruments then, to the extent so replaced and without prejudice to the Debt Instruments evidenced by such new certificate, the original certificate shall not represent outstanding Debt Instruments.

"**Person**" includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of a state (in each case whether or not having separate legal personality).

"**Personal Property**" means all of the CDF's present personal property and after-acquired personal property, including any present and future rights in relation to any personal property, in each case, to which the PPSA applies.

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

"**Principal**" means:

- (a) in relation to any Debt Instrument, the "Amount of Debt Instrument" as defined in the relevant Debt Instrument Certificate; and

- (b) in relation to any other Debt Instruments, the amount (other than interest, fees and costs) inclusive of the premium (if any) payable on the redemption of the Debt Instrument.

"Prior Charge" means any Security Interest over any of the Secured Property ranking in priority to the Security created by or pursuant to this Deed or as the case requires the principal moneys secured by such Security Interest.

"Public Sector Securities" means New Zealand Government Stock issued and registered in New Zealand and any other loans, investments or securities issued by any local or other public authority under any legislation governing such issues which are held by the Charging Group or which are guaranteed as to principal and interest by the New Zealand Government.

"Readily Realisable Assets" means the total on a consolidated basis of the Value of the following assets of the Charging Group as would be disclosed in the Charging Group Financial Statements prepared as at the Reference Date:

- (a) Cash;
- (b) Public Sector Securities maturing within 180 days;
- (c) Any deposits with any Bank or with any similar institution having a Credit Rating or credit worthiness acceptable to the Supervisor, maturing within 180 days;
- (d) Any bill of exchange, loan investment, deposit or other instrument issued by, drawn or endorsed by a Bank or with any similar institution having a Credit Rating or credit worthiness acceptable to the Supervisor, and maturing within 180 days;
- (e) Any deposits and investments in the above categories which mature later than 180 days, but which are able to be redeemed within 180 days.

"Real Property" means on the Reference Date the Value of the Charging Group's interest as registered proprietor in any land and improvements on such land.

"Receiver" means a receiver or receivers of all or any part of the Secured Property appointed under this Deed and includes a receiver and manager or receivers and managers.

"Reference Date" means the date as at which any of the restrictions contained in clause 8 are being applied or as at which any of the amounts relevant to the application of clause 8 are being determined.

"Register" means a register of Debt Instruments to be kept pursuant to clause 3.11 (Obligation to maintain Register) and the register kept by the CDF in respect of any class of Debt Instrument and Registers means any two or more of them as the case may be.

"Registered Address" in respect of a Holder means his or her address for the time being recorded in the relevant Register.

"Registrar" means in respect of each class of Debt Instrument, the Person (whether it be the CDF or any other Person appointed by it for the purpose) which maintains the Register in respect of such class of Debt Instrument.

"Regulations" means the Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010, as those regulations are amended or replaced from time to time.

"Related Party" means any person, who is:

- (a) a company, trust or other Person of which any shares, units or other interests are beneficially owned by the CDF or any Charging Subsidiary;
- (b) any other Person who has a relevant interest (as defined in section 235 of the FMCA) in any shares in the Charging Group; and
- (c) a director, or senior officer of a Charging Subsidiary or an immediate family member of such director or of the Bishop.

"Related Party Transaction" means any transaction of any nature between the Charging Group and a Related Party including, but not limited to:

- (a) the provision of financial accommodation by the Charging Group to a Related Party;
- (b) the investment by the Charging Group in the capital or equity of a Related Party;
- (c) the transfer of assets between the Charging Group and a Related Party;
- (d) the provision of services by or to the Charging Group or by a Related Party; and
- (e) the giving of a guarantee, indemnity or other commitment by the Charging Group to, at the request of, or for the benefit of, a Related Party.

but does not include:

- (f) the provision of financial accommodation by a Related Party to a member of the Charging Group on arms length commercial terms, or any payment by the Charging Group to that Related Party of principal, interest or other moneys in respect of that financial accommodation in accordance with those terms;
- (g) transactions with a Related Party in relation to investments of the Charging Group which are to be held by the Related Party as nominee or trustee for the Charging Group; or
- (h) payment of reasonable remuneration and expenses to the Bishop for his or her services as Bishop.

"Secured Liabilities" means as at the Reference Date, the aggregate of Debt Instruments and the principal amount outstanding under Prior Charges.

"Secured Property" means the bonds and other securities listed on the NZX in accordance with the current Diocesan investment policy, a copy of which has, prior to its effective date, been provided to the Supervisor and which is acceptable to the Supervisor, such bonds and other securities held by the CDF from time to time in the investment portfolio managed by an Authorised Financial Advisor.

"Secured Receivables" means the aggregate on the Reference Date of the Value of all moneys payable to the Charging Group under any financing receivables of the type appropriate to the business of a finance company and which are secured by a Security

Interest over personal property and/or a charge over non-personal property of the relevant debtor.

"Security and Security Interest" means:

- (a) any present or future mortgage, charge, encumbrance, lien, pledge, finance lease, sale and lease-back, sale and repurchase, flawed asset arrangement, title retention arrangement, charge or similar interest imposed by statute, or other arrangement of any nature having similar economic effect to a Security;
- (b) any present or after acquired interest in personal property that is a Security Interest for the purposes of the PPSA; and
- (c) a guarantee or indemnity, but excludes:
 - (i) liens (except as provided in Part 8 of the PPSA), charges, or other interests in personal property created by any Act other than the PPSA or arising by operation of any rule of law; and
 - (ii) any right of set-off, netting or combination of accounts.

"Single Group" means a group of legal or natural persons, one or more of which is a counterparty to a contract to which a member of the Charging Group is also a Party, who are related in such a way that:

- (a) the financial soundness of any one of them may materially affect the financial soundness of the other(s); or
- (b) one has Effective Control of the other(s).

"Special Resolution" means a Special Resolution of Holders as defined in the Third Schedule in respect of any Debt Instrument as set out in the terms of issue of such Debt Instrument.

"Specified Engagement" means an assurance engagement carried out by an auditor in relation to the CDF's compliance with this Deed.

"Subsidiary" means a company which is at the relevant time a subsidiary of the CDF within the meaning of section 5 of the Companies Act 1993.

"Supervisor" means Covenant Trustee Services Limited or any other or substitute Supervisor or Supervisors for the time being under this Deed.

"Tangible Assets" means, at any time, all assets except those assets which according to GAAP are considered to be intangible assets.

"Total Contingent Liabilities" means, at any time, the aggregate amount of all Contingent Liabilities of the Charging Group at that date other than any Contingent Liability in respect of which the Charging Group has the benefit of a guarantee or indemnity from a Bank, other financial institution or other Person, in any case having a Credit Rating or credit worthiness acceptable to the Supervisor.

"Total Liabilities" means, at any time, the aggregate of:

- (d) in relation to Listed Securities the middle price (being the price midway between the highest and lowest recorded sales) on any recognised exchange in New Zealand executed over the calendar month preceding the Reference Date and if there shall be no such recorded sale or only one such recorded sale over such period, then a value which is acceptable to the Supervisor;
- (e) in relation to any other Tangible Assets a value which is acceptable to the Auditor;
- (f) In respect of (a) to (e) above allowance is to be made for any costs of realisation that may reasonably be expected.

"Wholly Owned Subsidiary" means a Subsidiary all the shares in which are beneficially owned by the Charging Group.

1.4 **Construction:** In the construction of the Deed:

- (a) **Headings:** The headings and marginal notes appear as a matter of convenience and shall not affect the construction of this Deed.
- (b) **Clauses:** In the absence of an express indication to the contrary, references to Parts, clauses, sub-clauses, paragraphs and Schedules are to the parts, clauses, sub-clauses and paragraphs of, and schedules to, this Deed.
- (c) **Statutes:** References to any statute, statutory regulations or other statutory instrument shall be deemed to be references to the statute, statutory regulations or statutory instrument as from time to time amended or re-enacted or, as the context permits, provisions substituted therefor for the time being in force, and in addition reference to any statute includes any statutory regulations or instruments from time to time made and in force under that statute.
- (d) **Agreements:** References to any deed, agreement or other instrument shall be read as referring to such deed, agreement or other instrument as from time to time modified, supplemented or novated.
- (e) **Singular:** The singular includes the plural and vice versa, and words importing any gender include the other genders.
- (f) **Successors and Assigns:** Each reference to a party to this Deed shall be read as a reference to that party and its successors and permitted assigns.
- (g) **Currency:** All references to money shall, unless the contrary is stated or necessarily implied, be deemed to be references to New Zealand currency.

1.5 **Corporate form of the CDF:** The CDF is a corporation sole under section 5 of the Bishops Empowering Act. Consequentially, unless otherwise defined in this Deed, words defined in the Bishops Empowering Act shall have the same meanings in this Deed.

1.6 **PPSA Terms:** In this Deed unless the context requires otherwise, the following words and expressions (and grammatical variations of them) shall have the same meanings as are given to them under, or in the context of, the PPSA: accession, account receivable, advance, at risk, after-acquired property, attach, debtor, documents of title, financing statement, future advance, goods, investment security, intangible personal property, proceeds, purchase

money security interest, purchase price, security agreement, transfer value and verification statement.

2. APPOINTMENT OF SUPERVISOR

The CDF hereby appoints the Supervisor, and the Supervisor hereby accepts appointment, as Supervisor for the Holders on the terms and subject to the provisions of this Deed and applicable law, and with the rights, powers, duties and obligations in respect of any Debt Instruments conferred by this Deed or (save to the extent that it is affected by the express provisions of this Deed) by applicable law.

PART II: CONSTITUTION AND ISSUE OF DEBT INSTRUMENTS

3. DEBT INSTRUMENTS

- 3.1 **Creation and issue of Debt Instruments:** The CDF shall be at liberty to create Debt Instruments at any time and to issue such Debt Instruments to such persons as the CDF shall determine and on such terms and conditions (not being inconsistent with the provisions of this Deed) and in such currencies as the CDF may from time to time determine provided that:
- (a) no Debt Instruments may be issued by the CDF as Security for fluctuating amounts of present or future liabilities, debts or advances (whether by way of indemnity, guarantee or otherwise) of the CDF or any Charging Subsidiary; and
 - (b) no Debt Instruments may be issued by the CDF if the CDF is in breach or would as a result of such issue be in breach of any of the limitations contained in clause 8.1 (Financial Limitations) or any other provision of this Deed.
- 3.2 **Brokerage:** The CDF shall be entitled to pay commission, procurement fee or brokerage to any Person for subscribing for, underwriting the subscription of, or obtaining subscriptions for, any Debt Instrument.
- 3.3 **Cancellation:** All Debt Instruments purchased by the CDF or the Supervisor in its capacity as such under the provisions of this Deed or otherwise and all Debt Instruments redeemed whether upon maturity or otherwise shall be cancelled and the CDF shall not be at liberty to keep the same alive for the purposes of re-issue or to re-issue the same.
- 3.4 **Covenant to Repay Debt Instruments:**
- (a) The CDF hereby acknowledges its indebtedness to the Supervisor as trustee on behalf of the Holders of Debt Instruments in respect of the Principal outstanding from time to time in respect of the Debt Instruments and interest thereon whenever such Debt Instruments are issued and hereby covenants with the Supervisor to pay to the Supervisor when due, in the currency and manner in which the same is payable, at such place as the Supervisor shall by notice in writing direct, the Principal of such Debt Instruments and that until such payment the CDF will pay to the Supervisor as aforesaid interest on such Debt Instruments in the currency and manner in which such interest is payable in accordance with the terms and conditions of issue of such Debt Instruments.

- (b) Notwithstanding the provisions of sub-clause (a) the CDF shall, unless and until otherwise requested by the Supervisor or prevented by law, pay all Principal and interest in respect of the Debt Instruments issued by it to the Holder in accordance with the terms and conditions of issue of such Debt Instruments and each such payment shall operate as payment to the Supervisor in satisfaction, to the extent of the payment, of the indebtedness acknowledged by this clause.
- 3.5 **Right to Deduct Withholding and Other Taxes:** The CDF shall be entitled to deduct from any amount payable to a Holder the amount of any withholding or other tax or duty required to be deducted in respect of such amount under the laws of New Zealand and where any such deduction is or has been made and the amount thereof accounted for by the CDF to the Commissioner of Inland Revenue or other appropriate authority and the balance of the amount payable has been paid to the Holder concerned, the full amount payable to such Holder shall (subject to any agreement to the contrary with the Holder) be deemed to have been duly paid and satisfied by the CDF.
- 3.6 **Unclaimed Payments to Holder:** If any payment made to any Holder pursuant to clause 3.4 (Covenant to Repay Debt Instruments) at its last Registered Address shall be returned unclaimed the amount thereof shall (unless notice of a change of Registered Address has in the meantime been received by the CDF) be retained by the CDF and held for such Holder (as the case may be) without liability to invest the same or pay interest thereon. Any money unclaimed for six (6) years or longer shall be forfeited in accordance with the Unclaimed Money Act 1971 and the CDF shall have no liability in respect of the Unclaimed Amount.
- 3.7 **Validity of Debt Instruments:** No Holder shall be concerned or obliged to enquire whether any Debt Instrument has been issued or any borrowing made or liabilities (actual or contingent) incurred in contravention of any provision of this Deed. All Debt Instruments issued for valuable consideration shall be deemed to be validly issued and constituted by this Deed and entitled to the benefit of the provisions of this Deed notwithstanding that it may subsequently be determined that the issue of such Debt Instrument or any borrowing made or liabilities (actual or contingent) incurred in respect of such Debt Instrument, was in breach of any provision of this Deed. This clause shall not however prejudice or affect the Supervisor's rights under or pursuant to this Deed against the CDF and any Charging Subsidiary in relation to such breach.
- 3.8 **Enforcement of Holders' Rights:** The CDF acknowledges, in relation to each Debt Instrument and the Holders of the Debt Instruments, that this Deed is made for the benefit of any person who is from time to time a Holder. Subject to section 104 of the FMCA, the Deed is intended to be enforced by the Supervisor.
- 3.9 **Debt Instrument Certificates:**
- (a) The CDF shall, subject to the conditions of issue of the Debt Instrument, issue to every Holder a Certificate or several Certificates evidencing the relevant Debt Instrument held by it in reasonable denominations, such Certificates to be in or to the effect of the form set out in the First Schedule including the conditions set out in the Second Schedule (or in such other form as the Supervisor shall approve) and in the case of

Debt Instruments which are repayable in a currency other than New Zealand currency in such form as the Supervisor approves.

- (b) The Debt Instrument shall be held with the benefit of and subject to the provisions of this Deed, the conditions endorsed on the Debt Instrument Certificates and the further conditions contained in the Second Schedule or such (if any) of them as are applicable thereto respectively and any further special conditions not inconsistent with this Deed as may be required by the terms of issue of the Debt Instrument or as may be required by or approved by the Supervisor and aforesaid provisions, conditions and special conditions shall be binding on the CDF and the Holders and all Persons claiming through them respectively.
- (c) Such Debt Instrument Certificates shall be executed by the CDF or on behalf of the CDF by the manual or facsimile signature of any Person or Persons appointed by the Bishop for the purpose.

3.10 Replacement Debt Instrument Certificates:

- (a) The CDF may at any time issue on such terms and conditions as the CDF may reasonably require:
 - (i) in the case of a transfer of the Debt Instrument specified in any Debt Instrument Certificate, a new Debt Instrument Certificate for such Debt Instrument to the transferee thereof and in the case of a transfer of part only of the Debt Instrument specified in any Debt Instrument Certificate a new Debt Instrument Certificate in respect of the Debt Instrument transferred to the transferee thereof and a new Debt Instrument Certificate in respect of the balance to the registered Holder thereof;
 - (ii) several new Debt Instrument Certificates in respect of the Debt Instrument specified in any Debt Instrument Certificate in exchange for the latter; or
 - (iii) a new Debt Instrument Certificate to the Holder of a Debt Instrument in exchange for any existing Debt Instrument Certificate or Certificates for such Debt Instrument (whether denominated in the same currency as the existing Debt Instrument Certificate or Certificates or not).
- (b) If any Debt Instrument Certificate be worn out or defaced then upon production thereof to the CDF it may cancel the same and issue a new Debt Instrument Certificate in lieu thereof, and if any Debt Instrument Certificate be lost or destroyed then upon proof thereof to the satisfaction of the CDF and on such terms and conditions as the CDF may require, the CDF may issue a new Debt Instrument Certificate in lieu thereof to the Person apparently entitled to such lost or destroyed Debt Instrument Certificate.

3.11 Obligation to maintain Register: The CDF shall maintain a Register and appoint a Registrar (which may be the CDF itself (maintaining such Register among its general accounting records or separately) or any other Person appointed by the CDF as Registrar in respect of the Debt Instrument) and cause the Registrar to establish and maintain the Register. The CDF shall comply with and (where the Registrar is not the CDF) shall use

reasonable endeavours to ensure that the Registrar complies with all legal requirements relating to the maintenance of registers of securities and the requirements of this Deed.

3.12 Entries in Register: There shall be entered in the Register the details referred to below and any other details required by any applicable law and such other details as the CDF thinks fit. The following provisions shall apply in respect of the Register:

- (a) the CDF shall comply with all statutory requirements and all requirements of the Supervisor applicable to the Register;
- (b) any Debt Instrument shall be indicated as such in such Register;
- (c) the details of any change of name or address of any such Holder, as advised to the CDF, or the issue by the CDF of any replacement Debt Instrument Certificate, shall forthwith be entered in the Register by the Registrar;
- (d) the Supervisor, any Receiver, any Holder and any Person authorised in writing by any such persons may at all reasonable times inspect the Register and take copies of and extracts from the same;
- (e) the Register may be closed for periods not exceeding thirty days in total in any one year;
- (f) if the Register or particulars to be entered thereon shall be kept by computer the system shall be such as is approved in writing by the Supervisor and the Auditors, such approval not to be unreasonably withheld; and
- (g) the Register shall be audited by and to the satisfaction of the Auditors at regular intervals of not more than twelve months or upon request in writing by the Supervisor if the Supervisor has reasonable grounds for believing the requirements of this clause 3.12 are not being complied with in relation to the Register.

3.13 New Zealand Statutory Requirements: The CDF shall:

- (a) **FMCA:** Comply with the provisions of sections 215-218 and section 220 of the FMCA as regards the maintenance and form of each Register, except as regards Debt Instruments to which such provisions do not apply;
- (b) **Location:** Maintain each Register in Hamilton or in some other place in New Zealand, except as regards Debt Instruments offered or issued solely or principally outside New Zealand where maintenance of the relevant Register outside New Zealand is required by law or market convention;
- (c) **FMCA Not Applicable:** In respect of Debt Instruments to which sections 215-218 and section 220 of the FMCA does not apply or the Register for which is kept outside New Zealand, ensure (subject however to the requirements of any other applicable law) that the Register therefor is in a form that complies substantially with the requirements of section 217 of the FMCA and that in respect of any Register kept outside New Zealand a copy updated at such intervals as are reasonably practicable is kept in New Zealand or that other arrangements to the reasonable satisfaction of the Supervisor are made permitting the Supervisor access to the information contained in such Register.

3.14 **Terms and Conditions:** The Debt Instruments shall be held by the Holders with the benefit of and subject to the following provisions, terms and conditions (referred to in this Deed as the terms and conditions of or applicable to the relevant Debt Instrument):

- (a) **This Deed:** such of the provisions of this Deed as are applicable thereto; and
- (b) **Debt Instrument Certificates:** the terms and conditions endorsed on or relating to any Debt Instrument Certificates therefor and the terms and conditions specified to be applicable to such Debt Instrument in any deed, agreement, prospectus, product disclosure statement or other document (whether supplemental to this Deed or not) issued or executed by the CDF in relation to the issue, allotment or offering of such Debt Instrument and which the Holder has accepted (whether expressly or otherwise);

and all such provisions, terms and conditions shall be binding upon the CDF, the Supervisor, the Holder and all Persons claiming under or through them respectively. The Holder and all Persons claiming by or through them are deemed to have notice of all such provisions, terms and conditions.

3.15 **Alteration of Terms and Conditions of Issue of any Debt Instrument:**

- (a) The CDF may at any time and by prior arrangement with the Holder or group of Holders concerned alter any of the terms or conditions attached to any Debt Instrument but so that alteration shall not be inconsistent with any of the provisions of this Deed.
- (b) Details of any such alteration shall be recorded in the Register in respect of the Debt Instrument affected and the CDF may issue a new replacement Debt Instrument Certificate or Certificates in respect of such Debt Instrument embodying the terms and conditions of any such alteration.

3.16 **Identity of Holders.** The Holders are to be regarded as the beneficial owners of the Debt Instrument registered in their names respectively in the relevant Register, and are to be regarded as exclusively entitled thereto and the CDF and all other Persons may act accordingly. Neither the CDF nor any Registrar shall be bound to enter in any Register notice of any trust or, save as provided in the relevant Certificate or except as ordered by a Court of competent jurisdiction, to recognise any trust or equity affecting the ownership of any Debt Instrument or the money thereby represented.

3.17 **Exclusion of Equities:** Every Holder will be recognised by the Supervisor as entitled to the Debt Instrument held by it and to the moneys payable thereon free from any equity, set-off or cross claim between the CDF and any prior Holder thereof.

3.18 **Taxation Indemnity:** Whenever, in respect of any Debt Instrument, there shall by law be imposed any liability on the Supervisor or the CDF to make any payment of or on account of tax payable by the Holders, the Supervisor and the CDF respectively shall in respect of such liability be indemnified by such Holders and the personal representatives of such Holders and in the case of the Supervisor additionally by the CDF (in respect of which the CDF shall in turn be indemnified as aforesaid) and any moneys paid by the Supervisor and the CDF in respect of any such liability may be recovered from such Holders and the personal representatives of such Holders or the CDF (as the case may be) as a debt due to the

Supervisor or the CDF. Nothing herein contained shall prejudice or affect any other right or remedy of the Supervisor or the CDF.

4. TRANSFER OF DEBT INSTRUMENT

- 4.1 **Transfer:** Debt Instruments may be transferred by the Holders in accordance with such procedures and on the production of such transfer and other documentation as is determined by the CDF to be appropriate either generally or for particular Debt Instruments. In any case the transferor of Debt Instruments shall (notwithstanding any provisions to the contrary as contemplated in clause 4.3 (Terms of Debt Instrument Prevail)) be deemed to remain the Holder until the name of the transferee has been entered in the Register.
- 4.2 **Death, Insanity or Bankruptcy of Holder:** Any Person becoming entitled to any Debt Instrument as a consequence of the death, insanity or bankruptcy of a Holder may, upon producing such evidence as to his, her or its right or title as the CDF shall require, be registered as the Holder or may transfer such Debt Instrument in accordance with the provisions of this Deed. The executors or administrators of a deceased Holder (not being one of several joint Holders) shall be the only Persons recognised by the CDF and the Supervisor as having any title to or interest in the Debt Instrument so held by that Holder. In the event of the death of any Holder who held any Debt Instrument jointly, the surviving joint Holder or Holders shall be the only Person or Persons recognised by the CDF and the Supervisor as having any title to or interest in such Debt Instrument. The CDF may retain money which is payable upon any Debt Instrument to which this clause 4.2 applies until a transmission or transfer of the Debt Instrument shall have been registered on such terms and conditions as it considers reasonable.
- 4.3 **Terms of Debt Instrument Prevail:** The above provisions of this clause 4 shall (save as otherwise provided in the second sentence in clause 4.1 (Transfer)) be subject to any terms and conditions of the relevant Debt Instrument which restrict or prescribe procedures for the transfer thereof or which otherwise exclude or are inconsistent with such provisions.

PART III: SECURITY INTEREST

5. SECURITY INTEREST

5.1 Security Interest:

- (a) The CDF and each Charging Subsidiary grants to the Supervisor a Security Interest in the Secured Property to secure the payment of the Debt Instrument Indebtedness.
- (b) Such Security Interest shall be a first ranking Security Interest subject only to such liabilities (if any) as may be deemed to be preferred by operation of law, or any Prior Charge given or permitted to subsist pursuant to the provisions of clause 5.3 (Prior Charges).
- (c) Except to the extent agreed otherwise by the Supervisor in writing, nothing in this Deed shall be construed as an agreement to defer or postpone the date of attachment of the Security Interest in any Personal Property.

- 5.2 **Transfer of accounts receivable and chattel paper:** In the case of all the CDF's and each Charging Subsidiary's present and future accounts receivable and chattel paper, and all of the CDF's and each Charging Subsidiary's present and future rights in relation to any accounts receivable and chattel paper, the Security Interest provided for by clause 5.1(a) takes effect as a transfer and assignment thereof to the Supervisor.
- 5.3 **Prior Charges:** Subject always to the provisions of clause 8.2(a) (Prior Charges Limitation), the CDF may create a Prior Charge over any asset to secure:
- (a) any moneys to be borrowed, raised or otherwise owing in purchasing, acquiring or improving in any manner approved by the Supervisor such asset for an amount not exceeding the cost of such acquisition or improvement of the asset; or
 - (b) any bank facility made available to the CDF and secured by a Security Interest over all the assets of the CDF,
- provided that subject always to the provisions of clause 8.2(a) (Prior Charges Limitation):
- (c) the CDF shall be entitled to create a Prior Charge over any right, title or interest it may have in any financing agreement (or the chattels subject thereto) to which it is a party or which is held by it following assignment thereof (whether absolutely or by way of Security) and/or over any other assets held or arising in respect of any such agreements; and
 - (d) the CDF may renew or extend the term, increase the rate of interest or otherwise vary the provisions of any Prior Charge given or permitted to subsist pursuant to the foregoing provisions but subject always to the condition that the principal sum thereby secured shall not be increased except to secure any additional moneys pursuant to any variation given for the purposes permitted by clause 5.3(a).
- 5.4 **Ranking of Prior Charges:**
- (a) All such Prior Charges raised or taken over shall rank as charges upon the assets subject thereto in priority to the charges thereover created by or pursuant to this Deed; and
 - (b) Whenever it may be necessary to give effect to such intended priority the Supervisor at the request and expense of the Charging Group shall join in the execution of any memorandum of priority or other relevant document; and
 - (c) No vendor, lender or other Person shall be concerned or obliged to enquire whether any loan to or liability assumed by the CDF or any Charging Subsidiary is in contravention of the provisions of clause 8.1 (Financial Limitations) or of this clause nor shall the validity and priority of any charge given to or held by any vendor, lender or other Person be affected by knowledge on the part of any vendor, lender or other Person of any such contravention.
- 5.5 **Partial Releases of Secured Property:** At any time before the Date of Enforcement, upon the request in writing and at the cost of the Charging Group and without approval by the Holders (unless in the opinion of the Supervisor the interests of the Holders would be materially prejudiced) the Supervisor may:

- (a) upon being satisfied as a result of receiving such valuations or other evidence as the Supervisor shall specify that full market or otherwise reasonable value is being received or that the circumstances otherwise justify the release and upon and subject to such terms and conditions as in this discretion the Supervisor may specify; or
- (b) in connection with any disposal of which is not in breach of clause 8.3(e) (Disposal) (as to which the Supervisor may rely on a certificate to this effect from the Bishop or other appropriate authorised person).

release any part of the Secured Property from the operation of any charge thereover created by or pursuant to this Deed and/or release any Charging Subsidiary from its guarantee and other obligations under this Deed and/or execute all documents which may be necessary to effect any such release or discharge, provided always that:

- (c) the Supervisor shall not concur in the sale and subsequent release of more than 50% of Total Tangible Assets of the CDF without the sanction of a Special Resolution of Holders; and
- (d) in any other case, where the Supervisor is not satisfied that either full market or otherwise reasonable value is being received or that the circumstances otherwise justify the release, the Supervisor may nevertheless concur in the release of any part of the Secured Property from the operation of any Security Interest thereover created by or pursuant to this Deed with the consent of and confirmed by way of an ordinary resolution of Holders.

5.6 Investment Securities: At any time after the occurrence of an Event of Default (whether or not it is continuing), the Supervisor may:

- (a) cause itself to be registered as the holder of any investment securities, including shares and interest bearing bonds held in a company, or as the Person entitled to any rights relating to such investment securities, in order to hold those investment securities or related rights as the secured party under this Deed;
- (b) complete and present any transfer to the relevant issuer for registration; and
- (c) complete in favour of any Person (including the Supervisor itself) who is purchasing the investment securities under the powers given to the Supervisor by this Deed or by law, any transfer or any other document signed by or on behalf of the CDF.

For the purposes of this clause 5.6 the expressions "related rights" and "rights relating to" include:

- (d) distributions;
- (e) options or rights to take up any securities of any nature; and
- (f) all other rights, money or securities (as defined in the FMCA) of any nature,

attributable to, or arising from, any investment securities, and includes all proceeds of any such rights, all documents of title relating to any rights and all of the CDF's present and future rights in relation to those rights, proceeds and documents of title, and includes any of them.

5.7 **Proceeds of Sale of Released Assets:** The proceeds of sale of any part of the Secured Property may until the Date of Enforcement, but subject to any terms and conditions imposed by the Supervisor, be applied by the CDF or the relevant Charging Subsidiary for the purpose of carrying on its business.

6. DEALINGS WITH SECURED PROPERTY

6.1 **Consent Required:** The CDF will not do or attempt to do any of the following without the Supervisor's consent:

- (a) **Disposal:** whether by a single transaction, or a number of related or unrelated transactions and whether at the same time or over a period of time, dispose of any Secured Property (except as permitted by clause 6.2);
- (b) **Negative Pledge:** create, allow to be created or permit to exist, any security interest over any Secured Property; and
- (c) **Set-off or Netting:** allow any of its chattel paper, accounts receivable or other monetary obligations to be subject to any right of set-off, netting or combination of accounts, or other defence or claim in favour of the Account Debtor, except for rights that arise:
 - (i) solely by operation of any rule of law (but not if created or arising as a result of any non-performance or default); or
 - (ii) under any netting or set-off arrangement entered into by the CDF in the ordinary course of its transactional banking arrangements for the purpose of netting debit and credit balances.

6.2 **Permitted Dealings:** The CDF may:

- (a) **Inventory:** dispose of any inventory in the ordinary course of, and for the purpose of carrying on, the CDF's ordinary business and on arm's-length commercial terms, on the condition that the CDF deposits any proceeds of that inventory the CDF receives in any of the CDF's usual working current accounts as specified or agreed from time to time by the Supervisor;
- (b) **Money:** part with money in the ordinary course of, and for the purpose of carrying on, the CDF's ordinary business and on arm's-length commercial terms;
- (c) **Assets:** renew or replace any of the CDF's Secured Property assets with other assets comparable as to type, value and quality, on the condition that the CDF does not create, allow to be created or permit to exist any purchase money security interest in any such other assets;
- (d) **Chattel Paper, Accounts Receivable and Other Monetary Obligations:** collect in and realise any chattel paper, accounts receivable and other monetary obligations owing to the CDF, on the condition that the CDF deposits any amounts collected or realised in any of the CDF's usual working current accounts as specified or agreed from time to time by the Supervisor;

- (e) **Borrowed Money:** apply the proceeds of money borrowed or raised for the purposes for which it was borrowed or raised; and
- (f) **Disposal of Assets:** dispose of any assets where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other disposal, other than any permitted under paragraphs (a) to (e) above) does not exceed 20% of Total Tangible Assets in any financial year.

6.3 **Cessation of Rights:** On the occurrence of any Event of Default or upon receipt of notice from the Supervisor to cease dealing with the Secured Property, all of the CDF's rights under clauses 6.1 and 6.2 to deal in any way with the Secured Property shall immediately cease.

7. PRIORITY OF SECURITY INTEREST IN SECURED PROPERTY

7.1 **Priority of Security Interest in Secured Property:** Except to the extent agreed otherwise by the Supervisor in writing, the Security Interest granted in the Secured Property has the same priority in relation to all Debt Instrument Indebtedness, including future advances. Nothing in this clause 7.1 shall prevent or adversely affect the Supervisor claiming that the Security Interest is a purchase money security interest in respect of all or part of the Secured Property.

7.2 **No consent or agreement to subordination, attachment or accessions:** Except to the extent agreed otherwise by the Supervisor in writing, nothing in this Deed shall be construed as:

- (a) an agreement by the Supervisor to subordinate the Security created under and by this Deed in favour of any person; or
- (b) consent by the Supervisor to any other Security attaching to or being created in any Secured Property;
- (c) consent by the Supervisor to any personal property that is not Personal Property becoming an accession to any Personal Property;
- (d) consent by the Supervisor to any Personal Property becoming an accession or affixed to any property that is not Secured Property.

7.3 **Further assurances:** Without limiting any of the CDF's or any Charging Subsidiary's other obligations under this Deed, the CDF and each Charging Subsidiary will promptly execute, deliver to the Supervisor, and (if applicable) register or deliver up to the Supervisor, all relevant transfers (including blank transfers), assignments, securities, instruments, other deeds or documents in each case in the form and substance and at the times and places specified by the Supervisor. Additionally the CDF and each Charging Subsidiary will do all things and provide all information which the Supervisor thinks is desirable, in order:

- (a) **Title:** to perfect the CDF's and/or the Charging Subsidiary's title to all or any part of the Secured Property;

- (b) **Security:** to perfect, preserve or otherwise protect the Secured Property or the Security intended to be created under and by this Deed, and the priority of that Security required by the Supervisor;
 - (c) **Register financing statements:** for the Supervisor to register and maintain (including to renew before expiry) one or more financing statements in relation to the Security Interest in Secured Property created or provided for by this document;
 - (d) **Remove financing statements and caveats:** to remove any financing statement which is registered against the CDF or Charging Subsidiary which is not permitted by this Deed or otherwise consented to by the Supervisor in writing;
 - (e) **Secure:** to more satisfactorily secure to the Supervisor payment of the Debt Instrument Indebtedness, including the granting of fixed Security;
 - (f) **Power:** to facilitate the exercise of any power by the Supervisor or any Receiver;
 - (g) **Realisation:** to facilitate the realisation of all or any part of the Secured Property following the occurrence of an Event of Default; and
 - (h) **Full Benefit:** to otherwise enable the Supervisor to obtain the full benefit of the provisions of this Deed.
- 7.4 **Ultimate Balance:** The Security constituted by clause 5.1 (Security Interest) shall be continuing and not satisfied by any intermediate payment or satisfaction of the whole or any part of any of the Debt Instrument Indebtedness but shall secure the ultimate balance of the Debt Instrument Indebtedness.
- 7.5 **Security Additional:** The powers conferred by this Deed in relation to the Secured Property on the Supervisor or on any Receiver of that Secured Property shall be in addition to and not in substitution for the powers conferred on mortgagees under the Property Law Act 2007 or any other relevant statute except insofar as they are expressly or impliedly excluded and where there is any ambiguity or conflict between the powers contained in any of those Acts and those conferred by this Deed as aforesaid then the terms of this Deed shall prevail
- 7.6 **Personal Property Securities Act 1999:** Without limiting any other provision of this Deed, the Charging Group:
- (a) **Change of Name:** will give the Supervisor not less than 14 days' prior written notice of any proposed change in the name of any member of the Charging Group (such notice to be given to the officer of the Supervisor responsible for the relationship with the Charging Group);
 - (b) **Verification Statement:** waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interest created under and by this Deed;
 - (c) **Further action:** shall promptly, upon request by the Supervisor, do all things (including signing any other documents) and provide all information necessary to enable the Supervisor to perfect and maintain the perfection of any Security Interest in Secured Property granted to the Supervisor by the Charging Group (including by registration of a financing statement);

- (d) **Section 109 of the PPSA:** agrees that, at any time after an Event of Default has occurred or at any time if any Secured Property is at risk, the Supervisor may:
- (i) take possession of any Secured Property; and/or
 - (ii) sell or dispose of any Secured Property in such manner and generally on such terms and conditions as the Supervisor thinks fit,

and, in each case, otherwise do anything the Charging Group could do in relation to the Secured Property. The Supervisor and the Charging Group agree that section 109(1) of the PPSA is contracted out of in respect of particular Secured Property if and only for so long as the Supervisor is not the secured party with priority over all secured parties in respect of that particular Secured Property.

- (e) **Remainder of Part 9 of the PPSA:** and the Supervisor agrees that, to the extent permitted by law in respect of this Deed and the Security created under and by this Deed:
- (i) the Charging Group and the Supervisor contract out of sections 114(1)(a), 133 and 134 of the PPSA;
 - (ii) the Charging Group and the Supervisor contract out of the Charging Group's rights to (and each member of the Charging Group waives its rights to):
 - (1) receive notice of the Supervisor's proposal to retain collateral under section 120(2) of the PPSA;
 - (2) object to the Supervisor's proposal to retain any Secured Property under section 121 of the PPSA;
 - (3) not have goods damaged when the Supervisor (or any Person on its behalf) removes an accession under section 125 of the PPSA;
 - (4) receive notice of the removal of an accession under section 129 of the PPSA; and
 - (5) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA;
- (f) **Other rights continue:** acknowledges that, where the Supervisor has rights, powers or remedies in addition to, or existing separately from, those in Part 9 of the PPSA, those rights shall continue to apply and are not limited or excluded (or otherwise adversely affected) by the right, power or remedy provided by this Deed or by law and, in particular, will not be limited by section 109 of the PPSA.

PART IV: COVENANTS AND GOVERNANCE REQUIREMENTS

8. FINANCIAL LIMITATIONS, SPECIAL COVENANTS AND GOVERNANCE REQUIREMENTS

- 8.1 **General:** The CDF, in respect of itself and each Charging Subsidiary, represents and warrants to the Supervisor that:

- (a) **Duly Formed:** it is a corporation sole under section 5 of the Bishops Empowering Act, and that each Charging Subsidiary is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation, capable of suing and being sued and has the power and authority to own its assets and to carry on its business as presently conducted;
- (b) **Power and Authority:** it has the power, and all necessary action has been taken, to authorise it to enter into, execute and deliver, and exercise its rights and perform its obligations under, this Deed;
- (c) **Binding Obligations:** its obligations under this Deed are legal, valid, binding and enforceable against it subject to equitable principles and laws affecting creditors' rights generally;
- (d) **No Contravention:** its entry into, and the exercise of its rights and performance of its obligations under this Deed does not and will not conflict with, violate or contravene:
 - (i) any applicable law or directive;
 - (ii) its constituent documents; or
 - (iii) any document which is binding upon it or any of its assets,
 nor cause any limit on its powers or the powers of its authorised persons to be exceeded;
- (e) **Legal Requirements Met:** all consents, acts, conditions and things required to be obtained, done, fulfilled and performed in order to:
 - (i) enable it lawfully to enter into, exercise its rights and perform its obligations under this Deed;
 - (ii) make this Deed (after stamping and/or registration, if applicable) admissible in evidence; and
 - (iii) enable it to continue to operate its business,
 have been obtained, done, fulfilled and performed and all consents remain in full force and effect,
- (f) **Financial Statements and Information:**
 - (i) the latest Financial Statements provided to the Supervisor under this Deed were prepared in accordance with NZ GAAP consistently applied.
 - (ii) the latest Financial Statements provided to the Supervisor under this Deed present a true and fair view of the consolidated financial position of Charging Group and the consolidated results and operations of Charging Group as at the date they were prepared and for the period to which they relate;
 - (iii) all information provided to the Supervisor in writing at any time was, when given, true and accurate and not misleading in any respect, and did not omit to state any facts or circumstances which would make that information untrue, inaccurate or misleading in any respect, in each case in the opinion of the

Supervisor and by reference to the circumstances then existing, and no facts were omitted which it reasonably believes would be material to a reasonable and prudent supervisor's assessment of the nature and degree of risk undertaken by it; and

- (iv) no material adverse change has taken place in respect of any member of the Charging Group since the date the latest Financial Statements were provided to the Supervisor under this Deed;
- (g) **No Default:** neither it nor any of the Charging Subsidiaries are in default under any agreement relating to its indebtedness, or under any other agreement which is binding on it or any of its property, to an extent or in a manner which might have a material adverse effect on any member of the Charging Group, and no event has occurred or circumstance exists which with the giving of notice, the expiration of time, the making of a determination or the fulfilment of any other requirement (or any combination of any of those things) would constitute such a default;
- (h) **No Legal Proceedings:** no legal proceedings, arbitration or administrative proceeding of, or before, any court, arbitral body or governmental agency has commenced, or to the best of its knowledge and belief is pending or threatened, which, if adversely determined, is likely to have a material adverse effect on any member of the Charging Group; and
- (i) **Compliance with Law:** it has complied with all laws of New Zealand and the laws of any other jurisdiction applicable to its assets, breach of which would, or could reasonably be expected to, have a material adverse effect on any member of the Charging Group.

8.2 **Financial Limitations:** The CDF and each Charging Subsidiary covenants with the Supervisor that at all times:

- (a) **Prior Charges Limitation:** It will not borrow or raise or permit to be outstanding any money on the Security of any Prior Charge when the aggregate of all principal moneys then secured by existing Prior Charges plus the moneys so proposed to be borrowed or raised and secured would exceed 2% of Total Tangible Assets.
- (b) **Secured Property to Debt Instrument Ratio:** The Value of Secured Property will not be less than 110% of the Principal of the Debt Instruments
- (c) **Minimum Capital Ratio:** The Charging Group's Capital Ratio will not be less than 10%, calculated in accordance with the Credit Ratings Exemption Notice, adjusted as necessary in accordance with the guidelines and treatment relating to the Capital Ratio as agreed in writing from time to time between the Supervisor and the Issuer.
- (d) **Liquidity Coverage Ratio:** The Charging Group's cash shall not at any time fall below 7% of Total Tangible Assets.

8.3 **Negative Covenants:** The CDF and each Charging Subsidiary covenants with the Supervisor that it will not, without the prior written consent of the Supervisor:

- (a) **Negative Pledge:** (except for any Security created under or expressly permitted by this Deed or, in relation to Secured Property that is Personal Property, a purchase money security interest in favour of a seller, lessor or consignor of that Personal Property) create or permit to subsist any Security Interest over the Secured Property, ranking:
 - (i) in priority to or pari passu with the Security Interest of the Supervisor created by or pursuant to this Deed; or
 - (ii) after the Security Interest in favour of the Supervisor created by or pursuant to this Deed, unless by the specific provisions of such Security Interest the priority thereover of the said Security in favour of the Supervisor as a continuing Security is expressly reserved to the satisfaction of the Supervisor;
- (b) **Restriction on Related Party Transactions:** enter into any Related Party Transaction in relation to any employee of the CDF or any other member of the Charging Group or in relation to any other Related Party, enter into any Related Party Transaction except in the ordinary course of business and where the terms thereof are evidenced in writing and the consideration therefor is on the basis of an arms length transaction as between two unrelated parties contracting in an open market;
- (c) **Restrictions on business:** carry on any business other than the provision of financial accommodation and financial services;
- (d) **Exposure:** The Charging Group's Exposure to any Person or any Single Group shall not exceed an amount equal to 10% of Total Tangible Assets;
- (e) **Disposal:** sell or transfer as a going concern, whether by a single transaction, or any series of transactions whether related or not within any consecutive 24 month period, the whole of its undertaking, or any part or parts thereof comprising more than 40% of Total Tangible Assets.
- (f) **Writing up of assets:** write up the value of any asset in its books of account beyond the fair market value thereof as approved by the Auditors at the time of such writing up;
- (g) **Compromise or Amalgamation.** enter into or make any proposal for a compromise or amalgamation (other than any amalgamation with another Charging Group Member, prior written notice of which has been given to the Supervisor); or
- (h) **Distributions:** make any distribution other than by way of dividend out of profits,

And in any event no distributions of any kind are to be made at any time after an Event of Default has occurred and is continuing.

8.4 **General Covenants:** The CDF and each Charging Subsidiary hereby covenants with the Supervisor that while any amount remains outstanding under this Deed it will:

- (a) **Attend General Meetings:** permit the Supervisor through its agent, attorney or representative to attend any general meeting of the Charging Group and to be heard on any part of the business of the meeting which concerns the Supervisor or the Holders;

- (b) **Carry on Business:** carry on and conduct its business in an efficient, prudent and businesslike manner;
- (c) **Meet Obligations:** duly pay all liabilities and comply with all obligations binding on it by law, contract or otherwise;
- (d) **Information:** whenever requested, to give to the Supervisor or any chartered accountant or Receiver or other Person appointed by the Supervisor such information as they shall require with respect to all matters relating to its affairs and all matters relating to the Holders and ensure that all such information is true and accurate in all material respects as at the date when that information is provided and will not omit to state any fact or circumstance which would make that information untrue, inaccurate or misleading in any material respect;
- (e) **Events of Default:** promptly upon becoming aware of the same notify the Supervisor of the occurrence of any Event of Default and any event or circumstance which:
 - (i) with the lapse of time, giving of notice or fulfilment of any other requirement would constitute an Event of Default; or
 - (ii) may have a material adverse effect on the Charging Group,
 giving full details of it and of any action taken (or to be taken) as a result;
- (f) **Maintain Consents:** maintain in full all consents required to enable it to perform or comply with its material obligations under this Deed;
- (g) **Assets situated outside New Zealand:** where the Secured Property comprises assets outside New Zealand, the Charging Group shall at its own cost do all such things, including registering or recording the charge in such manner as may be required by the laws in force in the place where the assets thereby charged are situated, to ensure that the charge is a valid and effective first Security Interest to the satisfaction of the Supervisor subject only to any Prior Charges permitted by this Deed; and
- (h) **Compliance with Laws, etc:** duly and promptly comply with all laws, directives and consents the non-compliance with which might give rise to a Security Interest or have a material adverse effect on the Charging Group or may adversely and materially affect the rights or Security of the Supervisor or any Holder under this Deed.
- (i) **Exposure disclosure:** if the Exposure of the Charging Group to a Person or Single Group exceeds an amount equal to 20% of CDF Funds, it shall provide details of any such Exposure to the Supervisor in the next CDF's Quarterly Report certifying to whom and what the Exposure relates and that the Bishop is satisfied that there are no undue risks to the Charging Group in such Exposure.
- (j) **Risk management programme:** have a risk management programme and:
 - (i) take all practicable steps to comply with the risk management programme; and
 - (ii) submit the risk management programme to the Supervisor for approval. If the Supervisor is not satisfied with the risk management programme, the CDF must

amend the risk management programme and resubmit it to the Supervisor within a reasonable time specified by the Supervisor; and

- (iii) agree that the Supervisor may require the CDF to have the risk management programme, or the manner in which it is being implemented or operated, reviewed and reported on at the cost of the CDF, within any reasonable time period specified by the Supervisor.

8.5 **Guarantee by Charging Subsidiary:** Each Charging Subsidiary jointly and severally unconditionally and irrevocably guarantees the due payment of the aggregate Debt Instrument Indebtedness by the CDF as and when the same becomes due and payable in accordance with the provisions of this Deed and each Guarantor agrees that the following provisions shall have effect and apply to the guarantee given by each Charging Subsidiary under or pursuant to this Deed:

- (a) **Payment:** Whenever any default has been made by the CDF in the payment of the Debt Instrument Indebtedness the Charging Subsidiary will forthwith pay such money to the Supervisor, to the intent that the same may be applied by the Supervisor pursuant to this Deed.
- (b) **Liability not prejudiced:** Neither the liability of the Charging Subsidiary, nor any of the rights, powers or remedies of the Holders or the Supervisor, under this guarantee shall be affected or discharged by anything which, but for this clause 8.5(b), might operate to affect or discharge the liability of, or otherwise provide a defence to, that Charging Subsidiary (whether or not known to that Charging Subsidiary), including, without limitation:
 - (i) the granting of any time, credit, indulgence or other concession to any other member of the Charging Group or other Person by any Holder or the Supervisor;
 - (ii) any amendment to, or variation of, this deed, or any Charging Subsidiary not receiving notice of any such amendment or variation;
 - (iii) any Subsidiary or other Person joining in this, or giving any similar guarantee, or giving any other Security, or failing or being incompetent to give this guarantee or any other guarantee or any Security;
 - (1) the liability of any other Charging Group member or other Person ceasing from any cause whatsoever (including release or discharge by any Holder or by the Supervisor or by any other Charging Group member failing to become legally bound to the Holders or the Supervisor as intended);
 - (2) any Security (including any Security given pursuant to this Deed) held or taken in respect of any Debt Instrument Indebtedness being void, voidable, unenforceable, defective or informal or being released, partially released, discharged, partially discharged or varied in any way;
 - (3) failure by any other Charging Group member or other Person to provide any Security which has been requested by the Supervisor or ought to be provided under or pursuant to this deed;

- (4) any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any agreements, securities, documents of title or assets, or of any of the rights of the Holders or any of them or of the Supervisor against any other Charging Group member or other Person;
 - (5) the enforcement of, or failure to enforce, any rights of the Holders or the Supervisor under this Deed, or anything else done, or omitted or neglected to be done, by the Supervisor or any Holder, whether in exercise of the authorities, powers and discretions vested in them by this Deed or any other document or by law or otherwise;
 - (6) the dissolution of any other Charging Group member or other Person, or the appointment of any receiver, receiver and manager, statutory manager or similar person, or the establishment of any compromise or other arrangement in respect of any other Charging Group member or other Person;
 - (7) the amalgamations, change in constitution, status or control, or reconstruction or reorganisation, of any other Charging Group member or other Person; or
 - (8) any other thing whatever, other than a release of this Deed given by the Supervisor pursuant to clause 5.5.
- (c) **Principal obligation:** This guarantee is a principal obligation. It shall be treated as in addition to, and not in substitution for or collateral to, any other Security or right which the Supervisor may have under or by virtue of this Deed. In particular it shall be independent of any other Security, to the intent that the respective guarantees may be enforced against each Charging Subsidiary or any of them without first having recourse to any such securities or rights and without taking steps or proceedings against any other Charging Group member. This is notwithstanding that any other Security may be in whole or in part unenforceable by reason of any rule of law or equity and notwithstanding the loss by the Supervisor of any other Security or any other acts or omissions on the part of the Supervisor.
- (d) **Continuing guarantee:** This guarantee is a continuing guarantee and shall operate irrespective of any intervening payments, settlement of account or other matter or thing whatever until a final release has been signed by the Supervisor and delivered to the Charging Subsidiary.
- (e) **Discretion:** The Supervisor may (unless otherwise directed by a Special Resolution of the relevant Holders) from time to time determine whether it shall enforce or refrain from enforcing any guarantee given under or pursuant to this deed. It may make any arrangement or compromise with any Charging Group member in relation to the provisions of this Deed or any Debt Instruments which the Supervisor may think expedient in the interests of the Holders.

- (f) **Payments in gross:** All money from time to time received by the Supervisor in reduction of the CDF's indebtedness from or on account of the CDF (including any dividends upon the liquidation of any Charging Group member or from any other Person or from the realisation of any Security) and capable of being applied by the Supervisor in reduction of the CDF's indebtedness in relation to the Debt Instrument Indebtedness shall be regarded as payments in gross. No Charging Group member has any right to stand in the place of the Supervisor in respect of, or to claim the benefit of, any money so received as against any other Charging Group member until the whole of the Debt Instrument Indebtedness has been paid or satisfied. In the event of any Charging Group member going into liquidation the Supervisor shall be entitled to prove against it for the total indebtedness of the CDF in respect of the Debt Instrument Indebtedness.
- (g) **No competition:** No Charging Subsidiary shall claim or prove in the liquidation of any other Charging Group member or other Person in competition with the Supervisor and the Supervisor may prove for all money which a Charging Subsidiary has paid hereunder or is otherwise owing to it and has not been repaid to it by any other Charging Group member. The Supervisor may retain, carry to a suspense account, and appropriate at its discretion, any amount received by it until the Debt Instrument Indebtedness has been paid in full.
- (h) **Waiver of rights:** Each Charging Subsidiary waives in favour of the Supervisor all its rights (including rights of subrogation, contribution and marshalling) against the Supervisor and any other Charging Group member or other Person so far as is necessary to give effect to this guarantee.
- (i) **No rights to Security:** This guarantee shall not prejudicially affect, or be prejudicially affected by, any other Security or right which the Supervisor may now or hereafter have in respect of the Debt Instrument Indebtedness. Any such Security shall be deemed to be collateral hereto and no Guarantor shall, as against the Supervisor, in any way claim the benefit, or seek the transfer, of any such Security or any part thereof or any right of recourse.
- (j) **Reinstatement:** If any payment received or recovered by the Supervisor, any Receiver, or any Holder in respect of the Debt Instrument Indebtedness is avoided by law, such payment shall be deemed not to have discharged or affected the liability of any Charging Subsidiary therefor or any charge by any Charging Subsidiary in favour of the Supervisor in respect thereof. The Supervisor and each Charging Subsidiary shall be restored to the position in which each would have been and be entitled to exercise all the rights which each would have had if such payment had not been received or recovered notwithstanding that the Supervisor may have signed a release pursuant to this Deed.
- (k) **Restrictions on rights:** Until the Debt Instrument Indebtedness has been paid in full, no Charging Subsidiary shall be entitled to exercise any right of subrogation or contribution, or to require marshalling, or to claim the benefit of any Security now or in the future held by the Supervisor for payment of any Debt Instrument Indebtedness.

- (l) **Liabe as principal debtor:** The liability of each Charging Subsidiary under this deed is as a principal debtor and not merely as a surety. The charges given by each Charging Subsidiary to the Supervisor by or pursuant to this deed shall constitute Security for the Debt Instrument Indebtedness. Such liability shall not be affected or diminished, nor shall such charges be released or discharged, by any of the matters hereinbefore mentioned.

8.6 **Indemnity:** Each Charging Subsidiary jointly and severally indemnifies the Supervisor and each of the Holders against:

- (a) all claims, liabilities, damages, losses and payments; and
- (b) all costs, charges and expenses (including legal expenses on a solicitor and client basis and goods and services and similar taxes thereon),

which are suffered, incurred or sustained by the Supervisor or the Holders at any time as a direct or indirect consequence of:

- (a) any Debt Instrument Indebtedness not being recoverable from the Charging Subsidiary under the guarantee in clause 8.5; or
- (b) any monetary or other obligation of the CDF to the Holders or any of them not being duly satisfied or performed by the CDF,

and the Charging Subsidiary shall pay to the Supervisor upon demand all amounts payable pursuant to this indemnity and such amounts shall be a charge on the Debt Instrument Indebtedness and form part of the same and until payment shall carry interest at the highest rate per annum for the time being payable on each class of Debt Instrument.

8.7 **Notice of formation or change:** The CDF shall promptly give notice in writing to the Supervisor of:

- (a) the acquisition or formation of any Subsidiary, stating whether or not it is a Wholly Owned Subsidiary, and shall furnish to the Supervisor a copy of the most recent Financial Statements of such Subsidiary;
- (b) any change in the shareholding of a Subsidiary which does or may effect or result in a change of control or direction thereof by any Charging Group member.

8.8 **Further Charging Subsidiaries:** The CDF shall promptly after any company incorporated in New Zealand becomes a Wholly Owned Subsidiary, and may at any time in the case of any other Subsidiary, procure that such company becomes a Charging Subsidiary by executing, registering and delivering to the Supervisor a deed in, or to the effect of, the form prescribed in the Fourth Schedule guaranteeing and securing the Debt Instrument Indebtedness and thereby agreeing to become bound as a Charging Subsidiary provided that:

- (a) If the Bishop certifies in writing to the Supervisor in respect of any Wholly Owned Subsidiary:
 - (i) that it is not carrying on any business and has no significant assets in New Zealand; or

- (ii) that it is carrying on business principally as a bank or finance company or other financial intermediary or as an insurance broker or any similar business.

then for so long only as such company continues to fall within the provisions of this proviso the CDF shall be under no obligation to procure it to become a Charging Subsidiary;

If the Bishop certifies in writing to the Supervisor in respect of any Wholly Owned Subsidiary that for good commercial reasons (which shall be specified in the certificate) it is expedient that it shall not become a Charging Subsidiary and that the interests of the Holders will not be, or are not likely to be prejudiced thereby, the Supervisor may in its discretion, upon such terms and conditions as it shall think fit, permit such Subsidiary to remain excluded from being a Charging Subsidiary provided that the Supervisor may at any time withdraw such permission and require the Wholly Owned Subsidiary concerned to become a Charging Subsidiary.

- 8.9 **Compliance by Charging Subsidiary:** The CDF shall use its voting powers in, and representation on the board of directors of, each Charging Subsidiary in such manner as to ensure full compliance and observance by each Charging Subsidiary at all times with the covenants, conditions, agreements and other provisions of this Deed and to prevent any act which would or might detrimentally affect the interests of the Holders.

9. REPORTS AND INFORMATION FOR SUPERVISOR

- 9.1 **CDF Reports:** The CDF covenants with the Supervisor that it will:

- (a) **Furnish Annual Financial Statements:** furnish or cause to be furnished directly by the Auditors to the Supervisor within 3 months (or such further time as the Supervisor agrees in writing) after the close of each financial year of the CDF:

- (i) the Financial Statements of the CDF;
- (ii) the consolidated Financial Statements of the CDF and its Subsidiaries;
- (iii) the Charging Group's consolidated Financial Statements;

each duly audited and signed jointly by the Bishop or his or her duly appointed delegate or attorney in accordance with relevant statutory requirements, and the General Manager, together with all documents and reports required by the FMCA to be annexed to or to accompany such statements.

- (b) **Auditor's Reports:** furnish to the Supervisor at the same time as the Annual Financial Statements are furnished under clause 9.1(a) and the Semi-Annual Financial Statements are furnished under clause 9.1(c) a separate report by the Auditor to the Supervisor in a form agreed from time to time between the Auditor and the Supervisor.
- (c) **Furnish Semi-Annual Financial Statements:** if required by legislation furnish or cause to be furnished to the Supervisor within 3 months after the close of each financial half year of the CDF the Financial Statements of the CDF and the Charging Group at the end of and in respect of that half year, each duly audited by a qualified auditor (unless the Supervisor expressly waives this requirement) and signed jointly by

the Bishop or his or her duly appointed delegate or attorney in accordance with relevant statutory requirements, and the General Manager. If the Supervisor waives the requirement for half-yearly audits, the CDF must instead have the semi-annual financial statements reviewed by a qualified auditor.

- (d) **Furnish Further Financial Statements at Supervisor's Request:** at the request of the Supervisor by not less than 14 days' notice in writing (which request shall only be made when the Supervisor considers that special circumstances warrant such request and so certifies in writing to the CDF specifying such special circumstances) furnish, within such period as the Supervisor reasonably requests, copies of the Financial Statements referred to in clause 9.1(a) (Furnish Annual Financial Statements) duly audited and signed and made up as at the next monthly management accounting date of the CDF or the Charging Group (as the case may be) occurring after the expiry of the said notice, or as at such other date as the Supervisor and the CDF agrees, together with all documents and reports required by the Companies Act and/or the FMCA and/or the Financial Reporting Act to be annexed to or to accompany such statements and together with a report by the Auditors setting out the information referred to in clause 9.1(b) (Auditor's Annual Report) in respect of the Financial Statements so requested with such adaptations as may be necessary or such of that information as may be required by the Supervisor, such financial statement to be provided within two months after the relevant accounting date, or within such longer period as the Supervisor may in its discretion agree.
- (e) **CDF's Quarterly Reporting Certificates:** within 30 days (or such other time as agreed with the Supervisor in writing) after the end of each quarter of each financial year furnish to the Supervisor a certificate signed jointly by the Bishop or his or her duly appointed delegate or attorney in accordance with relevant statutory requirements, and the General Manager, in a form agreed by the Supervisor and the CDF or as required by law.
- (f) **CDF's Monthly Reports:** if required by the Supervisor, within 30 days of the end of each month, furnish to the Supervisor:
 - (i) a copy of the monthly management report prepared for the Finance Council and signed jointly by the Bishop or his or her duly appointed delegate or attorney in accordance with relevant statutory requirements, and the General Manager;
 - (ii) a report, in a form agreed from time to time with the Supervisor, signed jointly by the Bishop or his or her duly appointed delegate or attorney in accordance with relevant statutory requirements, and the General Manager, on:
 - (1) the capital of the CDF;
 - (2) the liquidity of the CDF;
 - (3) the asset quality of the CDF (including arrears, restructured, impaired, past due and bad debts);
 - (4) reinvestment rates; and

- (5) any breach by any Charging Group Member of financial covenants in financing arrangements with third parties.
- (g) **Provision of requested information and reports to the Supervisor:** If requested by the Supervisor (or a person authorised by the Supervisor to exercise this power) the CDF must:
- (i) make available to the Supervisor (or other authorised person) all documents and records relating to the CDF; and
 - (ii) provide the Supervisor (or other authorised person) with any other reports or information required by the Supervisor (or other authorised person) within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor. Reports or information requested by the Supervisor may be about any matter relevant to the performance of the Supervisor's functions and may include forward-looking reports.
 - (iii) use reasonable endeavours to provide the Supervisor with access to such employees and board members of the CDF as the Supervisor reasonably requires.
- (h) **Reporting contraventions or possible contraventions of the CDF's obligations:** If the CDF has reasonable grounds to believe that it has contravened, or is likely to contravene any of its obligations as an issuer of Debt Instruments in a material respect the CDF must:
- (i) report the contravention or possible contravention to the Supervisor; and
 - (ii) advise the Supervisor of the steps (if any) that the CDF has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken.
- (i) **Reporting of serious financial problems:** If the CDF becomes aware of information on the basis of which it could reasonably form the opinion that the CDF is, or is likely to become, insolvent the CDF must, 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 CDF and that was obtained in the course of, or in connection with, the performance of its functions as an issuer of Debt Instruments; and
 - (ii) advise the Supervisor of the steps (if any) that the CDF 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) **Furnish Reports etc of CDF:** furnish to the Supervisor copies of any report, notice or circular and any other communication issued by the CDF to any of its shareholders at or in relation to any general meeting of the CDF or to the Holders at the time of such issue

- (k) **Give Notice if Financial Limits exceeded:** forthwith give notice in writing to the Supervisor if any of the limits imposed by clause 8.1 (Financial Limitations) have been or are about to be exceeded.
- (l) **Notice of Proceedings:** forthwith give notice to the Supervisor of the service of any notice affecting the Secured Property or any part of them (and not being in connection with the normal conduct of its business) of the commencement of any proceedings which materially and adversely affect the same.
- (m) **Notification of major transactions:** furnish to the Supervisor, in advance or as soon as it is known, a report of any major transactions (as defined in the Companies Act), or of any series of transactions that have the effect of a major transaction, entered into or to be entered into by the CDF as if it were a company under the Companies Act.

10. AUDITOR APPOINTMENT AND REPORTING

10.1 Appointment of auditors:

- (a) The CDF must, before recommending the appointment or reappointment of a person as an auditor of the CDF:
 - (i) consult with the Supervisor on the appointment or reappointment; and
 - (ii) ensure that any comments of the Supervisor concerning the proposed auditor are brought to the attention of the person or persons appointing or reappointing the auditor.
- (b) The CDF must notify the Supervisor if an auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the auditor for resigning from appointment or declining to accept appointment or reappointment.
- (c) The CDF must not attempt to prevent a person who has resigned from appointment as an auditor, or declined to accept appointment or reappointment as an auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.

10.2 Duty concerning giving opportunity for auditor reporting to Supervisor: The CDF must, before recommending the appointment or reappointment of a person as an auditor of the CDF:

- (a) give the Supervisor an opportunity to be a party to a Specified Engagement for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the powers or duties of the Supervisor; and
- (b) consult with the Supervisor on the nature and scope of the Specified Engagement (if any).

10.3 Terms of appointment of auditor:

- (a) The CDF must ensure that the terms set out in clause 10.3(b) are included in the terms of appointment of an auditor in its capacity as an auditor, whether the auditor is conducting an audit, a review, or any other engagement.

- (b) The terms are as follows:
- (i) that the auditor will, at the beginning of the audit, review, or engagement, give the Supervisor an opportunity to meet with the auditor, without any representative of the CDF being present, in order to allow the Supervisor an opportunity to raise any issues or concerns relevant to the exercise or performance of the powers or duties of the Supervisor; and
 - (ii) that the auditor will give the Supervisor an opportunity to meet with the auditor, without any representative of the CDF 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.

PART V: ENFORCEMENT

11. EVENTS OF DEFAULT: ACCELERATION

11.1 **Events of Default:** Subject to clauses 11.3 (Notice of Exercise of Supervisor's Power) and 15.3 (Waiver by Supervisor) the Security constituted by this Deed shall become enforceable upon the occurrence of any one or more of the following events:

- (a) **Non-Payment:** the CDF or any Charging Subsidiary fails to pay any Principal on its due date for payment or any other amount of the Debt Instrument Indebtedness within three Business Days of its due date for payment, provided that this Deed shall not become enforceable if the delay in payment is due to a malfunction of the banking system;
- (b) **Dissolution:** an order of a Court is made or an effective resolution is passed or legislation is enacted for the liquidation or dissolution of the CDF or any Charging Subsidiary or the CDF or any Charging Subsidiary ceases or threatens in writing to cease to carry on the whole or a substantial part of its business, except (in any of the foregoing cases) for the purposes of a reconstruction or reorganisation or amalgamation (not involving or arising out of insolvency) the terms of which have been previously approved in writing by the Supervisor, such approval not to be unreasonably withheld or delayed;
- (c) **Enforcement:**
 - (i) either following a final judgement against the CDF or any Charging Subsidiary, a distress, attachment, execution or other legal process is levied, enforced or sued out, on or against all or any material part of the Secured Property for an amount exceeding (in aggregate) \$100,000 or its equivalent in any other currency and is not discharged or stayed or contested in good faith within 30 days; or
 - (ii) a receiver, Supervisor, manager, official administrator, custodian or inspector appointed under the Companies Act, the FMCA Act or any similar legislation, or other similar official, is appointed in respect of the CDF or any Charging Subsidiary or all or any material part of its Secured Property and the same is not removed or discharged or contested in good faith by appropriate proceedings;

- (d) **Statutory Management:** A statutory manager is appointed under the Corporations (Investigation and Management) Act 1989 in respect of the CDF or any Charging Subsidiary or the CDF or any Charging Subsidiary is declared at risk pursuant to the provisions of that Act;
- (e) **Insolvency: the CDF or any Charging Subsidiary:**
 - (i) is unable to pay its debts as they fall due or is deemed or presumed unable to pay its debts as they fall due under any law, or
 - (ii) stops or suspends payment of any of its indebtedness generally or takes any proceedings to reschedule any of its indebtedness; or
 - (iii) makes a general assignment, or enters into an arrangement, compromise or composition with, or for the benefit of its creditors in respect of its indebtedness generally;
- (f) **Cross Default:** any indebtedness of the CDF or any Charging Subsidiary of an amount exceeding (in aggregate) \$100,000 (or its equivalent in any foreign currency) becomes due before its stated maturity by reason of default by the CDF or any Charging Subsidiary, or is not repaid at maturity (or by the expiry of any applicable grace period), and (in either case) proper proceedings are being taken for its recovery or enforcement; or
- (g) **Other Defaults:** the CDF or any Charging Subsidiary fails to perform or comply with:
 - (i) any of its obligations under clause 8.1 (Financial Limitations) or 8.3 (Negative Covenants) or
 - (ii) any of its obligations under this Deed in a material respect and, in the case of a failure that is capable of remedy, that failure is not remedied within 14 days of the date that the CDF or Charging Subsidiary first became aware of it; or
- (h) **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 CDF or any Charging Subsidiary repudiates or does or causes to be done an act, omission, matter or thing evidencing an intention to repudiate this Deed; or
- (i) **Enforcement of Prior Charge:** a Prior Charge is enforced.

- 11.2 **Acceleration:** At any time after the Security created under or pursuant to this Deed shall have become enforceable the Supervisor may in its discretion, and shall forthwith (subject to the provisions of clause 15.8 (Indemnity of Supervisor) upon being directed to do so by a Special Resolution of Holders of Debt Instruments, take one or more of the following steps:
- (a) declare the whole of the Debt Instrument Indebtedness to have become immediately due and payable whereupon the Debt Instrument Indebtedness shall forthwith become due and payable;
 - (b) enter upon or take possession of the Secured Property or any part thereof

- (c) either with or without taking possession sell, call in, collect and convert into money the Secured Property or any part thereof in such manner and for such consideration as the Supervisor shall think fit. Upon any such sale the Supervisor may sell any part of the Secured Property either by public auction or by private contract on such terms as the Supervisor may think fit and may buy in or rescind or vary any contract of sale and may re-sell without being responsible for any loss occasioned thereby; or
- (d) institute and pursue all such proceedings, suits and other legal actions, execute any judgments obtained, exercise all such rights of set-off or other rights or remedies available at law or under this Deed, compromise and effect compositions, all such assurances and things as the Supervisor may think fit on behalf of the Holders, to enforce payment of the Debt Instrument Indebtedness; or
- (e) collect any unpaid capital and call up any uncalled capital for the time being hereby charged in which case the Bishop shall exercise his or her powers at the direction and under the control of the Supervisor,

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

11.3 Notice of Exercise of Supervisor's Power: The powers conferred by clause 11.2 (Acceleration) shall be exercisable by the Supervisor without notice to the CDF. However before exercising any powers of conversion the Supervisor shall, except where it shall certify in writing to the CDF that in its opinion delay would imperil the interests of any of the Holders or where in its opinion the event is not capable of being remedied within 14 days, give written notice of its intention to the CDF (which may be in general terms) and shall not exercise the powers of conversion until the expiration of 14 days after the giving of such notice. If within such period of 14 days the relevant breach or default is remedied to the satisfaction of the Supervisor or the Supervisor notifies the CDF in writing that the particular breach or event relied upon no longer in the opinion of the Supervisor detrimentally affects the Security created by or pursuant to this Deed, the Supervisor shall not exercise the powers of conversion. Notwithstanding anything contained in this clause 11.3, if the Supervisor has appointed a Receiver no further notice shall, subject to Section 119 of the Property Law Act 2007, be required before exercising the powers of conversion.

11.4 Supervisor's Power After Entry: After entry into possession as aforesaid and until the powers of conversion shall have been exercised in respect of the whole of the Secured Property the Supervisor may if it thinks fit so to do carry on any class of business in and with the Secured Property or any part thereof and may manage and conduct the same in such manner as it shall in its discretion think fit and for the purposes of that business may generally do all such things respecting the Secured Property as it could do if it were absolutely entitled to do so including without limitation the power to acquire any property or rights (which upon acquisition shall be deemed to be part of the Secured Property) and without being responsible for any loss or damage which may arise or be occasioned thereby and the Supervisor shall out of the revenue of the Secured Property and the business pay the expenses incurred in doing so and shall apply the balance of such revenue in the manner provided in clause 12 (Distribution of Funds). The Supervisor may for any such purpose and

for the purpose of payment to the Supervisor of any moneys owing to it in terms of this Deed borrow or raise money on the Security of the Secured Property or any part thereof in priority to any class of Debt Instrument Indebtedness on such terms as the Supervisor may think fit.

11.5 Appointment of a Receiver: At any time after:

- (a) the Security Interest created under or pursuant to this Deed shall have become enforceable; or
- (b) (subject always to the exceptions contained in clause 11.1(b) (Dissolution)) application for liquidation of the CDF or any Charging Subsidiary shall have been made or a notice shall have been given of a proposed resolution for winding up the CDF or any Charging Subsidiary;

(and so that no delay or waiver of the right to exercise the powers hereby conferred shall prejudice the future exercise of such powers) the Supervisor may in its discretion and shall forthwith (subject to the provisions of clause 15.8 (Indemnity of Supervisor)) upon the request in writing of any Major Security Holder or upon being directed to do so by a Special Resolution of Holders of Debt Instruments appoint in writing a Receiver or Receivers of all or any part of the Secured Property with power from time to time to remove any Receiver so appointed and in case of removal, retirement or death to appoint another in his place. Any such Receiver or Receivers may be appointed either before or after the Supervisor has entered into or taken possession of the Secured Property or any part thereof. If any such application is dismissed or withdrawn or any such resolution shall not be passed by the necessary majority then without prejudice to any rights exercisable otherwise than in consequence of the making of such application or the giving of such notice and subject to anything done in the meantime in pursuance of the powers given by this clause possession of the Secured Property shall be restored to the CDF and/or relevant Charging Subsidiary and subject to the provisions of this Deed as to costs charges and expenses incurred and payments made the CDF and all persons concerned shall be remitted to their original rights.

11.6 Receiver's powers: Every such Receiver so appointed shall have power either in his name or in the name of the CDF or Charging Subsidiary to do the following things:

- (a) take immediate possession of, get in and collect the Secured Property or any part thereof;
- (b) do all acts which the CDF or Charging Subsidiary might do for the protection or for the improvement of the Secured Property;
- (c) appoint and discharge managers, officers, agents, solicitors, accountants, servants and others for the purposes hereof upon such terms as to remuneration or otherwise as he may think proper and to discharge any such Persons appointed by the CDF or Charging Subsidiary;
- (d) raise and borrow money either unsecured or on the Security of the Secured Property or any part thereof for the purpose of exercising any of the powers, authorities and discretions conferred on him by or pursuant to this Deed and/or of defraying any costs, charges, losses or expenses which shall be incurred by him in the exercise thereof;

- (e) sell, convert into money and realise all or any part of the Secured Property by public auction or private contract and generally in such manner and on such terms as he shall think proper;
- (f) settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any Person or relating in any way to the Secured Property or any part thereof;
- (g) bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to the Secured Property or any part thereof as may seem to him to be expedient;
- (h) give valid receipts for all money and execute all assurances and things which may be proper or desirable for realising the Secured Property;
- (i) execute all documents and do all such other acts and things as he may consider desirable or necessary for realising the Secured Property or any part thereof or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of this Deed;
- (j) exercise in relation to the Secured Property or any part thereof all such powers, authorities and things as he would be capable of exercising if he were the absolute beneficial owner of the same;
- (k) carry on, or concur in carrying on, any business of the CDF and/or Charging Subsidiary, and exercise and enforce all rights, powers and remedies which the CDF or Charging Subsidiary could exercise over or in relation to its assets, while a going concern, whether or not the CDF is then in liquidation; and
- (l) delegate any of the Receiver's powers to any Person or Persons for such time as the Supervisor approves.

11.7 **CDF's agent:** Any Receiver appointed by the Supervisor shall be the agent of the CDF or of the relevant Charging Subsidiary (as the case may be) for all purposes and the CDF or any Charging Subsidiary alone shall be responsible for his contracts, engagements, acts, omissions, defaults, losses and misconduct and for liabilities incurred by him and for his remuneration.

11.8 **Direct exercise by Supervisor:** All or any of the powers, authorities and discretions which are conferred by this Deed (either expressly or impliedly) upon a Receiver of the Secured Property may be exercised after the Security created under or pursuant to this Deed becomes enforceable by the Supervisor or by any officer, manager, attorney or solicitor of the Supervisor in relation to the whole of such Secured Property or any part thereof without first appointing a Receiver of such property or any part thereof or notwithstanding the appointment of a Receiver of such property or any part thereof.

11.9 **Treatment of money received:** Any moneys received by the Supervisor pursuant to this Deed and/or under the powers hereby conferred shall, after the Security created under or pursuant to this Deed shall have become enforceable but subject to the payment of any claims having priority to this Security, be applied by the Supervisor for such purposes and in such order as provided in clause 12 (Distribution of Funds).

- 11.10 **Not liable as mortgagee in possession:** The Supervisor shall not nor shall any Receiver, by reason of it or the Receiver entering into possession of the Secured Property or any part thereof, be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.
- 11.11 **Protection for persons dealing with Supervisor or Receiver:** No purchaser, mortgagee or other Person or company dealing with the Supervisor or any Receiver or its or his representatives or agents shall be concerned to enquire whether the Security created under or pursuant to this Deed has become enforceable or whether any Debt Instrument Indebtedness has become payable or remain due or whether the power which the Supervisor or Receiver is purporting to exercise has become exercisable or whether any money secured by this Deed remains due or to see to the application of any money paid to the Supervisor or to such Receiver and in the absence of fraud on the part of such Person such dealing shall be deemed with respect to such Person to be within the powers conferred under this Deed and to be valid and effectual accordingly and the remedy of the CDF or the relevant Charging Subsidiary in respect of any irregularity or impropriety whatsoever in exercise of such powers shall be in damages only.
- 11.12 **Power of attorney:** For the purpose of enabling the Supervisor to obtain the full benefit of this Security, the CDF and each Charging Subsidiary hereby irrevocably appoints the Supervisor and any Receiver appointed by the Supervisor for the time being and from time to time, severally to be the attorney of the CDF or Charging Subsidiary in its name and as its act and deed and at its expense in all things to do and execute all such acts, things, mortgages, assurances and instruments which the CDF or Charging Subsidiary covenants or agrees to do and execute under the covenants or provisions contained in this Deed or which the Supervisor or any Receiver appointed by the Supervisor or the said attorney shall consider necessary or expedient to do or execute for the purpose of facilitating the exercise by the Supervisor or by any Receiver appointed by the Supervisor of all or any of the powers, rights and remedies by this Deed or by law vested in, conferred upon or exercisable by them respectively or otherwise howsoever in relation to the Secured Property and with power for all or any of the purposes aforesaid from time to time to appoint and/or remove any substitute or substitutes. The CDF and each Charging Subsidiary hereby ratifies and confirms and agrees to ratify and confirm whatever any such attorney as is mentioned above shall do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this clause 11.12.
- 11.13 **Avoidance:** No assurance, Security or payment which may be avoided under any enactment relating to bankruptcy or insolvency, and no release, settlement or discharge given or made by the Supervisor on the faith of any such assurance, Security or payment, shall prejudice or affect the right of the Supervisor to enforce the Security created by or pursuant to this Deed in respect of the full extent of the Debt Instrument Indebtedness.
- 11.14 **Quiet Enjoyment:** Notwithstanding the Security upon the Secured Property created by this Deed and any further Security upon such assets or any part thereof which may be created by the CDF and each Charging Subsidiary under or pursuant to this Deed, the Supervisor shall permit the CDF or any Charging Subsidiary to hold and enjoy the Secured Property and to

receive and apply as it thinks fit all income arising therefrom and to carry on therewith the CDF's business or any Charging Subsidiary's business authorised by its Constitution (in each case, however, subject to compliance with the provisions of this Deed) until the Security created by or pursuant to this Deed becomes enforceable as hereinafter provided and the Supervisor shall have determined or become bound to enforce the same.

12. DISTRIBUTION OF FUNDS

All money received by the Supervisor or a Receiver from or in respect of, or for the account of, the CDF or any Charging Subsidiary including from the Date of Enforcement shall (subject to payment or provision out of such funds of or for any debts or liabilities having priority to the Debt Instrument Indebtedness) be held and applied:

- (a) **First:** subject to any direction made by any Court in respect thereof, in payment or retention of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor or any Receiver under this Deed and of all remuneration payable to the Supervisor or any Receiver under this Deed with interest thereon as herein provided;
- (b) **Secondly:** in or towards payment to the Holders of Debt Instruments *pari passu* in proportion to the amounts owing whether actually or contingently to them of the Principal in respect of their Debt Instruments and interest thereon calculated in accordance with the provisions of the respective Debt Instrument Certificates, provided always that:
 - (i) before making any such payment the Supervisor shall, in the case of each Holder of Debt Instruments but subject as hereinafter provided, set aside an amount (or the proper proportion thereof in the event of the amount available for distribution and application as aforesaid in respect of the amounts owing to the Holders of Debt Instruments respectively as aforesaid being less than one hundred cents in the dollar) equal to the aggregate of the contingent liabilities (if any) forming part of the Debt Instruments;
 - (ii) in the event of a contingent liability or any part thereof in respect of the Debt Instruments being indeterminate or unlimited in amount then the Supervisor shall subject as hereinafter provided set aside as aforesaid such amount as shall be nominated by the Holders of the relevant Debt Instrument as its reasonable estimate of that contingent liability or the proper proportion thereof (in the event of the amounts available for distribution and application aforesaid in respect of the amounts owing to the Holders of Debt Instruments respectively as aforesaid being less than one hundred cents in the dollar as the case requires);
 - (iii) any amount set aside in accordance with these provisos shall be held by the Supervisor and applied in the following manner:
 - (1) when and so often as a contingent liability in whole or in part shall become an absolute ascertained liability the Supervisor shall pay to the Holders of the relevant Debt Instrument the amount of such absolute and ascertained liability or a proportionate part thereof as aforesaid as if the same had

been a debt presently payable to such Holders at the Date of the Enforcement;

- (2) when and so often as any portion of the amount set aside pursuant to these provisos is no longer required for the purposes of the immediately preceding sub-paragraph (i) then the same shall become available for distribution and payment as otherwise provided in this clause.
- (c) **Thirdly:** to the CDF or such other Person or Persons as the High Court of New Zealand on the application of the Supervisor may direct.

13. MISCELLANEOUS PROVISIONS AS TO PAYMENT

- 13.1 Order of Payment of Principal and Interest:** All money available for payment to the Holders under clause 12 (Distribution of Funds) shall be applied first on account of interest and secondly on account of Principal provided that if the Supervisor considers it expedient in the interests of Holders generally to do so or the Holders of a particular class by Special Resolution so direct, the whole or any part of the Principal may be paid before any payment is made on account of interest.
- 13.2 Supervisor's Powers to Postpone Distribution:** If the amount of the funds at any time available under clause 12 (Distribution of Funds) is less than ten per cent (10%) of the Debt Instrument Indebtedness owing, the Supervisor may at its discretion invest those funds in accordance with clause 14.1 (Powers of Investment) 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 Debt Instrument Indebtedness as aforesaid and then such accumulations and funds shall be applied in the manner specified in clause 12 (Distribution of Funds).
- 13.3 Notice of Distribution:** The Supervisor shall give not less than fourteen (14) days' notice to the Holders of the day, place and time fixed for any payment to them under clause 12 (Distribution of Funds) and after the day so fixed the Holders shall be entitled to interest only on the balance (if any) of the money owing on the Instruments held by them after deducting the amount (if any) payable in respect thereof on the day so fixed.
- 13.4 Production of Certificates on Payment by Supervisor:** Upon any payment under any of the provisions of clause 12 (Distribution of Funds) or account of the Debt Instrument the relevant certificates shall be produced to the Supervisor who shall cause a memorandum of the amount and date of payment to be endorsed thereon but the Supervisor may in any particular case dispense with the production and endorsement of a certificate upon such indemnity or Security being given as it shall think sufficient or without any indemnity. In relation to any Debt Instrument in respect of which more than one payment is made, whether by instalments or otherwise, the Supervisor may retain such certificates produced after the first payment for the purposes of making subsequent payments on the Debt Instrument and may make subsequent payments in the same manner as the first payment without liability for doing so on this basis.

14.2 Applications to Court:

- (a) The Supervisor may at any time after the Date of Enforcement apply to the Court for an order that the powers and trusts conferred under this Deed be exercised under the direction of the Court and for the appointment of a Receiver of the Secured Property or any part thereof and for any other order or direction in relation to the execution and administration of the powers and trusts hereof as the Supervisor deems expedient, and the Supervisor may assent to, approve of, or oppose any application to the Court made by, or at the instance of, any Holder. The Supervisor shall be indemnified by the CDF against all expenses incurred in relation to any such application or proceedings in priority to the Debt Instrument Indebtedness.
- (b) In addition and independent of the provisions of clause 14.2(a), the Supervisor may apply for an order under section 208 of the FMCA on the basis set out in section 207 of that Act.

14.3 **Waiver by Supervisor:** Subject to any direction or request given by Holders pursuant to the provisions of the Securities Act or by the Holders pursuant to clause 11.2 (Acceleration) or 12.5 (Appointment of Receiver), the Supervisor may at any time and from time to time by notice in writing to the CDF waive in part or in whole for a specified period or completely on such terms and conditions (if any) as it deems expedient any breach or anticipated breach by the CDF of any of the provisions of this Deed or of any collateral Security provided the Supervisor is satisfied that the interests of the Holders will not be materially prejudiced thereby but such waiver shall in no way prejudice the rights of the Supervisor and the Holders in respect of any other breach.

14.4 Functions of Supervisor:

- (a) The Supervisor is responsible for:
 - (i) acting on behalf of the Holders in relation to:
 - (1) the CDF and the Charging Group;
 - (2) any matter connected with this Deed, or the terms of any offer of Debt Instruments; or
 - (3) any contravention or alleged contravention of the CDF's obligations in respect of the Debt Instruments; and
 - (ii) supervising the CDF's performance of its obligations as an issuer (as defined in the FMCA) and ascertaining whether the assets of the CDF and its Charging Subsidiaries that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the amounts of the Debt Instruments as they become due; and
 - (iii) performing or exercising any other functions, duties and powers conferred or imposed on the Supervisor by or under the FMCA, the FMSA or this Deed.
- (b) In performing its functions the Supervisor must:
 - (i) act honestly in acting as a Supervisor; and

- (ii) act in the best interest of Holders when exercising its powers and performing its duties as Supervisor; and
- (iii) exercise reasonable diligence in carrying out its functions as Supervisor; and
- (c) The Supervisor must also:
 - (i) do all things it has the power to do to cause any contravention or alleged contravention of the CDF's obligations as an issuer (as defined in the FMCA) in respect of the Debt Instruments to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Holders); and
 - (ii) subject to any court order made under s 210 of the FMCA, act in accordance with any direction given by a Special Resolution of Holders in relation to seeking a remedy to a contravention of the CDF's issuer obligations or any other matter connected with the Supervisor's functions, provided that this is not inconsistent with any enactment, rule of law or this Deed.
- (d) In exercising its powers and performing its duties as a Supervisor, the Supervisor must exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.
- (e) The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction by Holders.

14.5 **Rights and powers held in trust by the Supervisor for Holders:** The following rights and powers are held in trust by the Supervisor for the benefit of the Holders of the Debt Instruments:

- (a) the right to enforce the CDF's duty to repay the Principal, or to pay interest, under the terms of the Debt Instruments; and
- (b) any charge or security for repayment; and
- (c) the right to enforce any other duties that the CDF, Charging Subsidiary or any other person has under the terms of the Debt Instrument or the provisions of this Trust Deed in relation to the Debt Instruments.

15. SUPPLEMENTAL POWERS OF SUPERVISOR

In addition to the provisions of the law relating to Supervisors, and to facilitate the discharge of its duties hereunder, but subject always to the provisions of section 105 of the FMCA, it is expressly declared that:

- 15.1 **Reliance on Advice:** The Supervisor in relation to this Deed may, without liability for loss, obtain, accept and act on or decline and elect not to act on:
- (a) **Advice:** the opinion or advice of or any information obtained from any barrister, solicitor, valuer, stockbroker, surveyor, auctioneer, chartered accountant or other expert, whether obtained by the CDF or by the Supervisor or otherwise;
 - (b) **CDF Certificate:** a certificate signed by the Bishop, or by or on behalf of the Bishop by the Finance Council, as to any fact or matter prima facie within his or her knowledge or

the knowledge of the CDF and upon which the Supervisor may, in the exercise of any of the trusts, powers, authorities and discretions and provisions hereof, require to be satisfied, or that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental or prejudicial to the interests of, or does not or is not likely to have a material adverse effect on, the Holders, as sufficient evidence of such fact or matter or the expediency or desirability of such dealing, transaction, step or thing;

(c) **Certificates Under this Deed:** 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.

- 15.2 **Resolutions:** The Supervisor shall not be responsible for acting or relying upon any resolution purporting to have been passed at any meeting of the Holders or class of Holders in respect of which a proper record has been made and which the Supervisor believes to have been properly passed even though it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or the proceedings thereat or otherwise howsoever.
- 15.3 **Application of Funds:** The Supervisor shall not be responsible for the issue of Debt Instruments or the money subscribed by the applicants for or subscribers of the Debt Instruments or be bound to see to the application thereof.
- 15.4 **Custody of Documents:** The Supervisor may place this Deed and any deeds and other documents or certificates of title relating to the Secured Property of the CDF to which the Supervisor is entitled to possession with a banker or company whose business includes undertaking the safe custody of documents or any solicitor and make such arrangements as it thinks fit for allowing the CDF or its solicitors or the Auditor access to or possession of all or any of such deeds or documents whenever the Supervisor deems it necessary or convenient so to do. The CDF agrees to pay all sums required to be paid in respect of such deposits of deeds and documents.
- 15.5 **Defects in Title: Validity of Certificates:** The Supervisor shall not be bound or concerned to enquire into or be liable for any defects or failure in the title of the CDF or any Charging Subsidiary to the Secured Property whether such defects or failure might have been discovered upon an examination or enquiry and remedied or not, and shall not be liable to the CDF or any Holder for accepting as valid any Debt Instrument Certificate or other certificate evidencing the issue of Debt Instruments, subsequently found to be forged or not authentic.
- 15.6 **Discretion as to Powers:** Except as otherwise expressly provided in this Deed the Supervisor shall as regards all trusts, powers, authorities and discretions vested in it by this Deed have absolute discretion as to the exercise or non-exercise thereof and as to the conduct of any action, proceeding or claim and provided it shall have acted with reasonable care and diligence it shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise thereof.
- 15.7 **Delegation:** Subject to section 111 of the FMCA and the FMSA, the Supervisor whenever it thinks it is expedient in the interests of the Holders to do so may:

- (a) **Delegate to other Persons:** at any time or times and to any Person or Persons, delegate any of the trusts, powers, authorities or discretions vested in the Supervisor by this Deed which cannot conveniently be exercised by it or through its employees upon such terms and conditions and under such regulations (including the giving of power to sub-delegate) and (subject to the provisions of section 105 of the FMCA) the Supervisor shall not be responsible for any loss incurred by any misconduct or default on the part of any such delegate or sub-delegate;
- (b) **Agents:** instead of acting through its permanent employees in the carrying out of any of the trusts, powers or discretions hereby vested in it employ an agent to transact all business and do all acts required to be done under this Deed including the receipt and payment of money; or
- (c) **Officers:** delegate from time to time and at any time to any of its officers any of the trusts, powers, authorities and discretions vested in the Supervisor by this Deed which owing to the place in which they are to be or may require to be exercised cannot conveniently be exercised by the Supervisor; or
- (d) **Engagement of expert:** engage an expert if the Supervisor considers, on reasonable grounds that it requires the assistance of the expert to determine the financial position of the CDF or review the business, operation, or management systems, or the governance, of the CDF. If the Supervisor engages an expert the CDF must provide reasonable assistance to the expert to allow the expert to provide assistance to the Supervisor and the CDF must pay the fees and expenses of the expert which must be reasonable in the circumstances.

15.8 Indemnity of Supervisor:

- (a) Without prejudice to the right of indemnity by law given to Supervisors and subject to section 105 of the FMCA, the Supervisor and every Receiver, attorney, manager or agent or other Person appointed by the Supervisor under this Deed shall be indemnified out of the Secured Property:
 - (i) **Liabilities and Expenses:** in respect of all liabilities and out of pocket expenses properly and reasonably incurred by it in the execution or purported execution of the trusts hereof or of any powers, authorities or discretions vested in it pursuant to this Deed; and
 - (ii) **Costs and Claims:** against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted or in any way relating to this Deed;
- (b) Notwithstanding any other provision the Supervisor is only entitled to be indemnified in relation to the performance of the Supervisor's licensee obligations (as that term is defined in the FMSA) in relation to the proper performance of its duties under clause 14.4(d) and 14.4(d).

Other than any of the foregoing which arise out of a wilful or negligent default or breach of trust, the Supervisor may retain and pay out of any money in its hands arising from the trusts of this Deed all sums necessary to effect such indemnity and also the remuneration and

disbursements of the Supervisor as herein provided and the Supervisor shall have a charge on the Secured Property for all money payable to it under this clause or otherwise howsoever arising out of or in connection with this Deed or the issue of Debt Instruments.

- 15.9 **Other Dealings:** Nothing in this Deed or implied by law shall prohibit the Supervisor or its holding company or any of its subsidiaries or any of the subsidiaries of its holding company (together in this clause where the context permits being included in the expression "the Supervisor") or the directors or officers of the Supervisor from being a Holder, creditor or shareholder of the CDF, any Charging Subsidiary or any other associated company of the CDF or from acting in any representative capacity for a Holder. In particular, and without prejudice to the generality of the foregoing, it is expressly declared that the Supervisor may so act on its own account or as executor, administrator, Supervisor, receiver, committee, guardian, attorney or agent or in any other fiduciary, vicarious or professional capacity. The acting in such capacity as aforesaid shall not be deemed a breach of any of the obligations hereby established or otherwise imposed or implied by law arising out of the fiduciary relationship between the Supervisor and the Holders. The Supervisor shall not by reason of its fiduciary capacity be in any way precluded from making any contracts or entering into any transactions with the CDF, any Charging Subsidiary or any other associated company of the CDF in the ordinary course of the business of the Supervisor, or from undertaking any insurance, financial or agency service for any of them or from accepting or holding the office of Supervisor for the Holders of any debt instrument issued by the CDF or by any other company and the Supervisor shall not be accountable either to the CDF or any other company or the Holders for any profits arising from any such contracts, transactions or offices.
- 15.10 **Represent Holders:** The Supervisor may at any time or times, either of the Supervisor's own volition, or pursuant to any directions or in accordance with any policy given or indicated by any meeting of Holders represent the Holders in any matter, investigation, negotiation, action, transaction or proceedings affecting the interests of the Holders or concerning them generally.
- 15.11 **Acting on Instructions:** Whenever any authorisation or approval for or in respect of the taking of any action or other matter, or any direction to take, or in respect of the taking of, any action or other matter, may under the provisions of this Deed be given to the Supervisor by Special Resolution, the Supervisor may act in reliance upon such authorisation or approval or (as the case may be) shall act in accordance with any such direction, and shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the actions so taken in reliance thereon, provided that the Supervisor shall nevertheless not be so bound to act unless first indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, charges, damages, expenses and liabilities which it may incur by so doing.
- 15.12 **Stamp Duty and Taxes:** The CDF and each Charging Subsidiary shall pay all stamp, documentary, transaction, registration and other like duties and taxes (including fines, interest and penalties), if any, which may be payable or determined to be payable in connection with the signing, delivery, registration, performance, exercise of any right under, or enforcement or variation of, this deed or any document or agreement entered into pursuant to this Deed, in

New Zealand and shall indemnify the Supervisor against all liabilities with respect to, or resulting from, any delay or omission by the CDF or any Charging Subsidiary in paying any such duties or taxes.

15.13 **Supervisor's Indemnity:** If the Supervisor shall receive a request or direction pursuant to the provisions of clauses 11.2 (Acceleration) or 11.5 (Appointment of a Receiver), the Supervisor shall not be bound to comply with such request or direction unless the Supervisor shall first be indemnified to its satisfaction against all actions, proceedings, claims and demands to which the Supervisor may be rendered liable and all expenses which it may incur by so doing.

16. CHANGE OF SUPERVISOR

16.1 Removal and Retirement of Supervisor:

- (a) The Supervisor ceases to hold its appointment under this Deed (subject to paragraph (b) of this clause) if the Supervisor:
 - (i) is removed by the FMA or the CDF under Part 2 of the FMSA; or
 - (ii) is removed by a Special Resolution of Holders; or
 - (iii) is removed or resigns in accordance with clause 16.1(c).
- (b) Notwithstanding clause 16.1(a) and clause 16.1(c), the Supervisor may not
 - (i) be removed or resign under clause 16.1(a)(ii) or (iii) unless:
 - (1) all functions and duties of the position have been performed; or
 - (2) another licensed Supervisor has been appointed, and accepted the appointment, in its place; or
 - (3) the court consents.
- (c) Subject to clauses 16.1(a) and (b) the Supervisor may retire at any time without assigning any reason therefor upon giving ninety (90) days' notice in writing to the CDF of its intention so to do, provided that such retirement shall be conditional upon and not be effective until the requirement of clause 16.1(b)(i)(2) is met the transfer to such new Supervisor of the securities collateral to this Deed and the money and investments held by the Supervisor under this Deed.
- (d) The CDF must notify the Registrar of Financial Service Providers of a change of the Supervisor within 5 working days of the change.

16.2 **Appointment of Substitute Supervisor:** Subject to clause 16.1 the power of appointing a new Supervisor in place of a Supervisor which has retired or has ceased to exist or to be qualified pursuant to applicable legislation for appointment as Supervisor hereunder, or which is removed from office, shall be vested in the CDF. In the event that the CDF within sixty (60) days of receiving notice of the Supervisor's intention to retire or of its ceasing to exist or be qualified for appointment as Supervisor hereunder or its removal from office (as the case may be) fails to exercise the power hereby vested in it of appointing a substitute Supervisor or

Supervisors then the Holders may by a Special Resolution of Holders exercise such power to the exclusion of the CDF.

17. SUPERVISOR'S POWERS CUMULATIVE

The powers, authorities and discretions conferred by this Deed upon the Supervisor shall be in addition to any powers authorities and discretions which may from time to time be vested in Supervisors by law and to any powers, authorities and discretions which may from time to time be vested in the Supervisor as a Holder of any Debt Instruments.

18. SUPERVISOR'S REMUNERATION

18.1 **Remuneration:** The CDF shall pay to the Supervisor by way of remuneration for its services as Supervisor under this Deed a periodic fee of such amount and at such times as may be agreed in writing from time to time provided always that if the CDF and the Supervisor fail to agree on any amount payable to the Supervisor under this clause 18.1 the dispute shall be referred to a single arbitrator if the parties can agree on one and otherwise to two arbitrators, one to be appointed by the CDF and one by the Supervisor, in accordance with the Arbitration Act 1996.

18.2 **Expenses:** The CDF will also pay all out of pocket expenses (including legal and travelling expenses) reasonably incurred by or on behalf of the Supervisor in connection with:

- (a) the preparation and execution of this Deed and of any deed collateral or supplemental to this Deed;
- (b) the exercise by the Supervisor of any power or discretion or the execution of any trust conferred on the Supervisor by this Deed or upon any Holder (including without limitation the taking of any expert advice deemed necessary from time to time by the Supervisor);
- (c) any breach or default in the observance or performance by the CDF of the covenants, obligations and conditions of this Deed;
- (d) the convening and holding and carrying out of any directions or resolutions of any meeting of Holders;
- (e) any application under the trusts and provisions of this Deed for its consent to or approval of any act or matter.

18.3 **Payable on Demand:** All expenses incurred or payments made in the lawful exercise of the powers hereby conferred on the Supervisor shall be payable on demand.

18.4 **Consents etc.:** The CDF will also pay on demand any reasonable charges made by the Supervisor for work done by it in connection with any application by or on behalf of the CDF under the trusts or provisions hereof for its consent to or approval of any thing act or matter.

18.5 **Payments Charge on Charged Assets:** All expenses incurred by, all payments made in the lawful exercise of the powers conferred upon and all remuneration payable to, the Supervisor or to any Receiver shall be payable by the CDF on demand and shall be an additional charge on the Secured Property and form part of the Debt Instrument Indebtedness and shall be

satisfied before any payment is made thereout to the Holders and until payment shall carry interest at the highest rate then applicable to Debt Instruments from the date on which they have become payable.

PART VII: MISCELLANEOUS

19. MODIFICATIONS

19.1 **Approach to modifications:** An amendment to or replacement of this Deed has no effect unless made:

- (a) with the consent of the Supervisor (where the Supervisor's consent is given in accordance with clause 19.2); or
- (b) in accordance with clause 19.4; or
- (c) under any power to amend or replace the Deed under any enactment.

19.2 **Supervisor Consent:** The Supervisor must not consent to an amendment to, or replacement of, this Deed unless:

- (a) either:
 - (i) the amendment or replacement is approved by, or is contingent on approval by, the Holders of the Debt Instruments by Special Resolution under clause 19.5 or 19.6; or
 - (ii) the Supervisor is satisfied that the amendment or replacement does not have a material adverse effect on the Holders; and
- (b) the Supervisor certifies that either circumstances in paragraph 19.2(a) applies, and certifies or obtains a certificate from a lawyer, that this Deed, as amended or replaced will comply with sections 104 to 106 of the FMCA and states the basis for that conclusion.

19.3 **No Material Adverse Effect:** Subject to clause 19.2, the Supervisor may consent to the CDF making any modification or addition to this Deed without the consent of the Holders, if in the opinion of the Supervisor the modification or addition to this Deed:

- (a) **Technicalities:** shall be made to correct a manifest error or is of a formal, technical or administrative nature; or
- (b) **Other Obligations:** is necessary to ensure that the tenor or nature of the obligations imposed upon the CDF hereunder correspond with or do not conflict with the obligations imposed on the CDF under or pursuant to the FMCA, the Companies Act or the Financial Reporting Act or by any other applicable statutory provision; or
- (c) **Quotations:** shall be convenient for the purpose of obtaining or maintaining a quotation of any Debt Instruments on any exchange in New Zealand or elsewhere; or
- (d) **Applicable Law:** shall be made to comply with the requirements or any modification of the requirements of any applicable law; or

- (e) **Debt Instrument:** in relation to any modifications or additions to any Debt Instrument, is permitted by the terms of that Debt Instrument; or
- (f) **Otherwise Appropriate:** is, in the Supervisor's opinion, an appropriate and reasonable modification or addition in all the circumstances in so far as they relate to this Deed and the CDF (as to which modifications or additions which are necessary or convenient for complying with any practice of the New Zealand financial markets or for complying with banking practice, or are necessary, convenient or useful for the purpose of any financial market, banking or business practice or technique or method adopted by either the CDF or Persons which carry on similar business to the CDF, shall be prima facie deemed reasonable and appropriate), provided that any such modification or addition is in the Supervisor's opinion (which opinion shall be final and conclusive) not likely to have a material adverse effect on the CDF or to be or become materially prejudicial to the general interests of the Holders including any such modifications necessary to facilitate the CDF issuing additional classes of Debt Instruments pursuant to this Deed; or
- (g) **Clause 21:** is agreed by the Supervisor pursuant to clause 21 (Construction by reference to analogous obligations and exemptions); or
- (h) **Change to Issue Terms:** in relation to the terms and conditions on which that Debt Instrument is issued, is notified to all Holders of that class of Debt Instrument not less than 30 days prior to the date on which the change becomes effective and that Debt Instrument can be redeemed by the Holders prior to that date without penalty.

19.4 **FMA Approved Changes:** Notwithstanding anything else in this Deed, the CDF may amend or replace this Deed with the FMA's consent if the FMA is satisfied that it is necessary to enable the Deed to comply with any enactment or rule of law

19.5 **Special Resolution of Holders:** An amendment to or replacement of this Deed affecting the interests of a class of Holders only, is subject to clause 19.1(a), effective if authorised by a Special Resolution of that class of Holders.

19.6 **Special Resolution:** An amendment to or replacement of this Deed affecting the interests of more than one class of Holders, is subject to clause 19.1(a) effective if authorised by separate Special Resolutions of the affected classes of Holders.

20. WAIVER

20.1 **Temporary Variation:** In addition to, and not in abrogation of or substitution for, clause 19 (Modifications) (but subject to any applicable law) the Supervisor may temporarily vary the provisions of this Deed or the terms and conditions of any Debt Instrument in each case for such period and on such terms as:

- (a) **Supervisor Deems Appropriate:** the Supervisor may deem appropriate provided that it shall be satisfied that the interests of the Holders generally will not be materially prejudiced thereby; or
- (b) **Clause 22:** may be agreed by the Supervisor pursuant to clause 21 (Construction by reference to analogous obligations and exemptions); or

- (c) **Special Resolution:** may be approved by Special Resolution of the Holders of that class of Debt Instrument.

20.2 **Waivers:** Subject to any applicable law, by notice to the CDF or any Charging Subsidiary the Supervisor may waive any breach or anticipated breach by the CDF or Charging Subsidiary of this Deed or of the terms and conditions of any Debt Instrument either wholly or in part for a specified period or indefinitely and on such other terms and conditions as:

- (a) **Supervisor Deems Appropriate:** it deems expedient provided that it shall be satisfied that the interests of the Holders generally will not be materially prejudiced thereby and provided further that no such waiver shall prejudice the rights of the Supervisor or the Holders in respect of any other breach; or
- (b) **Clause 22:** may be agreed by the Supervisor pursuant to clause 21 (Construction by reference to analogous obligations and exemptions); or
- (c) **Special Resolution:** may be approved by Special Resolution of Holders.

21. CONSTRUCTION BY REFERENCE TO ANALOGOUS OBLIGATIONS AND EXEMPTIONS

If the CDF is granted an exemption, or an exemption is applicable to the CDF, in relation to any obligation imposed upon the CDF by or pursuant to the FMCA, the Companies Act or the Financial Reporting Act which is materially the same as or analogous to any obligation of the CDF under this Deed or any Debt Instrument, then so long as in the Supervisor's opinion such modification, temporary variation or waiver will not have a material adverse effect on the CDF or be or become materially prejudicial to the general interests of the Holders, the Supervisor may agree to modify or temporarily vary this Deed or the Debt Instrument or waive any breach or anticipated breach of such obligation in a manner which is consistent with the relevant exemption.

22. NOTICES

22.1 **Notices:** Any notice, demand, consent or request (a "Notice") under this Deed shall be in writing and may be signed or given by or on behalf of the CDF, the Supervisor, or any Holder (whichever Person is the giver thereof) by such Person on its behalf or by an officer, employee, agent, attorney or solicitor thereof and may be given:

- (a) **To or By Holders:** to every Holder whose Registered Address is in New Zealand, by ordinary post and to each Holder whose Registered Address is outside New Zealand by airmail post; or
- (b) **Parties to this Deed:** by any party to this Deed to any other party (unless that other party has by not less than 14 days written notice specified another address) by making or delivering it to that other party at the address shown below:

if to the CDF to:

The Roman Catholic Bishop of the Diocese of Hamilton trading as the Catholic Development CDF
51 Grey Street, Hamilton East 3216
PO Box 4353, Hamilton East 3247

Telephone No: 0800 843 233

Facsimile No: (07) 856 7035

Attention: Finance Council

Email: cdf@cdh.org.nz

if to the Supervisor to:

Covenant Trustee Services Limited

Level 6, 191 Queen Street, Auckland 1010

PO Box 4243, Shortland St, Auckland 1140

Attention: Client Services Manager

Email: team@covenant.co.nz

22.2 **Effectiveness:** Notices given pursuant to this Deed shall be deemed to have been made or given:

- (a) **Delivery:** in the case of delivery, when received;
- (b) **Telephone, email etc:** in the case of facsimile and other telephone or computer transmission, the next Business Day following the date of despatch; and
- (c) **Mail:** in the case of posting, on the fourth day following the date of posting;

provided that (except in the case of Notices to or by the Holders) if any Notice would be deemed made or given after 4.00pm on any business day in the locality of the recipient ("local business day") or on any day that is not a local business day such Notice shall be deemed made or given at 9.00am on the next succeeding local business day.

22.3 **Proof of Notice:** In proving the making or giving of any Notice:

- (a) **Execution:** it shall not be necessary to prove that any facsimile or telephonically or mechanically transmitted Notice was manually or originally executed by the Person making or giving it;
- (b) **Addresses etc:** it shall be sufficient to prove that the Notice was delivered or sent properly addressed encoded numbered and stamped or (as the case shall require) in the customary manner of the method of notification adopted;
- (c) **Joint Holders:** a Notice to joint Holders shall be deemed to have been properly made or served on each Holder if made or given in accordance with this Deed to the Holder whose name stands first in the Register.

23. MEETINGS

23.1 **Convened by the Supervisor at request of Holders:** The Supervisor (subject to its being indemnified to its satisfaction against all costs and expenses to be incurred thereby) shall at the request in writing of any Major Security Holder or Holders holding at least 10 per cent (10%) in Principal amount of the class of Debt Instrument shall summon a meeting of the Holders of that class. Any such request shall state the nature of the business proposed to be dealt with at the meeting. The Supervisor and/or the CDF may call meetings of all or any class of Holders in accordance with the applicable provisions of the Third Schedule.

23.2 **Convened by the CDF:** The CDF must, at the request in writing of any Holders holding at least 5 per cent (5%) in Principal amount of the class of Debt Instruments or at the request in writing of the Supervisor, call a meeting of the Holders of that class. Any meeting called under this clause 23.2 is in accordance with the applicable provisions of the Third Schedule.

23.3 **Other Rules:** The Supervisor may, without the consent of the Holders agree with the CDF to the adoption of supplemental rules or procedures for meetings of the Holders and/or variations to the rules and procedures applying to such meetings set out in the Third Schedule. Subject to the foregoing, meetings of the Holders shall be conducted in accordance with the rules and procedures set out in the Third Schedule.

24. **RELEASE UPON PAYMENT**

Upon proof being given to the reasonable satisfaction of the Supervisor that all of the Debt Instrument Indebtedness has been paid or satisfied or that provision for such payment or satisfaction has been made in accordance with the provisions of this Deed 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 CDF execute a deed of release of this Deed and shall thereupon retire.

25. **GOVERNING LAW**

This Deed shall be governed by and construed in accordance with the laws of New Zealand.

NOTES

1. This Debt Instrument Certificate must be surrendered;
 - (a) before redemption; and
 - (b) before any transfer of the whole or any part of the Debt Instrument comprised in this certificate can be registered.
2. All payments of principal and interest will be made in New Zealand.
3. All sums specified in this Debt Instrument Certificate relate to New Zealand currency.
4. A copy of the Trust Deed may be inspected at the registered office of the CDF.

BRIEF PARTICULARS

In respect of Debt Instruments the following are brief particulars of the Security provided by the Trust Deed.

1. The Debt Instrument is secured by a Security Interest granted in favour of the Supervisor over certain Bonds held by the CDF.]
2. Such Security Interest is subject only to any Prior Charges given by the CDF as permitted and within the limitations prescribed by the Trust Deed which provides that the CDF may create or permit to subsist Prior Charges securing amounts not exceeding 7.5% of Total Tangible Assets.
3. No Security Interest may be created ranking pari passu with the said Security Interest in favour of the Supervisor except Security Interests given to the Supervisor to secure Debt Instruments ranking pari passu in point of Security with the Debt Instrument.
4. Repayment of the Debt Instrument is not guaranteed by the Supervisor.
5. A Special Resolution of Holders duly passed in accordance with the Trust Deed binds all Holders except in regard to matters affecting their interests exclusively.

Note: All terms used above and in the Conditions endorsed hereon which commence with capital letters are defined in the Trust Deed.

CONDITIONS

1. The Principal and interest payable in respect of the Debt Instrument will be paid on the relevant dates set out above, but will become immediately due and payable if the Security created under and pursuant to the Trust Deed shall become enforceable and is enforced by the Supervisor.
2. Interest shall cease to accrue on the Debt Instrument from the date fixed for payment of the Principal unless either the Supervisor enforces this Deed or, upon production of this Debt Instrument Certificate, the CDF fails to make payment, in either of which case interest shall run until redemption or payment is actually effected or made.
3. Every Holder will be recognised by the CDF as entitled to his or her Debt Instrument and to the Principal and interest payable thereon free from any equity set-off or cross claim between the CDF and the original or any intermediate Holder of the Debt Instrument.

4. Transfers of Debt Instruments shall be made in the following manner:
- (a) subject to the terms and conditions of issue, the Debt Instrument or any part thereof may be transferred in such denominations as the CDF in its absolute discretion shall approve, in any of the following ways:
 - (i) by an instrument of transfer in writing in any usual or common form;
 - (ii) in any manner permitted by the FMCA;
 - (iii) in any other manner acceptable to the CDF.
 - (b) the Transferor shall be deemed to remain the Holder until the name of the transferee has been entered in the Register of Debt Instruments in respect thereof.
 - (c) no Transfer will be registered while the Register of Debt Instruments is closed.
 - (d) upon registration of a transfer, a new Debt Instrument Certificate or Debt Instrument Certificates shall be issued.

SECOND SCHEDULE

Further Conditions Applicable to Debt Instruments

FURTHER CONDITIONS

1. Every Holder shall be entitled to receive a Debt Instrument Certificate or several Debt Instrument Certificates for his or her Debt Instrument duly executed by the CDF pursuant to the Trust Deed provided always that joint Holders of Debt Instruments shall not be entitled to duplicate Certificates in respect of the Debt Instrument held by them jointly and the Certificates in respect of a joint holding may be delivered to such of the joint Holders as the joint Holders may in writing direct or the CDF may select.
2. The Holder shall as a condition precedent to receiving payment of the Principal of the Debt Instrument produce in the case of part payment and surrender in the case of payment in full, his Certificate to the CDF or in case of contemplated payment by the Supervisor, to the Supervisor provided always that this Condition shall not preclude payment by the CDF or by the Supervisor without production of the Certificate if the CDF or the Supervisor so elects and upon payment in part the Certificate shall be endorsed accordingly and returned to the Holder and upon payment in full the Certificate shall be deemed to have been cancelled and surrendered to the CDF.
3. The CDF may at the request of a Holder issue a Certificate in replacement of a lost, destroyed, damaged or incorrect certificate subject to production where possible of the existing certificate to the CDF or to such evidence being produced and such indemnity being given as to loss or destruction as the CDF may reasonably require.
4. Subject to the provisions of the Trust Deed the CDF will only recognise the registered Holder of the Debt Instrument, his executors or administrators as the absolute owner thereof and except as ordered by a Court of competent jurisdiction or by statute required shall not be bound to take notice or see to the execution of any trust whether express implied or constructive to which any Debt Instrument may be subject and the receipt of such Holder for the amount payable in respect thereof shall be a good discharge to the CDF notwithstanding any notice it may have of the right title and interest or claim of any other Person to or in respect of the amount so payable. No notice of any trust express implied or constructive shall be entered on the Register in respect of any Debt Instrument.
5. Any Person becoming entitled to a Debt Instrument in consequence of the death or bankruptcy of any Holder may upon producing such evidence that he or she sustains the character in respect of which he proposes to act under this Condition or of his or her title as the Bishop shall think sufficient be registered himself or herself as the Holder of such Debt Instrument or subject to the Conditions as to transfer contained in the Debt Instrument Certificate may transfer such Debt Instrument. This Condition shall include any case in which a Person becomes entitled as a survivor of persons registered as joint Holder.
6. Any Principal and interest payable in respect of the Debt Instrument may be paid by direct credit to the Bank account nominated by the Holder or by cheque or warrant crossed "not transferable" sent through the post to the registered address of the Holder or in the case of joint Holders to the Registered Address of that one joint Holder who is first named on the Register in respect of such Debt Instrument or to such Person and to such address as the

Holder or joint Holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the Person to whom it is sent or to such other Person as the Holder or joint Holders may in writing direct and payment of such cheque or warrant to the Holder or to such other Person as the Holder or joint Holders may so direct shall be a satisfaction of the Principal or interest in respect of which it was drawn.

7. If several Persons are entered in the Register as joint Holders of any Debt Instrument then without prejudice to the last preceding Condition the receipt of any one of such Persons for any Principal or interest from time to time payable on or in respect of such Debt Instrument shall be as effective a discharge to the CDF as if the Person signing such receipt were the sole registered Holder of such Debt Instrument.

THIRD SCHEDULE

Rules and Procedures for Meetings of Holders or class of Holders

(Clause 23.3)

1. **Interpretation**
 - 1.1 References in this Schedule to regulations are references to the provisions of this Schedule.
 - 1.2 **Appointed Time** means the day and hour at which any meeting of Holders or the taking of a poll of Holders (not at a meeting of Holders) is due to be held.
 - 1.3 **Proxy Closing Time** means 48 hours before the Appointed Time of the relevant meeting of Holders or taking of a poll of Holders.
 - 1.4 **Representative** means a Person appointed by an instrument by way of proxy or by a power of attorney and in addition, in the case of a Holder being a company or corporation sole only, a Person authorised pursuant to its constitution.
2. **Convening and Place**
 - 2.1 The Supervisor or the CDF may at any time of their own volition convene a meeting of the Holders. The CDF shall whenever required to do so pursuant to clause 23 (Meetings) of the Trust Deed or by the FMCA or the FMCR convene a meeting of the Holders.
 - 2.2 Notwithstanding the provisions of regulation 2.1 above, the Supervisor shall not be obliged to convene a meeting of Holders pursuant to such provisions until it has been indemnified to its satisfaction against all costs and expenses to be thereby incurred.
 - 2.3 At least ten days before the CDF or, as the case may be, the Supervisor convenes a meeting it shall advise the Supervisor or, as the case may be, the CDF in writing of the place, day and hour of the meeting and the nature of the business to be transacted and shall obtain the prior approval in writing of the Supervisor to the draft of the documents to be sent to the Holders concerned and if the Supervisor shall so require shall include with the documents sent to such Holders any statement which the Supervisor requires to make in relation to the meeting and the matters to be dealt with thereat.
 - 2.4 Notwithstanding regulation 2.3, if a Special Resolution is to be submitted to a meeting:
 - (a) a draft of the proposed notice of meeting must be given to the Supervisor at least 10 working days before the notice is given under regulation 3.1 (or any lesser period approved by the Supervisor); and
 - (b) the notice of meeting to be sent to Holders under regulation 3.1 must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution (but only if the Supervisor has provided these comments in writing to the CDF at least 5 Business Days before the notice is given under regulation 3.1).
 - 2.5 Subject to regulation 4.2, each meeting shall be held in the city or town in which the registered office of the CDF is situated or at such other place as the Supervisor determines or approves.
3. **Notice**

- 3.1 At least fifteen Business Days' notice of every meeting of Holders (exclusive of the day on which it is served and the day of the meeting) shall be given in the manner provided in the Trust Deed (namely in clause 22 (Notices)) to the following:
- (a) subject to regulation 4.7, every Holder entered in the Register as at the close of business on a date not less than five (5) Business Days and not more than 15 Business Days prior to the date of despatch of the notice. The material accompanying the notice of the meeting shall specify the date selected;
 - (b) every legal personal representative or assignee in bankruptcy of a deceased or bankrupt Holder who but for his death or bankruptcy, would have been entitled to receive notice of the meeting;
 - (c) the Supervisor; and
 - (d) the Bishop and an auditor of the CDF.
- 3.2 Each notice shall:
- (a) in the case of a meeting held under regulation 4.1, specify the place and Appointed Time of the meeting and the general nature of the business to be transacted; or
 - (b) in the case of a meeting held under regulation 4.2, specify the method (or methods) by which the meeting is being held, the place and Appointed Time of the meeting, the general nature of the business to be transacted and set out where, when by and how Holders can vote,
 - (c) but it shall not be necessary to specify in the notice the terms of any resolution to be proposed, except in the case of a resolution proposed to be passed as a Special Resolution of Holders in which case the text of the proposed resolution and any comments of the Supervisor under regulation 2.4(b) shall be set out.
- 3.3 The notice of meeting at which Holders are entitled to cast a vote by post, email or other electronic means must also state the name of the person authorised by the Supervisor to receive and count votes at that meeting. If no person has been authorised to receive and count those votes at the meeting, or if no person is named in the notice of meeting as being so authorised, the Supervisor is deemed to be so authorised.
- 3.4 If the meeting is convened by the CDF a copy of the notice shall be sent to the Supervisor. If the meeting is convened by the Supervisor a copy of the notice shall be sent to the CDF. If any Debt Instrument is listed for quotation on an Exchange a copy of the notice shall also be sent to the Exchange at the same time as notices are sent to the Holders.
- 3.5 The accidental omission to give notice or the non-receipt of notice by any Person entitled thereto shall not invalidate the proceedings at any meeting.
- 3.6 An irregularity in a notice given under regulation 3 is waived
- (a) all Holders entitled to attend and vote at the meeting attend without protest as to the irregularity, or if all Holders agree to the waiver; or

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

4. Method of holding meetings and Quorum

- 4.1 A meeting may be held by a quorum of the Holders being assembled together at the time and place appointed for the meeting in accordance with regulation 2.5.
- 4.2 A meeting may also be held by means of a quorum of Holders:
 - (a) participating in the meeting by means of audio, audio and visual, or electronic communication; or
 - (b) by a combination of regulation 4.1 and 4.2(a),provided that the Supervisor approves those means and the Holder or Representative complies with any conditions imposed by the Supervisor in relation to participation by means of audio, audio and visual or electronic communication.
- 4.3 No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business. A Holder is present at a meeting and forms part of the quorum if participating by means of audio, audio and visual, or electronic means approved by the Supervisor under regulation 4.2.
- 4.4 Subject to regulation 4.6 in relation to adjourned meetings, the quorum for passing a Special Resolution of Holders shall be Holders present in person or by Representative or who have cast votes under regulation 13.9 holding or representing at least 25% of the Principal amount of the Debt Instruments held by persons entitled to vote at the meeting.
- 4.5 Subject to regulation 4.6 in relation to adjourned meetings, the quorum for the transaction of any business at a meeting of Holders other than the passing of a Special Resolution of Holders shall be Holders present in person or by Representative holding or representing at least 10% in Principal amount of the Debt Instruments or applicable class of Debt Instrument.
- 4.6 If within 30 minutes from the Appointed Time a quorum is not present, the meeting if convened upon the request of Holders, shall be dissolved. In any other case it shall stand adjourned to such day and time not being less than 14 days thereafter and to such place as may be appointed by the chairperson. At such adjourned meeting the Holders present shall (regardless of their number or the Principal amount of Debt Instruments held or represented by them) be a quorum for the transaction of business including the passing of Special Resolutions.
- 4.7 Notwithstanding regulation 3.1, notice of an adjourned meeting at which a Special Resolution of Holders is to be submitted shall be given to the same Persons as those who were given notice of the original meeting and otherwise shall be given in the same manner (except in respect of the period of notice) as notice of the original meeting. Such notice shall state that the Holders present at the adjourned meeting whatever their number and whatever the Principal amount of Debt Instruments held or represented by them shall form a quorum. No notice shall be required of any other adjourned meeting.

5. Right to Attend and Speak

Any director, officer or solicitor of the Supervisor and any other Person authorised by the Supervisor or the CDF may attend any meeting (including any adjournment thereof) and all such Persons shall have the right to speak at the meeting.

6. Chairperson

A Person nominated in writing by the Supervisor shall preside as chairperson at every meeting and if no such Person is nominated or if at any meeting the Person nominated is not present within 15 minutes after the time appointed for holding the meeting (or adjournment thereof), the Holders present and eligible to vote thereat shall choose one of their number to be chairperson and, failing such choice, the CDF may appoint the chairperson.

7. Adjournment

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

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

8. Recognition of Ownership

8.1 The Persons registered as Holders in the Register at Proxy Closing Time and no other Person or Persons shall be recognised and treated as the legal Holders of the Debt Instrument specified in the Register whether such Persons are or are not in fact the owners of such Debt Instrument.

9. Authority to Vote

9.1 The Persons registered as Holders in the Register at Proxy Closing Time or the personal representatives of any such Holder, or their respective Representatives shall, except as may be otherwise provided by regulation 13.8, be exclusively entitled to be present at a meeting of Holders, to be counted in the quorum, and to vote in person, or vote by postal vote, email, or a vote using any other electronic means permitted for the meeting by the Supervisor under regulation 4.2 or by Representative in respect of the Debt Instrument.

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

10. Proxies

10.1 The Holders may appoint proxies by:

- (a) notice in writing, in accordance with regulation 10.2, signed by the Holder; or
- (b) by electronic notice, in accordance with regulation 10.2.

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

I/We, of being a Holder/s of \$..... in principal amount of [] Debt Instruments of the Roman Catholic Bishop of the Diocese of Hamilton trading as the Catholic Development Fund hereby appoint of or failing him/her of or failing him/her, the Chairperson of the meeting as my/our proxy to vote for me/us and on my/our behalf at the meeting of Holders of the CDF to be held on 20 , and at any adjournment thereof.

I/We authorise my/our proxy to vote

*in favour of/against the resolution(s).

Signed this day of 20 .

Signature of Holder(s)

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

10.3 The instrument appointing a proxy shall be in writing under the hand of the appointor or of his or her attorney duly authorised in writing or if the appointor is a company either under seal or under the hand of an officer of the company, or its attorney duly authorised in writing.

10.4 A Person appointed to act as a proxy need not be a Holder and a holder of a proxy shall have the right to speak at the meeting (or any adjournment thereof).

10.5 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified by a Solicitor or Notary Public or in such other manner as the Supervisor shall approve shall be deposited at or sent by electronic notice to such place as the Supervisor, or the CDF with the approval of the Supervisor, may in the notice convening the meeting direct (or if no such place is appointed then at the registered office of the CDF, or for electronic notices at cdf@cdh.org.nz) not later than Proxy Closing Time (or such other shorter period as the CDF may direct in the notice convening the meeting) and in default the instrument of proxy shall not be treated as valid, provided that:

- (a) the Supervisor may in its discretion accept and treat as valid an instrument of proxy delivered late or otherwise than in accordance with this regulation 10.5; or
- (b) the person authorised to receive and count votes under regulation 3.3 may in its discretion (after consultation with the Supervisor) accept and treat as valid an instrument of proxy delivered late or otherwise than in accordance with this regulation 10.5.

10.6 A proxy, whether in a usual or common form or not, shall unless the contrary is stated thereon be valid as well for any adjournment of the meeting as for the meeting to which it relates and need not be witnessed. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy shall be valid after the expiration of 12 months from the date

of its execution but this provision shall not be construed to apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.

10.7 An instrument of proxy in favour of:

- (a) the chairperson of the CDF; or
- (b) the chairperson of the meeting or the chairperson (howsoever expressed),

shall be valid and effectual as though it were in favour of a named Person and shall, in the case of paragraph (a) constitute the Person holding the office of chairperson of the CDF and in the case of paragraph (b) constitute the Person who chairs the meeting for which the proxy is used (whether an adjournment or not) the lawful proxy of the appointor.

10.8 A Person appointed proxy shall have the right to demand or join in demanding a poll and shall (except to the extent to which the proxy is specially directed to vote for or against any proposal) have the power generally to act at the meeting for the Holder concerned.

10.9 A vote given in accordance with the terms of an instrument of proxy or power of attorney or authority as referred to in regulation 12 (or other form approved by the Supervisor) shall be valid notwithstanding the previous death, insanity or (in the case of a company) liquidation of the principal, or revocation of the proxy or power of attorney or other form of appointment or authority (or of the authority under which the proxy, power of attorney or authority was executed), or the transfer of the Debt Instruments in respect of which the vote is given, provided that no intimation in writing of such death, insanity, liquidation, revocation or transfer is received by the Supervisor or the CDF at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, power of attorney or authority is used

11. Attorneys

Any Holder may by power of attorney appoint an attorney or attorneys (who need not be a Holder) to vote and act on his or her behalf at any meeting (and any adjournment thereof). An attorney shall be entitled to produce evidence of his or her appointment at any time before the Appointed Time of the meeting or for the taking of a poll or at any time before an adjourned meeting, at which he or she proposes to vote, or at such meeting or adjourned meeting. An attorney if so empowered may appoint a proxy for the Holder granting the power of attorney.

12. Corporate Representatives

A Person authorised as required or permitted by law by a Holder which is a company or a corporation, to act for it as its representative at any meeting or any adjourned meeting, shall be entitled to exercise the same powers on behalf of that corporation as that corporation could exercise if it were an individual Holder. A Person so authorised shall be entitled to produce evidence of his or her appointment at any time before the Appointed Time of the meeting or for the taking of a poll or at any time before an adjourned meeting, at which he or she proposes to vote, or at such meeting or adjourned meeting.

13. Voting

13.1 A resolution put to the vote of a meeting of:

- (a) Holders assembled together at the time and place appointed for the meeting shall be decided by voting by voice or voting on a show of hands (with the method to be determined by the chairperson); or
- (b) Holders participating in the meeting by means of audio, audio and visual, or other electronic communication, or by a combination of the methods described in regulations 4.1 and 4.2(a) shall be decided by any method permitted by the chairperson,
- unless a poll is (before or on the declaration of the result under regulations 13.1(a) or(b)) demanded by the chairperson or the Supervisor or any representative of the Supervisor or by any Major Security Shareholder or by one or more Holders holding or representing not less than 5 percent in principal amount of the class of Debt Instrument for the time being outstanding. Unless a poll is so demanded a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 13.2 If a poll is duly demanded it shall be taken in such manner as the chairperson may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 13.3 In case of an equality of votes whether on a show of hands or by voice or otherwise or on a poll the chairperson of the meeting at which the vote takes place or at which the poll is demanded shall be entitled to a casting vote in addition to the votes (if any) to which he or she may be entitled as a Holder or on behalf of Holders.
- 13.4 A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (not being more than 30 days from the date of the meeting) and place as the chairperson may direct. The result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 13.5 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 13.6 On a poll votes may be given either personally or by Representative. On a poll a Person entitled to more than one vote need not use all his or her votes or cast all the votes he or she uses in the same way.
- 13.7 On a vote by show of hands or by voice or otherwise (but excluding a poll) each Person present at the meeting (a Holder is present at a meeting if participating by audio, audio and visual or other electronic means) and entitled to vote (whether personally or by Representative) shall have one vote only. On a poll every Holder (including any Holder of Security Stock) who is present in person or by Representative shall be entitled to one vote for every nominal \$1.00 of Debt Instrument of which he or she or it is the Holder. Any Debt Instrument for the time being held by the CDF or any related company (as defined in section 2(3) of the Companies Act) of the CDF shall not whilst so held confer any right to vote.

- 13.8 In the case of joint Holders the vote of the senior who tenders a vote whether in person or by Representative shall be accepted to the exclusion of the votes of the other joint Holders and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.
- 13.9 A Holder may also exercise their right to vote at a meeting by casting a postal vote, a vote by email, or a vote using any other electronic means, in each case that is permitted for the meeting by the Supervisor under regulation 13.10, provided the Holder complies with any conditions imposed under regulation 4.2. A Holder is present at a meeting and entitled to vote if participating by post, email or other electronic means and their votes and polls are counted in accordance with regulation 13.11.
- 13.10 A Holder may cast a vote by postal vote, email or other electronic means that is permitted by the Supervisor by sending a notice of the manner in which the Holder's votes are to be voted to a person authorised to receive and count those votes at the meeting. The notice must reach the person 48 hours before the Appointed Time of the relevant meeting of Holders.
- 13.11 The person authorised to receive and count votes at the meeting must:
- (a) collect together all votes received by him or her or by the CDF;
 - (b) in relation to each resolution to be voted on at the meeting, count:
 - (i) the number of Holders voting in favour of the resolution and the number of votes cast by each Holder in favour of the resolution; and
 - (ii) the number of Holders voting against the resolution and the number of votes cast by each Holder against the resolution; and
 - (c) sign a certificate certifying that they have carried their duties under regulation 13.11(a) and (b) and which sets out the results of the counts required by regulation 13.11(b); and
 - (d) ensure that the certificate is presented to the chairperson of the meeting.
- 13.12 If a vote is taken at a meeting on a resolution on which votes under this regulation 13.12 have been cast, the chairperson of the meeting must:
- (a) on a vote by show of hands or by voice or otherwise, count each Holder who has submitted a vote under this regulation 13.12 for or against the resolution;
 - (b) on a poll, count the votes cast by each Holder (who are entitled to one vote for every nominal \$1.00 of Debt Instrument of which he or she or is the Holder) who has submitted a vote under regulation 13.10 for or against the resolution
- 13.13 The chairperson of a meeting must call for a poll on a resolution if he or she believes that sufficient votes have been cast under regulation 13.10 so that if a poll is taken the result may differ from that obtained on a vote by show of hands, voice or otherwise.
- 13.14 The chairperson of a meeting must ensure that the certificate of votes received under regulation 13.11(d) is attached to the minutes of the meeting.

14. Ordinary Resolution

The expression "ordinary resolution of Holders" means a resolution passed at a meeting of Holders duly convened and held in accordance with the provisions of the Trust Deed at which not less than 50% of the persons voting at such meeting upon a show of hands, or by voice or by any other method permitted by the chairperson, or if a poll is duly demanded then not less than 50% of the votes given on such a poll voted in favour of the resolution.

15. Special Resolution

- 15.1 The expression "**Special Resolution of Holders**" when used in the Trust Deed means a special resolution as defined in the FMCA.
- 15.2 Without limiting the rights powers and discretions conferred on the Supervisor by the Trust Deed but subject to regulation 16 below, a meeting of Holders shall, in addition to all other powers which by the Trust Deed are specified as exercisable by Special Resolution of Holders (including as set out in this regulation 15.2) have the power, exercisable by and in accordance with the terms and conditions (if any) contained in such Special Resolution, to agree, approve, authorise, ratify, and sanction any act, matter or thing whatsoever in relation to or in connection with the Trust Deed, the Debt Instrument and the exercise or performance by the Supervisor of its powers, duties, and discretions in respect thereof. Without in any way limiting anything elsewhere contained in this regulation 15.2, the following powers may be exercised by Special Resolution of Holders:
- (a) power to sanction either unconditionally or upon any conditions the release of the CDF from the payment of all or any part of the Debt Instrument Indebtedness;
 - (b) power to sanction the exchange of Debt Instruments for or the conversion of Debt Instruments into shares, alternative Debt Instruments, or other obligations or securities of the CDF or any other company formed or to be formed;
 - (c) power to postpone or with the concurrence of the CDF to accelerate the day when the Principal of the Debt Instruments shall become payable and to suspend or postpone or, with the concurrence of the CDF, to accelerate the payment of interest on Debt Instruments;
 - (d) power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Holders against the CDF howsoever such rights shall arise;
 - (e) power to assent to any alteration or addition to the provisions contained in the Trust Deed or the terms or conditions attaching to the Debt Instruments proposed or agreed to by the CDF and to authorise the Supervisor to concur in and execute any supplemental trust deed embodying any such alteration or addition;
 - (f) power to give any sanction, assent, release or waiver of any breach or default by the CDF under any of the provisions of the Trust Deed or the terms or conditions attaching to any Debt Instrument;
 - (g) subject to section 105 of the FMCA, power to discharge, release or exonerate the Supervisor from all liability in respect of any act of commission or omission for which the Supervisor has or may become responsible under the Trust Deed;

- (h) power to sanction any scheme for the reconstruction of the CDF or for the amalgamation of any such Person with any other company where such sanction is necessary;
- (i) subject to the provisions of the Trust Deed, power to remove any Supervisor and to approve the appointment of or appoint a new Supervisor;
- (j) power to give any consent, approval, dispensation, authorisation or waiver, or to take any other action, able to be given or taken by the Supervisor or the Holders under the provisions of the Trust Deed or the terms and conditions of any Debt Instrument;
- (k) power to consent to, approve, authorise and direct the Supervisor in respect of any of the matters referred to in regulation 15.2(j) or any of the foregoing paragraphs of this regulation 15.2, or as to any other matter which may be necessary to carry out and give effect to any Special Resolution of Holders;
- (l) power to authorise the Supervisor to concur in and execute any supplemental deed or other document embodying such sanction, authority or approval, assent, release, waiver, direction or request referred to or otherwise permitted by this regulation 15.2.

16. Effect of Ordinary Resolution or Special Resolution

An ordinary resolution or Special Resolution of Holders passed at a meeting of Holders duly convened and held in accordance with the regulations contained in this Third Schedule shall be binding upon all the Holders whether present or not present at the meeting and each of the Holders and the Supervisor (subject to the provisions of its indemnity contained in the Trust Deed) shall be bound to give effect thereto accordingly. The passing of any such resolution shall as between the Supervisor and the Holders be conclusive evidence that the circumstances justify the passing thereof, the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution. A resolution which affects either a particular Holder only as opposed to the rights of the Holders generally shall not be binding on such Holder unless such Holder agrees to be bound by the terms of any such resolution.

17. Minutes

Minutes of all resolutions and proceedings at every meeting shall be made by the CDF or by some Person appointed by the chairperson of such meeting at which such resolutions were passed or proceeding had, or by any Persons appointed by the said chairperson of the meeting for the purpose, or by the chairperson of the next succeeding meeting of Holders. shall be prima facie evidence of the matters stated in those minutes and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to be duly passed and had. Copies of such minutes shall be furnished by the CDF to the Supervisor as early as possible after the holding of the meeting to which they refer.

18. Resolutions in Writing

- 18.1 Anything that may be done by Holders by a resolution or Special Resolution of Holders passed at a meeting of Holders may be done by a resolution in writing signed by Holders

having the right to vote on that resolution, holding in the aggregate the principled amount of Debt Instruments conferring the right to cast not less than 75% of the votes which could be cast on that resolution.

- 18.2 Any such resolution may consist of several documents in similar form (including letters, electronic mail, or other similar means of communication), each signed by one or more Holders.
- 18.3 Any such resolution may be signed by a Holder, or an agent or attorney of the Holder duly authorised in writing, or if the Holder is a company, either under its seal or signed by an officer or attorney so authorised or by any director, secretary, general manager, investment manager or other Person who appears to the Supervisor to have authority to sign the resolution on behalf of the CDF.
- 18.4 The CDF must ensure that the proposed resolution is:
 - (a) dated with the date the resolution is first sent, for the purpose of signing, to persons entitled to vote on the resolution at a meeting of Holders;
 - (b) sent to every person entitled to vote (as far as is reasonably practicable the resolution should be circulated to every person entitled to vote on the same date); and
 - (c) accompanied by a statement with the effect of regulation 18.5.
- 18.5 A proposed resolution lapses if not passed by resolution in writing in accordance with the Trust Deed within 3 months after the date it is first sent to Holders entitled to vote on the resolution at a meeting of Holders.
- 18.6 The CDF must, within 5 working days after a resolution is passed, send a copy of the resolution to every person entitled to vote who did not sign the resolution and on whose behalf the resolution was not signed.

19. Unpaid calls

If a sum due to the CDF in respect of a Debt Instrument has not been paid, then the Holder is not entitled to vote at a meeting in respect of those Debt Instruments with sums outstanding.

3. Guarantee

The Subsidiary, jointly and severally with each other Charging Subsidiary, unconditionally guarantees the due and punctual payment by the CDF in accordance with the provisions of the Trust Deed of the Secured Money as and when the same shall become due and payable under the Trust Deed and the due observance and performance by the CDF of all its obligations under the Trust Deed.

4. Charge

4.1 Security Interest:

- (a) the Subsidiary grants to the Supervisor a Security Interest in all of its Secured Property to secure the payment of the Debt Instrument Indebtedness;
- (b) such Security Interest shall be a first ranking Security Interest subject only to such liabilities (if any) as may be deemed to be preferred by operation of law, or any Prior Charge given or permitted to subsist pursuant to the provisions of clause 5.3 (Prior Charges) of the Trust Deed;
- (c) except to the extent agreed otherwise by the Supervisor in writing, nothing in this Deed shall be construed as an agreement to defer or postpone the date of attachment of the Security Interest in any Personal Property.

4.2 Transfer of accounts receivable and chattel paper: In the case of all the Subsidiary's present and future accounts receivable and chattel paper, and all of the Subsidiary's present and future rights in relation to any accounts receivable and chattel paper, the Security Interest provided for by clause 5.1(a) of the Trust Deed takes effect as a transfer and assignment thereof to the Supervisor.

5. Incorporation of Trust Deed

It is hereby expressly declared that there shall be deemed to be incorporated in this Deed all the provisions of the Trust Deed in the same manner and to the same extent as if the same had been set out in full herein with all necessary modifications and made applicable to the Subsidiary and the Subsidiary accordingly covenants with the Supervisor duly and punctually to observe, fulfil and perform and to be bound by all the provisions imposed on, relating to or affecting it by or under this Deed or the Trust Deed or by the terms or conditions of issue of any Debt Instrument.

6. Security enforceable

If the Security created by or pursuant to the Trust Deed in relation to the undertaking and assets thereby charged shall become enforceable then the Security hereby created in relation to the Secured Property of the Subsidiary shall also become immediately enforceable and should the Supervisor notify the CDF of its intention to enforce the Security created by or pursuant to the Trust Deed then the whole of the Secured Money shall become immediately due and payable.

7. Attorney

The Subsidiary irrevocably appoints the Supervisor and any Receiver appointed by the Supervisor and the Supervisor's general manager, assistant general manager, manager corporate trusts division and secretary for the time being to be its attorney and in its name and on its behalf to enter

into, execute, sign and do all assurances, deeds, instruments, acts and things whatsoever which shall in the opinion of the Supervisor or the attorney be necessary or expedient, or that it ought to execute, sign and do for the purpose of carrying out any trust or obligation declared or imposed upon it by this Deed or by the Trust Deed or for giving to the Holders, or to the Supervisor on their behalf, the full benefit of any of the provisions of this Deed or the Trust Deed and generally to use its name in the exercise of all or any of the powers hereby or by the Trust Deed conferred on the Supervisor or any Receiver appointed by the Supervisor, as the case may be.

EXECUTION

Executed as a Deed

**SIGNED by BISHOP STEPHEN MARMION LOWE
THE ROMAN CATHOLIC BISHOP OF THE DIOCESE
OF HAMILTON TRADING AS THE CATHOLIC
DEVELOPMENT FUND**

Stephen Marmion Lowe

BISHOP STEPHEN MARMION LOWE

and sealed with his seal of office in the presence of:



Authorised Signatory

MICHAEL DENIS HANARAY

Print Name

[Signature]

Signature of Witness

CHARTERED ACCOUNTANT

Occupation

HAMILTON

City/Town of Residence

SIGNED by COVENANT TRUSTEE SERVICES LIMITED by

Authorised Signatory

Authorised Signatory

Print Name

Print Name

Witness to both signatures

Print Name

Occupation

Address