

DEED OF MODIFICATION OF DEBENTURE

between

AUCKLAND CITY COUNCIL

and

TRUSTEES EXECUTORS LIMITED



AUCKLAND CITY



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THIS DEED dated the 27th day of February 2004

BETWEEN AUCKLAND CITY COUNCIL a territorial authority as defined in the Local Government Act 2002, and authorised by the Local Government (Auckland Region) Reorganisation Order 1989, *Gazette* 1989 p.2247 (included in the term, the "Council")

AND TRUSTEES EXECUTORS LIMITED a company incorporated in New Zealand having its registered office at Wellington (included in the term, the "Security Agent")

INTRODUCTION

- A. The Council and the Security Agent (under its then name The Trustees Executors and Agency Company of New Zealand Limited) entered into a deed dated 9 July 1998 ("Deed") (as varied by a Deed of Variation of Debenture dated 10 December 1998 and a Deed of Variation of Debenture dated 12 December 2000) under which the Council is authorised to enter into Facilities pursuant to the Deed, and the Security Agent agreed to act as Security Agent for the benefit of the Security Holders in accordance with the terms of the Deed.
- B. The Council and the Security Agent have determined to make a number of modifications and additions to the Deed as a consequence of or in connection with the introduction of the Local Government Act 2002 ("LGA 2002"), the Personal Property Securities Act 1999 ("PPSA"), and the Local Government (Rating) Act 2002 ("LGRA").
- C. For the purposes of clause 13.1 of the Deed, the Security Agent concurs with the Council in making the modifications to the Deed set out in this Deed on the basis that:
- (a) in the opinion of the Security Agent such modifications are of a formal or technical nature and are not, and are not likely to become, prejudicial to the general interests of the Security Holders; and
 - (b) such modifications are necessary or desirable as a result of the coming into force of the LGA 2002, the PPSA and the LGRA.
- D. The Council and the Security Agent have accordingly agreed to enter into and execute this Deed.

WITNESSES AS FOLLOWS:

1. INTERPRETATION

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

- 1.1 **Definitions:** Words and expressions defined in the Deed and not otherwise defined below shall have the same meanings where used in this Deed:

"Deed of Modification" and "this Deed" mean this deed of modification of the Deed;

"Effective Date" means 1 July 2003;

"Security Agent" means Trustees Executors Limited, or, if it retires from office or is removed from office in accordance with the Deed, the person from time to time who has been appointed Security Agent pursuant to clause 8.1.1 of the Deed.

1.2 Construction of Certain References: Any reference to:

the Deed includes a reference to such as may from time to time have been or be supplemented, modified or novated in accordance with the provisions of that deed, and, when the context permits, includes any deed which is or is expressed to be supplemental to, or collateral with the Deed;

a clause means a reference to that clause in the Deed;

a gender includes each other gender;

the singular includes the plural, and vice versa;

any legislation includes a modification or re-enactment of, legislation enacted in substitution for, or a regulation, order-in-council or other instrument from time to time issued or made under, that legislation;

something being done, includes a reference to it being done from time to time;

a party to this Deed or any other agreement includes its successors or its permitted assignees or transferees; and

1.3 Headings: Headings and the table of contents are to be ignored in construing this Deed.

2. AMENDMENT OF DEED

With effect on and from the Effective Date the Deed is amended as follows:

2.1 In the Introduction the following amendments are made:

2.1.1 In paragraph A the word "certain" is added after the word "incur" and the words ", by way of Loans and Incidental Arrangements" are deleted; and

2.1.2 In paragraph C the words "for the purposes of" are deleted and replaced with "under".

2.2 The following definitions are added to clause 1.2 in the correct place by alphabetical order:

"Account receivable" has the same meaning as in the PPSA;

"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;

"financing statement" has the same meaning as in the PPSA;

"LTCCP" means the long term council community plan prepared and adopted by the Council under section 93 of the Act, as amended from time to time;

"Negotiable instrument" has the same meaning as in the PPSA;

"PPSA" means the Personal Property Securities Act 1999; and

"Proceeds" has the same meaning as in the PPSA.

- 2.3 In the definition of "Act" "1974" is deleted and replaced with "2002".
- 2.4 In the definition of "Annual Plan" "223D" is deleted and replaced with "95".
- 2.5 In the definition of "Annual Report" "223E" is deleted and replaced with "98".
- 2.6 In the definition of "Charged Assets" the following amendments are made:
- 2.6.1 in paragraph (a) the words "all rates from time to time made" are deleted and replaced with "all rates from time to time set or assessed";
- 2.6.2 in paragraph (b) the words "arising under section 122ZE of the Act" are deleted and replaced with "which may have arisen under the Local Government Act 1974" and the word "and" after the semi-colon is deleted;
- 2.6.3 a new paragraph (c) is added as follows:
- "(c) each rate arising under section 115 of the Act in relation to any Secured Money, and the rates revenue from each such rate;"
- and the following paragraph is renumbered "(d)" accordingly;
- 2.6.4 in new paragraph (d) the comma in the last line is deleted and replaced with "; and"; and
- 2.6.5 a new paragraph (e) is added as follows:

- "(e) the Proceeds of the rates, special rates or rates revenues described in paragraphs (a) to (d) above but only to the extent to which such Proceeds constitute Accounts receivable, Negotiable instruments or money (as the term "Money" is defined in the PPSA) arising directly from the collection of those rates, special rates or rates revenues,".
- 2.7 In the definition of "Facility" the words ", in any case, constitutes a Loan or an Incidental Arrangement" are deleted and replaced with "is lawfully entered into by the Council" and the word "is" after the word "thereunder", and the word "is" before the words "proposed to be" are deleted and replaced with "are".
- 2.8 The definition of "Incidental Arrangement" is deleted.
- 2.9 The definition of "Loan" is deleted.
- 2.10 All references in the Deed to "Principal Administrative Officer" are deleted and replaced with the words "Chief Executive", and the definition of "Principal Administrative Officer" is deleted.
- 2.11 In the definition of "Rating Act" the words "or the Local Government (Rating) Act 2002, as applicable" are added before the semi-colon.
- 2.12 In the definition of "Secured Money" the words "constitutes a Loan or an obligation under an Incidental Arrangement" are deleted and replaced with "is lawfully entered into by the Council".
- 2.13 In clause 1.3 in the reference to "charge" the following amendments are made:
- 2.13.1 the words "and includes a reference to a security interest (within the meaning of the PPSA)," are added after the word "Act,";
- 2.13.2 the word "including" is deleted and replaced with "and" before the words "for the avoidance"; and
- 2.13.3 in subparagraph (a) the words "(including a security interest as referred to in section 17(1)(b) of the PPSA)" are added after the word "statute".
- 2.14 In clause 1.3 in the reference to "person" the words "body corporate," are added after the word "company," and the word "any" is deleted and replaced with "each".
- 2.15 In clause 1.3 in the reference to "principal amount":
- (a) the words "Incidental Arrangement" are deleted and replaced with "arrangement lawfully entered into by the Council"; and

- (b) the reference to 122ZB(1)(a) is deleted and replaced with "112".
- 2.16 In clause 1.3 in the reference to "the security created by this Deed" the word "instrument" is deleted and replaced with "agreement".
- 2.17 In clause 1.6 the words "and the Public Bodies Contracts Act 1959" are deleted.
- 2.18 In clause 6.1.1:
- (a) the words "constitutes or represents, or is an obligation under, a Loan or Incidental Arrangement" are deleted and replaced with "is lawfully entered into by the Council";
 - (b) the words ", and grants a security interest (within the meaning, and for the purposes, of the PPSA) " are added after the words "the Council charges"; and
 - (c) the words "charged as" are deleted.
- 2.19 In clause 6.1.2 the words "and security interest" are added after the word "charge".
- 2.20 In clause 6.2 the words "is a floating charge and accordingly" are deleted and replaced with "(to the extent that it is not a security interest under the PPSA) is a floating charge, and in either case".
- 2.21 In clause 6.5.1:
- 2.21.1 the word "and" after the words "created by this Deed" is deleted and replaced with ". Without limiting the foregoing, the Council shall, to the extent permitted by law, do all things and provide all information which the Security Agent reasonably considers is desirable, in order:
- (a) to perfect, preserve or otherwise protect the Charged Assets or the security intended to be created under and by this Deed, and the priority of that security as contemplated by this Deed;
 - (b) for the Security Agent to register and maintain (including to renew before expiry) one or more financing statements in relation to the security interest in the Charged Assets created or provided for by this Deed;
 - (c) to remove any financing statement which is registered against the Council in relation to any security which is not permitted by this Deed or otherwise consented to by the Security Agent in writing.

The Council";

2.21.2 the words "levying of rates once made" are deleted and replaced with "assessing of rates once set"; and

2.21.3 the words "taking possession of the Charged Assets and" are added after the words "which the Security Agent may reasonably require for".

2.22 A new clause 6.6 is added as follows:

"6.6 Attachment not Delayed: Any security interest created by this Deed to which the PPSA applies shall attach, in the case of:

6.6.1 any present Charged Assets, from when the Council first signs or assents to this Deed in one of the ways specified in section 36(1)(b) of the PPSA; or

6.6.2 any after-acquired Charged Assets, from when the Council acquires any rights in those assets.

The Council acknowledges and agrees that there has been no agreement between the Council and the Security Agent that the attachment of any security interest to which the PPSA applies shall be at a time other than that provided in this clause."

and the following paragraph is renumbered "6.7" accordingly.

2.23 In clause 7.1 the words "except as otherwise permitted by the Security Agent" are added before the colon.

2.24 In clause 7.1.2:

2.24.1 the words "accounting documents (within the meaning of section 223H(3) of the Act)" are deleted and replaced with "financial statements (within the meaning of clause 17 of Schedule 10 of the Act)"; and

2.24.2 the words "(subject to section 122ZM(2)(f) of the Act)" are deleted and replaced with "(subject to section 40D(4) of the Receiverships Act)".

2.25 In clause 7.2 the words "Secured Money is outstanding" are deleted and replaced with "Facility remains unexpired or uncanceled".

2.26 In clause 7.2.1:

2.26.1 the heading is amended to read "LTCCP, Annual Plan, Annual Report and Liability Management Policy";

2.26.2 the word "are" is deleted and replaced with "is";

- 2.26.3 the reference to "223D, 223E, 122K and 122R" is deleted and replaced with "93, 95, 98 and 102(4)(b)";
- 2.26.4 the words "20 business days" are deleted and replaced with "1 month";
- 2.26.5 the reference to "Long-term Financial Strategy" is deleted and replaced with "LTCCP" and the reference to "Borrowing Management Policy" is deleted and replaced with "Liability Management Policy"; and
- 2.26.6 the word "those" is deleted and replaced with "these".
- 2.27 In clause 7.2.2:
- 2.27.1 The heading is amended to read "Amendments";
- 2.27.2 The words "any material variation in any such Annual Plan, Long-term Financial Strategy or Borrowing Management Policy" are deleted and replaced with "any material amendment to any such LTCCP or Liability Management Policy"; and
- 2.27.3 The word "variation" in the last line is deleted and replaced with "amendment".
- 2.28 In clause 7.2.3 the words "accounting documents (within the meaning of section 223H(3) of the Act)" are deleted and replaced with "financial statements (within the meaning of clause 17 of Schedule 10 of the Act)" and the word "and" after the semi-colon is deleted.
- 2.29 In clause 7.2.4 the fullstop is deleted and replaced with "; and".
- 2.30 A new clause, clause 7.2.5 is added as follows:
- "7.2.5 PPSR Information: promptly disclose to the Security Agent any change of the Council's name, or any change to the Council's address, facsimile or telephone numbers and, upon a request from the Security Agent (such request to set out the relevant information then contained in the Security Agent's financing statement registered in respect of this Deed), promptly confirm, or provide details of any changes to, that information for the purposes of accurately maintaining that financing statement."
- 2.31 In clause 8.2.2 the words "or by the PPSA (and not excluded by this Deed)" are added in paragraph (a) after the word "Deed".
- 2.32 A new clause 9.2 is added as follows:
- "9.2 Application of the PPSA: The Council and the Security Agent:
- 9.2.1 Contracting Out: contract out of:

- (a) sections 108, 109 and 120(1) of the PPSA to the extent that:
- (i) "default" in terms of those sections may occur before the occurrence of an Enforcement Event and accordingly agree, for the purposes of clarification, that those three sections of the PPSA will not apply unless and until an Enforcement Event occurs and continues unremedied and unwaived; and
 - (ii) those sections may require that only a secured party with priority over all secured parties may enforce in the manner permitted by those sections (to the intent that the Security Agent and the Council agree that the Security Agent shall be entitled, subject to the terms of this Deed, to enforce pursuant to those sections regardless of whether or not the Security Agent has priority over all other secured parties);
- (b) section 114(1)(a) of the PPSA to the extent that that section obliges the Security Agent to give any period of notice beyond that which the Security Agent is obliged to give under clause 10.3;
- (c) section 109(1)(b) and section 109(2) of the PPSA (except to the extent that the events referred to in those sections have led to the security created by this Deed becoming enforceable as provided for in Section 9); and

2.33 Two new clauses, 9.3 and 9.4, are added as follows:

"9.3 **Verification Statement:** The Council waives its right to receive a copy of the verification statement in respect of a financing statement or financing change statement relating to any security interests created by this Deed until such time as the Council may request such.

9.4 **Security Trust Deed:** The Council agrees that this Deed is a security trust deed for the purposes of the PPSA, and consents to any registration of a financing statement in respect of the

security interest created pursuant to this Deed disclosing that this Deed is a security trust deed."

- 2.34 In clause 10.1 ", 10.5" is added after the words " clause 10.3".
- 2.35 A new clause 10.1.4 is added as follows:
- "10.1.4 Apply: apply in accordance with Part 9 of the PPSA, Charged Assets in the form of accounts receivable, money or negotiable instruments to the satisfaction of the obligations secured by this Deed; and"
- and the following paragraph is renumbered 10.1.5 accordingly.
- 2.36 In clause 10.3 the words ", or applying" are added before the words "(the powers of conversion)".
- 2.37 In clause 10.4.1 the word "applied," is added before the words "sold, called in,".
- 2.38 A new clause 10.5 is added as follows:
- "10.5 Essential Services: The Council and the Security Agent agree that the regime as set out in section 40D of the Receiverships Act shall be deemed to apply mutatis mutandis to any action taken by the Security Agent in relation to any Charged Assets pursuant to the powers referred to in clause 10.1 as if the references in that section to "receiver" were references to the Security Agent, and the provisions of this Deed shall be read accordingly."
- 2.39 In clause 11.1 the words "and to the Act (and in particular sections 122ZM(2)(e) and (q))" are deleted and replaced with ", the Act and the Receiverships Act".
- 2.40 In clause 11.2 the words "and the Receiverships Act" are added after the word "Act".
- 2.41 In clause 11.2.1 the words "sections 122ZF and 122ZM(3))" are deleted and replaced with "section 115), and the Receiverships Act,".
- 2.42 In clause 11.2.8 the words "(subject to the Act, and in particular, to section 122ZM(2)(g))" are deleted and replaced with "(subject to the Receiverships Act)".
- 2.43 In clause 11.2.10 the words "the Receiverships Act," are added after the word "Deed,".
- 2.44 In the last lines of the final paragraph in clause 11.2, the words "or the Receiverships Act" are added after the word "Act" and the reference to "122ZN(1)" is deleted and replaced with "40D(1)".
- 2.45 In clause 11.4 the words "or the Receiverships Act" are added after the word "Act".

- 2.46 In clause 11.6.5 the words "Loan or Incidental Arrangement" are deleted and replaced with "transaction which is lawfully entered into by the Council".
- 2.47 In clause 12.1 in the first line the words ", the Receiverships Act and clause 10.5" are added after the word "Act".
- 2.48 In clause 12.1.1 the words "section 34(2) of" are deleted.
- 2.49 In clause 12.1.3 the words "122ZN(1) of the Act" are deleted and replaced with "40D(1) of the Receiverships Act".
- 2.50 In clause 12.1.8 the words "(including, where applicable, pursuant to section 117 of the PPSA)" are added before the semi-colon.
- 2.51 In clause 15.3:
- 2.51.1 the words "Council shall immediately at its own cost" are deleted and replaced with "Security Agent may at the Council's cost, or may require the Council at its own cost to, "; and
- 2.51.2 the words "perfect the security interest created by this Deed on the personal property securities register (as referred to in section 135 of the PPSA) to" are added before the word "give".
- 2.52 In the Schedule all instances of the words "[endorsement of certificate of registration for purposes of section 106 Companies act 1955]" are deleted.

3. MISCELLANEOUS

- 3.1 **Deed Continues in Force:** Except as modified by this Deed the provisions of the Deed are unchanged and remain in full force and effect on and after the Effective Date.
- 3.2 **Counterparts:** This Deed may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this Deed by executing any such counterpart.
- 3.3 **Governing Law and Submission to Jurisdiction:** This Deed is governed by and to be construed in accordance with the laws of New Zealand, and the Council, the Security Agent (for itself and on behalf of each Security Holder) submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters or disputes arising in respect of this Deed.

In witness of which this deed has been executed.

THE COMMON SEAL of AUCKLAND CITY COUNCIL was affixed to this Deed at the Office of and in pursuance of a resolution of the Council, in the presence of:

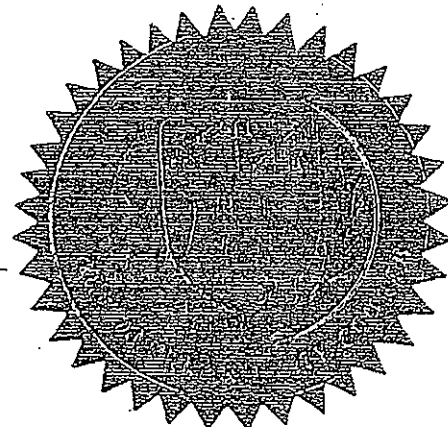
[Handwritten signature]

DEPUTY MAYOR

[Handwritten signature]

COMMITTEE MANAGER

SIGNED ^{Executed by} for and on behalf of TRUSTEES EXECUTORS LIMITED by two authorised signatories ^{under its Common Seal}



Yogesh Mody

Signature Authorised Signatory

[Handwritten signature]

Eva Lotter-Medel

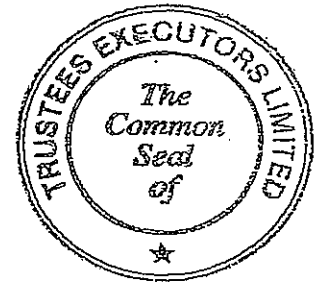
Signature Authorised Signatory

In the presence of:

[Handwritten signature]

Signature

Full Name Sean Roberts
Corporate Business Manager
Wellington
Occupation
Address



2004 - 031
(112)