

DEED OF AMENDMENT AND RESTATEMENT

between

AUCKLAND COUNCIL

and

TRUSTEES EXECUTORS LIMITED

 **Simpson Grierson**

Barristers & Solicitors
Auckland & Wellington, New Zealand
www.simpsongrierson.com

PARTIES

1. AUCKLAND COUNCIL (Borrower)
2. TRUSTEES EXECUTORS LIMITED (Bank)

BACKGROUND

The parties have agreed to amend and restate the debenture trust deed dated 13 December 2010 (**Debenture Trust Deed**) on the terms of this deed to comply with and to reflect the Financial Markets Conduct Act 2013 (**FMCA**) and the Financial Markets Conduct Regulations 2014.

THIS DEED RECORDS THAT:**1. DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions:** In this deed, unless the context indicates otherwise, words and expressions defined in the Debenture Trust Deed have the same meaning when used in this deed.
- 1.2 **Interpretation:** In this deed, unless the context indicates otherwise, the interpretation provisions of the Debenture Trust Deed apply as if they were set out in this deed.

2. AMENDMENT AND RESTATEMENT

- 2.1 With effect from the date of this deed:
 - (a) the Debenture Trust Deed is amended and restated in the form set out in the Schedule to this Deed; and
 - (b) references in the Debenture Trust Deed to "this Deed" shall be references to the Debenture Trust Deed as amended and restated by this deed.

3. CONFIRMATION

- 3.1 Each of the parties confirms and acknowledges that, except as expressly agreed in this deed, its obligations and covenants under, and the provisions of, the Debenture Trust Deed continue and remain in full force and effect.
- 3.2 For the purposes of clause 17.1 of the Debenture Trust Deed, the Trustee:
 - (a) is of the opinion that the amendments contemplated by this deed are:
 - (i) in accordance with clause 17.1(a)(i) of the Debenture Trust Deed, of a technical nature; and
 - (ii) in accordance with clause 17.1(a)(viii) of the Debenture Trust Deed, to comply with, or as a result of the coming into effect of, any applicable law; and
 - (b) is of the reasonable opinion that such amendments are not, nor are likely to become, prejudicial to the general interests of the Stockholders.

4. GENERAL

- 4.1 **Partial Invalidity:** If any provision of this deed is or becomes invalid or unenforceable, that provision will be deemed deleted from this deed. The invalidity or unenforceability of that provision will not affect the other provisions of this deed, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 4.2 **Further Assurances:** Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this deed.
- 4.3 **Waiver:** Any waiver by a party of any of its rights or remedies under this deed will be effective only if it is recorded in writing and signed by that party. If the waiver relates to a breach of any provision of this deed, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of this deed at any time by either party will in any way affect limit or waive that party's right to subsequently require strict compliance with this deed.
- 4.4 **Counterparts:** This deed may be signed in counterparts. All executed counterparts will together constitute one document.
- 4.5 **Amendment:** No amendment to this deed will be effective unless it is in writing and signed by each party.
- 4.6 **Governing Law and Jurisdiction:** This deed is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this deed.

EXECUTED AND DELIVERED AS A DEED

SIGNED for and on behalf of **AUCKLAND COUNCIL** by:

A handwritten signature in black ink, appearing to read "Stephen Town". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Stephen Town, Chief Executive

SIGNED by
TRUSTEES EXECUTORS LIMITED by



[Handwritten signature]

Authorised Signatory

[Sign]

Melanie Lyn Hewitson

[Print name in full]

[Handwritten signature]

Authorised Signatory

[Sign]

Susan Jane Bingham

[Print name in full]

2016/055 (2 of 2)

Witness to Authorised Signatory's signature:

Witness to Authorised Signatory's signature:

Signature: *Adesh Kaur*
[Print name in full]

Signature: *Adesh Kaur*
[Print name in full]

Occupation: Adesh Kaur
Business Analyst

Occupation: Adesh Kaur
Business Analyst

Address: Auckland

Address: Auckland

Address: Level 7, 51 Shortland Street
PO Box 4197
Auckland 1140

Facsimile: (09) 308 7101
For: Robert Gatward (Team Manager)

DEBENTURE TRUST DEED

between

AUCKLAND COUNCIL

and

TRUSTEES EXECUTORS LIMITED



**Simpson
Grierson**

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FIFTH SCHEDULE - AUDITOR

BETWEEN **AUCKLAND COUNCIL** a Council duly constituted as a territorial authority under the Act (**Council**)

AND **TRUSTEES EXECUTORS LIMITED (Trustee)**

INTRODUCTION

- A.** Council has the power, subject to the Act, to raise certain money or incur certain obligations from time to time in such amounts and upon such terms and conditions and for such of its lawful purposes as it considers appropriate by means of, or to be evidenced or secured by, stock to be constituted by this Deed.
- B.** The Trustee has agreed, at the request of Council and for the consideration expressed or referred to in this Deed, to act as trustee under this Deed for the benefit of the Stockholders on the terms and conditions contained in this Deed.
- C.** On 1 November 2010, Council assumed the liabilities and obligations of the Existing Local Authorities pursuant to the Local Government (Tamaki Makaurau Reorganisation) Act 2009 (**Reorganisation Act**). The Existing Local Authorities were dissolved and then, to the extent the Existing Local Authority's districts form part of Council's district, merged to form Council.
- D.** The liabilities and obligations assumed by Council included certain secured debt obligations of the Existing Local Authorities. Pursuant to section 31 of the Local Government (Auckland Transitional Provisions) Act 2010 those secured debt obligations were consolidated under a single security structure on the basis of the terms and conditions set out in this Deed and as provided for in an Order in Council under that section that came into effect on the Effective Date.
- E.** The FMCA came into effect in two stages, on 1 April and 1 December 2014. The FMCA requires that trust deeds for the issuance of debt securities contain certain terms by the end of the transitional period, being 1 December 2016. Council has outstanding retail Stock maturing on 29 September 2017. As a consequence, this Deed must comply with the requirements of the FMCA and is to be amended to achieve this under clauses 17.1(a)(i) and 17.1(a)(viii) of this Deed.

THIS DEED RECORDS:

1. INTERPRETATION

In this Deed (including the introduction to this Deed) unless the context indicates otherwise the following provisions apply:

1.1 General:

- (a) Trust:** This Deed will be construed and will take effect as a contract and declaration of trust made in New Zealand.
- (b) Money:** All references to money in this Deed will, unless the contrary is stated, be references to New Zealand currency.

- (c) **Conversion:** Where, for any purpose under this Deed and where consistent with the Act, it is necessary or desirable to determine the equivalent in one currency of an amount in another currency, such equivalent will be determined in such manner as Council adopts and is acceptable to the Auditor having regard to prevailing commercial practices and to the policies in such regard adopted in the latest audited financial statements of Council.
- (d) **Calculation of foreign currency amounts:** Notwithstanding clause 1.1(c), where all or any part of the nominal amount of Stock held by, or all or any part of the Secured Money owing to, a Stockholder is not denominated in New Zealand dollars:
- (i) For the purpose of the Second Schedule or calculating any person's share of any sum payable under this Deed, as the case may be, the Trustee shall be entitled to notionally convert the relevant part of the nominal amount or the Secured Money owed to or by any person, as the case may be, into New Zealand dollars, that notional conversion to be made at the spot rate, as quoted to the Trustee by a Reference Bank, at which the Trustee is able to purchase New Zealand dollars with the actual currency of the relevant part of the nominal amount, or the relevant part of the Secured Money owed to or by that person, at the time at which that calculation is to be made, provided that:
- (A) such notional conversion shall not alter the amount owing to, or secured in favour of, such person; and
- (B) where a notional conversion is undertaken for the purposes of clause 16.1, the conversion shall be undertaken on the same date as the Trustee makes the distribution under that clause.
- (ii) Following application of clause 16.1, for the purpose of distributing the amount available for distribution to the relevant Stockholder, the Trustee will convert the New Zealand dollar amount available to be distributed to a Stockholder to the relevant foreign currency in which the relevant part of the Secured Money is owing by reference to the applicable spot rate, as quoted to the Trustee by a Reference Bank for the purposes of clause 1.1(d)(i)(B) above.

1.2 Definitions:

"Act" means the Local Government Act 2002;

"Annual Plan" means the report prepared and adopted by Council under section 95 of the Act for each forthcoming financial year of Council;

"Annual Report" means the report prepared and adopted by Council under section 98 of the Act at the end of each financial year of Council;

"Auckland City Council Security Debenture" means the debenture entered into between the Auckland City Council and Trustees Executors Limited as security agent, dated 9 July 1998 as amended from time to time prior to the Effective Date;

"Auckland Regional Trust Deed" means the debenture trust deed entered into between Auckland Regional Council and Perpetual Trust Limited as trustee, dated 22 August 2003 as amended from time to time prior to the Effective Date;

"Auditor" means the person or persons for the time being holding the office of auditor of Council (or any agent or delegate of such person or persons);

"Bearer Stock" means Stock issued in bearer form as provided for in clause 8.1;

"Charged Assets" means:

- (a) all rates (past, present and future) from time to time set or assessed by the Existing Local Authorities under the Rating Act, and all rates revenue in respect thereof;
- (b) all rates from time to time set or assessed by Council under the Rating Act, and all rates revenue in respect thereof;
- (c) each rate arising under section 115 of the Act in relation to any Secured Money and all rates revenue in respect thereof;
- (d) the Proceeds of the rates, special rates or rates revenues described in paragraphs (a), (b) and (c) above, but only to the extent to which such Proceeds constitute Accounts Receivable, Negotiable Instruments or Money arising directly from the collection of those rates, special rates or rates revenues,

but, for the avoidance of doubt, excludes any rates (or the Proceeds thereof) which are or may be collected by Council on behalf of any other local authority;

"Chief Executive" means the chief executive of Council appointed under section 42 of the Act from time to time, and includes a reference to any person to whom any right or obligation of such chief executive has lawfully been delegated;

"Class of Stock" means any category of Stock having substantially the same rights, privileges, limitations and conditions which, at any particular time for any particular purpose, constitute a separate class of Stock within the Stock, as determined by Council;

"Class of Stockholders" means the Stockholders of a particular Class of Stock;

"Companies Act" means the Companies Act 1993, or in respect of a company not registered under that Act means the equivalent legislation applicable to that company;

"Date of Enforcement" means the date on which the security created by this Deed is enforced by the Trustee;

"Debenture Stock" means all Stock which is not Security Stock;

"Effective Date" means 13 December 2010;

"Enforcement Event" means any of the events listed in clause 13.1;

"Existing Global Stock" means:

- (a) any 'Global Stock' originally issued pursuant to, and as defined as such in, any of the Rodney Trust Deed, the Manukau Trust Deed, the Waitakere Trust Deed or the North Shore Trust Deed; and
- (b) the benefit of the security created by the Auckland City Council Security Debenture extended to third parties pursuant to a 'Global Security Certificate' as defined in, and issued pursuant to, the Auckland City Council Security Debenture,

in each case, for the time being outstanding and uncanceled, or a specified portion thereof as the case may require, as such may, in any case, have been reduced in aggregate nominal amount in accordance with the terms of the relevant Existing Trust Deed prior to the Effective Date;

"Existing Local Authorities" means each of Auckland Regional Council, Auckland City Council, Franklin District Council, Manukau City Council, North Shore City Council, Papakura District Council, Rodney District Council and Waitakere City Council;

"Existing Security Stock" means:

- (a) any 'Security Stock' issued pursuant to, and as defined as such in, any of the Existing Trust Deeds;
- (b) any Existing Global Stock;
- (c) the benefit of the security created by the Franklin Security Agency Deed extended to certain noteholders pursuant to clause 2.4 of the Franklin Note Deed Poll or clause 3.1 of the Franklin Security Agency Deed; and
- (d) the benefit of the security created by the Auckland City Council Security Debenture extended to third parties pursuant to a 'Security Certificate' as defined in, and issued pursuant to, the Auckland City Council Security Debenture,

in each case, for the time being outstanding and uncanceled, or a specified portion thereof as the case may require, as such may, in any case, have been reduced in aggregate nominal amount in accordance with the terms of the relevant Existing Trust Deed prior to the Effective Date;

"Existing Stock" means Existing Security Stock and any secured indebtedness by whatever name called, which was constituted and issued in accordance with any of the Existing Trust Deeds prior to the Effective Date and which is deemed to be issued and governed by the terms of this Deed pursuant to clause 2.1, for the time being outstanding and uncanceled, or a specified portion thereof as the case may require;

"Existing Stock Certificate" means a certificate or other written acknowledgement (including a deed of acknowledgement under the Franklin Security Agency Deed) in respect of Existing Stock issued under the relevant Existing Trust Deed prior to the Effective Date (subject to the Register, in the case of Registered Stock, and the provisions of this Deed, including the conditions

applicable to that Stock), evidencing that the person named therein is the holder of the amount of Existing Stock stated therein;

"Existing Trust Deeds" means each of the:

- (a) Auckland Regional Trust Deed;
- (b) Auckland City Council Security Debenture;
- (c) Franklin Security Agency Deed;
- (d) Manukau Trust Deed;
- (e) North Shore Trust Deed;
- (f) Papakura Trust Deed;
- (g) Rodney Trust Deed; and
- (h) Waitakere Trust Deed;

"Extraordinary Resolution" has the meaning contained in the Second Schedule;

"Facility" means any loan, advance, accommodation, bill, stock or note issuance, acceptance, endorsement or discount, guarantee, indemnity, letter of credit, bond, note, stock, bill, exchange, swap, rate, or other financial facility, agreement, liability, obligation or arrangement which is or has been lawfully entered into by Council (including to the extent transferred to Council pursuant to section 35 of the Reorganisation Act) and in respect of which the money or other liabilities or obligations owing or which may become owing thereunder are, or are proposed to be, secured by Stock;

"FMA" means the Financial Markets Authority;

"FMCA" means the Financial Markets Conduct Act 2013;

"FMC Regulations" means the Financial Markets Conduct Regulations 2014;

"FMSA" means the Financial Markets Supervisors Act 2011;

"Franklin Note Deed Poll" means the deed poll in relation to the issue of registered secured notes entered into by Franklin District Council in favour of the holders described therein, dated 29 August 2001 as amended from time to time prior to the Effective Date;

"Franklin Security Agency Deed" means the security agency deed entered into between Franklin District Council and the Public Trust as security agent, dated 7 August 2001 as amended from time to time prior to the Effective Date;

"Information and Meetings Act" means the Local Government Official Information and Meetings Act 1987;

"Liability Management Policy" means the liability management policy prepared and adopted by the Council under section 102(4)(b) of the Act;

"LTCCP" means each long term council community plan prepared and adopted by Council under section 93 of the Act;

"Manukau Trust Deed" means the debenture trust deed entered into between Manukau City Council and Trustees Executors Limited as trustee, dated 15 October 1999 as amended from time to time prior to the Effective Date;

"North Shore Trust Deed" means the debenture trust deed entered into between North Shore City Council and Trustees Executors Limited as trustee, dated 16 July 1998 as amended from time to time prior to the Effective Date;

"NZX" means NZX Limited and includes its successors and assigns;

"NZX Rules" means the rules published by NZX as the "NZX Listing Rules", as amended from time to time, or any rules published by NZX which replace those rules;

"Order in Council" means the order in council made by the Governor General on 13 December 2010 pursuant to section 31 of the Local Government (Auckland Transitional Provisions) Act 2010;

"Papakura Trust Deed" means the debenture trust deed entered into between Papakura District Council and Perpetual Trust Limited as trustee, dated 16 February 2009 as amended from time to time prior to the Effective Date;

"Paying Agent" means the person or persons appointed to this role under the Registrar and Paying Agency Agreement for the time being;

"PPSA" means the Personal Property Securities Act 1999;

"Principal" and **"Principal Money"** means, at any time:

- (a) in relation to Stock (other than Security Stock) the sum, other than interest payable on redemption of the Stock, inclusive of the premium (if any) of the Stock payable in accordance with the conditions of issue of that Stock;
- (b) in relation to Security Stock any amounts secured by that Security Stock which are not in the nature of interest on other amounts secured by that Security Stock;

"Priority Interest Amount" in relation to any Security Stock and the holder thereof, means the amount referred to as such in clause 7.3(a)(ii), unless otherwise agreed between Council and the Trustee (including by agreeing wording in the relevant Stock Certificate);

"Priority Principal Amount" in relation to any Security Stock and the holder thereof, means the amount referred to as such in clause 7.3(a)(i), unless otherwise agreed between Council and the Trustee (including by agreeing wording in the relevant Stock Certificate) and includes the "Secured Amount" as that term is defined in any Existing Stock Certificate issued under the Auckland Regional Trust Deed;

"Priority Total Amount" in relation to any Security Stock and the holder thereof, means the aggregate of the Priority Principal Amount and the Priority Interest Amount in respect of that Security Stock;