

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a Bond to secure subdivisional works in connection with the deposit of LT Plan No. *(insert plan number)* ("the plan")

BY THIS BOND dated the _____ day of _____ 2011

(Insert NAME) *(insert share amount i.e 1/10th share)*, *(Insert NAME)* *(insert share amount i.e 1/10th share)* jointly and severally ("the Owner") **HEREBY ACKNOWLEDGE** that they are bound to pay to **WHANGAREI DISTRICT COUNCIL**, a body corporate under the Local Government Act 2002, ("the Council") the sum of *(insert dollar amount in words)* (*Insert dollar amount in figures*) (inclusive of Goods and Services Tax) ("the bonded sum")

WHEREAS

- A. The Owner is the registered proprietor of an estate in fee simple in that piece of land described in the *(insert name of document i.e. First Schedule)* ("the land").
- B. The Owner has applied to the Council for a subdivision consent for the land.
- C. The Council has granted a subdivision consent for the land but such is conditional on the carrying out of certain engineering works in respect of the subdivision.
- D. The deposit of the survey plan of the subdivision of the land is dependent upon the completion of the engineering works.
- E. Notwithstanding that the engineering works have not been completed in full the Council has agreed to issue a Completion Certificate ("the certificate") pursuant to Section 222(1) of the Resource Management Act 1991 ("the Act") in respect of the

uncompleted works on the condition of the Owner entering into this bond to complete the carrying out of the uncompleted works within a specified period of time.

- F. The particulars of the uncompleted works which are the subject of the certificate and of this bond are detailed in the *(insert name of document i.e. Second Schedule)* hereto (“the work”).

- G. As part of the work involves engineering works being undertaken on or within land that is to be privately owned the Owner has agreed that the bond is to be secured against the title to that property upon which or within which the work is required to be undertaken such property being detailed in the *(insert name of document i.e. Third Schedule)* hereto.

- H. As security for its obligations the Owner has deposited the bonded sum with the Council.

THIS BOND shall be void if the Owner carries out and completes the work to the satisfaction of the Council within the period of *(insert period in words and figures)* from the date of the issue of the certificate pursuant to Section 224(c) of the Act for the subdivision of the land (“the Section 224(c) certificate”) (“the prescribed time”).

AND IT IS HEREBY AGREED as between the Council and the Owner as follows :

1. THE Council on the execution of this bond will, when it is appropriate, issue a Section 224(c) certificate for the plan recording that the Owner has entered into this bond with security as herein provided binding the Owner to carry out and complete the work to the satisfaction of the Council within the prescribed time.

2. THE Owner will carry out and complete the work to the satisfaction of the Council and in the event of there being plans and specifications then the work shall be undertaken in accordance with such plans and specifications but subject to the same having been

previously submitted to and approved by the Council with the work to be carried out and completed within the prescribed time.

3. IF the Owner fails to fulfil any obligation under clause 2 within the prescribed time, or fails to make such progress with the work as the Council considers necessary to complete the work within the prescribed time, the Council may at any time and from time to time enter on the land to ascertain whether the work has been completed to its satisfaction and in the event that it has not it may thereafter from time to time enter on the land and take such steps and carry out such works as the Council considers necessary to complete the work.

4. ALL or any expenses incurred by the Council hereunder shall constitute a debt due to the Council by the Owner and may be recovered by the Council from the Owner as the Council may from time to time desire and in the event that the expenses incurred by the Council upon it entering on the land and taking such steps and carrying out such works as it considers necessary to complete the work are in excess of the bonded sum then such excess may be recovered by the Council from the Owner as a debt due to the Council and a charge against the land.

5. THE Owner **COVENANTS** with the Council that it will well and sufficiently indemnify and keep indemnified the Council against all actions suits proceedings and claims made against the Council or incurred or become payable by the Council by reason of, or arising out of, any default negligence or sufferance of the Owner or the Owner's servants agents or contractors in respect of the work or of any default negligence of sufferance of the Council or of its servants agents or employees in carrying out any portion of the work and for which the Council would not be liable if the issue of the certificate and the Section 224(c) certificate had been delayed until completion of the work.

6. WITHOUT limiting the obligations or liabilities of the Owner hereunder the Owner will at the Owner's own cost effect and keep on foot policies of insurance fully insuring the Council and the Owner against all claims and liabilities whether under any statute or at common law in respect of any damage or loss of any real or personal property of any description whatsoever arising out of or in the course of or caused by the execution of the work.

7. THE liability of the Owner in this bond shall not be released varied or affected in any way by any delay extension of time or other indulgence granted to the Owner or suffered or permitted by the Council or by any delay failure or neglect of the Council to enforce these presents or any obligation of the Owner.

8. THE powers and remedies as herein provided are exercised pursuant to sections 108A and 109 of the Act and the exercise by the Council of any power or remedy under these presents shall not prejudice its authority to exercise any other power or remedy under those provisions of the Act, any other provisions of the Act or any other statutory or other authority.

9. THE Council having received payment of the bonded sum at the time of or prior to the issue of the Section 224(c) certificate for the plan will hold the bonded sum as a cash bond to better secure the performance of the obligations of the Owner under this bond.

10. THE Owner acknowledges that the Council having received the bonded sum by way of a cash payment will neither be required to pay the bonded sum to a separate account nor to account to the Owner for any interest earned on the bonded sum while the bonded sum is held by the Council.

11. IF the Owner fails to carry out the work to the Council's satisfaction then the Council may apply the bonded sum towards the cost of carrying out the work and shall be entitled to forfeit the bond to the extent required to meet or pay for the work.

12. THE Owner shall pay the Council's legal expenses incurred in the preparation, execution, registration, release, discharge, transfer and (if necessary) enforcement of this bond.

13. THE Owner agrees to this bond being registered against the title to that part of the land described in the (*insert name of document i.e. Third Schedule*) on the following agreed terms:

- (i) No payment is required from the future proprietors of such property other than from the Owner;
- (ii) The Council is entitled to exercise access to the land described in the *(insert name of document i.e. Third Schedule)* to undertake the work so as to meet the obligations of the Owner;
- (iii) The proprietors for the time being of the property described in the *(insert name of document i.e. Third Schedule)* consent to the Council having access to their property in order to be able to undertake the work and to ensure that the work as secured by this bond is undertaken in terms of the conditions attaching to the consent authorising the subdivision; and
- (iv) Upon satisfactory proof of transfer of the title to any of the property described in the *(insert name of document i.e. Third Schedule)*, the Council shall accept, at the cost of the Owner, a new bond from the new registered proprietor in substitution for the existing bond such to be drawn to the reasonable satisfaction of the Council's solicitor and to provide all the same terms and conditions as are included in this bond.

14. ON completion of the work to the satisfaction of the Council, the Council will immediately:

- (a) Repay the bonded sum to the Owner (less any amount forfeited by the Council under clause 11 of this bond); and
- (b) Provide a release of the bond for registration of such discharge against the title described in the *(insert name of document i.e. Third Schedule)*.

FIRST SCHEDULE

The land in Certificate of Title *(insert CT number)*

SECOND SCHEDULE

Outstanding engineering works in terms of the engineering plans approved by the Council's Senior Environmental Engineering Officer pursuant to condition *(insert applicable condition number)* of the resource consent granted in favour of *(insert applicant name)* authorising the subdivision of the land in Certificate of Title CFR *(insert CT number)* dated *(insert date of CT)* such work to be undertaken pursuant to condition *(insert applicable condition number)* of such grant of consent such requiring all work on the approved engineering plans as submitted and approved to be carried out to the approval of the Council Senior Environmental Engineering Officer together with the provision of certified and dated "as built" plans as required by condition *(insert applicable condition number)* of the grant of consent.

THIRD SCHEDULE

The land contained in lot *(insert lot number/s)* on Deposited Plan *(insert DP number)*

EXECUTED AS A DEED this day of 2011.

SIGNED by)
(*Insert NAME OF SHAREHOLDER*))
(*Insert NAME OF SHAREHOLDER*))
in the presence of:)

SIGNED by)
(**Insert NAME**) and)
(**Insert NAME**))
in the presence of:)

SIGNED for and on behalf of
WHANGAREI DISTRICT COUNCIL
by

.....
Authorised Officer
in the presence of:

.....
Witness to complete in BLOCK letters
Name:
Address:
Occupation:

**DEED OF COVENANT TO COMPLETE
WORK SECURED BY GUARANTEE**

(Insert initial and surname of each shareholder)

- with -

WHANGAREI DISTRICT COUNCIL

(INSERT SOLICITORS NAME)

SOLICITORS

(INSERT LOCATION OF SOLICITORS)

(INSERT SOLICITORS REFERENCE)