

TRUST DEED

(Consolidated Amendments 1988 – 2007)

THE ASB COMMUNITY TRUST

**A trust duly constituted under the Trustee Banks Restructuring Act 1988
(which has now been replaced with The Community Trusts Act 1999)**

THE ASB COMMUNITY TRUST

THIS TRUST DEED is made and executed on 30 May 1988

BY THE MINISTER OF FINANCE (“the Minister”)

RECITALS

- A By Section 14(1) of the Trustee Banks Restructuring Act 1988 (‘The Act’)¹, the Minister is directed to execute a trust deed establishing a trust (for the purposes specified in Part II of the Act) to acquire shares in the capital of the public company to be formed and registered by ASB Bank under Section 4(1).
- B The First Trustees have been appointed by the Minister as the first trustees of the trust pursuant to Section 15, subject to their agreeing to accept such appointment.
- C The First Trustees will, shortly after the execution of this Deed, subscribe for shares in the capital of the said company as required by Section 4(1) (c). Such shares will, by Section 8(1), be deemed to have been allotted as fully paid up.
- D The Minister has agreed to pay to the First Trustees the sum of one hundred dollars (\$100.00) to enable the Trust to be properly constituted.

¹ The Trustee Banks Restructuring Act 1988 was repealed by the Trustee Banks Restructuring Act Repeal Act 1999 and replaced with The Community Trusts Act 1999; the purpose of which is to make provision for the continued operation of the community trusts that were established under the Trustee Banks Restructuring Act 1988.

All references to the “Act” in the Recitals mean the Trustee Banks Restructuring Act 1988. All other references in the Trust Deed to the “Act” mean the Community Trusts Act 1999.

PROVISIONS OF DEED

1. Interpretation

In this Deed, unless the context requires:

“**Act**” means the Community Trusts Act 1999, unless some other Act is specified.

“**Bank**” means the company formed and registered by ASB Bank pursuant to Section 4(a) of the Trustee Banks Restructuring Act 1988 under the name of “ASB Bank Limited”.

“**the Bank shares**” means the shares for the time being held by the Trust in the Bank.

“**financial year**” means a year ending on 31 March.

“**Inland Revenue Acts**” means the Acts specified in the First Schedule of the Inland Revenue Department Act 1974.

“**the Minister**” means the Minister of Finance, and includes any member of the Executive Council.

“**Objects of the Trust**” means the objects or purposes of the Trust specified in clause 4(a).

“**section**” refers to a section of the Community Trusts Act 1999, unless some other Act is specified.

“**Specified Area**” means all that area comprising the counties of Bay of Islands, Franklin, Great Barrier, Hobson, Hokianga, Mangonui, Manukau, Otamatea, Rodney, Waitemata, Whangarei and Whangaroa and including all cities, boroughs and town districts surrounded by or contiguous to those counties, as the said counties were constituted on the first day of October 1964.

“**the Trust**” means the Trust established by this Deed.

“the Trustees” means the Trustees for the time being of the Trust.

“Trust fund” means all the funds of the Trust described as “the Trust fund” in clause 3, and includes all capital and income for the time being held by the Trustees of the Trust.

“Trustee Act” means the Trustee Act 1956 or any statutory modification or re-enactment thereof.

The clause headings and central headings shall not affect the construction of this Deed. Words importing persons include corporate bodies. Words importing the singular number include the plural number also and vice versa.

History: See Endnote 1.

2 **Name of Trust**

The Trust hereby established shall be known as “the ASB Community Trust”.

Clause 2 History: Amended 17 July 2006. Former clause read:

“The Trust hereby established shall be known as “the ASB Bank Community Trust”.

3 **Declaration of Trust**

The Minister hereby declares that the Trustees shall stand possessed of the said sum of \$100.00 and all other moneys or property hereafter paid, transferred or donated to the Trustees to be held upon the Trusts hereby declared, or raised or collected by them or otherwise acquired by any legal means whatever, and the income from any investment thereof and any accumulations of income therefrom made pursuant to the provisions hereinafter contained and all moneys, investments and property from time to time representing the same (in this Deed called “the Trust Fund”) UPON THE TRUSTS and with the powers set out in these presents.

4 **Objects of the Trust**

- (a) The Trustees shall stand possessed of the Trust fund upon trust to be applied for charitable, cultural, philanthropic, recreational and other purposes being purposes beneficial to the community principally in the Specified Area.
- (b) It is recorded that the effect of section 12 of the Act in relation to this Trust is that all of the purposes set out in paragraph (a) are, for the purposes of the application of any rule of law or the provisions of any Act (with the exception of the Inland Revenue Acts or any enactment that imposes or provides for the collection of a tax, duty, levy or other charge), deemed to be charitable.

Clause 4 History: See Endnote 2.

5 **Raising of Funds**

The Trustees may raise money for the purposes of the Trust by such lawful means as they think fit and may accept gifts or donations for such purposes from any person or persons and upon such conditions as they think fit, provided that no condition shall be at variance with the objects of the Trust.

6. **Appointment and Replacement of Trustees**

- (a) Trustees shall be appointed by the Minister who shall have regard to any recommendations made by the Trustees, and each shall hold office for a term of not more than 4 years.
- (b) A Trustee may hold office on more than 1 occasion.
- (c) Despite paragraphs (a) and (b) above, where the term of office of a Trustee expires, that Trustee, unless sooner vacating office or being removed from office under clause 8, continues to hold office by virtue of the appointment for the expired term until:

- (i) the Trustee is reappointed; or
- (ii) a successor to the Trustee is appointed; or
- (iii) the Trustee is advised in writing by the Minister that the Trustee will not be reappointed and that a successor to the Trustee will not be appointed.

Clause 6 History: See Endnote 3.

7. **Eligibility for and Disqualification from Appointment**

- (a) No person shall be appointed a Trustee unless that person is suited for appointment by reason of either that person's knowledge of, or experience in, business, banking, law or accountancy or that person's interest or involvement in the community.
- (b) A person must not be appointed or be reappointed, or hold office as a trustee of the Trust, if he or she is:
 - (i) A bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled;
 - (ii) Convicted of an offence punishable by imprisonment for a term of 2 years or more;
 - (iii) Convicted of an offence punishable by a term of imprisonment of less than 2 years and is sentenced to imprisonment for that offence;
 - (iv) Subject to an order made under section 383 of the Companies Act 1993;

- (v) A person to whom section 151 (2) (ba) or section 151 (2) (c) of the Companies Act 1993 applies;
- (vi) Mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (vii) Not resident in the area or region of the Trust;
- (viii) Employed in the service of, or holding an office (other than the office of director) in, the Bank in which that Trust holds shares.

Clause 7 History: See Endnote 4.

8 **Termination of Office**

- (a) A Trustee may at any time resign office by notice in writing to the Minister. The Trustee shall forward a copy of such notice to the Chair of the Trust.
- (b) A Trustee is deemed to have resigned office if at any time he or she is prohibited as acting as a Trustee by clause 7(b).
- (c) The Governor General may remove a Trustee from office if:
 - (i) disability in relation to the performance of his or her duties as a Trustee, neglect of duty, or misconduct is proved to the satisfaction of the Governor General, or
 - (ii) The Governor-General is satisfied on reasonable grounds that the Trustee has acted or is acting in a manner which is, or likely to be, prejudicial to the interests of the Trust.
- (d) If any Trustee dies or resigns or ceases to hold office, the office of that Trustee shall become vacant, the vacancy shall be filled by the Minister who shall have regard to any recommendation made by the

Trustees and any person appointed shall hold office for the residue of the term of office of the Trustee, provided that the Minister shall be under no obligation to fill any vacancy unless the number of Trustees shall have fallen below the minimum prescribed by clause 9.

- (e) If any Trustee dies or resigns or ceases to hold office, the Trustees shall immediately inform the Minister of that fact by notice in writing together with their recommendation, if any, as to the person to be appointed under clause 8(d).

Clause 8 History: See Endnote 5.

9 Number of Trustees

The number of Trustees shall be not be more than 15 nor less than 7.

10. Chair

The Trustees shall appoint one of their number as Chair and may remove any such Chair from that office. Subject to the right of removal, the Trustees shall determine the term of office for which any Chair is appointed, provided that the term of office does not exceed the Chair's term of appointment as a Trustee. Subject to this clause, a Chair may hold office as a Chair on more than one occasion.

Clause 10 History: Amended 24 March 2000. Former clause read:

PROCEEDINGS OF TRUSTEES

10 Chairperson

The Minister shall from time to time appoint one of the Trustees as Chairperson and may remove any such Chairperson from that office. The Minister shall determine the period for which any Chairperson is to hold office, if not earlier removed. If the Chairperson is not present at any meeting of the Trustees, then those trustees present may choose one of their number to be Chairperson of the meeting.

11. Meetings and Voting

- (a) The Trustees may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Except where some other majority is required by this Deed, questions arising at any meeting shall be decided by a simple majority of votes. In the case of

an equality of votes (where a simple majority is required), the Chair shall have a second or casting vote. The Chair or any 2 of the Trustees may at any time summon a meeting of the Trustees. Notice of each meeting of Trustees shall be given by sending or delivering the same to the last known place of residence of, or other address for service notified by, each Trustee.

- (b) The quorum necessary for the transaction of the business of the Trustees shall be fixed by the Trustees but shall not be less than a majority of the Trustees for the time being.
- (c) A resolution in writing signed by all the Trustees shall be as valid and effectual as if duly passed at a meeting of the Trustees.
- (d) The Trustees shall cause minutes to be kept of their meetings.
- (e) The Trustees may from time to time delegate any of their powers to committees consisting of not less than 3 members of their body and of such other person (if any) as they think fit. Any committee so formed shall in exercise of the powers so delegated conform to any regulations that may be imposed on it by the Trustees. The Trustees may prescribe procedural rules for any such committee.

Clause 11 History: See Endnote 6.

12. **Disclosure of Interests**

A Trustee who is in any way, whether directly or indirectly:

- (a) interested in a contract or proposed contact or arrangement or dealing with the Trust; or
- (b) associated as a member, officer or otherwise howsoever with any organisation to or for the benefit of which the Trustees are currently considering making any application of the Trust fund;

shall disclose the nature of that interest at a meeting of the Trustees and such disclosure shall be recorded in the minutes of the meeting.

Clause 12 History: See Endnote 7.

13. **Voting and Quorum**

- (a) A Trustee required to disclose an interest by clause 12 shall, subject to subclauses (b) and (c), not be counted in the quorum present at the meeting and shall not vote in respect of the matter in which that Trustee is interested, and if the Trustee does so the vote shall not be counted.
- (b) Subclause (a) shall not apply in the case of a matter in which so many of the Trustees have an interest that the remaining Trustees could not, if they were all present at a meeting of the Trustees, make up a quorum.
- (c) When subclause (b) applies, then:
 - (i) all Trustees who vote in favour of the matter must sign a certificate for entry in the minutes of the meeting that the matter is in the best interests of the Trust; and
 - (ii) the Trustees must cause to be included in the next financial statements prepared under clause 15 of this Trust Deed, particulars of the matter and of the nature of the Trustees' interest in it.

Clause 13 History: See Endnote 8.

14. **Investment Powers of Trustees**

- (a) The Trustees shall in the administration, management and investment of the Trust Fund, have the rights powers and privileges of a natural

person of full age and capacity with no restraints on the Trustees' power to invest the Trust Fund, subject to clauses 14(b), (c), and (d).

- (b) The Trustees must:
 - (i) invest the Trust Fund prudently; and
 - (ii) take into account the matters to which trustees are required to have regard in exercising any powers of investment as required by the Trustee Act 1956.
- (c) The Trustees must establish, and adhere to, a statement of investment policy and objectives for the Trust Fund consistent with their duty to invest the Trust Fund as set out in clause 14(b), above.
- (d) The Trustees must review those investment policies, standards and procedures for the Trust Fund at least annually.

<p>Clause 14 History: See Endnote 9.</p>

15. **Financial Statements**

- (a) The Trustees shall ensure that full and correct accounts of all the financial transactions for the Trust and its assets, liabilities, and funds are kept.
- (b) The Trustees shall, after the end of each Financial Year, have prepared the financial statements in compliance with the provisions of the Financial Reporting Act 1993, as if it were a reporting entity within the meaning of section 2 of the Financial Reporting Act.
- (c) The financial statements shall show the distributions approved or paid for the purposes of the Trust during the financial year. In each case, the name of each recipient and the amount approved or paid to each recipient shall be shown.
- (d) The financial statements must be audited by an auditor appointed for the purpose.

- (e) An auditor appointed by the Trustees:
 - (i) must be appointed in accordance with provisions of the Companies Act 1993 which for that purpose apply with such modifications as may be necessary; and
 - (ii) must not be a Trustee, employee or agent of the Trust.
- (f) The auditor's report shall comply with the provisions of s.16 (1) of the Financial Reporting Act 1993.
- (g) Unless directed otherwise by the Minister, the Trustees of the Trust must, not later than 31 August in each year:
 - (i) Send the financial statements and the auditor's report to the Minister: and
 - (ii) Publish copies of the financial statements and the auditor's report:
 - (aa) In the Gazette; and either
 - (bb) In one (1) or more principal newspapers circulating in the area or region of the Trust; or
 - (cc) By distribution to every household in that area or region.
- (h) Despite paragraph (g) above, the Trustees are not required to publish in the Gazette the information specified in paragraph (c) above if the Trustees publish in the Gazette, with the financial statements and auditor's report, a statement that a list of all distributions of income and capital approved or paid by the Trust in the relevant financial year is available, on request, from the office of the Trust.

16. Trustees must hold Public Meeting

- (a) The Trustees must hold a public meeting in the area or region of the Trust not later 31 October in each year.
- (b) The Trustees must give not less than 14 days' notice of the meeting in one (1) or more principal newspapers circulating in the area or region of the Trust.
- (c) At the meeting, the Trustees must report on:
 - (i) The operation of the Trust during the preceding financial year;
and
 - (ii) The financial statements of the Trust for that year.

Clause 16 History: Amended 24 March 2000. Former clause read:

18 Trustees to Hold Public Meeting

- (a) The Trustees shall, no later than the 31st day of July in each year, hold a public meeting in the Specified Area and shall at that meeting report on the operation of the Trust during the preceding Financial Year and on the financial statements of the Trust for that year.
- (b) The Trustees shall give not less than 14 days notice of the holding of a public meeting inserted prominently in a principal newspaper or newspapers circulating in the Specified Area.

17. Officers

The Trustees may from time to time appoint (and may remove) a Secretary, a Treasurer and such other officers, employees, managers and agents as the Trustees may think fit. The respective duties and conditions of appointment of such officers and agents shall be as prescribed by the Trustees from time to time.

Clause 17 History: Amended 24 March 2000. Former clause read:

The Trustees may from time to time appoint (and may remove) a Secretary, a Treasurer and such other officers as the Trustees may think fit. The respective duties and conditions of appointment of such officers shall be as prescribed by the Trustees from time to time.

18. Inspection of Trust Deed

A copy of this Deed shall at all times be made available for public inspection during ordinary business hours at the office of the Secretary, or at such other place as the Trustees from time to time determine.

19. Procedure for Variation of Trust Deed

- (a) Subject to paragraphs (b) and (c) of this Clause, this Deed may be altered or added to at any time and from time to time by, on each occasion, concurring votes of not less than 75 per cent of the Trustees, provided that no alteration or addition shall be inconsistent with the provisions of the Act.
- (b) No such alteration or addition shall be of any effect unless and until approved by the Minister.
- (c) No alteration or addition to the Objects of the Trust set out in Clause 4(a) (or to any other provision in this Deed) shall be valid if it should permit any part of the Trust Fund to be used for other than a purpose referred to in Clause 4(a) of this Deed.
- (d) For the avoidance of doubt, it is declared that it is permissible for the Minister to approve, if the Minister thinks fit, an alteration deleting the requirement of the Minister's consent to any future amendment to any provision in the Deed, provided that such alteration is not inconsistent with the Act.

20. Incorporation

- (a) The Trustees may, if they think fit, apply for the incorporation of the Trustees as a Board under Part II of the Charitable Trust Act 1957.
- (b) In the event of the Trustees becoming so incorporated, the common seal of the Trust shall only be affixed pursuant to a resolution of the Board or of a committee of the Trustees authorised by the Board in that behalf and every instrument to which the common seal is affixed shall be signed by two (2) Trustees.

21. **Other Powers**

The Trustees shall have and may exercise either alone or together with any other person or persons the following powers, authorities and discretions:

- (a) to distribute any part of the capital or income of the Trust fund in the implementation of the Objects of the Trust, and in doing so the Trustees may pay any amount available for distribution to any organisation or body (whether incorporated or not, but not one conducted for private profit) subject to any conditions which the Trustees may think fit to impose to ensure that the amount so paid is used for such specific purposes as the Trustees may direct, being purposes exclusively within the Objects of the Trust and the receipt of any such organisation or body acknowledging the conditions imposed shall be a sufficient discharge for the Trustees;
- (b) to accumulate the whole or any part of the current net annual income derived by the Trustees in any financial year and to designate all or any part of such accumulations as a reserve fund for, or provisionally for, any specified purpose if they should think fit, provided that any such designation or specification may at any time be revoked by the Trustees;
- (c) to sell, subject to section 19 of the Act, all or any part of the real or personal property or interest therein comprising the Trust fund or any part thereof at such price on such terms and subject to such conditions as they in their absolute discretion think fit with the power to allow the whole or any part of the purchase money to remain on mortgage of the property sold;
- (d) to lease or take on lease any freehold or leasehold property or interest therein with or without chattels for such period at such rent on such terms (including at the discretion of the Trustees a compulsory or optional purchasing clause) and subject to such conditions as they think fit and to accept or effect such renewals or surrenders of leases and tenancies as they think fit;
- (e) to borrow moneys on mortgage, bank overdraft or otherwise howsoever for such reasons upon such security by way of mortgage

or otherwise such terms and subject to such conditions as the Trustees think fit;

- (f) to employ and pay any person, firm, company or corporation upon such terms as they think fit;
- (g) to appoint and remove a nominee, custodian or trustee to hold any part of the Trust fund on such terms and conditions as they shall see fit, including as to remuneration, and to acquire and hold assets or interests which may be held registered for the Trustees in the name of, or in the name of a nominee of or depository for, a nominee, custodian or Trustee;
- (h) to permit any Trustee for the time being engaged in any profession or business and any firm with which the Trustee may be associated to charge and be paid all proper professional or other charges for any business done by the Trustee or firm for the Trust;
- (i) to make such arrangement as the Trustees think fit for the operation of any bank accounts held by the Trustees, including specification of the signatures required for such operation;
- (j) to pay out of the Trust fund all proper costs incurred in the administration of the Trust including (without limiting the generality of the foregoing) rent, salaries, superannuation contributions for employees, accounting and audit fees, general office expenses and other outgoings;
- (k) generally, to maintain, repair, improve and develop any real or personal property which or an interest in which for the time being forms part of the Trust fund in such manner as the Trustees think fit and for that purpose to pay and apply such of the capital and income of the Trust fund as they think fit;
- (l) to act as directors or a director of any company (including the Bank) in which the Trust fund holds shares and to receive without being liable to account for the same to the Trust, any director's fees or other remuneration for so acting;

- (m) To appoint any person to act as the agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting assurances of, or managing or otherwise administering any property, real or personal, moveable or immovable forming part of the Trust fund either within or outside New Zealand, or executing or exercising any discretion or trust or power vested in the Trustees in relation to any such property, with such ancillary powers and with and subject to such provision and restrictions as the Trustees may think fit, including a power to appoint substitutes, and shall not, by reason only of having made any such appointment, be responsible for any loss arising thereby;
- (n) with the prior approval of the Trustees, to effect insurance (including paying, whether directly or indirectly, the costs of the insurance) for a Trustee or former Trustee of the Trust but only in respect of:
 - (i) liability, not being criminal liability, for an act or omission in his or her capacity as a Trustee; or
 - (ii) costs incurred by that Trustee in defending or settling a claim or proceeding relating to that liability; or
 - (iii) costs incurred by that Trustee in defending criminal proceedings in which the Trustee is acquitted.
- (o) To act as nominee and/or as investment manager and/or as custodian for any other trust, corporation or other body having the same or equivalent objects to those of the Trust and to conduct any such functions themselves or by bodies corporate or other third parties established or appointed by them.

Clause 21 History: See Endnote 11.

22. The Trustees who vote in favour of authorising the effecting of insurance under clause 21(n) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Trust.

23. Availability of Powers

- (a) Notwithstanding section 2(4) of the Trustee Act, while the Trustees are not a body corporate, the powers conferred by or under the Trustee Act on a trustee are in addition to the powers given by the Act and this Deed; but the powers conferred on a Trustee by the Trustee Act, unless otherwise stated therein, apply if and so far only as a contrary intention is not expressed in the Act or the Trust Deed, and have effect subject to the terms of the Act and this Deed.
- (b) Notwithstanding section 2(5) of the Trustee Act, whenever the Trustees are a body corporate, the powers conferred by or under the Trustee Act on that body corporate are in addition to the powers given by the Act, this Deed and to the powers given by or under any Act by or under which the Trustees are incorporated, but the powers conferred on that body corporate by the Trustee Act, unless otherwise stated therein:
 - (i) apply if and so far only as a contrary intention is not expressed in the Act or this Deed, and have effect subject to the terms of the Act and this Deed;
 - (ii) apply if and so far only as a contrary intention is not expressed in the Act by or under which the Trustees are incorporated and have effect subject to the terms of that Act;

provided that nothing in this paragraph shall affect any Act which applies to all Trustees, whether corporations or not.

24. Remuneration and Reimbursement of Trustees

- (a) The Trustees shall be entitled in each Financial Year to such remuneration for their services as Trustees as may be reasonable having regard to their duties and responsibilities. The amount of such remuneration shall be set by the Minister, having regard to the recommendations of the Trustees. The amount of such remuneration shall be shown separately in the financial statements.

- (b) The Trustees shall be entitled to be reimbursed for expenditure incurred by them on behalf of the Trust, subject in every case to approval of the Trustees.

Clause 24 History: Amended 24 March 2000. Former clause read:

25. Remuneration and Reimbursement

- (a) The Trustees shall be entitled in each Financial Year to such remuneration for their services as Trustees as may be reasonable having regard to their duties and responsibilities. The amount of such remuneration shall not exceed the amount recommended by the Trustees and approved by the Minister. The amount of such remuneration shall be shown separately in the financial statements.
- (b) The Trustees shall be entitled to be reimbursed for the expenditure incurred by them on behalf of the Trust, subject in every case to approval of the Trustees

Clause 26 and 27 History: See Endnote 13.

History: The First Schedule and Second Schedule are made redundant by Deed of Variation dated 24 March 2000 whereby clauses 26 and 27 were omitted. Former First Schedule and Second Schedule read:

FIRST SCHEDULE

(Merger of Trusts)

- (1) A scheme submitted under Clause 26 shall:
 - (a) state the names of the trusts:
 - (b) state the names of the trustees of the trusts:
 - (c) have annexed to it the trust deeds established the trusts:
 - (d) have annexed to it a proposed trust deed established a single trust ("the New Trust") upon which the property, rights, assts, and liabilities of each of the trusts are proposed to be held;
 - (e) state the names, addresses, and occupations of the persons who it is proposed will be trustees of the New Trust:
 - (f) contain a summary of any submissions made under paragraph (3) of this Schedule:
 - (g) contain such other matters as may be appropriate;
 - (h) be dated.
- (2) The trustees of the trusts shall supply to the Minister such additional information relating to the scheme as the Minister may from time to time require.
- (3) Before submitting a scheme to the Minister the trustees of the Trust shall:
 - (a) give notice in the Gazette and in a principal newspaper or newspapers circulating in the Specified Area:
 - (i) stating that the Trustees intend to submit the scheme to the Minster: and
 - (ii) specifying details of the scheme; and
 - (iii) stating that any person residing in the Specified Area may, within 28 days after the last publication of the notice, make submissions to the Trustees in writing regarding the scheme; and
 - (b) have regard to any submissions made within that period.
- (4) The Minister may, on the recommendation of the Reserve Bank of New Zealand, approve a scheme for the amalgamation of any 2 or more trusts submitted under Clause 26.
- (5) Upon approval of the scheme by the Minister, the Trustees shall, together with the trustees of the other trust or trusts involved in the scheme, proceed to implement the scheme and shall have all such powers as shall be necessary for the purpose of establishing the New Trust, the appointment of its trustees, the transfer of the property, rights, assets and liabilities of the Trust to the New Trust and the consequential winding-up of the Trust.

SECOND SCHEDULE

(Formation of Separate Trusts in Place of the Trust)

- (1) A scheme submitted under Clause 27 shall:
 - (a) state the name of the Trust:
 - (b) state the names of the trustees of the Trust:
 - (c) have annexed to it a copy of this Deed:
 - (d) have annexed to it drafts of trust deeds for the proposed trusts ("New Trusts") pursuant to which the property, rights, assets, and liabilities of the Trust are proposed to be held:
 - (f) state the names, addresses, and occupations of the persons who it is proposed will be trustees of the New Trusts:
 - (g) contain a summary of any submissions made under paragraph (3) of this Schedule:

- (h) contain such other matters as may be appropriate:
- (l) be dated.
- (2) The trustees of the Trust shall supply to the Minister such additional information relating to the scheme as the Minister may from time to time require.
- (3) Before submitting a scheme to the Minister the Trustees shall:
 - (a) give notice in the Gazette and in a principal newspaper or newspaper circulating in the Specified Area:
 - (i) stating that the Trustees intend to submit
The scheme to the Minister: and
 - (ii) stating that any person residing in the Specified Area may, within 28 days after the last publication of the notice, make submissions to the Trustees in writing regarding the scheme: and: and
 - (b) have regard to any submissions made within that period.
- (4) The Minister may, on the recommendation of the Reserve Bank of New Zealand, approve a scheme for the formation of the New Trusts in place of the Trust.
- (5) Upon approval of the scheme by the Minister, the Trustees shall proceed to implement the scheme and shall have all such powers as shall be necessary for the purpose of establishing the New Trusts, the appointment of their respective trustees, the transfer of the property, rights, assets and liabilities of the Trust to the New Trusts and the consequential winding-up of the Trust.

Third Schedule History:

(Names and Retirement Dates of First Trustees)

Name	Retirement Date
Judith Bassett (Chairperson) 17 Stilwell Road Mount Albert AUCKLAND 3	31 May 1990
J F Neale 12 Easton Park Parade Glenfield AUCKLAND 10	31 May 1989
Gary J Judd 19 Truro Road Mount Albert AUCKLAND 3	31 May 1991
Frank B Knipe 21 Keats Place Mount Albert AUCKLAND	31 May 1990
Wari Wardhomes 39 Brilliant Street St Heilers AUCKLAND	31 May 1992
Donald Badley 73 Mt Albert Road AUCKLAND	31 May 1989
Douglas Graham, MP	31 May 1992
Ross Robertson, MP	31 May 1991
George Hawkins Mayor City Council Office PAPAKURA	31 May 1990
Dame Catherine Tizard Mayor Auckland City Council AUCKLAND	31 May 1991

Lee Goffin 26 Turama Road Royal Oak AUCKLAND	31 May 1989
Elaine Gregory PO Box 483 KAITAIA	31 May 1992
Agnes Tui Samoa 53 Wellpark Avenue GREY LYNN	31 May 1990

Endnote 1

Clause 1 History:

(a) Amended 24 March 2000 Former clause read:

In this Deed, unless the context otherwise requires:

“Act” means the Trustee Banks Restructuring Act 1988, unless some other Act is specified.

“Bank” means the company to be formed and registered by ASB Bank pursuant to Section 4(1) under the name of ASB Bank Limited.

“the Bank Shares” means the shares for the time being held by the Trust:

- (a) in the Bank; or
- (b) any company of which ASB Bank Limited is a “subsidiary”, as that term is defined in the Companies Act 1993.

“Financial Year” means a year ending on 31 March.

“First Trustees” means the First Trustees named in the Third Schedule hereto, and includes any trustee appointed in the stead of any of the First Trustees pursuant to Clause 6(a).

“Inland Revenue Acts” means the Acts specified in the First Schedule to the Inland Revenue Department Act 1974.

“the Minister” means the Minister of Finance, and includes any member of the Executive Council.

“Objects of the Trust” means the objects or purposes of the Trust specified in Clause 4(a)

“Section” refers to a section of the Act, unless some other Act is specified.

“Specified Area” means all that area comprising the counties Bay of Islands, Franklin, Great Barrier, Hobson, Hokianga, Mangonui, Manukau, Otamatea, Rodney, Waitemata, Whangarei and Whangaroa and including all cities, boroughs and town districts surrounded by or contiguous to those counties, as the said counties were constituted on the first day of October 1964.

“the Trust” means the Trust established by this Deed.

“the Trustees” means the trustees for the time being of the Trust.

“Trustee Fund” means all the funds of the Trust described as “the Trust Fund” in Clause 3, and includes all capital and income for the time being held by the Trustees of the Trust.

“Trust Act” means the Trustee Act 1956 or any statutory modification or re-enactment thereof.

The Clause headings and central headings shall not affect the construction of this Deed. Words importing persons include corporate bodies. Words importing the singular number include the plural number also and vice versa.

(b) Amended 18 March 1999 by substituting the definition of “the Bank shares”. Variation to take effect from 1 November 1998. Former definition of “the Bank shares” read:

“the Bank Shares” means the shares for the time being held by the Trust in the Bank.

Endnote 2

Clause 4 History: Amended 24 March 2000. Former clause read:

4 **Objects of the Trust and Application of the Trust Fund**

- (a) The Trustees shall stand possessed of the Trust Fund UPON TRUST to be applied for charitable, cultural, philanthropic, recreational and other purposes being purposes beneficial to the community principally in the Specified Area.
- (b) It is recorded that the effect of Section 21 of the Act in relation to this Trust is that all of the purposes set out in paragraph (a) are, for the purposes of the application of any rule of law or the provisions of any Act (with the exception of the Inland Revenue Acts or any enactment that imposes or provides for the collection of a tax, duty, levy or other charge) deemed to be charitable.
- (c) In distributing any part of the capital or income of the Trust Fund in the implementation of the Objects of the Trust, the Trustees may pay any amount available for distribution to any organisation or body (whether incorporated or not, but not one conducted for private profit) subject to any conditions which the Trustees may think fit to impose to ensure that the amount so paid is used for such specific purposes as the Trustees may direct, being purposes exclusively with the Objects of the Trust and the receipt of any such organisation or body acknowledging the conditions imposed shall be a sufficient discharge for the Trustees.

Endnote 3

Clause 6 History: Amended 24 March 2000. Former clause read:

6 **Term of Office**

- (a) Each of the First Trustees shall signify in writing to the Minister agreement to accept appointment as a trustee. In the event that any of the First Trustees shall not accept appointment, the Minister may appoint some other person as one of the First Trustees in that persons stead.
- (b) Each of the First Trustees shall cease to hold office as a trustee on the date set opposite the name of that trustee in the Third Schedule.
- (c) All trustees other than the First Trustees shall also be appointed by the Minister who shall have regard to any recommendations made by the Trustees, and each shall hold office for a term of 4 years.
- (d) Subject to Clause 7, a trustee may hold office on more than one occasion.

Endnote 4

Clause 7 History: Amended 24 March 2000. Former clause read:

7 **Eligibility for and Disqualification from Appointment**

- (a) No person shall be appointed a trustee unless that person is suited for appointment by reason of either that person's knowledge of, or experience in, business, banking, law or accountancy or that person's interest or involvement in the community.
- (b) The following persons shall not be capable of being appointed or reappointed, or holding office, as a trustee:
 - (i) a bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled;
 - (ii) a person who is convicted of any offence punishable by imprisonment for a term of 2 years or more;
 - (iii) a person who is convicted of any offence punishable by imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence;
 - (iv) a person to whom an order made under Section 189 of the Companies Act 1955 applies;

- (v) a mentally disordered person within the meaning of the Mental Health Act 1969;
- (vi) a person who does not reside in the Specified Area;
- (vii) a person who is employed in the service of or who holds any office (other than the office of non-executive director) in the Bank or in any company which holds more than

Endnote 5

Clause 8 History: Amended 24 March 2000. Former clause read:

8 Termination of Office

- (a) A trustee may at any time resign office by notice in writing to the Minister. The Trustee shall forward a copy of such notice to the Chairperson of the Trust.
- (b) A trustee shall be deemed to have resigned office as a trustee if at any time that trustee is prohibited from acting as a trustee by virtue of Clause 7(b).
- (c) A trustee may be removed from office at any time by the Governor-General:
 - (i) for disability, neglect of duty, or misconduct proved to the satisfaction of the Governor-General;
 - (ii) in any case where the Governor-General is satisfied on reasonable grounds that the trustee has acted or is acting in a manner prejudicial, or likely to be prejudicial, to the interests of the Trust.
- (d) If any trustee dies or resigns or ceases to hold office, the office of that trustee shall become vacant, the vacancy shall be filled by the Minister who shall have regard to any recommendation made by the Trustees and any person appointed shall hold office for the residue of the term of office of that trustee, provided that the Minister shall be under no obligation to fill any vacancy unless the number of trustees shall have fallen below the minimum prescribed by Clause 9.
- (e) If any trustee dies or resigns or ceases to hold office, the Trustees shall immediately inform the Minister of that fact by notice in writing, together with their recommendation, if any, as to the person to be appointed under Clause 8(d).

Endnote 6

Clause 11 History: Amended 24 March 2000. Former clause read:

11 Meetings and Voting

- (a) The Trustees may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Except where some other majority is required by this Deed, questions arising at any meeting shall be decided by a simple majority of votes. In the case of an equality of votes (where a simple majority is required), the Chairperson shall have a second or casting vote. The Chairperson or any 2 of the Trustees may at any time summon a meeting of the Trustees. Notice of each meeting of Trustees shall be given by sending or delivering the same to the last known place of residence of, or other address for service notified by, each trustee.
- (b) The quorum necessary for the transaction of the business of the Trustees shall be fixed by the Trustees but shall not be less than a majority of the Trustees for the time being.
- (c) A resolution in writing signed by all the Trustees shall be as valid and effectual as if duly passed at a meeting of the Trustees.
- (d) The Trustees shall cause minutes to be kept of their meetings.
- (e) The Trustees may from time to time delegate any of their powers to committees consisting of not less than 3 members of their body and of such other persons (if any) as they think fit. Any committee so formed shall in exercise of the powers so delegated conform to any regulations that may be imposed on it by the Trustees. The Trustees may prescribe procedural rules for any such committee.

Endnote 7

Clause 12 History: Amended 24 March 2000. Former clauses read:

CONFLICTS OF INTEREST

12 Associations with the Bank

A trustee shall not be employed in the service of or hold any office (other than the office of non-executive director) in the Bank or in any company which holds more than 25 per cent of the ordinary shares in the Bank, so long as the Trust owns any shares in the Bank or in any such company.

13 Disclosure of Interests

A trustee who is in any way, whether directly or indirectly:

- (a) interested in a contract or proposed contract or arrangement or dealing with the Trust; or,
- (b) associated as a member, officer or otherwise howsoever with any organisation to or for the benefit of which the Trustees are currently considering making any application of the Trust Fund;

shall disclose the nature of that interest at a meeting of the Trustees and such disclosure shall be recorded in the minutes of the meeting.

Endnote 8

Clause 13 History:

(a) Amended 24 March 2000. Former clause read:

- 14(a) A Trustee required to disclose an interest by clause 13 shall, subject to subclauses (b) and (c), not be counted in the quorum present at the meeting and shall not vote in respect of the matter in which that Trustee is interested, and if the Trustee does so vote, the vote shall not be counted.
- (b) Subclause (a) shall not apply in the case of a matter in which more than one of the Trustees have an interest if:
 - (i) the matter affects the Trustees in such a manner that all Trustees have an interest in that matter; or
 - (ii) the matter affects so many of the Trustees that the Trustees who do not have an interest in the matter could not, if they were all present at a meeting of the Trustees, make up a quorum.
- (c) When subclause (b) applies, then all Trustees who have an interest in the matter may, notwithstanding subclause (a), be counted in the quorum present at any meeting at which that matter is discussed and may vote in respect of that matter, provided that:
 - (i) all Trustees who vote in favour of the matter sign a certificate for entry in the minutes of the meeting stating that, in their opinion, the matter is in the best interests of the Trust; and
 - (ii) the Trustees cause to be included in the next financial statements prepared under clause 16 of this Trust Deed, particulars of the matter and of the nature of the Trustees' interest in it.

b) Amended 29 September 1997. Former clause read:

14 Voting and Quorum

A trustee required to disclose interest by Clause 13 may be counted in the quorum present at the meeting but shall not vote in respect of the matter in which that trustee is interested (and if the trustee does so the vote shall not be counted) provided that the trustee may be expressly permitted to vote by a majority vote of the other trustees present given after disclosure of the interest. This Clause shall not, however, apply to approvals given by the Trustees pursuant to Clause 25 (b).

Endnote 9

Clause 14 History:

a) Amended 31 January 2007. Former clauses read:

14. Investment Powers of Trustees

- (a) The Trustees may invest the Trust fund either alone or in common with any other person or persons in any form of investment for the time being authorised by the law of New Zealand for the investment of Trust funds.
- (b) The Bank shares shall be deemed to be an investment so authorised under paragraph (a) of this clause 14. Any shares:
 - (i) in any other successor company formed and registered pursuant to section 4(1) of the Trustee Banks Restructuring Act 1988; and
 - (ii) in any company to which all or any of the Bank shares may be sold or otherwise disposed of; and
 - (iii) any company of which ASB Bank Limited is a "subsidiary", as that term is defined in the Companies Act 1993.

shall be deemed to be investments so authorised.

b) Amended 24 March 2000. Former clauses read:

INVESTMENT POWERS OF TRUSTEES

15. General Power

The Trustees may invest the Trust Fund either alone or in common with any other person or persons in any form of investment for the time being authorised by the law of New Zealand for the investment of trust funds. The Bank Shares shall be deemed to be an investment so authorised. Any shares in any other successor company formed and registered pursuant to Section 4(1), and any shares in any company to which all or any of the Bank Shares may be sold or otherwise disposed of with the consent of the Minister pursuant to Clause 16(b) shall be deemed to be investments so authorised.

16. Bank Shares

- (a) Subject to paragraph (b) of this Clause, the Trustees may at any time or times, in accordance with a resolution passed by not less than 75 per cent of the Trustees, sell or otherwise dispose of all or any of the Bank Shares.
- (b) The Trustees shall not during the "transition period" (as that term is defined in the Act) sell or otherwise dispose of all or any of the Bank Shares without the consent of the Minister. Any consent may be given subject to such conditions as the Minister thinks fit.
- (c) In voting on any resolution where the sale or disposition of Bank Shares would result in the Trust relinquishing a controlling interest in the Bank the Trustees shall have regard to the effect of such relinquishment on the community of the Specified Area.

Endnote 10

Clause 15 History: Amended 24 March 2000. Former clause read:

GENERAL

17 Financial Statements

- (a) The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets, liabilities, and funds are kept.
- (b) The Trustees shall, after the end of each Financial Year, have prepared financial statements including a balance sheet and income and expenditure account and notes thereto, giving a true and fair view of the financial affairs of the Trust for the Financial Year.

- (c) The financial statements shall show separately the distributions made for the purposes of the Trust during the Financial Year. The name of each recipient shall be shown and the amount given to each.
- (d) The financial statements shall be audited by an auditor appointed for the purpose, being a person qualified for appointment as auditor of a company under the Companies Act 1955 and not being a trustee, employee or agent of the Trust.
- The auditor shall certify whether the financial statements are properly drawn up and give a true and fair view of the financial affairs of the Trust for the Financial year.
- (f) Unless otherwise directed by the Minister the financial statements together with the auditor's report thereon shall be sent to the Minister not later than the 1st day of June in each year and copies of the financial statements and the auditor's report shall be published by the Trustees in the Gazette and in a principal newspaper or newspapers circulating in the Specified Area.

Endnote 11

Clause 21 History:

- a) Amended 8 August 2002 by inserting clause 21(o); effective 1 January 2002 so that the Trustees shall have and shall always be deemed to have had the power contained in clause 21(o) from that date.
- b) Amended 24 March 2000. Clause 21(n) is to take effect from 30 May 1988 so that the Trustees shall always have and shall always be deemed to have had the power contained in clause 21(n) from that date. Former clause read:

23 Other Powers

The Trustees shall have and may exercise either alone or together with any other person or persons the following powers, authorities and discretions:

- (a) to accumulate the whole or any part of the current net annual income derived by the Trustees in any Financial Year and to designate all or any part of such accumulations as a reserve fund for, or provisionally for, any specified purpose if they should think fit, provided that any such designation or specification may at any time be revoked by the Trustees;
- (b) to sell, subject to Clause 16, all or any part of the real or personal property or interest therein comprising the Trust Fund or any part thereof at such price on such terms and subject to such conditions as they in their absolute discretion think fit with power to allow the whole or any part of the purchase money to remain on mortgage of the property sold;
- (c) to lease or take on lease any freehold or leasehold property or interest therein with or without chattels for such period at such rent on such terms (including at the discretion of the Trustees a compulsory or optional purchasing clause) and subject to such condition as they think fit and to accept or effect such renewals or surrenders of leases and tenancies as they think fit;
- (d) to borrow moneys on mortgage bank overdraft or otherwise howsoever for such reasons upon such security by way of mortgage or otherwise on such terms and subject to such conditions as the Trustees think fit;
- (e) to employ and pay any person, firm, company or corporation upon such terms as they think fit;
- (ea) to appoint and remove a nominee, custodian or trustee to hold any part of the Trust Fund on such terms and conditions as they shall see fit, including as to remuneration, and to acquire and hold assets or interests in assets which may be held registered for the Trustees in the name of, or in the name of a nominee of or depositary for, a nominee, custodian or trustee;
- (eb) to appoint any person to act as the agent or attorney of the Trustees for the purpose of selling, converting, collecting, getting in, and executing and perfecting assurances of, or managing or otherwise administering any property, real or personal, moveable or immovable forming part of the trust fund either within or outside New Zealand, or executing or exercising any discretion or trust or power vested in the trustees in relation to any such property, with such ancillary powers and with and subject to such provisions and restrictions as the Trustees may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made any such appointment, be responsible for any loss arising thereby.

- (f) to permit any trustee for the time being engaged in any profession or business and any firm with which that trustee may be associated to charge and be paid all proper professional or other charges for any business done by that trustee or firm for the Trust;
- (g) to make such arrangements as the Trustees think fit for the operation of any bank accounts held by the Trustees, including specification of the signatures required for such operation;
- (h) to pay out of the Trust Fund all proper costs incurred in the administration of the Trust including (without limiting the generality of the foregoing) rents, salaries, superannuation contributions for the employees, accounting and audit fees, general office expenses and other outgoings;
- (i) generally to maintain, repair, improve and develop any real or personal property which or an interest in which for the time being forms part of the Trust Fund in such manner as the Trustees think fit and for that purpose to pay and apply such of the capital and income of the Trust Fund as they think fit;
- (j) to act as directors or a director of any company (including the Bank) in which the Trust Fund holds shares and to receive without being liable to account for the same to the Trust any director's fees or other remuneration for so acting.
- (k) with the prior approval of the Trustees, to effect insurance (including paying, whether directly or indirectly, the costs of insurance) for a Trustee or former Trustee of the Trust but only in respect of:
 - (i) liability, not being criminal liability, for an act or omission in his or her capacity as a Trustee; or
 - (ii) costs incurred by that Trustee in defending or settling a claim or proceeding relating to that liability; or
 - (iii) costs incurred by that Trustee in defending criminal proceedings in which the Trustee is acquitted.
- c)** Amended 16 September 1999 by inserting clause 23(k) and 23A; effective 30 May 1988 so that the Trustees shall have and shall always be deemed to have had the power contained in clause 23(k) and 23A. Clause 23A is now clause 22 in the current deed.
- d)** Amended 29 September 1997 by inserting clauses 23(ea) and 23(eb); effective 30 May 1988 so that the Trustees shall have and shall always be deemed to have had the power contained in clause 23(ea) and 23(eb).

See Endnote 13

Clause 26 and 27 History: Clauses 26 and 27 omitted 24 March 2000. Former clauses read:

MERGER AND SEPARATION OF TRUSTS

26 Merger of Trusts

- (a) The Trustees, together with the trustees of any 1 or more other trusts established pursuant to the Act, may, at any time, in accordance with a resolution passed by not less than 75 per cent of the trustees of each trust, submit to the Minister a scheme for the amalgamation of those trusts into a single trust.
- (b) In the event of such resolutions being passed, the procedures applicable shall be those prescribed by the Act. In the event of no procedures being then prescribed by the Act, the procedures set out in the First Schedule shall apply.

27 Formation of Separate Trusts in Place of the Trust

- (a) The Trustees may, at any time, in accordance with a resolution passed by not less than 75 per cent of the Trustees, submit to the Minister a scheme for the formation of 2 or more trusts in place of the Trust.
- (b) In the event to such resolution being passed, the procedures applicable shall be those prescribed by the Act. In the event of no procedures being then prescribed by the Act, the procedures set out in the Second Schedule shall apply.