

# DEED OF AMENDMENT RELATING TO TRUST DEED

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between

**AUCKLAND CITY COUNCIL**

and

**TRUSTEES EXECUTORS LIMITED**



**Simpson Grierson**

Barristers & Solicitors  
Auckland & Wellington, New Zealand  
[www.simpsongrierson.com](http://www.simpsongrierson.com)

DEED DATED 13 FEBRUARY 2009

## PARTIES

1. Auckland City Council (formerly known as The Auckland City Council) (Council)
2. Trustees Executors Limited (formerly known as The Trustees Executors and Agency Company of New Zealand Limited, company number 142877) (Trustee)

## BACKGROUND

- A. Pursuant to the Trust Deed (defined below), Council entered into a deed to provide for the constitution and issue of notes.
- B. Pursuant to the Trust Deed the Trustee agreed, at the request of Council to act as trustee of the Trust Deed for the benefit of the Holders (as defined in the Trust Deed) on the terms and conditions contained in the Trust Deed.
- C. Clause 14.1(a)(ii) of the Trust Deed provides the Trustee with the ability to agree to amendments to the Trust Deed that are of a formal or technical nature. Following a review of the Trust Deed, it is considered necessary that the parties enter into certain amendments as contemplated by this deed to address changes in legislation, which are considered to be either formal or technical changes.

## WITNESSES AS FOLLOWS:

### 1. DEFINITIONS AND INTERPRETATION

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- 1.1 **Definitions:** In this deed, unless the context indicates otherwise:
  - (a) **Effective Date** means the date of this Deed;
  - (b) **Trust Deed** means the deed dated 25 February 1999 between Council and the Trustee.
- 1.2 **Interpretation:** In this deed, unless the context indicates otherwise:
  - (a) **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background;
  - (b) **Headings:** section, clause and other headings are for ease of reference only and will not affect this deed's interpretation;
  - (c) **Parties:** references to parties are references to parties to this deed;
  - (d) **Plural and Singular:** references to the singular include the plural and vice versa;

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- (e) **Capitalised Terms:** capitalised terms not defined in this deed shall, except where the context otherwise requires, have the same meanings ascribed to such terms in the Trust Deed; and
- (f) **Documents:** references to a document are to that document as amended, novated or replaced from time to time.

## 2. AMENDMENTS

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With effect from the Effective Date, the Trust Deed shall be amended as follows:

- 2.1 the definition of "**Act**" in clause 1.1 shall be deleted and replaced with the following:
- "**Act**" means the Local Government Act 2002;"
- 2.2 the definition of "**Approved Issuer Levy**" in clause 1.1 shall be deleted and replaced with the following:
- "**Approved Issuer Levy**" means, in relation to any payment of interest (as defined in section 86F of the Stamp and Cheque Duties Act 1971) under any Note, the levy payable by the Council in accordance with section 86K of the Stamp and Cheque Duties Act 1971, to enable the payment of such interest to be made with a deduction for New Zealand non-resident withholding tax at the rate of zero percent pursuant to section RF12(3) of the Income Tax Act 2007"
- 2.3 the following definition of "**Chief Executive**" is added to clause 1.1 in the correct place and in alphabetical order:
- "**Chief Executive**" means the Chief Executive of the 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."
- 2.4 the definition of "**Reference Banks**" in clause 1.1 shall be deleted and replaced with the following:
- "**Reference Banks**" means ANZ National Bank Limited, Bank of New Zealand and Westpac New Zealand Limited;"
- 2.5 All references in the Trust Deed to "Principal Administrative Officer" are deleted and replaced with the words "Chief Executive" and the definition of "**Principal Administrative Officer**" is deleted.
- 2.6 clause 7.6(a) shall be deleted and replaced with the following:
- "apply for and use its best endeavours to maintain its status as an "approved issuer" as defined in section YA1 of the Income Tax Act 2007 and ensure that this Trust Deed and each issue of Notes to be made under it is registered with the Commissioner of Inland Revenue under section 86H of the Stamp and Cheque Duties Act 1971; and"
- 2.7 clause 10.1(d) shall be deleted and replaced with the following:

**"Records:** procure that the financial statements (within the meaning of clause 17 of schedule 10 of the Act) and other records of the Council are audited in accordance with any statutory requirements and are (subject to section 40D(4) of the Receiverships Act 1993) at all reasonable times (whether kept at its principal office or any other place or places in New Zealand) open for inspection by the Trustee and any Holder, or any person properly appointed by the Trustee or any Holder; and"

2.8 clause 11.1(a) shall be deleted and replaced with the following:

"(a) **Annual Plan and Annual Report:** as soon as each are adopted by the Council within the terms of sections 93, 95, 98 and 102(4)(b) of the Act respectively, and in any event within 20 Business Days of such adoption, a copy of the Annual Plan and Annual Report for the forthcoming, and previous, financial years respectively and (where not already delivered to the Trustee) the most recent Long-Term Council Community Plan and Liability Management Policy (within the meaning of those sections, in each case whether or not incorporated in any other document);"

2.9 clause 11.1(b) shall be deleted and replaced with the following:

"(b) **Variations in Policy:** as soon as the Council has approved and adopted any material variation in either the Annual Plan, Long-Term Council Community Plan or Liability Management Policy (but, for the avoidance of doubt, not its treasury management policy), details of that variation; and"

2.10 clause 11.1(d) shall be deleted and replaced with the following:

"(d) **Information on Request:** on request by the Trustee, any other information reasonably required by the Trustee with respect to matters relating to the financial statements (within the meaning of clause 17 of schedule 10 of the Act) of the Council, other records of the Council and to the financial condition of the Council."

2.11 clause 17.6 shall be deleted and replaced with the following:

**"Absence of Crown Guarantee:** The Outstanding Moneys are not guaranteed by the Crown unless expressly authorised pursuant to section 65ZD of the Public Finance Act 1989."

### 3. CONFIRMATION

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Each party confirms that its respective obligations under the Trust Deed continue in full force and effect, subject only to the amendments contained in this deed.

### 4. GOVERNING LAW AND JURISDICTION

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

*et*

EXECUTION

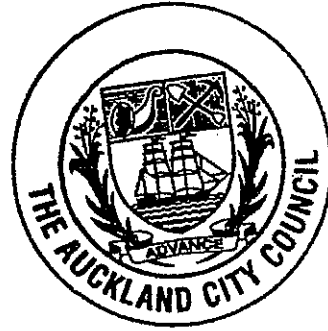
THE COMMON SEAL of AUCKLAND CITY COUNCIL affixed in the presence of:

*[Handwritten signature]*

Mayor / ~~Deputy Mayor~~ / Chairperson

*[Handwritten signature]*

~~Group Manager Democracy Services~~ / Democracy Advisor



EXECUTED by TRUSTEES EXECUTORS LIMITED as Trustee by:

*[Handwritten signature]*

Signature of authorised signatory  
Shahzad Contractor

Name of authorised signatory

Witness:\*

*[Handwritten signature]*

Signature of witness

**Matthew Joseph Band**  
Full name of witness  
**Corporate Business Manager**  
Auckland

Occupation of witness

Address of witness

*[Handwritten signature]*

Signature of authorised signatory  
Clynton Neil Hardy

Name of authorised signatory

Witness:\*

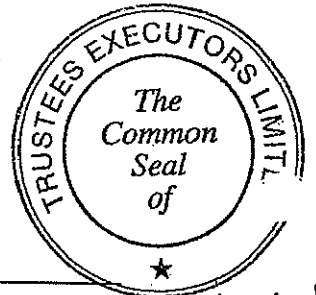
*[Handwritten signature]*

Signature of witness

**Matthew Joseph Band**  
Full name of witness  
**Corporate Business Manager**  
Auckland

Occupation of witness

Address of witness



2009/CTN/011/1