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**THE ROMAN CATHOLIC BISHOP OF  
THE DIOCESE OF CHRISTCHURCH**

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**DEED OF GUARANTEE AND INDEMNITY**

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**CAVELL LEITCH PRINGLE & BOYLE  
SOLICITORS  
CHRISTCHURCH**

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THIS DEED is dated the

18<sup>th</sup>

day of

February

2008

ISSUED BY

THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CHRISTCHURCH ("the Guarantor")

**WHEREAS**

1. The Christchurch Catholic Diocesan Development Fund (the "**Fund**") was established pursuant to a Trust Deed dated 21 December 1967 (as amended from time to time, the "**Trust Deed**").
2. The recitals to the Trust Deed state that the Roman Catholic Bishop for the time being of the Diocese of Christchurch in New Zealand in his secular capacity as Corporation Sole "hereby undertakes to guarantee the repayment of all moneys obtained and provided by the Fund".
3. In order to give better effect to the intention contemplated in the recitals to the Trust Deed the Bishop has agreed to issue this Deed.

By executing this Guarantee and Indemnity, the Guarantor agrees and declares as follows:

**1. INTERPRETATION**

1.1. In this Guarantee and Indemnity, unless the context requires otherwise:

1.1.1. "**Beneficiary**" means, in the case of the Guaranteed Indebtedness described in clause 1.1.2.1, each and every Depositor, Note Holder and Debenture Holder (as such terms are defined in the Trust Deed) and, in the case of the Guaranteed Indebtedness described in clauses 1.1.2.2 and/or 1.1.2.3, the Trustees;

1.1.2. "**Guaranteed Indebtedness**" means:

1.1.2.1. on any date each obligation (howsoever arising) of the Trustees to repay amount or amounts due or owing to any Beneficiary; and/or

1.1.2.2. on any date each obligation (howsoever arising) of each borrower to repay any advance (however described) made by the Trustees; and/or

1.1.2.3. any cost, loss, expense, damage or liability (howsoever arising) which a Trustee may suffer or incur as a direct or indirect result of the lawful exercise of its duties and powers as a Trustee;

1.1.3. "**Person**" includes Company and where relevant includes the Trustees and any borrower referred to in clause 1.1.2.2.

1.1.4. "**Tax**" includes a levy, impost, duty, charge, fee, deduction and withholding.

1.1.5. "**Trustees**" means the trustees of the Fund from time to time.

1.1.6. A gender includes each other gender.

1.1.7. The singular includes the plural and vice versa.

1.1.8. A reference to a party to this Guarantee and Indemnity or to another Person includes each personal representative, liquidator, receiver, assignee and

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transferee and successor of that party or other Person.

1.1.9. A reference to any legislation includes:

1.1.9.1. A modification, amendment, re-enactment or replacement of that legislation; and

1.1.9.2. An order-in-council, regulation and other instrument issued or made under that legislation.

1.1.10. Headings, marginal notes and directions are for convenience only. They do not affect the interpretation of this Guarantee and Indemnity.

## 2. GUARANTEE

2.1. **Guarantee:** The Guarantor irrevocably guarantees the due payment of the Guaranteed Indebtedness.

2.2. **Payment:** If, for any reason whatsoever, it does not pay when due or demanded any Guaranteed Indebtedness, the Guarantor will pay the relevant amount on demand of the relevant Beneficiary.

## 3. INDEMNITY

3.1. **Indemnity:** If, for any reason whatsoever, any Guaranteed Indebtedness is not recoverable from the Guarantor on the basis of a guarantee, the Guarantor indemnifies the Beneficiaries on demand for all Guaranteed Indebtedness which the Beneficiaries or, as the case may be, the Trustees might otherwise have recovered from the Guarantor, any borrower or other Person as the case may be.

3.2. **Indemnity Separate from Guarantee:** This indemnity is a separate and independent stipulation.

## 4. GUARANTEE AND INDEMNITY OF ALL GUARANTEED INDEBTEDNESS

4.1. This Guarantee and Indemnity is a guarantee and indemnity of all, and not any particular part, of the Guaranteed Indebtedness.

## 5. GENERAL EXTENT AND NATURE OF GUARANTOR'S OBLIGATIONS

5.1. **Liability as Sole Principal Debtor:** The Guarantor is liable under this Guarantee and Indemnity as if it were the sole principal debtor and not merely a surety.

5.2. **Indulgence:** The Guarantor's liability to a Beneficiary is not to be affected by anything whatsoever which (but for this sub-clause) might diminish or discharge the liability of, or otherwise provide a defence to, a surety.

## 6. MAXIMUM AMOUNT OF GUARANTORS LIABILITY

6.1. **Unlimited Guarantee:** The liability of the Guarantor under this Guarantee and Indemnity is unlimited.

## 7. CONTINUING GUARANTEE AND INDEMNITY

- 7.1. This Guarantee and Indemnity is a continuing security. It is not to be wholly or partially satisfied, discharged or affected by any intermediate payment or settlement of account, or by anything other than a discharge signed in accordance with clause 8.1.

## 8. DISCHARGES OF GUARANTEE AND INDEMNITY

- 8.1. **Discharge:** The Guarantor will only be discharged from the Guarantor's obligations under this Guarantee and Indemnity if:

8.1.1. All of the Guaranteed Indebtedness has been paid; and

8.1.2. There is no reasonable possibility that any Guaranteed Indebtedness received or recovered by the Beneficiaries will or may have to be set aside, refunded or repaid under any applicable law.

- 8.2. **Payment of Guaranteed Indebtedness Set Aside:** If any Guaranteed Indebtedness received or recovered from the Guarantor or another Person is or may be set aside, refunded or repaid under any applicable law, then:

8.2.1. The Beneficiaries and the Guarantor are to be restored to the position each would be in if that Guaranteed Indebtedness was not set aside, refunded or repaid; and

8.2.2. The Beneficiaries may exercise all their respective rights under this Guarantee and Indemnity notwithstanding that it may have signed a discharge under Clause 8.1.

- 8.3. **Retention of Guarantee for 25 months:** A Beneficiary may retain this Guarantee and Indemnity and any security or other guarantee given to the Beneficiary by the Guarantor in connection with this Guarantee and Indemnity for up to 25 months after it signs a discharge.

## 9. PAYMENT IN GROSS

- 9.1. Each Beneficiary is to receive each payment made in reduction of the Guaranteed Indebtedness as a payment in gross. Each such payment is to reduce the Guarantor's liability under this Guarantee and Indemnity only by the net cash benefit to the relevant Beneficiary after it deducts its expenses of obtaining that payment.

## 10. GUARANTOR NOT DISCHARGED IN CERTAIN EVENTS

- 10.1. The liability of the Guarantor under this Guarantee and Indemnity is not to be affected or discharged by:

10.1.1. The illegality, invalidity or unenforceability of, or a defect in, any security or guarantee given to, or any agreement made with any Person; or

10.1.2. Any amendment or replacement of any security or guarantee given to, or any agreement made with any Person; or

10.1.3. The failure to obtain, or the failure of any Person to execute or perfect, any security, guarantee or agreement; or

10.1.4. The granting of time, credit or any other indulgence to any Person; or

10.1.5. The making of, or failure to make, a demand on any Person; or

- 10.1.6. The total or partial release of any Person from, any security, guarantee or agreement; or
- 10.1.7. The enforcement of, or failure to enforce, this Guarantee and Indemnity or any other security, guarantee or agreement; or
- 10.1.8. Any other act or omission which, were it not for this clause, might release or affect the obligations of the Guarantor.

## 11. EXCLUSION OF LEGISLATION

11.1. All legislation which, directly or indirectly:

- 11.1.1. Lessens, varies or otherwise affects an obligation of the Guarantor under this Guarantee and Indemnity; or
- 11.1.2. Delays or otherwise prevents or prejudicially affects the exercise of any of the Beneficiaries rights;

Is to the fullest extent permitted by law, deemed to be negated and excluded in its application to this Guarantee and Indemnity.

## 12. GUARANTEED INDEBTEDNESS IS PAYABLE ON DEMAND

12.1.1. **Form of Demand:** A demand by a Beneficiary on the Guarantor for payment of the Guaranteed Indebtedness is to be in writing.

12.2. **Service of Demand:** A demand may be served on the Guarantor:

- 12.2.1. Personally, by leaving the demand with the Guarantor or, if the Guarantor does not accept it, by putting it down in the presence of, and bringing it to the notice of the Guarantor; or
- 12.2.2. By leaving it at, or posting it in a prepaid envelope addressed to, the latest business address of the Guarantor known to the Beneficiary; or
- 12.2.3. By any other lawful method.

12.3. **Proof of Service of Demand:** A certificate signed by a Beneficiary stating:

- 12.3.1. The latest home or business address of the Guarantor known to the Beneficiary; and
- 12.3.2. That a prepaid letter of demand addressed to the Guarantor was sent to that address.

Is to be conclusive evidence of the contents of that certificate for all purposes (including for any proceedings).

12.4. **Deemed Receipt of Demand:** A demand made in accordance with Clause 12.2 is deemed to be:

- 12.4.1. Properly made, even if the Guarantor does not actually receive it; and
- 12.4.2. Received, in the case of service by post, two days after the day on which it was posted.

**13. EVIDENCE OF GUARANTEED INDEBTEDNESS**

13.1. A certificate signed by or on behalf of a Beneficiary shall, save in the case of manifest error, be conclusive evidence of the amount owing to that Beneficiary.

**14. WAIVERS AND REMEDIES**

14.1. **Exercise of Rights and Waivers:** Time is of the essence of this Guarantee and Indemnity. However, a failure by any Beneficiary to exercise, or a delay by a Beneficiary in exercising, a right under this Guarantee and Indemnity does not mean the Beneficiary has waived that right. Also, a single or partial exercise by a Beneficiary of a right under this Guarantee and Indemnity does not preclude the exercise by a Beneficiary of another right. A waiver by a Beneficiary of its rights under this Guarantee and Indemnity is only effective if it is in writing.

14.2. **Remedies Cumulative:** A Beneficiary's rights under this Guarantee and Indemnity are cumulative. They are not exclusive of any rights provided by law.

**15. PARTIAL VALIDITY**

15.1. The illegality, invalidity or unenforceability of a provision of this Guarantee and Indemnity under any law is not to affect:

15.1.1. The legality, validity or enforceability of that provision under another law; or

15.1.2. The legality, validity or enforceability of another provision.

**16. DEATH OR CHANGE IN CONSTITUTION OF GUARANTOR**

16.1. This Guarantee and Indemnity is to remain fully in effect notwithstanding:

16.1.1. A change in the Persons now or later comprising the Guarantor or

16.1.2. A change in the constitution of the Guarantor.

**17. GUARANTOR AS BENEFICIARY**

17.1. The Guarantor is or may be a Depositor. The Guarantor hereby covenants with each of the other Beneficiaries that it will not exercise any rights that it may have as a Beneficiary until each other Beneficiary has been paid in full and provided a discharge to the Guarantor in accordance with clause 8.

SIGNED by )  
THE ROMAN CATHOLIC BISHOP OF )  
THE DIOCESE OF CHRISTCHURCH )  
as Guarantor and sealed with the Seal of )  
Office in the presence of:- )

+ B. Jones



Witness Signature: AWoolstencroft

Witness Name: ANGIE CA WOOLSTENCROFT

Witness Occupation: PA TO BISHOP JONES

Witness Address: 207c Moon Hay Rd Cx Ck 8025