

~~Deed Poll~~
~~in respect of the issuance of debt securities~~

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securities

Wellington Regional Council (Issuer)

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Date: 22 May 2007 as amended from time to time

PARTIES

Wellington Regional Council (*Issuer*)

INTRODUCTION

- A The Issuer proposes to issue debt securities denominated in New Zealand dollars.
- B The debt securities are to be constituted by, and issued subject to the terms and conditions contained in, this deed.

AGREEMENT

1 INTERPRETATION

1.1 Definitions

In this deed, unless the context otherwise requires:

Agency Agreement means the registrar and paying agency agreement dated on or about the date of this deed under which the Registrar is appointed as registrar and paying agent for the Notes.

Approved Issuer ~~means any person who has been deemed to be approved as an approved issuer in accordance with~~ has the meaning given in section ~~NG 6YA1~~ of the Income Tax Act ~~2004~~.2007.

Approved Issuer Levy ~~means, in relation to any payment of interest (as defined~~ has the meaning given in section 86F of the Stamp and Cheque Duties Act ~~1971)~~ ~~under any Note, the levy payable by the Issuer in accordance with section 86J of the Stamp and Cheque Duties Act 1971 to enable the payment of such interest to be made to any non-tax resident with a deduction for New Zealand non-resident withholding tax at the rate of zero percent under section NG2(1) of the Income Tax Act 2004~~.1971.

Auditor means the auditor of the Issuer from time to time.

~~*Austraclear* means the securities clearing and settlement facility known as the Austraclear New Zealand System, and includes any securities clearing and/or settlement facility which supersedes or replaces it.~~

~~*Austraclear Regulations* means, at any time, the rules and regulations governing the Austraclear New Zealand System at that time.~~

Base Rate means, in relation to an Interest Period for a Floating Rate Note:

- (a) the ~~bid-settlement~~[FRA](#) rate (rounded upwards, if necessary, to the nearest four decimal places) as displayed at or about 10.45am on the first day of that Interest Period on the Reuters Monitor Screen page BKBM (or its successor page) for bank bills having a term approximately equal to that Interest Period; or
- (b) if there is no such rate displayed for bank bills having that term, then the average (rounded upwards, if necessary, to the nearest four decimal places) of the rates quoted to the Registrar by each of the Reference Banks (or such one or more of them as are quoting) as being its buy rate for bank bills at or about that time on that date.

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

Default Rate means in the case of a Floating Rate Note, the Base Rate plus 2% per annum and, in the case of a Fixed Rate Note or a Zero Coupon Note, as the case may be, the interest rate (or discount rate) applicable to that Note plus 2% per annum.

Dollars and \$ means the lawful currency of New Zealand from time to time.

Event of Default means any of the events set out in clause 13.

Extraordinary Resolution has the meaning set out in Schedule 2.

Face Value means, in relation to a Note, the face or principal amount of that Note, being the amount entered as such in the Register in respect of that Note.

Fixed Rate Note means a Note bearing interest at a fixed rate.

Floating Rate Note means a Note bearing interest at a margin over the Base Rate.

Holder means, in relation to any Note at any time, the person whose name is recorded in the Register as the holder of that Note at that time.

Information Memorandum means, in relation to any issue of Notes, any information memorandum or other offering document prepared by, or on behalf and with the approval of, the Issuer in relation to that issue of Notes, together with all documents to be distributed with or which form part of that information memorandum or other offering document.

Interest Payment Date means, in respect of a Fixed Rate Note or a Floating Rate Note, as the case may be, the last day of each Interest Period for that Note.

Interest Period means, in relation to a Fixed Rate Note or a Floating Rate Note, a period determined in accordance with clause ~~5.1~~[5.1](#) in respect of that Note.

Issue Date means, in relation to a Note, the date on which that Note is issued, being the date specified as such in the Issue Notice in respect of such Note and as recorded as such in the Register in respect of that Note.

Issue Notice means a notice relating to an issue of Notes from the Issuer to the Registrar substantially in the form set out in schedule 1 or such other form of notice as the Issuer and the Registrar may from time to time agree.

Issuer means Wellington Regional Council.

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

Maturity Date means, in relation to a Note, the date for the repayment of that Note, being the date recorded as such in the Register in respect of that Note.

Negative Pledge means the negative pledge covenant contained in clause 12 of this deed.

Note means a note constituted by, and subject to the terms and conditions set out in, this deed and, for the avoidance of doubt, includes Fixed Rate Notes, Floating Rate Notes and Zero Coupon Notes.

[NZClear means the securities clearing and settlement facility known as the NZClear System, and includes any securities clearing and/or settlement facility which supersedes or replaces it.](#)

[NZClear Regulations means, at any time, the rules and regulations governing the NZClear System at that time.](#)

Principal Amount means, in relation to a Note, the amount payable on repayment of that Note, being the amount entered as such in the Register in respect of that Note or the amount that would be entered in the Register in respect of that Note if the Note were issued.

Record Date means, in respect of a Note, 5pm on the Business Day before the Maturity Date of that Note and also means, in relation to a payment of interest on

a Fixed Rate Note or a Floating Rate Note, 5pm on the tenth day before each Interest Payment date for that Note.

Register means the register of the Notes maintained in accordance with this deed and the Agency Agreement.

Reference Banks means ANZ ~~National~~[Bank New Zealand Limited, ASB](#) Bank Limited, Bank of New Zealand and Westpac ~~Banking Corporation~~[New Zealand Limited \(or any successor of any of the same\) or any replacement bank reasonably selected by the Issuer in consultation with the Trustee.](#)

Registrar means Computershare Investor Services Limited, as registrar and paying agent for the Notes, or any successor agent appointed under the Agency Agreement.

Term Note means a Note which has a Maturity Date falling more than 365 days after the Issue Date.

Term Note Holder means the Holder of a Term Note.

[**Wholesale Investor has the meaning set out in clauses 3\(2\) and \(3\) of Schedule 1 to the Financial Markets Conduct Act 2013.**](#)

Zero Coupon Note means a Note that is issued on a zero coupon basis.

1.2 References

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

a *person* includes an individual, firm, company, corporation or unincorporated body of persons, state, or governmental agency (in each case, whether or not having separate legal personality).

a *security* includes a mortgage, charge, lien, pledge, security interest of any nature, and any other arrangement having like economic effect over any property, assets or revenues and *unsecured* means not subject to a security.

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

tax resident means resident in New Zealand for tax purposes or engaged in business in New Zealand through a fixed establishment in New Zealand and *tax residency* and *non-tax resident* shall be construed accordingly.

1.3 **Miscellaneous**

- (a) The introduction to and headings in this deed are inserted for convenience only and shall be ignored in construing this deed.
- (b) Unless the context otherwise requires, words denoting only the singular number include the plural and vice versa.
- (c) References to any legislation or to any provision of any legislation are deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted and, unless the context otherwise requires, also include any statutory instrument issued under any such legislation or provision.
- (d) References to any document include references to such document as modified, novated, supplemented, varied or replaced from time to time.
- (e) References to any party to this deed or any other document or any Holder shall include its successors or permitted assigns.
- (f) Anything which may be done at any time may also be done from time to time.

2 **ISSUE, FORM AND STATUS OF NOTES**

2.1 **Issue and creation**

- (a) Notes may be issued by the Issuer under this deed at the times, in the amounts, to the persons, on the terms and conditions and at the prices from time to time determined by the Issuer. Such Notes may be issued on the basis that they bear interest at (i) a fixed rate (Fixed Rate Notes), (ii) a margin over the Base Rate (Floating Rate Notes) or (iii) bear no interest but are issued at a discount to their Principal Amount (Zero Coupon Notes).
- (b) Each Note shall be issued and created by the Registrar, on behalf of the Issuer, entering in the Register the particulars of that Note, substantially as specified in the Issue Notice relating to that Note.
- (c) The Notes will be held subject to the provisions contained in this deed, all of which shall be binding upon the Issuer and the Holders.

2.2 **Issue procedure**

On each day on which the Issuer has accepted an offer to purchase Notes or has otherwise agreed to issue Notes to any person the Issuer shall send to the

Registrar by facsimile an Issue Notice in respect of those Notes, substantially in the form set out in schedule 1.

2.3 Form of Notes

Each Note shall:

- (a) be in uncertificated book entry form;
- (b) have a Principal Amount which is a minimum of ~~\$500,000~~ [750,000](#) and a multiple of \$100,000; and
- (c) have a Maturity Date which is not less than 1 day nor more than 15 years after its Issue Date (or such later date as may be agreed by the Issuer and a subscriber, in any particular case).

2.4 Status

The Issuer undertakes to the Holders that its indebtedness under this deed and the Notes will at all times rank at least equally in right of payment with all its other unsecured, unsubordinated indebtedness, other than indebtedness preferred solely by operation of law.

3 TITLE AND TRANSFER

3.1 Transfer

Title to a Note may be transferred by a transfer in any usual or common form signed by the transferor and the transferee and produced to the Registrar. The Registrar will thereupon record the name and address of the transferee in the Register.

~~3.2 Austraclear~~

[3.2 NZClear](#)

Notwithstanding clause 3.1, where Notes are lodged in ~~Austraclear~~ [NZClear](#) the beneficial interest in those Notes may be transferred in accordance with the ~~Austraclear~~ [NZClear](#) Regulations.

3.3 Partial transfers

A Holder may transfer part only of its interest in a Note. However, no transfer of its interest may be effected if such transfer would result in the transferor or transferee holding or continuing to hold Notes with an aggregate Principal Amount of less than the minimum amount specified in clause 2.3(b).

3.4 Fees

The Issuer and the Registrar shall make no charge to the Holders for:

- (a) the registration of any holding of Notes; or

(b) the transfer of any Notes.

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

3.5 Certificates

At the request of a Holder (in respect of a Note held outside [AustraclearNZClear](#)), the Issuer shall procure the Registrar to issue to that Holder a certificate or notice of registration in relation to the Notes held by that Holder, such certificate or notice to be in a form agreed between the Issuer and the Registrar.

3.6 Title

A certificate or notice of registration issued in respect of a Note will not constitute a document of title. Entitlement will be determined solely by entry in the Register

and, in the case of the beneficial interest in Notes lodged in [AustraclearNZClear](#), the records of [AustraclearNZClear](#).

4 COVENANT TO PAY

4.1 Payment of Principal

The Issuer shall, on the Maturity Date of each Note, unconditionally pay or cause to be paid to, or to the order of, the relevant Holder, the Principal Amount of that Note, subject to and in accordance with the provisions of this deed and the Agency Agreement.

4.2 Payment of Interest on Fixed Rate Notes and Floating Rate Notes

The Issuer shall, on the relevant Interest Payment Dates, pay interest on each Fixed Rate Note for the appropriate Interest Period at the rate per annum specified in the Register as being applicable to that Note and pay interest on each Floating Rate Note for the appropriate Interest Period at the rate per annum equal to the aggregate of the Base Rate for that Interest Period (as determined by the Registrar) and the Margin for that Floating Rate Note.

4.3 No guarantee by the Crown

In accordance with section 121 of the Local Government Act 2002, the Crown does not guarantee and is not liable to contribute to the payment of any of the Issuer's obligations owed to the Holders under this deed.

4.4 Default interest

If any amount payable in respect of a Note is not paid on its due date, interest shall accrue on the unpaid amount at the Default Rate applicable to that Note and shall be determined at monthly intervals from the due date of payment until the unpaid

amount is paid (after, as well as before, any judgment) and shall be compounded monthly until paid.

5 **CALCULATION AND PAYMENT OF INTEREST ON FIXED RATE NOTES AND FLOATING RATE NOTES**

[5.1](#) ~~5.1~~ **Interest Periods**

Each Interest Period in relation to a Fixed Rate Note shall be for a period of 6 months and for each Floating Rate Note shall be a period of one, two, three or six months⁴ duration (in each case as specified by the Issuer at the time of issue of that Note and entered in the Register) and:

- (a) the first Interest Period will commence on the Issue Date and each subsequent Interest Period will commence on expiry of the previous one;
- (b) if, in the case of a Floating Rate Note, an Interest Period would otherwise end on a day which is not a Business Day it will be extended to the next Business Day; and
- (c) if, in the case of a Floating Rate Note, the final Interest Period would otherwise extend beyond the Maturity Date it will end on the Maturity Date.

5.2 **Basis for calculation**

Interest shall be calculated on the Principal Amount of each Fixed Rate Note on the basis of a year of 365 days and will be paid to the Holder in equal quarterly, semi annual or annual instalments on the Interest Payment Dates for that Note. Interest shall be calculated on the Principal Amount of each Floating Rate Note on the basis of the number of days in the relevant Interest Period and a year of 365 days. Interest on each Floating Rate Note shall accrue from day to day and shall be paid to the Holder in arrears on the Interest Payment Date for that Interest Period.

5.3 **Non-payment**

Each Fixed Rate Note or Floating Rate Note will cease to bear interest from its Maturity Date unless payment of the Principal Amount is improperly withheld or refused. In such event, interest will continue to accrue (after, as well as before, any judgment) up to but excluding the date on which payment in full of the Principal Amount is made.

6 **REGISTER**

6.1 **Register**

The Issuer shall at all times while Notes are outstanding cause the Registrar to maintain the Register, which must record, in respect of a Note, the information specified in the Issue Notice relating to that Note plus the following information:

- (a) the name, address and (where known) tax residency of the current Holder;
- (b) (where known) details of the account to which payments in respect of the Notes are to be made;
- (c) transfers of the Note;
- (d) details of any resident withholding tax exemption certificates held by the Holder; and
- (e) any other information required by law.

6.2 Register paramount

Except as ordered by a court of competent jurisdiction, the Issuer and the Registrar are each entitled to recognise the Holder of a Note as the absolute owner of the Note and shall not be bound by any actual or constructive notice of any trust (express, implied or constructive), encumbrance or security or other adverse interest to which any Note may be subject. No recognition of any trust (express, implied or constructive), encumbrance or security or other adverse interest shall be entered on the Register. In the event of any conflict between any certificate or notice of registration issued in respect of a Note and the Register, the Register shall prevail.

6.3 Correction of errors

The Registrar may, on such evidence as appears to it to be sufficient, correct errors and remedy omissions in the Register.

6.4 Co-ownership Notes:

- (a) Where two or more persons are registered as Holders of the same Note(s) by virtue of any application for Notes, memorandum of transfer or other instrument, then, unless the contrary is expressed in the application, memorandum, or other instrument, those persons will be deemed to hold the Note(s) as joint tenants with right of survivorship.
- (b) If two or more persons apply, whether on application for any Notes or by memorandum of transfer, to be registered as Holders as tenants in common, the Registrar may, after notifying the persons of its intention to do so, divide the Notes into parcels which represent each such person's share. If the Notes cannot be divided into shares each of which share would comply with clause 2.3(b) the Registrar may refuse to accept the application or memorandum of transfer (as the case may be).

- (c) The beneficial interests in Notes held in ~~Austraclear~~NZClear may be co-owned in accordance with the ~~Austraclear~~NZClear regulations.

6.5 Acquisition of Notes by operation of law

When the right to any Note is acquired by any person in any manner other than by way of a transfer under this deed (whether on the dissolution, death or bankruptcy of the relevant Holder, or under a writ of execution, or otherwise), the Registrar, on application by or on behalf of that person and on being satisfied that such person is legally entitled to be registered as the Holder of that Note, will enter that person's name in the Register as the Holder of that Note accordingly.

6.6 Disclosure

The Registrar must disclose to a Holder who so requests, any information held on the Register which relates to the Note(s) registered in the name of that Holder.

7 PAYMENTS

7.1 Payment to Holder

Payment of the Principal of a Note (together with any interest, if required) (less any amount required to be deducted in accordance with clause 8) will be made to the person whose name appears in the Register as the Holder of the Note on the Record Date in respect of the relevant payment. If more than one person is so named in the Register, payment will be made to the first person so named.

7.2 Method of payment

A Holder may (in respect of a Note held outside ~~Austraclear~~[NZClear](#)), by notice to the Registrar, request the Registrar to make payments in respect of any Note held by it to a specified bank account and may at any time cancel or amend any notice so given. No such notice, or cancellation or amendment of a notice, will have effect in respect of any payment unless received by the Registrar on or before the Record Date for that payment. In the absence of any such notice, payments in respect of each Note held outside ~~Austraclear~~[NZClear](#) will be made by posting a cheque to the address of the relevant Holder appearing in the Register. Any notice given under this clause will be deemed to be automatically cancelled upon transfer of all or part of a Note. A notice from one of several Holders of the same Notes shall be deemed to be given by all such Holders.

~~7.3 Austraclear~~

7.3 NZClear

Payments to the Holders of the beneficial interest in Notes lodged in ~~Austraclear~~[NZClear](#) shall be made in accordance with the ~~Austraclear~~[NZClear](#) procedures applicable at the relevant time.

7.4 Business Day

If any Interest Payment Date or the Maturity Date of a Note is not a Business Day, the due date for the payment to be made on that date will be the next following Business Day and all other provisions of this deed and the Agency Agreement will be read and construed accordingly.

7.5 Unclaimed payments

If any payment made by the Issuer to any Holder at its address last entered in the Register is returned unclaimed, the amount concerned will (unless the Issuer has in the meantime received notice of a change of address to be entered in the Register) be retained by the Registrar to be held by it for the Holder concerned without any liability to invest or pay interest on that amount. If any money is invested, any interest earned thereon shall be for the account of the Issuer only. Any money not claimed within a period of six months from the original date of payment must be returned to the Issuer. The Issuer will have no liability in respect of the amount concerned if it remains unclaimed six years after the original date of payment.

7.6 Reinstatement

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

8 TAXES

8.1 Deductions or withholdings

All sums payable under a Note or under this deed must be paid:

- (a) free of any restriction or condition;
- (b) free and clear of, and (except to the extent required by law or as provided in this clause 8) without any deduction or withholding on account of, any taxes; and
- (c) (except to the extent required by law or as provided in this clause 8) without deduction or withholding on account of any other amount whether by way of set-off or otherwise.

8.2 Non-resident Withholding Tax

New Zealand non-resident withholding tax will be deducted from payments of interest (or payments deemed by law to be interest) to non-tax resident Holders (other than where such non-tax resident Holder derives Interest (or amounts deemed by law to be interest) under a Note jointly held with one or more persons, one or more of whom are tax resident, in which case, New Zealand resident withholding tax will be deducted at the New Zealand resident withholding tax rate). Unless otherwise stated in any relevant Information Memorandum or unless a non-tax resident Holder advises the Issuer in writing that it does not wish for Approved Issuer Levy to be paid, if the Issuer is registered as an Approved Issuer and is lawfully able to pay Approved Issuer Levy in respect of any payment of Interest (or payments deemed by law to be interest) to non-tax resident Holders, the Issuer, or the Registrar on its behalf, shall pay the Approved Issuer Levy to the appropriate authority and shall deduct the amount paid from the Interest (or amounts deemed by law to be interest) payable to those Holders in lieu of deducting New Zealand non-resident withholding tax from that payment at the rate otherwise applicable.

8.3 Resident Withholding Tax

New Zealand resident withholding tax will be deducted from payments of Interest (or payments deemed by law to be interest) to Holders who are tax resident

unless an appropriate exemption certificate is produced to the Registrar not less than five (5) Business Days before the Record Date, and, in respect of Fixed Rate Notes and Floating Rate Notes, five (5) Business Days before the Interest Payment Date, for the relevant payment.

8.4 No gross-up

The Issuer will not be required to and will not make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made in respect of the Notes under clause 8.2 or 8.3. If, in respect of any Note, the Registrar or the Issuer becomes liable to make any payment of, or on account of, tax payable by any Holder, then the Registrar and the Issuer shall be indemnified by the relevant Holder in respect of such liability. Any moneys paid by the Registrar or the Issuer in respect of such liability may be recovered from the Holder as a debt due to the Registrar or the Issuer and may be withheld from any further payments to that Holder. Nothing in this clause will prejudice or affect any other right or remedy of the Registrar or the Issuer.

8.5 Maximum rate

Deductions of non-resident or resident withholding tax will be made at the maximum rates from time to time applicable unless a Holder provides evidence to the Issuer or the Registrar (acceptable to it) that a lesser rate is applicable.

8.6 Tax status

The Issuer and the Registrar shall be entitled for the purposes of this clause 8 to rely, without further enquiry, upon any statement made by or on behalf of a Holder in relation to that Holder's tax status or residency. The Issuer and the Registrar shall be entitled to assume that each Holder is tax resident unless a Holder advises the Issuer in writing to the contrary.

9 SELLING RESTRICTIONS

9.1 Compliance with laws

Notes may only be offered for sale or sold in conformity with all applicable laws and regulations in any jurisdiction in which they are offered, sold or delivered. No Information Memorandum in respect of any issue of Notes may be published, delivered or distributed in or from any country or jurisdiction except under circumstances which will result in compliance with all applicable laws and regulations.

9.2 Compliance with ~~Securities~~Financial Markets Conduct Act

The Issuer does not intend that the Notes should be offered for sale or subscription to any ~~member of the public~~person in New Zealand ~~in terms of the Securities Act 1978.~~who is not a Wholesale Investor. Accordingly, without prejudice to the generality of clause 9.1, no Holder shall subscribe for, offer, sell or deliver any Notes or distribute any Information Memorandum, advertisement or offering material relating to the Notes in breach

of the ~~Securities~~Financial Markets Conduct Act ~~1978~~2013 and, in particular, no Holder shall offer for sale Notes to any ~~member of the public~~person in New Zealand in breach of the ~~Securities~~Financial Markets Conduct Act ~~1978~~2013.

9.3 **Indemnity by Holders**

By its purchase of Notes, each Holder agrees to observe and comply with clauses ~~9.1~~9.1 and 9.2, and agrees to indemnify the Issuer in respect of any expense, loss or liability sustained or incurred by the Issuer as a result of the breach by that Holder of the restrictions contained in clause 9.1 or 9.2.

10 **REPRESENTATIONS AND WARRANTIES**

10.1 The Issuer represents and warrants to the Holders that as at the date of this deed:

- (a) *Status*: it is a regional council duly constituted and validly existing under the Local Government Act 2002 with indefinite existence, 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 Statutory Authority*: it has the power and authority (and at the time that it issues a Note it will have taken all necessary action (including without limitation passing all resolutions) to authorise its issue), to enter into, execute and deliver, exercise its rights and perform its obligations under this deed;
- (c) *Binding Obligations*: its obligations under this deed are legal, valid and binding and enforceable against it (subject to laws affecting creditors' rights generally and (as to enforceability) to equitable principles of general application); and
- (d) *Pari Passu*: its obligations under this deed rank and will at all times rank at least equally in right and priority of payment with all its other present and future unsecured, unsubordinated indebtedness (actual or contingent) except indebtedness preferred solely by operation of law.

11 **UNDERTAKINGS**

11.1 The Issuer undertakes to the Holders that:

- (a) *Agency Agreement*: it will comply with and perform all material obligations under the Agency Agreement and use all reasonable endeavours to ensure that the Registrar also does so;
- (b) *Change in Registrar*: it will give notice in accordance with clause 16 to the Holders of any appointment, resignation or removal of the Registrar or change in its specified office promptly following such event; and

- (c) *Event of Default:* once it has actual knowledge thereof, it will promptly notify the Term Note Holders, in accordance with clause 16, of the occurrence of an Event of Default.

12 **NEGATIVE PLEDGE**

12.1 **Negative Pledge**

The Issuer covenants in favour of the Term Note Holders that, subject to the provisions of this clause, it will not create or permit to arise or subsist any Security Interest over the whole or any part of its assets as security for any of its Borrowed Money Indebtedness, unless there is created at the same time as, or prior to the creation of, that Security Interest, the same or an equivalent Security Interest for the Specified Indebtedness.

12.2 **Exceptions**

Notwithstanding clause 12.1, the Issuer may create a Security Interest or permit a Security Interest to arise or subsist without the need for creating any Security Interest in relation to the Specified Indebtedness, where a Security Interest:

- (a) arises in the ordinary course of business by operation of law or arises or subsists pursuant to any statute so long as the payment of the Borrowed Money Indebtedness so secured is not in default or liability therefor is being contested by appropriate proceedings; or
- (b) is constituted by a retention of title to property (real or personal) to secure the payment of the purchase price for the property to the person so retaining title, or otherwise arises in relation to personal property acquired by the Issuer (in circumstances where the Security Interest is given by the Issuer (as buyer) in favour of a seller of the personal property and it secures (and only secures) all or part of the purchase price for the personal property) or any contractor's, supplier's or vendor's lien or any charge or lien created by any statute other than the Personal Property Securities Act 1999 or arising by operation of any rule of law, so long as such Security Interest arises in the ordinary course of business of the Issuer and so long as the payment of the money so secured is not in default or liability therefor is being contested by appropriate proceedings; or
- (c) is existing over any asset at the time of its acquisition provided that such Security Interest was not created in contemplation of such acquisition and the principal amount of the Borrowed Money Indebtedness so secured is not increased provided that in the case of a fluctuating facility the

foregoing shall not prevent fluctuations within the overall limit agreed as at the date of the acquisition and provided that (except with the prior consent of the Term Note Holders, such consent not to be unreasonably or arbitrarily withheld if the existence of the Security Interest does not have a material

adverse effect) such Security Interest is discharged within 12 months of the date of acquisition of the asset; or

- (d) is created or permitted to exist over the whole or any part of its right, title or interest in, or the assets of, any joint venture, partnership or similar venture (whether or not incorporated) to secure Borrowed Money Indebtedness in connection with such joint venture, partnership or similar venture; or
- (e) is created to secure Borrowed Money Indebtedness in connection with the purchase of an asset (and "asset" for the purpose of this sub-clause 12.2(e) shall include an interest in, or in the assets of, any joint venture, partnership or similar venture in which the Issuer is a participant), or the maintenance or repair or improvement of an asset, where the Security Interest is created over the asset purchased, maintained, repaired or improved and/or over any related or connected asset and the principal amount of the Borrowed Money Indebtedness so secured does not exceed such purchase price or the cost of such maintenance or repair or improvement (as the case may be) provided that in the case of any maintenance, repair or improvements to an asset forming part of the assets of any joint venture, partnership or similar venture the amount of Borrowed Money Indebtedness secured by such Security Interest shall not exceed, as a proportion of the aggregate Borrowed Money Indebtedness incurred in respect of such maintenance, repair or improvement, the Issuer's share in such joint venture, partnership or similar venture provided that such Security Interest is discharged within 12 months of the date of its creation; or
- (f) is created or permitted to exist to secure Borrowed Money Indebtedness in connection with a capital project of:
 - (i) the Issuer; or
 - (ii) any joint venture, partnership or similar venture in which the Issuer is a participant,

where (in any such case) under the Security Interest the financier's right of action to enforce repayment of the principal amount of that Borrowed Money Indebtedness and/or the payment of financing charges thereon is limited to a right of action or claim against the capital project so financed and/or any of the assets, revenues, contracts, licences, consents and

similar rights derived from or relating to such capital project, or against the interests of the Issuer in any of the foregoing; or

- (g) is created or permitted to exist with the prior consent of the Holders pursuant to an Extraordinary Resolution of Term Note Holders; or

- (h) is created or permitted to exist in substitution for any of the Security Interests referred to in sub-clause 12.2(a) to 12.2(g) above, provided that the requirements of the relevant sub-paragraph remain satisfied in relation to the substitute Security Interest and the Borrowed Money Indebtedness so secured is not increased provided that in the case of a fluctuating facility the foregoing shall not prevent fluctuations within the overall limit agreed as at the date of the substitution and provided that such substitute Security Interest is not materially different from the Security Interest which it replaced; or
- (i) secures (or is intended to secure) the repayment of any special loan, and interest thereon, which may have been raised by, or become a liability of, the Issuer prior to 1 July 1997 under or pursuant to the provisions of the Local Authorities Loan Act 1956.

12.3 **Security Interests Permitted**

Notwithstanding, and without breaching, clause 12.1, the Issuer may, in addition to and separately from any Security Interest permitted under clause 12.2, create or permit to exist any Security Interest over any asset as security for any Borrowed Money Indebtedness, provided that the aggregate principal amount of the Borrowed Money Indebtedness so secured by all such Security Interests permitted to be created or to exist by this clause 12.3 does not exceed five (5) per cent. of Total Tangible Assets. For the purposes of this clause 12.3, the principal amount of any Borrowed Money Indebtedness secured by a Security Interest shall, if such Borrowed Money Indebtedness is of the nature described in paragraph (e) of the definition "Borrowed Money Indebtedness" be the maximum amount that would be payable by the Issuer in respect of such Borrowed Money Indebtedness if the relevant agreement relating to such obligations were terminated on the date of determination of such amount (such amount being determined in accordance with any applicable provisions of the relevant agreement, and being the net amount payable in cash by the Issuer after giving effect to any provisions relating to set-off or netting against, or amalgamation with, other amounts payable by or to the counterparty) provided that if the Issuer would not be liable to pay any amount on termination of such agreement the principal amount of such Borrowed Money Indebtedness shall be zero.

12.4 **Special Loan Security**

The Issuer covenants in favour of each Term Note Holder that the Security Interests permitted by clause 12.2(i) shall be limited solely to the repayment of

the principal amount of each special loan, and interest thereon, raised under or pursuant to the provisions of the Local Authority Loans Act 1956 and shall not be extended to, or permitted to subsist in relation to, any other Borrowed Money Indebtedness of the Issuer which may have been incurred by the Issuer from 1 July 1997.

12.5 **Defined Terms**

For the purposes of this clause 12:

Borrowed Money Indebtedness means:

- (a) indebtedness for money borrowed;
- (b) indebtedness in respect of guarantees or similar indemnities;
- (c) indebtedness in respect of financial accommodation provided by way of acceptance or endorsement of bills of exchange, promissory notes or other negotiable instruments;
- (d) indebtedness in respect of negotiable instruments;
- (e) money owing in respect of interest rate swaps, options, forward rate agreements, futures, foreign exchange contracts and other similar transactions; and
- (f) rental or lease payments under any lease entered into primarily for the purpose of raising or obtaining finance and which would constitute a finance lease under GAAP;

Financial Statements means, in relation to the Issuer, a statement of the financial position and financial performance, prepared as at the end of its financial year or as at any other date (as the case may be or the context may require) in a manner that complies with the Financial Reporting Act ~~1993~~, 2013, the Local Government Act 2002 and all other applicable laws or regulations, which financial statements have been audited by the Auditor and is accompanied by his report;

GAAP means, at any time, New Zealand generally accepted accounting practice applicable to the Issuer at such time, and, where the Issuer has a choice as to accounting practice, means any accounting practice adopted by the Issuer which is in accordance with New Zealand generally accepted accounting practice at such time and which has been accepted by the Auditor as applicable to and appropriate to be adopted by the Issuer;

Latest Financial Statements means, at any time, the then most recent Financial Statements which have been prepared in respect of the Issuer;

Security Interest means any mortgage, pledge, encumbrance by way of security, lien, charge, assignment by way of security or hypothecation, but (for the avoidance of doubt) does not include any:

- (a) bailment, including a lease for a term of more than 1 year and a commercial consignment that does not secure payment or performance of an obligation;

- (b) rights or obligations in relation to personal property that is created or provided for by a transfer of an account receivable or chattel paper that does not secure payment or performance of an obligation;
- (c) or any rights or obligations (whether arising by operation of law, by contract or otherwise) of or in the nature of setoff, netting, combination, consolidation or retention of accounts, banker's lien or analogous rights or obligations in relation to or affecting any credit balances or other financial obligations owing to the Issuer;

Specified Indebtedness means, at any time and from time to time, all indebtedness, liabilities and other financial obligations (whether present or future, absolute or contingent) of the Issuer for or in respect of Borrowed Money Indebtedness (and, in respect of Borrowed Money Indebtedness of the type described in paragraph (e) of the definition of Borrowed Money Indebtedness, means the net amount of the Issuer's liability in respect of that Borrowed Money Indebtedness);

Tangible Assets means, at any time, all assets that would be or would have been regarded as being tangible assets in accordance with GAAP at that time with only such changes (if any) thereto as may have been approved by the Auditor;

Total Tangible Assets means, in respect of the Issuer, the aggregate of the book value (determined in accordance with the principles and practices applied in the Latest Financial Statements with only such changes (if any) as have been approved by the Auditor) of the Tangible Assets of the Issuer as at any time and from time to time valued or revalued (in accordance with GAAP) (and disclosed other than solely by noting to) in the Latest Financial Statements of the Issuer and, for the purposes of this definition, a certificate of any two authorised persons of the Issuer as to any relevant matter that has occurred since the date of the relevant Latest Financial Statements of the Issuer shall be conclusive.¹

- 12.6 Unless the context requires otherwise, the following words and expressions (and grammatical variations of them) have the same meanings as are given to them in the Personal Property Securities Act 1999: *account receivable, chattel paper, lease for a term of more than 1 year, personal property, purchase price and transfer.*

13 EVENTS OF DEFAULT

13.1 Events of Default

If any of the following occurs, whether or not within the control of the Issuer:

- (a) *Non Payment*: the Issuer fails to pay the Principal Amount of any Term Note in the manner required on its Maturity Date or fails to pay any interest on a Term Note in the manner required within two (2) Business Days of its

due date or, in either case, within two (2) Business Days after the Issuer receives notice of non-payment where non-payment has arisen as a result of a technical, computer or similar error outside the control of the Issuer;

- (b) *Negative Pledge*: the Issuer commits any breach of, or omits to observe, any of the undertakings or obligations under the Negative Pledge and such breach continues unremedied;
- (c) *Other Breach*: the Issuer commits any breach of, or omits to observe, any of its undertakings or obligations under this deed (other than that referred to in clause 12.1) and, if capable of remedy, such breach or omission is not remedied within thirty (30) days of the Issuer becoming actually aware of that breach or omission;
- (d) *Dissolution*: an order of a court is made or an effective resolution is passed or legislation is enacted for the dissolution of the Issuer (except for the purposes of and followed by an amalgamation or solvent reconstruction on terms previously approved by an Extraordinary Resolution);
- (e) *Insolvency*: the Issuer is unable to pay its debts as they fall due, or enters into negotiations with any of its creditors with a view to avoiding insolvency, or makes a general assignment for the benefit of, or an arrangement or a composition with or for the benefit of any of its creditors, except, in each case, for the purpose of, and followed by, an amalgamation or solvent reconstruction;
- (f) *Receivers etc*: an encumbrancer takes possession, or a trustee, receiver and manager, administrator, inspector or similar official is appointed in respect of the issuer or a substantial part of its assets;
- (g) *Cross-Default*: any indebtedness of the issuer of an amount exceeding \$10,000,000 (or its equivalent in a foreign currency) is not paid when due (or within any applicable grace period) and proper proceedings are being taken for its recovery or enforcement;
- (h) *Invalidity*: any material provision of this deed ceases to have effect in whole or in part or becomes wholly or partly void, voidable, unlawful or unenforceable, or the Issuer makes any allegation or claim to that effect.

13.2 Declaration

At any time after the occurrence of an Event of Default and provided that it is continuing unremedied, a Term Note Holder may (without prejudice to any other remedies it may have) by notice in writing to the Issuer:

- (a) where the Event of Default occurs under clause 13.1(a) in relation to a Term Note held by that Holder; or

- (b) where the Event of Default occurs under any other subclause of clause 13.1 and the Term Note Holders resolve by Extraordinary Resolution to do so,

declare all (but not some only) of the Term Notes held by that Holder to be immediately due and payable.

13.3 **Payments on Acceleration**

If a Holder makes a declaration under clause 13.2, then the issuer shall immediately pay to that Holder:

- (a) in the case of Term Notes which are interest bearing, the Principal Amount of the Note together with all accrued (but unpaid) interest thereon calculated in accordance with this deed; and
- (b) in the case of Term Notes which are Zero Coupon Notes, the net present value, as at the date of declaration, of the Principal Amount of the Note determined by discounting the Principal Amount at the discount rate used to calculate the purchase or issue price of the relevant Note at the time of its issue.

14 **MEETINGS OF HOLDERS**

Meetings of Term Note Holders or Holders of a Class of Term Notes (as defined in Schedule 2) shall be convened and held in accordance with the provisions set out in Schedule 2.

15 **BENEFIT OF DEED AND AMENDMENT**

15.1 **Acknowledgement**

The Issuer acknowledges that this deed is made for the benefit of, and is intended to be enforceable by, any person who is from time to time a Holder and the Registrar.

15.2 **Limited Right to Amend**

Except as provided in clause 15.3 and 15.4, the Issuer may not cancel, vary or amend any provisions of the deed while any Notes are outstanding.

15.3 **Technical Amendments**

The Issuer may, by supplemental deed, amend the provisions of this deed without the consent of the Holders where such amendment is of a minor or technical nature or will not be of any prejudice to the Holders. Notice of any such amendment shall be provided to the Term Note Holders within 30 days of the amendment being made.

15.4 **Other Amendment**

Without limiting clause 15.3, but subject to clause 15.5, the Issuer may, by supplemental deed, amend the provisions of this deed if the amendment has been approved by an Extraordinary Resolution and notified to all Holders in accordance with clause 16.

15.5 **Notice of Variations**

Notice of any proposed amendment of this deed made pursuant to clause 15.4 shall be given to each Term Note Holder not less than 14 days before the date on which it is intended that such amendment shall take effect, provided that the non-receipt of such notice by any Term Note Holder shall not affect the validity of any such amendment.

16 **NOTICES**

16.1 **Notices**

Each notice or other communication to be given or made under this deed to any person must:

- (a) *Writing*: be given or made in writing by fax or letter and be signed by the sender or an authorised officer of the sender;
- (b) *Address*: be given or made to the relevant person at the address or fax number, and marked for the attention of the person (if any), from time to time designated by that person for the purposes of this deed;
- (c) *Deemed delivery*: not be effective until received by that person, and any such notice or communication shall be deemed to be received by that person:
 - (i) (if given or made by letter) when left at the address of that party or five Business Days after being put in the post, postage prepaid, and addressed to that person at that address; or
 - (ii) (if given or made by fax) upon production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the recipient designated for the purposes of this deed,

provided that any notice or communication received or deemed received after 5 pm on a working day in the place to which it is sent, or on a day which is not a working day in that place, shall be deemed not to have been received until the next working day in that place. Any notice given by the Issuer or the Registrar to one of several holders of the same Notes shall be deemed to have been given to all such Holders.

16.2 **Initial contact details**

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The initial address, fax number, phone number and person (if any) so designated by each party, are set out below:

(a) the Issuer:

Wellington Regional Council
142 – 146 Wakefield Street
PO Box 11646
Wellington

~~Fax No~~ **Email:** ~~(04) 385 3973~~

~~Phone:~~ ~~(04) 802 0338~~

mike.timmer@gw.govt.nz

Attention: Mike Timmer

(b) the Holders:

The address of each Holder last entered in the Register.

17 MISCELLANEOUS

17.1 Waivers and remedies

Time shall be of the essence of this deed but no delay in acting, or failure to act, by a Holder is a waiver of any of that Holder's rights. The rights provided in this deed do not exclude any rights provided by law.

17.2 Partial invalidity

An invalid provision in this deed shall not affect the enforceability of the remaining provisions of this deed.

17.3 Further issues

Subject to any agreement to the contrary contained in any dealer or subscription agreement relating to the issue of any Notes, the Issuer may from time to time,

without the consent of the Holders, issue notes or other debt obligations on such other terms and conditions as the Issuer may think fit.

17.4 Documents

Copies of this deed, the Information Memorandum (if any) relating to Notes held by the relevant Holder and the Agency Agreement will be made available by the Issuer for inspection during usual business hours by any Holder at the registered office of the Issuer being, at the date of this deed, as set out in clause 16.2.

Each Holder will be deemed to have notice of the provisions of this deed and the Agency Agreement.

17.5 No liability

The Registrar will not be liable for any breach by the Issuer of any representation, obligation, undertaking, including the non-payment of any money due, nor will the Registrar be liable for any negligent act, error or omission on the part of the Issuer, nor for acting in accordance with any instruction or direction of the Issuer or with the consent or approval of the Issuer.

17.6 **Survival**

The indemnities contained in this deed will survive the payment of all Notes and the termination of this deed.

18 **GOVERNING LAW**

This deed and the Notes are governed by and will be construed in accordance with the laws of New Zealand.

SIGNED AS A DEED

Executed by **Wellington Regional Council** by affixing its common seal in the presence of:

Signature of authorised signatory

Name of authorised signatory

SCHEDULE 1 FORM OF ISSUE NOTICE

{ [] }

To Computershare Investor Services Limited

Attention []

Telephone [~~_____~~]

1

Facsimile []

Re Deed Poll in respect of the issuance of debt securities dated [] 2007 (*Deed Poll*)

Terms defined in the Deed Poll have the same meaning in this Issue Notice.

We confirm our instructions to you as Registrar to undertake the duties set out in the Agency Agreement in respect of an issue of Notes as described below:

Details for first registered Note holder

Name¹ New Zealand Central Securities Depository Limited o/a ~~Austraclear New Zealand~~ NZClear System

For credit of [~~Austraclear~~ NZClear Account details of organisation undertaking initial settlement]

Securities Details

Full Name of Issuer: Wellington Regional Council

Securities Reference: [A name which may be required for reference purposes] [e.g. Zero Coupon Notes issued 4 August 2005 Maturing 4 November 2005]

Type of Note: [Fixed Rate, Floating Rate, Zero Coupon]

Issue Date: Maturity Date: Principal Amount: Interest Rate: [If applicable]

Margin: [If applicable]

~~⁴ If the securities are not to be held in the Austraclear New Zealand System then the details of the actual investor are to be provided.~~

¹ If the securities are not to be held in the NZClear System then the details of the actual investor are to be provided.
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Interest Payment Dates: [If applicable]

Interest Periods: [If applicable]

Initial Interest Payment Date: [If applicable]

Minimum Denomination: [~~\$500,000~~ 750,000]

Multiple Denomination: [\$100,000]

Settlement Details²

² If Computershare Investor Services Limited is undertaking initial settlement, these details will be required.
[AXB959829](#).

Austraclear Mnemonic³	Amount⁴	Maturity	Purchase Price	Yield	27

³—This is the investors account number within Austraclear.

⁴—Principal Amount.

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[27034705.](#)

<u>NZClear Mnemonic</u> ³	<u>Amount</u> ⁴	<u>Maturity</u>	<u>Yield</u>
	<u>Purchase Price</u>		

³ This is the investors account number within NZClear.

⁴ Principal Amount.
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27034705.

Payment Details⁵

- (a) We require cleared funds and
- (i) [we are an ~~Austraclear~~NZClear member. Please credit the funds to our ~~Austraclear~~NZClear Mnemonic [].] OR
 - (ii) [we are not an ~~Austraclear~~NZClear member. Please credit the funds to our bank's ~~Austraclear~~'s NZClear Mnemonic []. We will inform our bank to expect to receive those funds];

OR

- (b) We do not require cleared funds, please credit the funds to our bank account number [].

Yours sincerely

[]

By:

Authorised Officer

ACKNOWLEDGEMENT

We confirm the registration of the Notes as described herein (and confirm the settlement proceeds of \$[] have been transferred to bank account [] Or ~~Austraclear~~NZClear Mnemonic []).⁶

Yours sincerely

COMPUTERSHARE INVESTOR SERVICES LIMITED

By:

⁵ Payment Details.

⁶ ~~Settlement details will only be provided if Computershare Investor Services Limited is undertaking initial settlement.~~

[AXB959829.](#)

[27034705.](#)

Authorised Officer

⁶ Settlement details will only be provided if Computershare Investor Services Limited is undertaking initial settlement.

SCHEDULE 2
MEETINGS OF TERM NOTE HOLDERS

1 CONVENING

- 1.1 The Issuer shall whenever required to do so pursuant to the Companies Act 1993 or the ~~Securities~~Financial Markets Conduct Act ~~1978~~2013 or any other applicable law or any regulations made thereunder convene a meeting of the Term Note Holders.
- 1.2 The Issuer shall at the request in writing of Term Note Holders holding not less than 10% of the aggregate principal amount of the Term Notes convene a meeting of the Term Note Holders. The request shall state the nature of the business proposed to be dealt with at the meeting concerned.
- 1.3 The Issuer may at any time of its own volition convene a meeting of the Term Note Holders.
- 1.4 Meetings of Term Note Holders shall be convened and held in accordance with the following provisions. In these provisions:

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

Class of Term Notes means each category of Term Notes which, in the reasonable opinion of the Issuer at any particular time, for any particular purpose, constitutes a separate class of Term Notes.

Deed Poll means the deed poll made by the Issuer to which this schedule is attached.

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

2 CLASSES OF NOTES

If, at any time, in the opinion of the Issuer a matter is required to be determined by the Holders of a Class of Term Notes, a meeting may be called in respect of Holders of that Class of Term Notes, in which case the provisions of this Schedule shall, with all necessary modifications, apply and be construed as if references to Term Holders were references to the relevant Class of Term Notes and the Holders of that Class of Term Notes.

3 PLACE

Meetings will be held in Wellington at a place designated in the relevant notice of meeting.

4 NOTICE OF MEETINGS

- 4.1 Notice of every meeting will be given in the manner provided in clause 16 of the Deed Poll to every Term Note Holder. Notice will be given to every Term Note Holder entered in the Register as at the close of business five Business days prior to the date of dispatch of the notice.
- 4.2 At least 14 days' notice of every meeting will be given. The notice will be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. The notice will specify the place and Appointed Time of the meeting and the general nature of the business to be transacted. It will not be necessary to specify in the notice the terms of the resolutions to be proposed, except in the case of a resolution proposed to be passed as an Extraordinary Resolution in which case the text of the proposed resolution must be set out.
- 4.3 The accidental omission to give notice to, or the non-receipt of notice by, any person entitled thereto will not invalidate the proceedings at any meeting.

5 QUORUM

- 5.1 No business will be transacted at any meeting unless the requisite quorum is present at the commencement of business. In the case of all meetings at least two individuals must be present.
- 5.2 The quorum for passing an Extraordinary Resolution will be Term Note Holders present in person or by representative holding or representing a majority in principal amount of the Term Notes.
- 5.3 The quorum for the transaction of any business other than the passing of an Extraordinary Resolution will be Term Note Holders present in person or by representative of at least 10% in nominal amount of the Term Notes.
- 5.4 If within 15 minutes (or any longer time not exceeding 45 minutes as the chairman of the meeting, may decide) after the Appointed Time a quorum is not present the meeting if convened at the request of Term Note Holders, will be dissolved. In any other case, it will be adjourned to a day and time (not being less than 14 days later) and to a place as may be appointed by the chairman. At such adjourned meeting all the Term Note Holders present in person or by representative will be a quorum for the transaction of business including the passing of Extraordinary Resolutions.
- 5.5 Notice of any such adjourned meeting of Term Note Holders at which an Extraordinary Resolution is to be submitted will be given in the same manner as for an original meeting (except that only 7 clear days' notice will be required) and such

notice will state that the Term Note Holders present in person or by representative at the adjourned meeting (but comprising at least two individuals) will form a quorum whatever the principal amount of Term Notes held by them.

6 **CHAIRMAN**

A person appointed, by a resolution of Term Note Holders, from the Term Note Holders or any representatives present will preside as chairman at a meeting.

7 **RIGHT TO ATTEND AND SPEAK**

Any Council Member, officer or solicitor of the Issuer, or any person appropriately authorised by the Issuer, may attend any meeting and all such persons will have the right to speak at the meeting.

8 **ADJOURNMENT**

8.1 The chairman may with the consent of any meeting at which a quorum is present and will if so directed by the meeting adjourn the meeting from time to time and from place to place.

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

9 **ONLY PERSONS ON REGISTER RECOGNISED BY ISSUER**

The persons named as Term Note Holders in the Register will be recognised and treated as the legal owners of the Term Notes whether those persons are or are not in fact the owners thereof.

10 **AUTHORITY TO VOTE**

10.1 An individual Term Note Holder may vote personally or by his representative and a Term Note Holder which is a corporation may vote by its representative or representatives. A Term Note Holder may appoint more than one representative, each such representative being authorised to act on behalf of the Term Note Holder in respect of a specified principal amount of Term Notes.

10.2 In these provisions "representative" means:

- (a) in the case of an individual Term Note Holder, a person appointed by an instrument of proxy or by power of attorney or, in the event of the death of a Term Note Holder, the personal representative of that Term Note Holder;
- (b) in the case of Term Note Holder which is a corporation or corporation sole either:

- (i) a person appointed by an instrument of proxy or by power of attorney; or
- (ii) a person authorised by the directors of the corporation, or in the case of a corporation sole, a person authorised pursuant to its constitution.

The persons named in the Register as Term Note Holders at the Proxy Closing Time will be exclusively entitled to vote in person or by representative in respect of the Term Notes recorded as owned by them.

11 PROXIES

- 11.1 The instrument appointing a proxy must be in writing signed by the appointer or his attorney or, if the appointer is a corporation, either by an authorised officer or attorney or by any director, general manager, investment manager or other person who appears to have authority to appoint a proxy on behalf of the corporation.
- 11.2 A person appointed to act as a proxy need not be a Term Note Holder and a holder of a proxy will have the right to speak at the meeting.
- 11.3 The instrument appointing a proxy, and, if applicable, the power of attorney or other authority under which it is signed or a copy of such power or authority certified by a Notary Public or in any other manner approved by the Issuer, must be deposited at the place appointed by the Issuer in the notice convening the meeting or (if no such place is appointed) then at the registered office of the Issuer not later than the Proxy Closing Time. An instrument of proxy which is not so deposited will not be treated as valid unless the Issuer, in its absolute discretion, elects to accept any instrument of proxy notwithstanding that that instrument, or any power of attorney or other authority, is received or produced at a place other than that specified above or out of time.
- 11.4 An instrument of proxy may be in any usual or common form or in any other form approved by the Issuer and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution.
- 11.5 An instrument of proxy, whether in a usual or common form or not, will unless the contrary is stated thereon need not be witnessed and will be valid for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any provisions contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 12 months from the date of its execution notwithstanding any provision to the contrary in the instrument, but this provision will not be construed to apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.

- 11.6 An instrument of proxy in favour of:

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- (a) the chairman of the Issuer; or
- (b) the chairman of the meeting,

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

12 **HOLDER MAY APPOINT ATTORNEY**

Any Term Note Holder may by power of attorney appoint an attorney (who need not be a Term Note Holder) to vote and act on his behalf at any meeting. An attorney will be entitled to produce evidence of their appointment at any time before the Appointed Time. An attorney who is so empowered may exercise the Term Note Holder's right to appoint a proxy.

13 **CORPORATE REPRESENTATIVES**

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

14 **VOTING PROCEDURE AND POLLS**

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

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

- 14.2 On a show of hands each person present at the meeting and entitled to vote (whether personally or as a representative) will have one vote only. On a poll every Term Note Holder who is present in person or by a representative will have one vote for every \$1 of Principal Amount of the Term Notes of which he is the Term Note Holder, provided that where an Term Note Holder holds Zero Coupon Notes, for the purposes of calculating that Holder's voting entitlement in this clause, the Principal Amount of those Zero Coupon Notes is to be construed as a reference to the net present value of those Zero Coupon Notes (as calculated by the Registrar by adjusting, on a straight line basis, the Face Value of the relevant Note by a proportion of any discount to that Face Value applicable to such Note on its Issue Date) as at the date of the meeting. On a poll votes may be given either personally or by representative and a person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.
- 14.3 If a poll is demanded it will be taken in the manner directed by the chairman and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 14.4 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands took place or at which the poll is demanded will be entitled to a casting vote in addition to the votes (if any) to which the chairman may be entitled as a Term Note Holder or on behalf of Term Note Holders.
- 14.5 A poll demanded on the election of a chairman or on a question of adjournment will be taken immediately. A poll demanded on any other question will be taken either immediately or at a time within 30 days from the date of the meeting) and place appointed by the chairman. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 14.6 The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question in relation to which the poll has been demanded.
- 14.7 In the case of joint Term Note Holders the vote of the senior who tenders a vote whether in person or by representative will be accepted to the exclusion of the vote of the other joint Term Note Holders and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.

- 14.8 A vote given in accordance with the terms of an instrument of proxy or power of attorney or other authority will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Term Notes in respect of which the vote is given, provided that no written notice of such death, insanity, liquidation, revocation or transfer is received by the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, attorney or authority is used.

15 EXTRAORDINARY RESOLUTIONS

- 15.1 The expression "Extraordinary Resolution" means a resolution passed at a meeting of Term Note Holders, properly convened and held in accordance with these provisions, at which not less than three fourths of the persons voting upon a show of hands or, if a poll is properly demanded, not less than three fourths of the votes given on such a poll voted in favour of the resolution.
- 15.2 A meeting of Term Note Holders will, in addition to all other powers which by the Deed Poll are specified as exercisable by Extraordinary Resolution, have the following powers exercisable by Extraordinary Resolution, namely power to:
- (a) sanction either unconditionally or upon any conditions the release of the Issuer from the payment of all or any part of the moneys payable pursuant to the Deed Poll or the Term Notes;
 - (b) sanction the exchange of the Term Notes for, or the conversion of the Term Notes into, shares, stock, debentures, debenture stock or other obligations or securities of the Issuer or any other company formed or to be formed;
 - (c) postpone or with the concurrence of the Issuer to accelerate the day when the principal amount of any Term Notes becomes payable and to suspend or postpone for a time the payment of interest on any Term Notes;
 - (d) sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement relating to the rights of the Term Note Holders against the Issuer or its assets however those rights arise;
 - (e) assent to any amendment to the terms of the Deed Poll proposed or agreed to by the Issuer and to authorise the Issuer to execute any supplemental deed poll embodying any such amendment;
 - (f) give any sanction, assent, release or waiver of any breach or default by the Issuer under any of the provisions of the Deed Poll;

- (g) sanction any scheme for the reconstruction of the Issuer or for the amalgamation of the Issuer with any other corporation where such sanction is necessary;
 - (h) authorise or direct the Issuer to execute any supplemental deed or other document embodying such sanction, authority or approval, assent, release, waiver, direction or request.
- 15.3 Extraordinary Resolution passed at a meeting of Term Holders properly convened and held will be binding upon all the Term Note Holders whether or not present or entitled to be present at the meeting and the Term Note Holders will be bound to give effect to that resolution. The passing of any such resolution will, as between the Issuer and the Term Note Holders, be conclusive evidence that the circumstances justify the passing thereof the intention being that the meeting is entitled to determine without appeal whether or not the circumstances justify the passing of any such resolution. Notwithstanding the foregoing, a resolution which affects a particular Term Note Holder or Term Note Holders holding a Class of Term Notes only (as opposed to the rights of the Term Note Holders generally) will not be binding on such Holder or Holders unless the Term Note Holder or Holders agree to be bound by the terms of such resolution.

16 **MINUTES TO BE KEPT**

Minutes of all resolutions and proceedings at every meeting will be made by the Issuer or, if the Issuer is not present at the meeting, by some person appointed by the chairman of the meeting. Minutes must be entered in books from time to time provided for that purpose by the Issuer. Any such minutes, if signed or apparently signed by the chairman of the meeting at which a resolution was passed or proceedings had or by the chairman of the next meeting of Term Note Holders, will be prima facie evidence of the matters recorded in those minutes.

Until the contrary is proved every meeting in respect of which minutes have been made will be deemed to have been properly held and convened and all resolutions passed or proceedings had held and convened and all resolutions passed or proceedings had at that meeting to have been properly passed and had.

17 **RESOLUTIONS IN WRITING**

- 17.1 Anything that may be done by Term Note Holders by a resolution or Extraordinary Resolution passed at a meeting of Term Note Holders may be done by a resolution in writing signed by not less than 75% of the Term Note Holders having the right to vote on that resolution, holding in aggregate the Term Notes conferring the right to cast not less than 75% of the votes which could be cast on that resolution.
- 17.2 Any such resolution may consist of several documents in similar form, each signed by one or more Term Note Holders.

- 17.3 Any such resolution may be signed by an Term Note Holder, or an agent or attorney of the Term Note Holder duly authorised in writing, or if the Term Note Holder is a company, by a director, or by an attorney so authorised by the company.

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