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# SECTION 1

## Important Information

(The information in this section is required under the Securities Act 1978)

Investment decisions are very important. They often have long-term consequences. Read all documents carefully. Ask questions. Seek advice before committing yourself.

### CHOOSING AN INVESTMENT

When deciding whether to invest, consider carefully the answers to the following questions that can be found on the pages noted below:

What sort of investment is this?	20
Who is involved in providing it for me?	21
How much do I pay?	22
What are the charges?	22
What returns will I get?	22
What are my risks?	23
Can the investment be altered?	27
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Who do I contact with enquiries about my investment?	28
Is there anyone to whom I can complain if I have problems with the investment?	28
What other information can I obtain about this investment?	28

In addition to the information set out in this section of this Offer Document, important information can be found in the current registered prospectus for the investment. You are entitled to a copy of the prospectus on request.

### CHOOSING AN INVESTMENT ADVISOR

You have the right to request from an investment advisor a written disclosure statement stating his or her experience and qualifications to give advice. That document will tell you:

- whether the advisor gives advice only about particular types of investments; and
- whether the advice is limited to the investments offered by one or more particular financial organisations; and
- whether the advisor will receive a commission or other benefit from advising you.

You are strongly encouraged to request that statement. An investment advisor commits an offence if he or she does not provide you with a written disclosure statement within five working days of your request. You must make the request at the time the advice is given or within one month of receiving the advice.

In addition:

- if an investment advisor has any conviction for dishonesty or has been adjudged bankrupt, he or she must tell you this in writing; and
- if an investment advisor receives any money or assets on your behalf, he or she must tell you in writing the methods employed for this purpose.

Tell the advisor what the purpose of your investment is. This is important because different investments are suitable for different purposes.

### IMPORTANT NOTICE

This Offer Document is a combined prospectus and investment statement for the purposes of the Securities Act 1978 ("Securities Act") and the Securities Regulations 1983 ("Securities Regulations"). The purpose of the "Answers to Important Questions" section of this Offer Document is to provide certain key information that is likely to assist a prudent but non-expert person to decide whether or not to acquire Perpetual Preference Shares in ASB Capital No. 2 Limited ("ASB Capital No. 2") under this Offer. However, investors should note that other important information about the Perpetual Preference Shares and the Offer is available in the remainder of this Offer Document.

### REGISTRATION

This Offer Document is prepared as at and dated 24 November 2004. A copy of this Offer Document signed by the directors of ASB Capital No. 2 (as issuer) or their agents and by ASB Bank and its directors or their agents (as promoters) for the purposes of the Securities Act (and having endorsed on or attached to this Offer Document the contracts, documents, information, certificates and other matters required to be so endorsed or attached by section 41 of the Securities Act including the material contracts described in section 11.19, the auditor's report set out in section 13, the consent of the auditor to the report appearing in the Offer Document and an acknowledgement from NZX), has been delivered to the Registrar of Companies at Auckland for registration under section 41 of the Securities Act.

### DEFINITIONS

Capitalised terms used in this Offer Document have defined meanings, which appear in the Glossary section or within the relevant section of this Offer Document in which the term is used. All references to \$ are to New Zealand dollars unless specified otherwise. All references to time in this Offer Document are to time in New Zealand.

This issue of ASB Capital No. 2 Limited Perpetual Preference Shares provides New Zealand resident investors with yet another opportunity to subscribe for an investment associated with the ongoing success of the ASB Group of companies.

For the year ended 30 June 2004, ASB Bank lifted its after-tax profit by 14% on the previous year to a record \$317 million.

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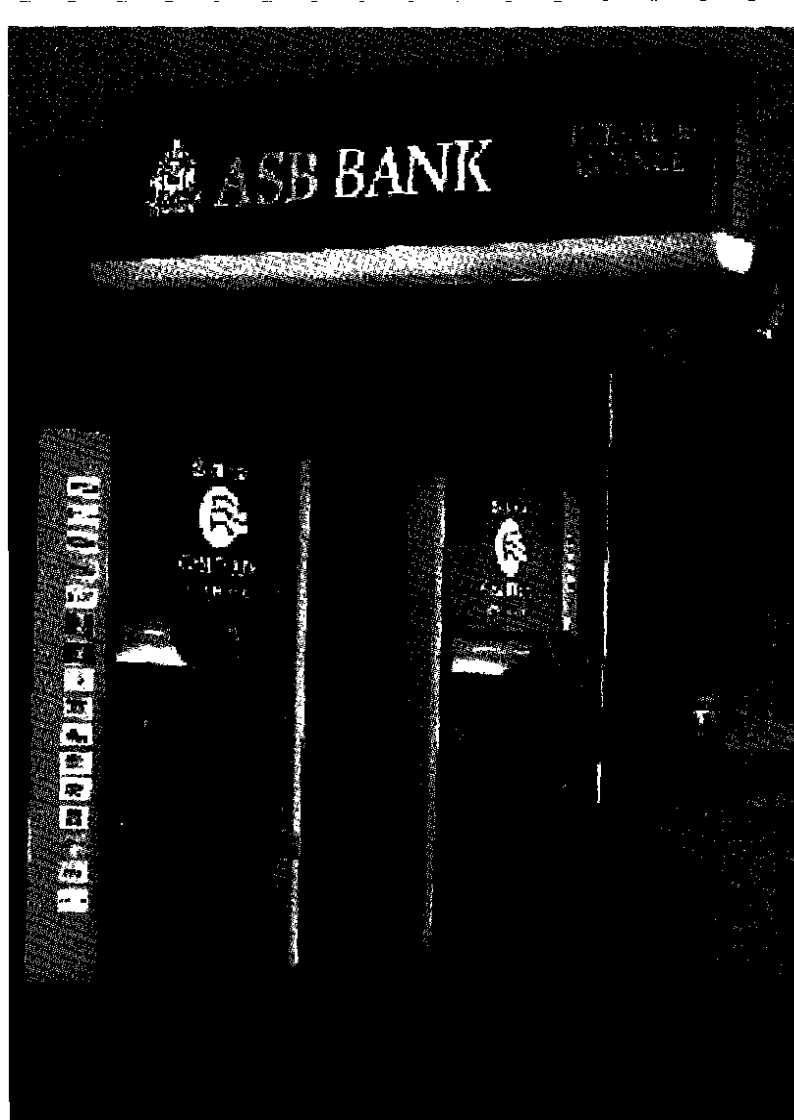
ASB Capital No. 2 Limited is a subsidiary of CBA Funding (NZ) Limited and has been incorporated as a special purpose company to issue preference shares, including the Perpetual Preference Shares. ASB Capital Limited, which issued the 2002 Perpetual Preference Shares is also a subsidiary of CBA Funding (NZ) Limited. The ultimate parent of all three of these companies, and of ASB Bank Limited is Commonwealth Bank of Australia.

#### OFFER TIMETABLE

Opening Date	29 November 2004
Closing Time	5.00 pm on 21 December 2004
Expected Date of Initial Quotation and Trading on NZSX	23 December 2004
First Dividend Payment Date	15 February 2005
Subsequent Dividend Payment Dates	Each 15 February, 15 May, 15 August and 15 November (or if that day is not a Business Day, the next Business Day)
First Dividend Reset Date	16 May 2005

1 The above dates are indicative only. Subject to applicable law, ASB Capital No. 2 has the right to extend or otherwise vary the Opening Date and the Closing Time. This may have a consequent effect on other dates listed above.

2 Application monies will be banked upon receipt. If an application is accepted, dividends will accrue from the date subscription monies are banked. The first dividend is payable on 15 February 2005 and is payable to the original subscriber (irrespective of any transfer of the Perpetual Preference Shares by that original subscriber prior to the first dividend payment date).





## Letter from Chairman of ASB Bank

Dear Investor

I have pleasure in introducing this opportunity to subscribe for \$250 million Perpetual Preference Shares in ASB Capital No. 2 (with the right to accept oversubscriptions for a further \$100 million). ASB Capital No. 2 is a special purpose company formed to issue perpetual preference shares. In December 2002, a special purpose company ASB Capital Limited issued \$200 million of perpetual preference shares, in an issue that was well oversubscribed. This issue of ASB Capital No. 2 Perpetual Preference Shares provides New Zealand resident investors with yet another opportunity to subscribe for an investment associated with the ongoing success of the ASB Group of companies.

This issue of Perpetual Preference Shares is again by a special purpose company - ASB Capital No. 2 - and the obligations of ASB Capital No. 2 under these shares are not guaranteed by ASB Bank. However, ASB Holdings Limited, another company in the group, has granted certain security and covenants in relation to the Perpetual Preference Shares. The nature of the security and covenants is described in this Offer Document.

Several high profile brands operate within the ASB Group of companies including ASB Bank, BankDirect, and ASB Securities. ASB Bank is a recognised leader in customer service, the practical application of leading edge technology and support of the New Zealand community.

For the year ended 30 June 2004, ASB Bank lifted its after-tax profit by 14% on the previous year to a record \$317 million. A buoyant housing market and vibrant business economy were at the heart of this excellent result. ASB Bank achieved more than its natural share of market growth, getting the balance right between providing outstanding customer service, leading edge IT based products and services, and competitive pricing.

This Offer Document contains details of the Offer of Perpetual Preference Shares by ASB Capital No. 2. I strongly commend this second Perpetual Preference Share issue to New Zealand investors.

Yours faithfully

**Gary Judd Q.C.**  
Chairman  
ASB Bank Limited

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A MEMBER OF THE COMMONWEALTH BANK OF AUSTRALIA GROUP

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### ASB BANK LIMITED

Level 28, ASB Bank Centre, 135 Albert Street, P.O. Box 35, Auckland 1015, New Zealand  
Telephone (09) 377-8930. Facsimile (09) 358-3511. DX: CX10087 Auckland DX Sort. Internet: [www.asbbank.co.nz](http://www.asbbank.co.nz)

# SECTION 2 Investment Highlights

## ASB Capital No. 2

Issuer of the Perpetual Preference Shares.

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### Perpetual Preference Shares

The instrument being offered. The instrument is a perpetual obligation of ASB Capital No. 2 paying a non-cumulative dividend.

#### A-

The Perpetual Preference Share credit rating from Standard & Poor's (Australia) Pty Limited.

#### 16 May 2005

The first Dividend Reset Date. The dividend then resets annually on each 15 May or if that day is not a Business Day, the next Business Day.

#### 7.65%

The Dividend Rate for the period to the first Dividend Reset Date.

#### 1.0%

The fixed margin over the 1 year swap rate. The Dividend Rate will reset annually at this margin over the Benchmark Rate.

### Imputation

If a dividend is fully imputed the cash dividend will be 67% of the Dividend Rate. If a dividend is unimputed or partially imputed, the cash dividend will be adjusted to compensate for the unimputed amount.

#### 15 February, 15 May, 15 August, 15 November (or if that day is not a Business Day, the next Business Day)

The quarterly dividend payment dates.

### Security Trust Deed

ASB Holdings Limited has entered into a Security Trust Deed in respect of the Perpetual Preference Shares and has granted security over ASB Bank 2004 Perpetual Preference Shares to secure certain covenants it has provided for the benefit of holders of Perpetual Preference Shares. This security is released on the occurrence of an APRA Event.

#### Up to \$350 million

Maximum amount of Perpetual Preference Shares being issued.

#### \$5,000

The minimum value of Perpetual Preference Shares that an individual investor can apply for. Thereafter in increments of \$1,000.

#### Monday, 29 November 2004

Applications for Perpetual Preference Shares can be made from this date.

#### Tuesday, 21 December 2004

Last day for Perpetual Preference Share applications.

#### Thursday, 23 December 2004

Expected Initial Quotation and Trading on NZSX.

# SECTION 3

## Terms of the Offer

### 3.1 INTRODUCTION

This Offer Document which is dated 24 November 2004, is a combined prospectus and investment statement for an offer by ASB Capital No. 2 of up to \$250 million of Perpetual Preference Shares. ASB Capital No. 2 reserves the right to accept oversubscriptions of up to \$100 million of Perpetual Preference Shares. ASB Capital No. 2 is a wholly owned subsidiary of CBA Funding (NZ) Limited. Neither CBA Funding (NZ) Limited nor any other party guarantees amounts payable in respect of the Perpetual Preference Shares. The relationship between ASB Capital No. 2 and ASB Bank Limited ("ASB Bank") is described in section 4.1 under the heading "*Relationship with ASB Bank*". The Perpetual Preference Shares are being offered to New Zealand resident institutional and retail investors at an issue price of \$1.00 per Perpetual Preference Share.

This Offer Document contains important information and should be read in its entirety. Investors should note that other important information about the Perpetual Preference Shares and the Offer is available in the Trust Deed, the Loan Agreement and the Constitution. Copies of these documents can be obtained free of charge from ASB Capital No. 2's registered office at Level 28, ASB Bank Centre, 135 Albert Street, Auckland.

### 3.2 CREDIT RATING

The Perpetual Preference Shares have been assigned a separate issue rating of

A- by Standard & Poor's (Australia) Pty Limited. ASB Bank holds a New Zealand dollar long term rating of AA- (stable outlook) from Standard & Poor's (Australia) Pty Limited. For the relationship between ASB Capital No. 2 and ASB Bank see the provisions under the heading "*Relationship with ASB Bank*" in section 4.1.

### 3.3 USE OF PROCEEDS

ASB Capital No. 2 will lend the proceeds of this issue of Perpetual Preference Shares to ASB Holdings Limited ("ASB Holdings") on the terms set out in the Loan Agreement. The terms of the Loan Agreement are described in section 5.3 under the heading "*Terms of ASB Capital No. 2 Loan to ASB Holdings*". ASB Holdings will then invest the proceeds of this loan in ASB Bank 2004 Perpetual Preference Shares. The proceeds will be used within the ASB Group of companies. The terms of the ASB Bank 2004 Perpetual Preference Shares are described in section 5.4, under the heading "*Terms of ASB Bank 2004 Perpetual Preference Shares*".

### 3.4 OPENING DATE AND CLOSING TIME

The Opening Date for the Offer of the Perpetual Preference Shares is 29 November 2004. The Closing Time for applications is expected to be 5.00 pm on 21 December 2004 or the date on which subscriptions are received and accepted for \$250 million of Perpetual Preference Shares plus the level of oversubscriptions (if any) that ASB Capital No. 2 decides to accept,



up to a maximum of \$100 million. ASB Capital No. 2 reserves the right to vary the Opening Date or the Closing Time.

### 3.5 ISSUE PRICE

The issue price of \$1.00 per Perpetual Preference Share must be paid in cash in full on application.

### 3.6 DIVIDEND RATE

The dividend is payable at the Benchmark Rate plus a margin of 1.0% per annum (adjusted to a quarterly equivalent rate). The dividend for the period to the first Dividend Reset Date was set on 24 November 2004 using a Benchmark Rate of 6.72%.

### 3.7 IMPUTATION

The dividends may consist of a combination of cash payments and imputation credits. Accordingly, if dividends are fully imputed, the cash payment received will be 67% of the amounts referred to above (assuming a corporate tax rate of 33%). If full imputation credits are not attached, the dividend will be increased to the extent of the imputation shortfall.

### 3.8 DIVIDEND AMOUNT

The dividend payable on each Perpetual Preference Share for each quarter (other than the first dividend) is calculated in accordance with the following formula:

$$\text{Issue Price} \times \text{Dividend Rate} / 4 \times (1-t)$$

Where "t" is the basic rate of New Zealand income tax applicable to companies.

As an example, if the Dividend Rate was 7.80% (represents 5.23% net of imputation credits), the quarterly dividend for a \$100 investment would be calculated as follows:

Face value:	\$100.00
Multiplied by Dividend Rate:	7.80%
	\$7.80
Divided by:	4
Gross Dividend:	\$1.95
Imputation Credits:	\$0.64
<b>Quarterly Cash Dividend:</b>	<b>\$1.31</b>

### 3.9 DIVIDEND RESET DATE

16 May 2005 and thereafter 15 May of each year, or if that day is not a Business Day, the next Business Day.

### 3.10 PAYMENT OF DIVIDEND

Dividends will accrue on a daily basis from the date subscription monies are banked. If any application is not accepted the subscription monies will be refunded without interest. The first dividend is payable on 15 February 2005 and is payable to the original subscriber (irrespective of any transfer of the Perpetual Preference Shares by that original subscriber prior to the first dividend payment date). Dividends are payable in quarterly instalments in arrears on 15 February, 15 May, 15 August and 15 November each year, or if that day is not a Business Day, the next Business Day. The payment of dividends is subject to ASB Capital No. 2's right to cancel dividends (See the provisions under the heading "Cancellation of dividends" in section 6.1.2).

### 3.11 VOTING RIGHTS

None, except for matters which change the terms of the Perpetual Preference Shares.

### 3.12 APPLICATIONS

Applications must be for a minimum of \$5,000 of Perpetual Preference Shares and thereafter in increments of \$1,000 of Perpetual Preference Shares. ASB Capital

No. 2 may refuse all or any part of any application without giving a reason.

### 3.13 HOW TO APPLY

Instructions on how to make an application are contained in the section of this Offer Document headed "*Application Instructions*" on page 62. If you wish to apply for Perpetual Preference Shares, you should complete the Application Form attached to this Offer Document, in accordance with the instructions.

Completed Application Forms (other than applications under firm allocations) should be sent to:

ASB Capital No. 2 Limited  
C/-ASB Securities Limited  
P O Box 35  
Auckland

Applicants accepting a firm allocation from a NZX Primary Market Participant need to lodge the Application Form with the offices of the NZX Primary Market Participant which has provided that firm allocation in time for it to be forwarded to the Registrar before the Closing Time. Applications for Perpetual Preference Shares must be made on the Application Form. You need to:

- complete the Application Form in accordance with the instructions set out in the section of this Offer Document headed "*Application Instructions*"; and
- return the completed Application Form together with payment of the full amount of the application, as soon as possible but in any event, so as to enable it to be received by the Registrar no later than the Closing Time.

ASB Capital No. 2 may, at its discretion, treat any Application Form as valid even if it does not comply with the requirements above or

is otherwise irregular. An Application Form may be treated by ASB Capital No. 2 as a valid application whether or not it is received before the Closing Time. By signing the Application Form, an applicant irrevocably offers to subscribe for the Perpetual Preference Shares on the terms set out in the Offer Document and the Application Form, notwithstanding any changes to the Closing Time or other dates which ASB Capital No. 2 is entitled to change.

### 3.14 OFFER IN NEW ZEALAND ONLY

The Perpetual Preference Shares are being offered only to New Zealand residents and no offer is being made outside New Zealand. No action has been or will be taken by ASB Capital No. 2 which would permit an offer of the Perpetual Preference Shares, or possession or distribution of any offering material, in any other country or jurisdiction where action for that purpose is required. No person may purchase, offer, sell, distribute or deliver any Perpetual Preference Shares, or have in its possession, or distribute to any person, any offering material or any documents in connection with the Perpetual Preference Shares, to any person outside New Zealand.

Unless otherwise agreed with ASB Capital No. 2, any person or entity applying for Perpetual Preference Shares is deemed to represent that they are not in a jurisdiction which prohibits the making of an offer of this kind and are not acting for a person in such a jurisdiction.

### 3.15 TAX

Investors should obtain their own advice regarding this Offer, and in respect of subscribing for, holding and selling Perpetual Preference Shares. The information (including the tax information) contained in this Offer

Document is general in nature and may not apply to investors' individual circumstances.

### **3.16 LISTING ON NZSX**

Application has been made to NZX for permission to list the Perpetual Preference Shares. All requirements of NZX relating to the listing that can be complied with on or before the date of this Offer Document have been duly complied with. However, NZX accepts no responsibility for any statement in this Offer Document.

### **3.17 BROKERAGE**

NZX has authorised NZX Primary Market Participants to act in this Offer. Applicants are not required to pay brokerage for Perpetual Preference Shares under the Offer. Details of the brokerage to be paid to NZX Primary Market Participants are set out in the "Answers to Important Questions" section of this Offer Document under "What are the Charges?".

### **3.18 PAYMENT OF ISSUE PRICE**

The Issue Price must be paid in full on application. Cheques must be made payable to "ASB Capital No. 2 Offer", must be crossed "Not Transferable" and must be for immediate value. If a cheque is dishonoured, ASB Capital No. 2 may cancel any Perpetual Preference Shares allotted or pursue any other remedies available to it at law.

### **3.19 REFUNDS**

If ASB Capital No. 2 accepts an application in part, the balance of the application money will be refunded (without interest) within five Business Days of the date of allotment of the Perpetual Preference Shares to the applicant under that application. If an Application Form is not accepted by ASB Capital No. 2 any application money received with that

application will be returned to the applicant within five Business Days of the Closing Time. Interest will not be paid on any refund or application money which is not accepted.

### **3.20 ALLOTMENT OF PERPETUAL PREFERENCE SHARES**

The minimum amount to be raised by the Offer is \$50 million. Unless and until valid applications for that amount have been received and accepted, Perpetual Preference Shares will not be allotted. Subject to valid applications being received for this minimum amount, all Perpetual Preference Shares will be allotted on 22 December 2004. Pending allotment, all subscription monies received from investors will be held on trust for those investors. Perpetual Preference Shares which are allotted will nevertheless accrue dividends from the date subscription monies are banked rather than the date of allotment, and investors will receive a dividend on 15 February 2005 for the period from the date subscription monies are banked to that date. The Registrar will advise successful applicants of the allotment of Perpetual Preference Shares to them as soon as possible after allotment.

### **3.21 FIRM ALLOCATIONS**

All of the Perpetual Preference Shares (including any oversubscriptions) may be reserved for subscription by clients of the Lead Manager, Organising Participant and other NZX Primary Market Participants.

The amount of Perpetual Preference Shares so reserved will be determined by the Lead Manager and notified to investors by way of general announcement to NZX on or before the Opening Date. It is anticipated that all of the Perpetual Preference Shares will be so reserved. Any amount not so reserved will form part of a public pool.

**3.22 ARRANGER**

ASB Bank.

**3.23 LEAD MANAGER**

ASB Bank.

**3.24 ORGANISING PARTICIPANT**

ASB Securities Limited.

**3.25 SECURITY TRUSTEE**

The New Zealand Guardian Trust  
Company Limited.

**3.26 ESTIMATED EXPENSES  
OF THE OFFER**

Issue expenses associated with the Offer comprising accounting and auditing fees, legal fees, listing fees, registry expenses, ratings agency fees, advertising, printing and distribution of this Offer Document and brokerage fees, are estimated to be \$5,652,648 and will be paid by ASB Bank and ASB Holdings.

**3.27 UNDERWRITING**

The Offer is not underwritten.

**3.28 IMPORTANT DOCUMENT**

If you are in any doubt as to how to deal with this Offer Document, please immediately contact a NZX Primary Market Participant, an accountant, or a financial advisor.

# SECTION 4

## Relationship with ASB Bank

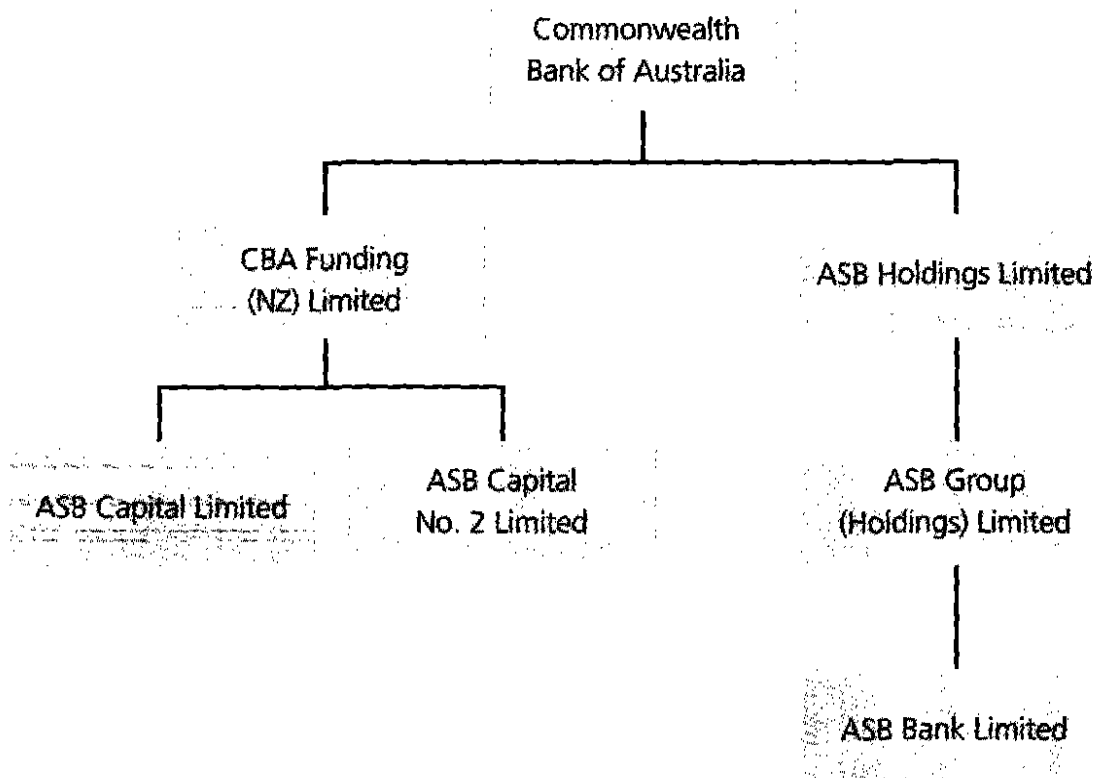
### 4.1 RELATIONSHIP WITH ASB BANK

The ultimate parent company of each of CBA Funding (NZ) Limited, ASB Capital No. 2, ASB Holdings, and ASB Bank is the Commonwealth Bank of Australia.

ASB Capital No. 2 is a company formed for the purpose of issuing preference shares (including the Perpetual Preference Shares). It has, and will have, no other business, and its only asset will be loans to ASB Holdings of the proceeds of issues of preference shares, including the Perpetual Preference Shares. ASB Holdings will invest any such loans in ASB Bank 2004 Perpetual Preference Shares. Holders of the Perpetual Preference Shares

will have recourse in certain circumstances to these ASB Bank 2004 Perpetual Preference Shares for amounts payable in respect of the Perpetual Preference Shares. (See the provisions under the heading "Structure of Transaction" on page 16.)

**No member of the Commonwealth Bank or ASB Group of companies, including Commonwealth Bank of Australia, CBA Funding (NZ) Limited, ASB Holdings or ASB Bank guarantees amounts payable in respect of the Perpetual Preference Shares. ASB Holdings does, however, provide certain covenants to the Trustee for the benefit of holders. See section 5.5.**



In the normal course of events, ASB Capital No. 2 will only be able to make payments under the Perpetual Preference Shares to the extent that ASB Bank makes payments to ASB Holdings under the ASB Bank 2004 Perpetual Preference Shares, and ASB Holdings makes payments to ASB Capital No. 2 under the Loan Agreement.

For that reason, the business and financial position of ASB Bank is relevant to investors in the Perpetual Preference Shares. Set out below is a summary statement of financial position for ASB Bank.

**Statement of Financial Position  
As at 30 June 2004**

<b>Assets</b>	<b>Consolidated NZ\$ millions</b>
Cash and Liquid Assets	75
Due from Other Banks	1,355
Investment Securities	440
Other Securities	2,129
Advances	28,789
Property, Plant and Equipment	154
Other Assets	106
<b>Total Assets</b>	<b>33,048</b>
<i>Financed by:</i>	
<b>Liabilities</b>	
Deposits	26,395
Due to Other Banks	4,437
Other Liabilities	369
	<u>31,201</u>
Subordinated Debt	251
<b>Total Liabilities</b>	<b>31,452</b>
<b>Net Assets</b>	<b>1,596</b>
<b>Shareholders' Equity</b>	
Contributed Capital -	
Ordinary Shareholder	323
Contributed Capital - Perpetual	
Preference Shareholder	200
Asset Revaluation Reserves	17
Accumulated Surplus	1,056
<b>Total Shareholders' Equity</b>	<b>1,596</b>

Other information about ASB Bank is available as follows:

- the most recent annual report for ASB Bank for the year ended 30 June 2004 may be found on its website at [www.asbbank.co.nz](http://www.asbbank.co.nz);
- a copy of the current disclosure statement of ASB Bank may be obtained from any branch of ASB Bank or on its website [www.asbbank.co.nz](http://www.asbbank.co.nz);
- copies of financial statements of ASB Bank for previous financial years, and other information about ASB Bank, can be inspected at the Companies Office, Business and Registries Branch, Ministry of Economic Development on its website [www.companies.govt.nz](http://www.companies.govt.nz). Where documents are not available on the website, request can be made for the document by contacting Searchlink at [info@searchlink.co.nz](mailto:info@searchlink.co.nz).

## **DIRECTORS**

### **4.2 ASB CAPITAL NO. 2 LIMITED**

The Board has three directors and one alternate director being:

#### **J.W. (John) Duncan C.A.**

Mr Duncan has in excess of 30 years experience in banking, accountancy and senior management. A Chartered Accountant, Mr Duncan joined ASB Bank in 1987 to head up the Bank's Visa card operations and in 1989 was appointed Assistant General Manager, Personal Banking. He was appointed as Group General Manager Finance in 1992 and was appointed to the position of Group General Manager Financial and Risk Management in 2001. In October 2004, Mr Duncan was appointed Head of Group Finance.

**P.S. (Peter) Hall B.Sc M.Sc**

Mr Hall has been a banker for more than 20 years. He was Treasurer of ASB Bank for six years before being appointed as Head of Corporate Banking. Mr Hall was also Head of ASB Securities and Commonwealth Bank Country Head for Institutional Banking. In October 2004, Mr Hall was appointed Head of Group Risk. Prior to joining ASB Bank, Mr Hall was treasurer of a bank in Hong Kong. He is a qualified electrical engineer, and has a B.Sc in electrical engineering and an M.Sc in industrial management.

**J.A. (John) te Wechel M.A.**

Mr te Wechel is General Manager Group Funding for Commonwealth Bank. Mr te Wechel joined Commonwealth Bank in 1974 and held a number of general banking positions in Australia and overseas prior to joining Group Funding. Mr te Wechel was appointed to his current role in 1992. He has a Master of Arts in banking management from Macquarie University.

**L. A. (Linley) Wood (Alternate Director for P.S. Hall and J.W. Duncan) B.A. LL.B MBA (Finance)**

Ms Wood joined the ASB Group in 1988 and is currently Head of Office of the CEO. With over 20 years experience in company and taxation law across a range of industries, she is responsible for the legal and company secretariat services, and strategy and planning across all ASB Group companies.

**4.3 ASB BANK LIMITED**

There are eight directors on the ASB Bank board including three Commonwealth Bank executives, one executive director and four independent directors. The directors are:

**G.J. (Gary) Judd Q.C., LL.B. (Hons), F. Inst.D. Chairman**

A practising barrister, Mr Judd has been associated with ASB Bank as a trustee and director since 1985. He became Chairman in 1988 when the Bank was owned by the ASB Bank Community Trust, and was reconfirmed in this position when the Commonwealth Bank Group obtained a controlling interest.

**R. (Rick) Boven B.A. (Hons), M.A., M.B.A.**

Mr Boven is a partner of The Boston Consulting Group. He has been a strategic management consultant since 1983 and a member of the ASB Bank board since 1994.

**G.H. (Hugh) Burrett Managing Director**

Appointed as Managing Director in October 2001, Mr Burrett has more than 30 years banking experience and has held a variety of executive roles within ASB Bank. He has overseen the expansion of ASB Bank's branch network nationally, the extension of its services into business and rural banking, and has focused on achieving an award winning level of customer service.

**L.G. (Les) Cupper B.Econ. (Hons), M.Econ., Dip.Ed.**

Mr Cupper has over 30 years experience in education, mining, manufacturing and banking. He was appointed a director of ASB Bank in February 1998. Currently he is Group Executive Group Human Resources at the Commonwealth Bank and an Executive Committee member of the Commonwealth Bank.

**S.I. (Stuart) Grimshaw B.C.A., M.B.A.**

Mr Grimshaw was appointed to the ASB Bank board in April 2003. Mr Grimshaw has had 20 years experience in the banking and finance industry and is currently Group Executive, Investment & Insurance Services at the Commonwealth Bank.

**J.P. (Jon) Hartley BA (Hons),  
FCA, ACA, FAICD**

Mr Hartley joined the Board in June 2004. He is a qualified accountant with extensive business experience across a wide range of industries in several countries. Mr Hartley has been the Chief Executive Officer or Chief Financial Officer of a number of companies including senior roles with Brierley Investments Limited in New Zealand and the Lend Lease Group in Australia. He is currently an advisory board member for several New Zealand and Australian organisations.

**G.L. (Garry) Mackrell B.Sc.,  
B.Econ.(Hons), M.Com.**

Mr Mackrell was appointed to the ASB Bank board in December 2001. Mr Mackrell has held several executive positions at Commonwealth Bank and is currently the Group Executive of International Financial Services (IFS) at the Commonwealth Bank and an Executive Committee member of the Commonwealth Bank. The ASB Group of companies is part of IFS.

**J.M.R. (Jim) Syme B.Com F.A.C.A.,  
C.M.A. Deputy Chairman**

A leading figure in the New Zealand financial industry, Mr Syme has over 30 years experience in retail, commercial and merchant banking. He is a director of Metro Water Limited and the chairman of Software of Excellence International Limited, Waste Management NZ Limited, Kiwi Income Properties Limited and Abano Healthcare Limited.



# SECTION 5

## Structure of Transaction

### 5.1 STRUCTURE OF TRANSACTION

This section contains a description of the structure of the transaction involving the issue of the Perpetual Preference Shares. It is a brief summary only of the relevant documents. The Glossary in section 14 contains definitions of the terms used in this summary. The full terms of the transaction are recorded in the following documents, when read together:

- the Constitution;
- the Loan Agreement and the security document securing the amounts payable under the Loan Agreement;
- the terms of the ASB Bank 2004 Perpetual Preference Shares; and
- the Trust Deed.

Copies of these documents may be obtained free of charge from ASB Capital No. 2, Level 28, ASB Bank Centre, 135 Albert Street, Auckland, (09) 377 8930 or may be inspected at the same address.

### 5.2 STEPS IN THE TRANSACTION

The principal features of the transaction are:

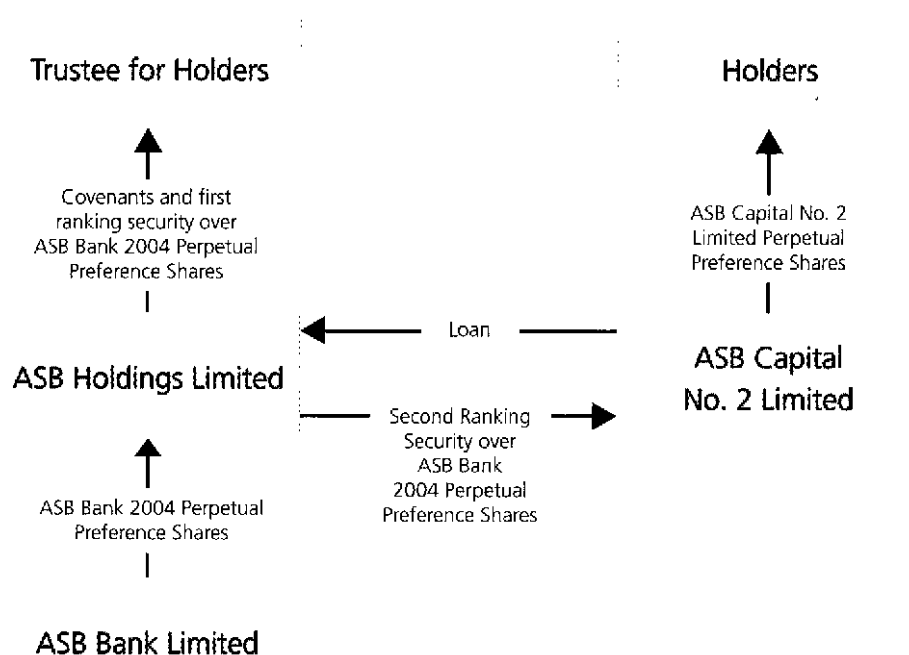
- ASB Capital No. 2 will offer and issue the Perpetual Preference Shares to New Zealand residents. The terms of the Perpetual Preference Shares are outlined under the heading *"What sort of investment is this?"* in section 6.1.
- ASB Capital No. 2 will lend the proceeds of the issue of the Perpetual Preference

Shares to ASB Holdings. The terms of that loan are outlined under the heading *"Terms of ASB Capital No. 2 Loan to ASB Holdings"* in section 5.3.

- ASB Holdings will apply the proceeds of this loan from ASB Capital No. 2 to subscribe for ASB Bank 2004 Perpetual Preference Shares. The terms of the ASB Bank 2004 Perpetual Preference Shares are outlined under the heading *"Terms of ASB Bank 2004 Perpetual Preference Shares"* in section 5.4.
- ASB Holdings, the Trustee and ASB Capital No. 2 are party to the Trust Deed, under which ASB Holdings gives covenants to the Trustee for the benefit of holders of the Perpetual Preference Shares, and grants security over the ASB Bank 2004 Perpetual Preference Shares in favour of the Trustee. The terms of the Trust Deed are outlined under the heading *"Terms of Trust Deed"* in section 5.5.
- If an APRA Event occurs, the ASB Bank 2004 Perpetual Preference Shares will, upon the release of the Trust Deed, be transferred to ASB Capital No. 2 and the loan from ASB Capital No. 2 will be repaid by ASB Holdings.

## TRANSACTION STRUCTURE

The diagram below sets out the structure of the transaction:



### 5.3 TERMS OF ASB CAPITAL NO. 2 LOAN TO ASB HOLDINGS

ASB Capital No. 2 will advance to ASB Holdings the proceeds of the issue of the Perpetual Preference Shares. The full terms of that loan are recorded in the Loan Agreement, a copy of which may be obtained in the manner specified in section 5.1. The important terms are:

- Interest is payable at the Dividend Rate quarterly, the first interest payment date being 15 February 2005.
  - The loan is repayable only in the event of the liquidation or statutory management of ASB Holdings, or upon the occurrence of an APRA Event. However, if ASB Holdings receives any amount other than dividends in respect of the ASB Bank 2004 Perpetual Preference Shares, ASB Holdings is required to pay that amount to ASB Capital No. 2 in reduction of the loan (unless the Trustee requires it to be paid to the Trustee instead).
- The events referred to in the definition of an APRA Event at the date of this Offer Document comprise (broadly) any one or more of the following:
- APRA determining in writing that the Commonwealth Bank group has a Tier 1 capital ratio of less than 5% or a capital ratio of less than 8% at Level 1 and/or Level 2;
  - APRA issuing a written directive to the Commonwealth Bank group under section 11CA of the Banking Act 1959 (Australia) for the group to increase its capital;

- APRA appointing a statutory manager of Commonwealth Bank Group pursuant to subsection 13A(1) of the Banking Act 1959 (Australia) or proceedings are commenced for the winding-up of the Commonwealth Bank group; or
- retained earnings of the Commonwealth Bank Group have become negative.

These events may be changed by APRA from time to time.

- If the loan is repaid on the occurrence of an APRA Event;
  - ASB Capital No. 2 will purchase the ASB Bank 2004 Perpetual Preference Shares from ASB Holdings for an amount equal to the loan so that ASB Capital No. 2 will become the holder of the ASB Bank 2004 Perpetual Preference Shares;
  - the security held by the Trustee under the Trust Deed over the ASB Bank 2004 Perpetual Preference Shares will be released (with the effect that the covenants, and security, given by ASB Holdings to the Trustee for the benefit of holders of Perpetual Preference Shares will cease to exist).
- The loan is limited in recourse to the ASB Bank 2004 Perpetual Preference Shares held by ASB Holdings and to any monies received by ASB Holdings in respect of those shares. This means that if ASB Capital No. 2 takes action to recover the loan or interest on it from ASB Holdings, then ASB Capital No. 2 can have recourse only to the ASB Bank 2004 Perpetual Preference Shares and to any monies received by ASB Holdings in respect of those shares, and cannot have recourse to any other assets of ASB Holdings.

- The loan is secured by a security over the ASB Bank 2004 Perpetual Preference Shares. This is a second ranking security, ranking after the security in favour of the Trustee referred to under the heading "*Terms of the Trust Deed*" in section 5.5. It will be released if the loan is repaid.

#### **5.4 TERMS OF ASB BANK 2004 PERPETUAL PREFERENCE SHARES**

The full terms of the ASB Bank 2004 Perpetual Preference Shares are set out in section 9. Important terms are:

- Dividends are payable at the rate determined from time to time by the directors of ASB Bank. However, if certain events of default occur, dividends are payable at the same rate as applies to the Perpetual Preference Shares.
- Dividends may be cancelled by the board of ASB Bank, so long as dividends on the ASB Bank 2002 Perpetual Preference Shares are also cancelled.
- In a liquidation of ASB Bank, the ASB Bank 2004 Perpetual Preference Shares would rank ahead of ordinary shares of ASB Bank, and equally with the rights of ASB Bank 2002 Perpetual Preference Shares (and any other shares issued by ASB Bank that by their terms are expressed to rank equally with those shares) but after all other shareholders and creditors of ASB Bank.
- The terms of the ASB Bank 2004 Perpetual Preference Shares are otherwise similar to the terms of the Perpetual Preference Shares.

#### **5.5 TERMS OF TRUST DEED**

The Trust Deed is between ASB Holdings, ASB Capital No. 2, and the Trustee, which acts as trustee for holders from time to time of the Perpetual Preference Shares. Important terms of the Trust Deed are:

- **Dividends on Perpetual Preference Shares:** ASB Holdings covenants that provided a dividend on the Perpetual Preference Shares is not cancelled (see *"Cancellation of Dividends"* in section 6.1.2) if that dividend is not paid within five Business Days after the relevant dividend payment date, ASB Holdings will pay an amount equal to the dividend to the Trustee for the benefit of holders of Perpetual Preference Shares. However, ASB Holdings is not required to do that if ASB Bank or Commonwealth Bank has given ASB Capital No. 2 a notice to the effect that dividends should be cancelled.
- **Capital of Perpetual Preference Shares:** ASB Holdings covenants that if a liquidation of ASB Capital No. 2 is commenced, and within one year after that liquidation commences, holders of the Perpetual Preference Shares have not received back the Issue Price plus dividends accrued but unpaid (and not cancelled) at the date that liquidation commenced, ASB Holdings will pay that amount to the Trustee for the benefit of holders of the Perpetual Preference Shares. However, ASB Holdings will not be required to do this unless and until a liquidation of ASB Bank has also commenced.
- **Limited recourse:** The obligations of ASB Holdings to the Trustee are limited in recourse to the ASB Bank 2004 Perpetual Preference Shares held by ASB Holdings and to any monies received by ASB Holdings in respect of those shares. That means that if the Trustee takes action against ASB Holdings, the Trustee can have recourse only to the ASB Bank 2004 Perpetual Preference Shares, and to any monies received by ASB Holdings in respect of those shares,

and cannot have recourse to any other assets of ASB Holdings.

- **Security:** ASB Holdings grants to the Trustee a first ranking security over the ASB Bank 2004 Perpetual Preference Shares to secure the covenants given by ASB Holdings to the Trustee.

A more detailed review of the trust deed is set out under the heading *"Summary of the Trust Deed"* in section 10.

# SECTION 6

## Answers to Important Questions

### 6.1 WHAT SORT OF INVESTMENT IS THIS?

The securities offered are Perpetual Preference Shares to be issued by ASB Capital No. 2. The principal terms of the Perpetual Preference Shares are:

**6.1.1 Dividend:** The Perpetual Preference Shares carry the right to a dividend payable quarterly in arrears. The aggregate of cash dividends paid, and imputation credits, will equal the Dividend Rate.

**6.1.2 Cancellation of dividends:** The Board has the right to cancel the payment of any dividend or dividends on the Perpetual Preference Shares. The Board may do that if for any reason it determines that dividends should not be paid, or if ASB Bank or Commonwealth Bank gives notice to ASB Capital No. 2 that dividends should not be paid on the Perpetual Preference Shares.

The Constitution contains provisions which have the effect that if dividends on the 2002 Perpetual Preference Shares are cancelled, dividends on the Perpetual Preference Shares will also be cancelled, and vice versa.

If a dividend or dividends are cancelled, the obligation of ASB Capital No. 2 to pay, and the right of holders of Perpetual Preference Shares to receive, that dividend or dividends is cancelled absolutely and for all time. In this event, ASB Capital No. 2 will not be able to

pay dividends or make any Distributions to ordinary shareholders until two consecutive dividend payments have been made in respect of the Perpetual Preference Shares. However, ASB Bank remains free to pay dividends to its ordinary shareholders, unless ASB Bank cancels dividends on the ASB Bank 2004 Perpetual Preference Shares or the ASB Bank 2002 Perpetual Preference Shares.

**6.1.3 Perpetual:** The Perpetual Preference Shares have no fixed term, and are not repayable or redeemable by ASB Capital No. 2 in any circumstances. Perpetual Preference Share holders may call for repayment of the Issue Price only in the event of a liquidation of ASB Capital No. 2. The Perpetual Preference Shares may however be purchased by Commonwealth Bank Subsidiary, at the discretion of Commonwealth Bank Subsidiary, in the circumstances set out under the heading "*Buy-Out Right*" below.

**6.1.4 Voting:** The holders of Perpetual Preference Shares have no right to receive notice of, attend, or vote at meetings of shareholders of ASB Capital No. 2 or of any other Commonwealth Bank Group company, except in the limited circumstances detailed in the full terms of the Perpetual Preference Shares as set out in the Constitution.

**6.1.5 Rights in liquidation:** In a liquidation of ASB Capital No. 2, a holder of Perpetual

Preference Shares will be entitled to receive, in priority to the rights of holders of ordinary shares of ASB Capital No. 2, the Issue Price in respect of the Perpetual Preference Shares held by that holder, and any dividends accrued from the end of the most recent dividend period and not cancelled, but will not be entitled to participate further in the assets of ASB Capital No. 2. Holders may however have certain rights against ASB Holdings under the Trust Deed. See the provisions under the heading “*Terms of Trust Deed*” in section 5.5.

**6.1.6 Buy-Out Right:** Commonwealth Bank Subsidiary may require holders of Perpetual Preference Shares to transfer their Perpetual Preference Shares to Commonwealth Bank Subsidiary for a price per share equal to the Issue Price plus dividends accrued from the end of the most recent dividend period (unless dividends have been cancelled). Commonwealth Bank Subsidiary may only do this:

- five years or more after the Perpetual Preference Shares are issued; or
- at any earlier time, if there occurs any change in law or interpretation or application of law (including as to taxation), or in any directive or the like by a Regulatory Authority or other Government agency, which materially adversely affects the benefits of the Perpetual Preference Shares to ASB Capital No. 2, ASB Bank or Commonwealth Bank,

provided the prior approval of APRA to the Buy-Out of the Perpetual Preference Shares has been obtained.

Commonwealth Bank Subsidiary must give holders of Perpetual Preference Shares at least 90 days prior notice of such transfer. Commonwealth Bank

Subsidiary may give notice in respect of all Perpetual Preference Shares, or a specified proportion of the Perpetual Preference Shares, held by each holder.

**6.1.7 Transfer:** The Perpetual Preference Shares are transferable to other persons without restriction except as provided in Article 4.19 of the Constitution (see section 8).

**6.1.8 Issue of Further Tranches:** ASB Capital No. 2 may issue further preference shares which rank equally with, or in priority to, the Perpetual Preference Shares. Further preference shares may differ in their terms from those offered by this Offer Document including in respect of dividend payment dates, margin and reset dates.

The above is a simplified and general description of some of the rights and obligations of holders of Perpetual Preference Shares. The full terms of the Perpetual Preference Shares are in Article 4 of the Constitution and in the resolution of the Board resolving to issue the Perpetual Preference Shares which are set out in section 8.

## **6.2 WHO IS INVOLVED IN PROVIDING IT FOR ME?**

The issuer of the Perpetual Preference Shares is ASB Capital No. 2. The address of ASB Capital No. 2 is Level 28, ASB Bank Centre, 135 Albert Street, Auckland. The promoters are ASB Bank and the directors of ASB Bank. The names of the directors of ASB Bank are set out in section 4.3. The address of ASB Bank is Level 28, ASB Bank Centre, 135 Albert Street, Auckland. The principal activities carried on by ASB Capital No. 2 are described in section 11.7. It has not carried on any business or activity since

its incorporation. No member of the Commonwealth Bank or ASB Group of companies, including Commonwealth Bank, CBA Funding (NZ) Limited, ASB Holdings or ASB Bank guarantees amounts payable in respect of the Perpetual Preference Shares.

The Trustee under the Trust Deed is The New Zealand Guardian Trust Company Limited, Vero Centre, 48 Shortland Street, PO Box 1934, Auckland.

### **6.3 HOW MUCH DO I PAY?**

Applications for Perpetual Preference Shares must be made on the application form contained in this Offer Document. Applications for Perpetual Preference Shares (including firm allocations) must be received by Computershare Investor Services Limited by 5.00 pm on 21 December 2004. The Issue Price for the Perpetual Preference Shares is \$1.00 per Perpetual Preference Share, which must be paid in full by applicants at the time of application. Payments and applications are to be sent to ASB Capital No. 2, c/-ASB Securities Limited, PO Box 35, Auckland, or in the case of a firm allocation, to the office of the NZX Primary Market Participant which provided that allocation, in time for that NZX Primary Market Participant to forward it to the Registrar prior to the Closing Time. Applications must be for a minimum amount of \$5,000 of Perpetual Preference Shares and thereafter in increments of \$1,000.

### **6.4 WHAT ARE THE CHARGES?**

Investors are not required to pay any charges to ASB Capital No. 2 in relation to the Offer.

NZX Primary Market Participants and approved financial intermediaries will receive

a brokerage fee of 1.00% of the Issue Price in respect of Perpetual Preference Shares allotted pursuant to applications submitted by investors (other than Institutional Investors) bearing their stamp.

NZX Primary Market Participants and approved financial intermediaries will receive a brokerage fee of 0.50% of the Issue Price in respect of Perpetual Preference Shares allotted pursuant to applications bearing their stamp submitted by Institutional Investors (other than those Institutional Investors that have given their consent to the Lead Manager to be included on a distribution exclusion list).

A firm allocation fee of 0.50% of the Issue Price will be payable to NZX Primary Market Participants and approved financial intermediaries in respect of Perpetual Preference Shares allotted pursuant to applications submitted by investors under firm allocations (other than those Institutional Investors that have given their consent to the Lead Manager to be included on a distribution exclusion list).

All expenses and brokerage fees will be paid by ASB Bank and ASB Holdings.

Details of the expenses of the Offer are set out in section 11.21.

### **6.5 WHAT RETURNS WILL I GET?**

Holders of Perpetual Preference Shares may receive dividends paid by ASB Capital No. 2 as outlined in section 6.1.1 under the heading "Dividend". Holders of Perpetual Preference Shares may also benefit from an increase (if any) in the market price of their Perpetual Preference Shares if they sell them. The market price of Perpetual Preference Shares may also decline, and holders may

receive less than the Issue Price they paid for their Perpetual Preference Shares.

The return to holders of Perpetual Preference Shares will be a combination of:

- dividends paid on the Perpetual Preference Shares; and
- the price the holder receives if the holder chooses to sell the holder's Perpetual Preference Shares; or
- the buy-out price of the Perpetual Preference Shares if the Perpetual Preference Shares are bought in accordance with the provisions outlined under the heading "*Buy-Out Right*" in section 6.1.6; or
- in the event of the liquidation of ASB Capital No. 2 and ASB Bank, amounts which may be paid in respect of the Perpetual Preference Shares or the ASB Bank 2004 Perpetual Preference Shares (see the provisions set out under the heading "*Terms of Trust Deed*" in section 5.5).

In the ordinary course, ASB Capital No. 2 will be able to pay dividends in respect of the Perpetual Preference Shares only to the extent that ASB Bank makes payments to ASB Holdings in respect of the ASB Bank 2004 Perpetual Preference Shares, and ASB Holdings makes payments to ASB Capital No. 2 under the Loan Agreement. Accordingly, the key factor which determines returns by way of dividend on the Perpetual Preference Shares is the continuing ability of ASB Bank to pay dividends on the ASB Bank 2004 Perpetual Preference Shares. The Perpetual Preference Shares carry a dividend at the rate recorded under the heading "*Dividend*" in section 6.1.1. However, dividends may be cancelled at the discretion of the Board or at the request of ASB Bank or Commonwealth

Bank. Accordingly, no specific return is promised to or enforceable by subscribers.

If dividends on the Perpetual Preference Shares are paid, they will be paid quarterly on each 15 February, 15 May, 15 August, and 15 November or if that day is not a Business Day, on the next Business Day. ASB Capital No. 2 is the person legally liable to pay any dividends on the Perpetual Preference Shares.

Taxes may affect the return to investors. Dividends will be subject to New Zealand withholding and income tax but the investor's liability in respect of such taxes may be reduced or satisfied to the extent the dividends have imputation credits attached. Wherever possible, dividends paid by ASB Capital No. 2 will have the maximum allowable imputation credits attached. In addition, in some cases gains on the sale of Perpetual Preference Shares may be taxable to investors. Further information relating to tax is set out in section 7. Investors should obtain their own advice regarding this Offer, and in respect of subscribing for, and holding, Perpetual Preference Shares.

## 6.6 WHAT ARE MY RISKS?

### 6.6.1 Specific risks relating to the

**Offer:** The Perpetual Preference Shares are perpetual and have no fixed term. Accordingly, the only way in which a holder of Perpetual Preference Shares can crystallise that holder's investment (unless Commonwealth Bank Subsidiary exercises its buy-out right - see the provisions under the heading "*Buy-Out Right*" in section 6.1.6) is to sell the Perpetual Preference Shares. The price a holder obtains will depend on the market for Perpetual Preference Shares at the time of sale.



If ASB Capital No. 2 is liquidated, the Issue Price of the Perpetual Preference Shares is required to be repaid to holders by ASB Capital No. 2. However, the ability of ASB Capital No. 2 to make any such payment will depend on ASB Bank making payment to ASB Holdings in respect of the ASB Bank 2004 Perpetual Preference Shares, and ASB Holdings making payment to ASB Capital No. 2 under the Loan Agreement. In addition, if the amount of the loan under the Loan Agreement is repaid on the occurrence of an APRA Event, ASB Capital No. 2 will purchase, and become the holder of, the ASB Bank 2004 Perpetual Preference Shares and the covenants, and security, given by ASB Holdings to the Trustee for the benefit of holders of Perpetual Preference Shares will cease to exist.

ASB Bank is not liable to make any payment on account of capital in respect of the ASB Bank 2004 Perpetual Preference Shares unless and until ASB Bank is in liquidation. Should ASB Bank be liquidated, the ASB Bank 2004 Perpetual Preference Shares rank ahead of ordinary shares of ASB Bank, and equally with the ASB Bank 2002 Perpetual Preference Shares (and any other shares issued by ASB Bank that by their terms are expressed to rank equally with those shares), but after the rights of all creditors and, if at any time there are other classes of shares of ASB Bank, after the holders of those shares. Risks which may affect the financial position of ASB Bank are recorded below under the heading "*ASB Bank's Key Risks*".

Dividends payable in respect of the Perpetual Preference Shares may be cancelled at the discretion of the Board. In addition, each of ASB Bank and Commonwealth Bank can give notice to ASB Capital No. 2 that dividends on the Perpetual Preference Shares should not be paid, and it is very likely that,

if it receives such a notice, the Board would cancel the payment of dividends. If dividends on the 2002 Perpetual Preference Shares are cancelled, dividends on the Perpetual Preference Shares will also be cancelled.

A holder of Perpetual Preference Shares may, on sale or other termination of that holder's investments, receive less than the Issue Price. That could occur if a holder sells that holder's Perpetual Preference Shares for less than the Issue Price, or if in a liquidation of ASB Bank there were insufficient funds to repay the ASB Bank 2004 Perpetual Preference Shares.

ASB Capital No. 2 is a limited liability company, and accordingly holders of Perpetual Preference Shares are not required to pay money to any person as a result of the insolvency of ASB Capital No. 2.

In the event of a liquidation of ASB Capital No. 2, the claims of any creditors of ASB Capital No. 2 would rank ahead of the claims of holders of Perpetual Preference Shares. The claims of holders of Perpetual Preference Shares would rank equally amongst themselves.

**6.6.2 ASB Bank's Key Risks:** Participants operating in the banking industry are exposed to many risks. The primary risks are credit, market (currency and interest rate), liquidity and operational risk. Some of the key risk elements that may affect ASB Bank's performance are set out below:

- **Credit risk**

Given that ASB Bank's core business is providing lending facilities to customers, there is a credit risk associated with customers not meeting their obligations under such lending facilities. Credit risk also arises from ASB Bank assuming contingent liabilities, taking equity participations, participating in financial market transactions and assuming underwriting commitments. All of

these activities have an element of risk associated with counterparties not meeting their obligations, or transactions deteriorating in credit quality to the extent that the likelihood of default increases. In the event of default, the financial performance of ASB Bank could be adversely impacted.

Industry and product concentrations are managed within established credit policies and underwriting standards. The Bank also has formal provisioning policies that are monitored and reviewed by both management and the board of ASB Bank.

- **Currency risk**

ASB Bank is exposed to fluctuations in both the New Zealand and foreign currencies arising from:

- the day-to-day buying and selling of foreign currency for clients;
- principal trading positions assumed by ASB Bank itself;
- deposit and lending activity in foreign currencies; and
- offshore funding by ASB Bank.

Such fluctuations could materially impact on ASB Bank's financial performance. ASB Bank monitors and manages this risk through its Treasury Department. As at 30 June 2004, aggregate foreign currency exposure amounted to 0.1% of ASB Bank's equity.

- **Interest rate risk**

Interest rate risks arise from holding assets and liabilities, including off balance sheet instruments, which may mature or reprice in different periods. The Bank is exposed to some degree of timing difference risk as the

interest rates on the money it lends may be reset for different periods to those for which the interest rates on the money it borrows reset. This exposes the Bank to fluctuations in interest rates between these periods.

The Bank reduces interest rate risk by seeking to match the repricing of assets and liabilities. Sensitivity to interest rate changes is monitored against limits set by the board of ASB Bank.

- **Liquidity risk**

Liquidity risk arises if the Bank is unable to generate or obtain sufficient funds at a reasonable price to meet its daily financial commitments. The Bank's financial performance and credit rating may then be adversely impacted. The Bank monitors this risk primarily by forecasting future daily cash requirements. The Bank also holds assets that can be converted into cash at short notice.

- **Prudential risk**

The Bank is registered and supervised by the Reserve Bank of New Zealand. If the Bank does not maintain a prudent level of capital in relation to the size and nature of its business, it could lose its status as a registered bank and subsequently be unable to undertake its normal banking activity.

- **Operational risk**

Operational risk is the risk of direct or indirect loss resulting from either external events or inadequate or failed internal processes, people and systems. Essentially, operational risk is any possible exposure to loss the Bank may face which is caused by any operational factor other than credit, liquidity or market risk.

A formal reporting structure and policy approved by the board of ASB Bank for the management of operational risk is in place.

- **Reliance on Auckland geographic region**

As at 30 June 2004, \$17,513 million of credit exposures (54% of total credit exposures) are concentrated in the Auckland geographic region.

Credit losses and bad debt write-offs exceeding provisions may result if there was an economic downturn or significant property market downturn in the Auckland region.

- **Reliance on certain industries**

*Housing*

The housing industry accounts for a major proportion of ASB Bank's credit exposures – \$19,540 million of credit exposures (60% of total credit exposures) as at 30 June 2004. If there was a significant downturn in the housing industry, this could cause an associated reduction in the total value of the Bank's security over residential properties.

This would expose the Bank to increased credit risk of ASB Bank's customers failing to meet their lending obligations.

*Agriculture*

ASB Bank has \$3,009 million of credit exposures in the agricultural sector as at 30 June 2004. If there was a significant downturn within the agricultural sector, there would be the potential for an increase in credit losses and bad debt write-offs, which would affect ASB Bank's profitability.

ASB Bank has clearly defined credit policy guidelines which are aimed at reducing the potential exposure to risk in these areas.

- **Other operational and event risks**

Demand for ASB Bank's products and services is partially dependent upon the performance of the New Zealand and world economies. Reduced or negative growth in these economies generally, or reduced demand for banking products and services, could have a material adverse effect on the financial results of ASB Bank.

The Bank's strategic plans are reviewed on an ongoing basis to take into account the changing environment worldwide and in New Zealand.

- **Competition in the banking industry**

ASB Bank faces competition from both existing financial service providers and new entrants. Customers are now able to choose from a greater number of providers in all of the areas of financial services provided by ASB Bank, including the residential lending market. Risks that may affect ASB Bank's ability to obtain new customers and retain existing customers, thereby affecting the profitability of ASB Bank, include, but are not limited to, the relative position of ASB Bank against its competitors in the:

- pricing and performance of products and services;
- convenience and ease of access to products and services;
- level and efficiency of service provided; and
- ability to develop new products and services to meet the changing needs of customers.

ASB Bank is committed to providing excellent customer service to both new and existing customers and is a recognised leader in this area.

- **Legal and regulatory environment**

ASB Bank considers that the legal and regulatory framework governing the banking industry in New Zealand, although well established, is still subject to change from time to time and has the potential to adversely impact ASB Bank's financial performance.

- **Business continuity management**

ASB Bank's core processing operations are based in Auckland. Should a natural disaster or a specific event such as a prolonged power shortage occur in the Auckland region, ASB Bank would find it difficult to continue its business operations. However, these risks have been considered and disaster specific contingency strategies and plans have been developed to ensure ASB Bank's critical operations could continue.

## **6.7 CAN THE INVESTMENT BE ALTERED?**

The full terms of the Offer are set out in this Offer Document. Those terms and the terms and conditions on which applicants may apply for the Perpetual Preference Shares may be altered by an amendment to this Offer Document by ASB Capital No. 2. Details of any such amendment must be filed with the Companies Office. These terms are described under the headings "*What sort of investment is this?*" and "*How much do I pay?*" in this section of the Offer Document.

The rights attaching to the Perpetual Preference Shares are governed by the Constitution. The Constitution (and any rights or privileges attaching to Perpetual Preference Shares) may only be altered with the approval of:

- the Board; and
- an ordinary resolution of the holder of the ordinary shares in ASB Capital No. 2; and
- a special resolution of the holders of the Perpetual Preference Shares; and provided that any amendment:
  - is approved by ASB Bank; and
  - will not affect the classification of the Perpetual Preference Shares under the rules of any Regulatory Authority.

Section 117 of the Companies Act restricts ASB Capital No. 2 from taking any action that affects the rights attached to Perpetual Preference Shares unless that action has been approved by a special resolution of shareholders whose rights are affected by the action. However, the issue of further shares ranking equally with, or in priority to, the Perpetual Preference Shares is deemed not to be an action affecting the rights attaching to the Perpetual Preference Shares.

## **6.8 HOW DO I CASH IN MY INVESTMENT?**

Perpetual Preference Shares are tradeable without restriction subject only to compliance with relevant laws, the Constitution and the continuation of an active trading market. In ASB Capital No. 2's opinion there is likely to be an established market for the Perpetual Preference Shares on completion of the Offer. No charges are payable to ASB Capital No. 2 for any sale of Perpetual Preference Shares. However, normal brokerage may be payable to the NZX Primary Market Participant acting in the sale.

### **Listing**

Application has been made to NZX for permission to list the Perpetual Preference

Shares. All requirements of NZX relating to the listing that can be complied with on or before the date of this Offer Document have been duly complied with. However, NZX accepts no responsibility for any statement in this Offer Document.

#### **6.9 WHO DO I CONTACT WITH ENQUIRIES ABOUT MY INVESTMENT?**

Enquiries in relation to the Perpetual Preference Shares can be directed to your normal advisor or:

##### **Fixed Interest Advisor**

ASB Securities Limited  
Level 13  
ASB Bank Centre  
135 Albert Street, Auckland  
Phone: 0800 ASB BOND (0800 272 266)  
Email: asbbond@asbbank.co.nz

#### **6.10 IS THERE ANYONE TO WHOM I CAN COMPLAIN IF I HAVE PROBLEMS WITH THE INVESTMENT?**

Complaints about the Perpetual Preference Shares can be made to:

##### **John Duncan**

ASB Capital No. 2 Limited  
Level 28  
ASB Bank Centre  
135 Albert Street, Auckland  
Phone: +64 9 374 8815  
Facsimile: +64 9 358 3511  
Email: john.duncan@asbbank.co.nz

Complaints may also be made to the Trustee:

##### **The New Zealand Guardian Trust Company Limited**

Vero Centre  
48 Shortland Street  
PO Box 1934, Auckland  
Phone: +64 9 377 7300  
Facsimile: +64 9 377 7477

There is no Ombudsman to whom complaints about the Perpetual Preference Shares can be made.

#### **6.11 WHAT OTHER INFORMATION CAN I OBTAIN ABOUT THIS INVESTMENT?**

**6.11.1 Offer Document:** Other information about the Perpetual Preference Shares and ASB Capital No. 2 is contained or referred to in the other sections of this Offer Document (and in the financial statements of ASB Capital No. 2 once these are produced).

This Offer Document and other documents relating to ASB Capital No. 2 (including the Constitution and the material contracts referred to in section 11.19) may be inspected without fee during normal business hours at ASB Capital No. 2's registered office at Level 28, ASB Bank Centre, 135 Albert Street, Auckland. These documents are also filed in a public register which may be inspected for a fee at the Companies Office, Business and Registries Branch, Ministry of Economic Development on its website [www.companies.govt.nz](http://www.companies.govt.nz). Where documents are not available on the website, a request for the documents can be made by contacting Searchlink at [info@searchlink.co.nz](mailto:info@searchlink.co.nz).

##### **6.11.2 Annual Information:** ASB

Capital No. 2 will provide to holders of Perpetual Preference Shares the annual and half yearly reports required by the

Companies Act and the Listing Rules.

#### **6.11.3 Financial Statements and**

**Other Information:** Holders of Perpetual Preference Shares can obtain copies of this Offer Document, and the financial statements referred to in this Offer Document from ASB Capital No. 2 free of charge by request either in writing or by telephone. Holders of Perpetual Preference Shares can also obtain copies of the following documents free of charge from ASB Capital No. 2 by request either in writing or by telephone:

- the most recent annual report (once produced) of ASB Capital No. 2;
- the most recent financial statements (once produced) of ASB Capital No. 2;
- a comparison of actual results against the forecast statement of cash flows set out in section 12.2; and
- the Trust Deed.

Copies of any of the documents referred to above will be sent within 5 working days of ASB Capital No. 2 receiving a request.

# SECTION 7

## Tax Information

### 7.1 GENERAL

The following statements relate only to New Zealand withholding tax and are of a general nature. The statements are based on tax legislation and interpretations of tax legislation current at the date of this Offer Document. The statements are not intended to deal with all relevant considerations or possible cases. No other taxation considerations are discussed. Prospective investors should seek their own taxation advice in relation to their own taxation position.

### 7.2 NEW ZEALAND RESIDENT SHAREHOLDERS

ASB Capital No. 2 will assume that holders of Perpetual Preference Shares are New Zealand tax residents unless it is satisfied to the contrary, and will act accordingly. Any liability for taxation is the responsibility of the holder of Perpetual Preference Shares.

### 7.3 DIVIDENDS DISTRIBUTED TO RESIDENTS

Under New Zealand's dividend imputation system, corporate tax paid by a New Zealand tax resident company gives rise to tax credits (known as imputation credits) which can be attached to dividends paid by that company to its shareholders. Those imputation credits can then be used by shareholders to offset their own personal income tax liability on those dividends. Dividends paid to New Zealand tax resident shareholders are ordinarily subject to resident withholding tax. However, if the dividend is fully imputed, no resident withholding tax will be deducted.

A deduction for resident withholding tax on dividends will also not be made where the recipient of the payment holds and produces a current certificate of exemption or where one of the other exemptions specified in the Income Tax Act 1994 applies. When required to do so, ASB Capital No. 2 will make a resident withholding tax deduction unless the holder of the shares can satisfy ASB Capital No. 2 that the deduction is not required by law.

ASB Capital No. 2's intention is that dividends paid to holders of Perpetual Preference Shares will be fully imputed. Resident withholding tax may be deducted from dividends paid on the Perpetual Preference Shares to the extent that the dividend is not fully imputed (and where the shareholder has not provided ASB Capital No. 2 with a copy of a valid certificate of exemption for resident withholding tax purposes). Non-resident withholding tax may also be deducted from dividends paid to non-residents (although it is the intention only to issue Perpetual Preference Shares to New Zealand residents).

ASB Capital No. 2 may, at its sole discretion, pay supplementary dividends to shareholders resident for tax purposes outside New Zealand.

### 7.4 EXAMPLE OF TAX CALCULATION

The tax treatment of dividends paid on the Perpetual Preference Shares for personal income tax purposes is illustrated by the following example.

This example assumes that the investor (a New Zealand resident for tax purposes) owns \$5,000 worth of Perpetual Preference Shares (5,000 shares at \$1.00). The Dividend Rate is assumed to be 7.80% for the purposes of this example, made up of cash payments of 5.23% and imputation credits of 2.57%. It is also assumed the current tax law prevails, the dividends are fully imputed and the investor is able to fully utilise the imputation credits attached.

On this basis the investor's dividend statements for one year for the four combined quarterly dividend payments would read:

Gross dividend:	\$390.00
Imputation credits attached:	\$128.70
Cash dividend paid:	\$261.30

**For an investor on a 39% marginal tax rate,** the impact on that investor's annual tax calculation would be:

Taxable dividend income:	\$390.00
Tax @ 39%:	\$152.10
Less imputation credits:	\$128.70
Net tax to pay in respect of dividend:	\$23.40

An investor on a 39% marginal tax rate in an income year pays an additional \$23.40 in tax with respect to the dividend, which reduces the after-tax return to 4.76%. This is the same return as the investor would have received from investing in a bond paying pre-tax interest of 7.80%.

**For an investor on a 33% marginal tax rate,** the impact on that investor's annual tax calculation would be:

Taxable dividend income:	\$390.00
Tax @ 33%:	\$128.70
Less imputation credits:	\$128.70
Net tax to pay in respect of dividend:	nil

An investor on a 33% marginal tax rate in an income year pays no more tax with respect to the dividend income.

**For an investor on a 19.5% marginal tax rate,** (after receipt of the dividend), the impact on that investor's annual tax calculation would be:

Taxable dividend income:	\$390.00
Tax @ 19.5%:	\$76.05
Less imputation credits:	\$128.70
Excess imputation credits/tax credit:	\$52.65

The excess imputation credits of \$52.65 can be used to reduce the investor's income tax liability (derived from other income sources) if the investor has other taxable income that income year. Where the excess imputation credits can be used in full in that income year, the effective after-tax return from the Perpetual Preference Shares is \$313.95 or 6.28%.

Imputation credits, which are not used in an income year, may be converted into net losses (at varying rates depending on investors' particular circumstances) and may be available for offset against taxable income in future income years.

The Taxation (Base Maintenance and Miscellaneous Provisions) Bill 2004, which was introduced into Parliament on 16 November 2004, contains a proposal which would change the treatment of individuals and unincorporated associations which have unutilised imputation credits. The proposed change, if enacted, will require such taxpayers to carry forward any unutilised imputation credits to succeeding income years, rather than being converted into a net loss. The proposed change, if enacted, is intended to apply from the 2005-2006 income year.



# SECTION 8

## Terms of the Perpetual Preference Shares

Set out below are the provisions of the Constitution relevant to the Perpetual Preference Shares and an extract from the text of the resolution of the Board resolving to issue the Perpetual Preference Shares. The numbering of the provisions below reflects the numbering in the Constitution.

### 1.1 DEFINITIONS

In this Constitution, unless the contrary intention appears:

**"ASB"** means ASB Bank Limited;

**"ASB Holdings"** means ASB Holdings Limited;

**"Act"** means the Companies Act 1993;

**"Article"** means a provision of this Constitution as amended or added to from time to time;

**"Company"** means ASB Capital No. 2 Limited;

**"Constitution"** means this Constitution as amended or added to from time to time;

**"director"** means a person holding office as a director of the Company, and where appropriate includes an alternate director;

**"directors"** means all or some of the directors acting as a board and the term

**"Board"** shall be construed accordingly;

**"Holding Company"** means CBA Funding (NZ) Limited;

**"register"** means the register of members to be kept pursuant to the Act;

**"ordinary share"** means an ordinary share issued, or to be issued, by the Company as the case may require;

**"preference share"** means a perpetual preference share issued, or to be issued, by the Company as the case may require;

**"share"** means an ordinary share, a preference share or any class of share in the capital of the Company;

**"shareholder"** means any person who is the registered holder of a share;

**"special resolution"** means a resolution approved by a majority of seventy-five per cent (75%) of the votes of those shareholders entitled to vote and voting on the issue.

### 1.4 AMENDMENT OF CONSTITUTION

- (a) Subject to the Act, this Constitution may be altered at any time by way of a special resolution.
- (b) An application to change the name of the Company is not an amendment of this Constitution for the purposes of Article 1.4(a) above and may be made by a director with the prior approval of the Holding Company.
- (c) Without limiting Articles 4.26 and 4.29, this Constitution shall not be altered or revoked without the written approval of ASB.

## 1.5 PREFERENCE SHARES

Without limiting any other provision of this Constitution, preference shares may be issued from time to time by the directors in different tranches. The rights, privileges, limitations and conditions attaching to each tranche of preference share shall be as set out in Article 4, and (insofar as Article 4 provides for the directors to determine matters affecting those rights, privileges, limitations and conditions) in the resolution of the directors resolving to issue the preference shares of that tranche. If there is any conflict between a provision in Article 4 and any other provision of this Constitution, the provision in Article 4 shall prevail.

## 1.6 LIMITATION ON BUSINESS

The only business or activity which the Company may carry on is to:

- (a) issue and maintain in existence preference shares;
- (b) advance the proceeds of preference shares to ASB Holdings or a related company of that company;
- (c) do all other things reasonably incidental to the activities referred to in paragraphs (a) and (b).

The Company has no power to:

- (d) carry on any other business or activity; or
- (e) apply amounts received by way of interest on, or repayment of, any loan referred to in paragraph (b) for any purpose other than in payments to the holders of preference shares.

For the purposes of paragraph (e), the directors may determine that amounts received in respect of a particular loan are to be applied in payment to the holders of a particular tranche of preference shares.

## 2.4 ISSUE OF FURTHER SHARES

The Company may issue further shares ranking equally with, or in priority to, any existing shares, whether as to voting rights, distributions or otherwise and such an issue is deemed not to be an action affecting the rights attaching to the existing shares.

## 4. PREFERENCE SHARES

### 4.1 DEFINITIONS

In Articles 4.1 to 4.31 of this Constitution, unless the context otherwise requires:

**"APRA"** means the Australian Prudential Regulation Authority;

**"ASB Capital No. 1"** means ASB Capital Limited;

**"Benchmark Rate"** on any day means the rate per annum expressed on a percentage yield basis, and rounded up to the nearest two decimal places, which is:

- (a) the average of the bid and offered swap rate displayed at or about 11am on that day on page FISSWAP (or any successor page) of the Reuters monitor screen for an interest rate swap with a one year term; or
- (b) if a rate is unable to be determined in accordance with paragraph (a), or if the Company forms the view that the rate so determined is not an accurate reflection of market rates, the average of the mean and bid offered swap rates quoted by three registered banks in New Zealand other than ASB at or about 11am on that day for an interest rate swap with a one year term.

**"Business Day"** means any day other than a Saturday, Sunday or a statutory public holiday in New Zealand;

**"Buy-Out Notice"** has the meaning in Article 4.22;

**"Buy-Out Price"** in respect of each preference share at any date means the aggregate of:

- (a) the Issue Price;
- (b) subject to Article 4.7, Dividends payable on that preference share as at that date calculated on a daily basis from the end of the most recent Dividend Period to that date.

**"Commonwealth Bank"** means Commonwealth Bank of Australia;

**"Commonwealth Bank Subsidiary"** means the Holding Company or any wholly owned subsidiary of Commonwealth Bank (which is not ASB or a subsidiary of ASB) to which the Holding Company assigns its rights under Articles 4.22 to 4.25;

**"Distribution"** has the meaning set out in section 2(1) of the Act;

**"Dividend"** means any dividend on the preference shares payable pursuant to Article 4.2;

**"Dividend Amount"** in respect of a Dividend Period means a sum in respect of each preference share calculated in accordance with the following formula:

$$\text{Issue Price} \times \frac{\text{Dividend Rate}}{4} \times (1-t)$$

where:

Dividend Rate is:

- (a) in respect of each Dividend Period ending on or before the first Reset Date, and in respect of preference shares offered under an offer document dated 24 November 2004, 7.65% per annum (being the Benchmark Rate on 24 November 2004 plus the Margin, adjusted to an equivalent quarterly rate).

- (b) in respect of each Dividend Period

ending on or before the first Reset Date and in respect of preference shares other than those referred to in (a), the rate specified in the Issue Resolution in respect of those preference shares.

- (c) in respect of each subsequent Dividend Period, the Benchmark Rate on the Relevant Reset Date plus the Margin (adjusted to an equivalent quarterly rate).

*t* is the basic rate of income tax applicable to the Company under Schedule 1 of the Tax Act.

provided that the Dividend Amount in respect of the first Dividend Period in respect of each preference share shall be an amount calculated in accordance with the following formula:

$$X \times \frac{Y}{91.75}$$

where:

X is an amount calculated in accordance with the first formula set out in this definition.

Y is the number of days from and including the date subscription monies in respect of each preference share are banked to but excluding the last day of the first Dividend Period.

**"Dividend Cancellation Notice"** means a notice given by the directors pursuant to Article 4.7;

**"Dividend Payment Date"** means in respect of each preference share, the quarterly dates fixed by the Issue Resolution in respect of that preference share;

**"Dividend Period"** means each period commencing on and including a Dividend Payment Date and ending on but excluding the next Dividend Payment Date, or, in respect of the first Dividend Period, in respect of any preference share the period

from and including the day subscription monies for that preference share are banked to but excluding the first Dividend Payment Date in respect of that preference share;

**“Dividend Resumption Notice”** means a notice given pursuant to Article 4.10;

**“Fully Credited”** means in relation to a Dividend, that Imputation Credits are validly attached to the Dividend, so that the imputation ratio of the Dividend is the maximum imputation ratio permitted by law;

**“Holder”** in respect of a preference share means a person whose name is entered in the Share Register as the holder for the time being of that preference share;

**“Imputation Credit”** means an imputation credit as defined in section OB 1 of the Tax Act;

**“Issue Date”** in respect of a preference share, means the date on which that preference share is issued;

**“Issue Price”** means \$1 in respect of each preference share;

**“Issue Resolution”** in respect of any preference shares, means the resolution of the directors resolving to issue those preference shares;

**“Margin”** in respect of each preference share means the rate per annum fixed in the Issue Resolution in respect of that preference share;

**“Reset Date”** in respect of each preference share, means the dates specified in the Issue Resolution in respect of that preference share;

**“Relevant Reset Date”** means in respect of a Dividend Period, if that Dividend Period begins on a Reset Date, that Reset Date, and if that Dividend Period does

not begin on a Reset Date, the Reset Date immediately preceding that Dividend Period;

**“Regulatory Authority”** means the Reserve Bank of New Zealand, the Australian Prudential Regulation Authority or any other authority having jurisdiction in respect of banking in Australia or New Zealand;

**“Share Registrar”** means an agent appointed by the Company to keep the register of the preference shares;

**“Tax Act”** means the Income Tax Act 1994;

**“Trust Deed”** means a trust deed dated 24 November 2004 between the Company, ASB Holdings and The New Zealand Guardian Trust Company Limited whereby the Company and ASB Holdings give certain covenants for the benefit of Holders;

**“2002 Preference Shares”** means certain perpetual preference shares issued in 2002 by ASB Capital No. 1.

Whenever in Articles 4.1 to 4.31 or in an Issue Resolution there is a reference to a date, and that date is not a Business Day, the reference shall be deemed to be to the next day which is a Business Day.

## 4.2 DIVIDEND

The preference shares carry the right to a dividend, payable in priority to other Distributions in accordance with Article 4.6, in respect of each Dividend Period equal to the Dividend Amount for that Dividend Period.

## 4.3 DIVIDEND TO BE FULLY CREDITED

All Dividend Amounts shall be Fully Credited. The only consequence of, or remedy for, a Dividend Amount not being Fully Credited shall be the payment by the Company of the amount referred to in Article 4.4.

#### **4.4 IMPUTATION CREDIT SHORTFALL**

If all or any part of a Dividend Amount is not Fully Credited the Company shall pay to each Holder an amount equal to the shortfall in Imputation Credits of which Holders would otherwise have had the benefit. The amount payable under this Article 4.4:

- (a) is due on the Dividend Payment Date of the Dividend Amount and, to the extent paid, substitutes for or replaces the corresponding obligation of the Company under Article 4.3; and
- (b) shall be regarded as a variation in the rate at which Dividends are calculated.

#### **4.5 DIVIDEND PAYMENT DATE**

If a Dividend is paid in respect of any Dividend Period, it shall be paid on the Dividend Payment Date on which that Dividend Period ends.

#### **4.6 DIVIDENDS TO HAVE PRIORITY**

Dividends shall rank for payment in priority to the rights in respect of dividends or other Distributions of all holders of other classes of shares of the Company.

#### **4.7 CANCELLATION OF DIVIDENDS**

Without limiting section 52(1) of the Act, but subject to Article 4.8, the directors may, by notice sent to Holders not later than five Business Days after the end of a Dividend Period, cancel the payment of Dividends in respect of that Dividend Period and all subsequent Dividend Periods, until such time as the board gives a Dividend Resumption Notice.

#### **4.8 REASONS FOR CANCELLATION**

The board may give a Dividend Cancellation Notice if:

- (a) the board is not satisfied on reasonable grounds that immediately after

payment of a Dividend the Company will satisfy the solvency test; or

- (b) the board has for any other reason determined in its discretion that a Dividend, or Dividends generally, should not be paid; or
- (c) ASB has given notice to the Company that the board of directors of ASB has determined that a Dividend, or Dividends generally, should not be paid and has also determined that dividends should not be paid on the 2002 Preference Shares; or
- (d) Commonwealth Bank has given notice to the Company that the board of directors of Commonwealth Bank has determined that a Dividend, or Dividends generally, should not be paid and has also determined that dividends should not be paid on the 2002 Preference Shares; or
- (e) ASB Capital No. 1 has received notice from ASB or Commonwealth Bank that its board of directors has determined that dividends should not be paid on the 2002 Preference Shares.

#### **4.9 AUTOMATIC CANCELLATION**

If the directors of ASB Capital No. 1 give notice to the holders of the 2002 Preference Shares of the cancellation of dividends payable in respect of the 2002 Preference Shares, and the directors do not simultaneously give a Dividend Cancellation Notice, then the notice given by the directors of ASB Capital No. 1 shall (with the necessary modifications) take effect as if it were a Dividend Cancellation Notice, and Dividends shall be cancelled accordingly.

#### **4.10 DIVIDEND RESUMPTION NOTICE**

If the board has given a Dividend Cancellation Notice the board may at any time thereafter send notice to Holders to the

effect that Dividends should again be paid. If such a notice is given, Dividends shall again be payable as from and including the first Dividend Period commencing after the giving of that notice, unless and until a further Dividend Cancellation Notice is given. If the board has given a Dividend Cancellation Notice following receipt from ASB or Commonwealth Bank of a notice of the nature referred to in Article 4.8(c) or 4.8(d) and the Company receives from the party which gave that notice a notice to the effect that Dividends should again be paid, the board shall give a Dividend Resumption Notice unless the board makes a determination of the nature referred to in Article 4.8(a) or (b). If ASB Capital No. 1 gives a dividend resumption notice under the provisions of the constitution of ASB Capital No. 1 corresponding with this Article 4.10, the board shall immediately give a Dividend Resumption Notice.

#### **4.11 EFFECT OF CANCELLATION**

If a Dividend Cancellation Notice is given, any obligation of the Company to pay, and any right of Holders to receive, the Dividends referred to in Article 4.7 shall be cancelled absolutely. The preference shares are not cumulative.

#### **4.12 SUSPENSION PERIOD**

If a Dividend Cancellation Notice is given, then for the period from the date of that Dividend Cancellation Notice until the Company has paid in full Dividends for two consecutive Dividend Periods the Company shall not make any Distribution, other than Dividends.

#### **4.13 CAPITAL**

Each Holder shall have the right in a liquidation of the Company to payment, in priority to the holders of other classes of shares of the Company, of the Issue Price of the preference shares held by that

Holder and (subject to Article 4.7) Dividends payable on those preference shares at the date of commencement of liquidation calculated on a daily basis from the end of the most recent Dividend Period to the date of commencement of liquidation.

#### **4.14 VOTING**

Holders shall have no right to receive notice of, attend, or vote at meetings of shareholders of the Company, other than meetings called under Articles 4.26 or 4.27.

#### **4.15 TRANSFER**

A Holder may, subject to Article 4.19, transfer any preference share:

- (a) under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company;
- (b) under any other share transfer system which operates in relation to the trading of securities on any stock exchange outside New Zealand on which preference shares are quoted and which is applicable to the Company; or
- (c) by an instrument of transfer which complies with this Constitution.

#### **4.16 SYSTEMS OF TRANSFER**

A preference share which is disposed of in a transaction which complies with the requirements of a system of transfer authorised under Article 4.15(a) or 4.15(b) may be transferred in accordance with the requirements of that system. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or the Share Registrar.

#### **4.17 INSTRUMENT REQUIREMENTS**

An instrument of transfer of preference shares to which the provisions of Article 4.16 are not applicable shall:

- (a) be in any common form or any other form approved by the Company or the Share Registrar; and
- (b) be signed or executed by or on behalf of the transferor.

#### **4.18 DELIVERY OF INSTRUMENT**

An instrument transferring preference shares must be delivered to the Company or to the Share Registrar, together with such evidence (if any) as the Company or the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the preference shares.

#### **4.19 REFUSAL TO REGISTER**

Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the directors may refuse to register a transfer of any preference share if:

- (a) the Company has a lien on the preference share;
- (b) the transferor fails to produce such evidence as the Company or the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the preference share; or
- (c) registration of the transfer (together with registration of any further transfer or transfers then held by the Company and awaiting registration) would result in less than 5,000 preference shares standing in the name of the transferee;

provided that the directors resolve to exercise its power under this article within 30

Business Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Business Days of the resolution being passed by the directors.

#### **4.20 TRANSFEROR TO REMAIN HOLDER UNTIL REGISTRATION**

A transferor of a preference share is deemed to remain the Holder of the preference share until the name of the transferee is entered in the register in respect of the share.

#### **4.21 COMPANY TO RETAIN INSTRUMENTS**

If the Company registers an instrument of transfer it shall retain the instrument.

#### **4.22 COMPULSORY BUY-OUT**

Subject to Article 4.23, Commonwealth Bank Subsidiary may give notice to all Holders in the manner specified in Article 12 (a “Buy-Out Notice”) requiring Holders to transfer their preference shares to Commonwealth Bank Subsidiary. A Buy-Out Notice shall take effect, and the Buy-Out Price shall be paid, on the day specified in the Buy-Out Notice, being not less than 90 days, and not more than 120 days, after the date on which the Buy-Out Notice is given.

#### **4.23 TIMING OF BUY-OUT NOTICE**

A Buy-Out Notice may be given only:

- (a) five years or more after the Issue Date; or
- (b) at any earlier time, if there has occurred any change in law (including any law relating to taxation) or in the interpretation or application thereof by any Court or governmental agency, or in any directive, regulation, request or requirement of a Regulatory Authority or other governmental agency, which materially adversely affects the benefits

of the preference shares to the Company, ASB, or Commonwealth Bank;

provided that the prior approval of APRA to the buy-out of the Perpetual Preference Shares has been obtained.

#### **4.24 EFFECT OF BUY-OUT NOTICE**

If Commonwealth Bank Subsidiary gives a Buy-Out Notice then:

- (a) each Holder shall be deemed, on the day on which Commonwealth Bank Subsidiary pays to that Holder the Buy-Out Price, to transfer that Holder's *Preference Shares to Commonwealth Bank Subsidiary*, and the Company shall on that day enter the name of Commonwealth Bank Subsidiary on the register as the holder of those preference shares;
- (b) each Holder shall be deemed to have *authorised the Company to act on behalf of that Holder in respect of the transfer of that Holder's Preference Shares to Commonwealth Bank Subsidiary, and to sign any document necessary to effect or record that transfer;*
- (c) Commonwealth Bank Subsidiary may pay the Buy-Out Price in the manner specified in Article 10.5 (with the necessary modifications).

#### **4.25 PARTIAL BUY-OUT**

Commonwealth Bank Subsidiary may give a Buy-Out Notice in respect of a specified proportion of the preference shares held by each Holder. If Commonwealth Bank Subsidiary does so, Articles 4.22 to 4.24 shall apply modified so as to refer to that proportion of each Holder's preference shares. Commonwealth Bank Subsidiary may give notice of the nature referred to in this clause on more than one occasion.

#### **4.26 AMENDMENT**

Subject to Article 4.29, the rights, privileges, limitations and conditions attaching to the preference shares may be amended with the approval of:

- (a) the board; and
- (b) an ordinary resolution of the holders of ordinary shares; and
- (c) a special resolution of Holders.

A meeting of holders for the purposes referred to in paragraph (c) may be convened by the board.

#### **4.27 MEETING FOR PURPOSES OF TRUST DEED**

The board may at any time convene a meeting of Holders to consider a resolution proposed to be passed for a purpose referred to in the Trust Deed. The board shall convene such a meeting if the trustee under the Trust Deed so requests.

#### **4.28 CONDUCT OF MEETINGS**

A meeting of Holders to consider a resolution of the nature referred to in Article 4.26 or 4.27 shall be convened and held in accordance with the First Schedule to the Act. At any such meeting:

- (a) where voting is by show of hands or by voice every Holder present in person or by representative has one vote;
- (b) on a poll every Holder present in person or by representative has one vote in respect of each preference share held by that Holder; and
- (c) if the meeting is to consider a resolution of the nature referred to in Article 4.27, and the trustee under the Trust Deed nominates any person as chairperson for the meeting, that person shall chair the meeting.



#### **4.29 RESTRICTIONS ON AMENDMENTS**

No amendment of the nature referred to in Article 4.26 shall be made unless:

- (a) ASB has approved that amendment; and
- (b) that amendment will not affect the classification of the preference shares under the rules of any Regulatory Authority.

#### **4.30 DEDUCTIONS**

The Company may make from Dividends any deduction or withholding on account of tax or on any other account which the Company is required by law to make.

#### **4.31 SUPPLEMENTARY DIVIDEND**

If the Company at any time:

- (a) pays a dividend (as defined in section LE 2(1) of the Tax Act and in section OB 1 of that Act for the purposes of Part LE of that Act) to a Holder who is not resident *in New Zealand for tax purposes at that time*; and
- (b) the Company attaches an Imputation Credit to such dividend pursuant to section ME 6 of the Tax Act.

then the Company may pay a single supplementary dividend (as defined in section OB 1 of the Tax Act) to that person.

#### **10.5 METHOD OF PAYMENT**

A dividend payable in cash may be paid in such manner as the board thinks fit to the entitled shareholders or, in the case of joint shareholders, to the shareholder named first in the register, or to such other person and in such manner as the shareholder or joint shareholders may in writing direct. Any one of two or more joint shareholders may give a receipt for any payment in respect of the shares held by them as joint shareholders.

#### **12. NOTICES**

- (a) A notice may be given to any member or to any other person entitled to notice under this Constitution either by serving it on that person personally or by sending it by post or facsimile transmission to the member's registered address or the address supplied by that other person to the Company for the purpose of notices.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (c) Where a notice is sent by facsimile transmission, service of the notice is deemed to be effected by properly addressing the facsimile transmission and the notice is deemed to have been served in the case of a facsimile transmission on the day following its despatch.

#### **EXTRACT FROM TEXT OF RESOLUTION OF BOARD**

Pursuant to Article 1.5 and section 4 of the Company's constitution, the Dividend Payment Dates, Margin and Reset Dates in respect of the Perpetual Preference Shares shall be as follows:

**Dividend Payment Date:** 15 February, 15 May, 15 August and 15 November.

**Margin:** 1.0%.

**Reset Date:** The first dividend reset date is 16 May 2005, and thereafter on each 15 May or if that day is not a Business Day, the next Business Day.

# SECTION 9

## Terms of ASB Bank 2004 Perpetual Preference Shares

Set out below are the rights, privileges, limitations and conditions attaching to the ASB Bank Limited 2004 perpetual preference shares and an extract from the text of the ASB Bank board resolution to issue those preference shares.

### 1. INTERPRETATION

#### 1.1 In these terms:

**"APRA Event"** means the occurrence in respect of Commonwealth Bank of Australia group, of one or more of the events described in paragraph 4 of a document published by Australian Prudential Regulation Authority entitled "Guidance Note - AGN 111.3 - Criteria for Capital Issues Involving Use of Special Purpose Vehicles" dated July 2003 as that document may be amended, novated, supplemented or replaced from time to time.

**"Benchmark Rate"** on any day means the rate per annum expressed on a percentage yield basis, and rounded up to the nearest two decimal places, which is:

- (a) the average of the bid and offered swap rate displayed at or about 11am on that day on page FISSWAP (or any successor page) of the Reuters monitor screen for an interest rate swap with a one year term; or
- (b) if a rate is unable to be determined in accordance with paragraph (a), or if the Company forms the view that the rate so determined is not an accurate

reflection of market rates, the average of the mean and bid offered swap rates quoted by three registered banks in New Zealand other than the Company at or about 11am on that day for an interest rate swap with a one year term.

**"Board"** has the meaning in section 127 of the Companies Act 1993.

**"Business Day"** means any day other than a Saturday, Sunday, or a statutory public holiday in New Zealand.

**"Company"** means ASB Bank Limited.

**"Default"** has the meaning in the Trust Deed.

**"Distribution"** has the meaning in section 2(1) of the Companies Act 1993.

**"Dividend"** means any dividend on the Preference Shares payable pursuant to clause 2.

**"Dividend Amount"** in respect of a Dividend Period means a sum in respect of each Preference Share calculated in accordance with the following formula:

$$\text{Issue Price} \times \frac{\text{Dividend Rate}}{4} \times (1-t)$$

where:

Dividend Rate is:

- (a) in respect of each Dividend Period ending on or before the first Reset Date and in respect of Preference Shares issued in December 2004 7.65% per annum; and

- (b) in respect of each Dividend Period ending on or before the first Reset Date and in respect of Preference Shares other than those referred to in (a), the rate specified in the Issue Resolution in respect of those preference shares
- (c) in respect of each subsequent Dividend Period, the Benchmark Rate on the Relevant Reset Date plus the Margin (adjusted to an equivalent quarterly rate);

t is the basic rate of income tax applicable to the Company under Schedule 1 of the Tax Act.

provided that the Dividend Amount in respect of the first Dividend Period shall be an amount calculated in accordance with the following formula:

$$X \times \frac{Y}{91.25}$$

where:

X is an amount calculated in accordance with the first formula set out in this definition.

Y is a number of days determined by the Board, having regard to the date or dates the subscription monies for the Preference Shares are banked by the Company and the first Dividend Payment Date.

**"Dividend Cancellation Notice"** means a notice given by the Board pursuant to clause 3.1.

**"Dividend Payment Date"** means in respect of a Preference Share, the quarterly dates fixed by the Issue Resolution in respect of that Preference Share.

**"Dividend Period"** means each period commencing on and including a Dividend Payment Date and ending on but excluding the next Dividend Payment Date, or, in respect of the first Dividend Period, the

period from and including the Issue Date to but excluding the first Dividend Payment Date falling after the Issue Date.

**"Fully Credited"** means in relation to a Dividend, that Imputation Credits are validly attached to the Dividend, so that the imputation ratio of the Dividend is the maximum imputation ratio permitted by law.

**"Holder"** in respect of a Preference Share means a person whose name is entered in the share register of the Company as the holder of that Preference Share.

**"Imputation Credit"** means an imputation credit as defined in section QB1 of the Tax Act.

**"Issue Date"** in respect of a Preference Share means the date on which that Preference Share is issued.

**"Issue Price"** means \$1 in respect of each Preference Share.

**"Issue Resolution"** in respect of any Preference Shares, means the resolution of the directors resolving to issue those Preference Shares.

**"Margin"** in respect of each Preference Share, means the rate per annum fixed in the Issue Resolution in respect of the Preference Share.

**"Ordinary Shares"** means the ordinary shares from time to time of the Company.

**"Preference Share"** means a 2004 perpetual preference share issued by the Company.

**"Reset Date"** in respect of a Preference Share, means the dates specified in the Issue Resolution in respect of that Preference Share.

**"Relevant Reset Date"** means in respect of a Dividend Period, if that Dividend Period

begins on a Reset Date, that Reset Date, and if that Dividend Period does not begin on a Reset Date, the Reset Date immediately preceding that Dividend Period.

**“Regulatory Authority”** means the Reserve Bank of New Zealand, the Australian Prudential Regulation Authority or any other authority having jurisdiction in respect of banking in Australia and New Zealand.

**“Tax Act”** means the Income Tax Act 1994.

**“Trust Deed”** means a security trust deed dated 24 November 2004 between ASB Holdings Limited, The New Zealand Guardian Trust Company Limited, and ASB Capital No. 2 Limited.

**“2002 Preference Shares”** means the 200,000,000 perpetual preference shares issued by the Company in December 2002.

Whenever in these terms, or in an Issue Resolution, there is a reference to a date, and that date is not a Business Day, the reference shall be deemed to be to the next day which is a Business Day.

## 2. DIVIDEND

**2.1** The Preference Shares carry the right to a Dividend payable in priority to Distributions in respect of Ordinary Shares and equally with Distributions in respect of the 2002 Preference Shares in accordance with clause 2.6, of the amounts referred to in clause 2.2.

**2.2** Unless and until a Default or an APRA Event occurs Dividends in respect of each Dividend Period shall be paid at such rate as the Board determines in respect of that Dividend Period. If a Default or an APRA Event occurs, then in respect of each Dividend Period from and including the Dividend Period in which that Default or an APRA Event occurs, the Dividend shall be equal to the Dividend Amount for that Dividend Period.

**2.3** If a Dividend is paid in respect of any Dividend Period it shall be paid on the Dividend Payment Date on which that Dividend Period ends.

**2.4** All Dividend Amounts shall be Fully Credited. The only consequence of, or remedy for, a Dividend Amount not being Fully Credited shall be the payment by the Company of the amount referred to in clause 2.5.

**2.5** If all or any part of a Dividend Amount is not Fully Credited the Company shall pay to each Holder an amount equal to the shortfall in Imputation Credits of which Holders would otherwise have had the benefit. The amount payable under this clause 2.5:

- (a) is due on the Dividend Payment Date of the Dividend Amount and, to the extent paid, substitutes for or replaces the corresponding obligation of the Company under clause 2.4; and
- (b) shall be regarded as a variation in the rate at which Dividends are calculated.

**2.6** Dividends shall rank for payment:

- (a) in priority to the rights of holders of Ordinary Shares in respect of dividends or other Distributions;
- (b) equally with the rights of holders of 2002 Preference Shares and any other shares that by their terms are expressed to rank equally with those shares, in respect of dividends or other Distributions;
- (c) after the rights of holders of all classes of shares of the Company from time to time other than Ordinary Shares, shares referred to in clause 2.6(b) and Preference Shares in respect of dividends or other Distributions;
- (d) after all rights of creditors of the Company.

### **3. CANCELLATION OF DIVIDENDS**

**3.1** Without limiting section 52(1) of the Act, but subject to clause 3.2, the Board may, by notice sent to Holders not later than five Business Days after the end of a Dividend Period, cancel the payment of Dividends in respect of that Dividend Period and all subsequent Dividend Periods, until such time as the Board determines that Dividends should again be paid.

**3.2** The Board may give a Dividend Cancellation Notice if:

- (a) the Board is not satisfied on reasonable grounds that after payment of a Dividend the Company will satisfy the solvency test; or
- (b) the Board has for any other reason determined in its discretion that a Dividend, or Dividends generally, should not be paid.

**3.3** The Board shall not give a Dividend Cancellation Notice unless the Board simultaneously gives a notice of cancellation of dividends in respect of the 2002 Preference Shares, and if the Board gives a notice of cancellation of dividends in respect of the 2002 Preference Shares, it shall be deemed to have given a corresponding Dividend Cancellation Notice.

**3.4** If a Dividend Cancellation Notice is given any obligation of the Company to pay, and any right of Holders to receive, the Dividends referred to in clause 3.1 shall be cancelled absolutely. The Preference Shares are not cumulative.

**3.5** If a Dividend Cancellation Notice is given then for the period from the date of that Dividend Cancellation Notice until the Company has paid in full Dividends for two consecutive Dividend Periods the Company

shall not make any Distribution, other than Dividends, and dividends in respect of the 2002 Preference Shares.

### **4. CAPITAL**

**4.1** Each Holder shall have the right in a liquidation of the Company to payment of the Issue Price of the Preference Shares held by that Holder and (subject to clause 3) Dividends payable on those Preference Shares at the date of commencement of liquidation calculated on a daily basis from the end of the most recent Dividend Period to the date of commencement of liquidation. That right to payment shall rank:

- (a) in priority to all rights of holders of Ordinary Shares;
- (b) equally with the rights of holders of 2002 Preference Shares and any other shares that by their terms are expressed to rank equally with those shares;
- (c) after all rights of holders of shares of the Company from time to time other than Ordinary Shares, shares referred to in clause 4.1 (b) and Preference Shares;
- (d)

### **5. VOTING**

**5.1** Holders shall have no right to receive notice of, attend, or vote at meetings of shareholders of the Company, other than meetings called under clause 7.

### **6. TRANSFER**

**6.1** The Board may refuse to register a transfer of a Preference Share if the Board is of the opinion that the proposed transferee is not an appropriate person to hold Preference Shares. The Board shall not refuse to register a transfer of the Preference Shares to ASB Capital No. 2 Limited.

## **7. AMENDMENT**

**7.1** Subject to clause 7.2, the rights, privileges, limitations and conditions attaching to the Preference Shares may be amended with the approval of:

- (a) the Board; and
- (b) all holders of Ordinary Shares; and
- (c) all Holders.

**7.2** No amendment of the nature referred to in clause 7.1 shall be made if that amendment would affect the classification of the Preference Shares under the rules of any Regulatory Authority.

### **EXTRACT FROM TEXT OF RESOLUTION OF ASB BANK BOARD**

Pursuant to clause 1.1 of the document headed "ASB Bank Limited - Terms of 2004 Perpetual Preference Shares", the Dividend Payment Dates, Margin and Reset Dates in respect of the Perpetual Preference Shares shall be as follows:

**Dividend Payment Date:** 15 February, 15 May, 15 August and 15 November.

**Margin:** 1.0%.

**Reset Date:** The first dividend reset date is 16 May 2005, and thereafter on each 15 May or if that day is not a Business Day, the next Business Day.

# SECTION 10

## Summary of the Trust Deed

### 10.1 INTRODUCTION

The following is a summary of the principal provisions of the Trust Deed under which ASB Holdings and ASB Capital No. 2 give certain covenants in favour of The New Zealand Guardian Trust Company Limited and for the benefit of holders of Perpetual Preference Shares ("Holders").

*Investors requiring further information should refer to the Trust Deed which is available for inspection at the Companies Office, Business and Registries Branch, Ministry of Economic Development on its website [www.companies.govt.nz](http://www.companies.govt.nz). Where documents are not available on the website, a request for the documents can be made by contacting Searchlink at [info@searchlink.co.nz](mailto:info@searchlink.co.nz). The Trust Deed may also be inspected at the registered office of ASB Capital No. 2 or the Trustee as set out in the Directory, free of charge during business hours.*

*Holders are entitled to the benefit of, are bound by, and are deemed to have notice of, the provisions of the Trust Deed.*

Capitalised terms that are used in this section but are not defined in this Offer Document have the meanings given to those terms in the Trust Deed.

### 10.2 GENERAL

The Trust Deed is dated 24 November 2004 and was entered into between ASB Holdings, ASB Capital No. 2 and the Trustee.

*The Trust Deed creates a security interest over certain assets of ASB Holdings (see under the heading "Security" below).*

*This security interest ranks in priority to a security interest granted by ASB Holdings in favour of ASB Capital No. 2 over the same assets securing payment of the ASB Capital No. 2 Loan.*

### 10.3 PRINCIPAL COVENANTS OF ASB HOLDINGS

#### Dividends

If a Dividend is payable and is not cancelled by the Board, and is not paid to each Holder within five Business Days, ASB Holdings must pay to the Trustee an amount equal to that Dividend in respect of all Perpetual Preference Shares, or so much thereof as is unpaid. However, ASB Holdings has no obligation to make that payment if ASB Bank or Commonwealth Bank has given to ASB Capital No. 2 a notice to the effect that a Dividend, or Dividends generally, should not be paid.

#### Capital

If a Liquidation of ASB Capital No. 2 is commenced and all Holders do not, within one year after commencement of that Liquidation, receive in respect of their Perpetual Preference Shares the Issue Price and all Dividends accrued but unpaid, ASB Holdings must pay to the Trustee that amount or so much thereof as is unpaid. However, ASB Holdings is not required to make any payment unless and until a Liquidation of ASB Bank has also commenced.

#### 10.4 SECURITY

As security for the payment of all amounts that ASB Holdings is or may become liable to pay to the Trustee under the Trust Deed ("Secured Money") and the performance by ASB Holdings of all of ASB Holdings' other obligations to the Trustee, ASB Holdings has granted to the Trustee a security interest ("Security") in the ASB Bank 2004 Perpetual Preference Shares and all Distributions and other present and future rights relating to those shares ("Collateral"). ASB Holdings may not dispose of, or permit the disposal of, or permit any other security interest (other than the ASB Capital No. 2 Security Interest) to attach to, any Collateral.

If the Trustee receives a certificate from ASB Holdings stating that an APRA Event has occurred and that the ASB Bank 2004 Perpetual Preference Shares will, immediately, upon receipt by ASB Holdings of the release of the security interest under the Trust Deed, be transferred to ASB Capital No. 2, the Trustee must execute and deliver to ASB Holdings, a complete release of the Trust Deed.

#### 10.5 LIMITED RECOURSE

The rights of the Trustee and Holders to enforce the obligations of ASB Holdings are limited in the Trust Deed in the following manner:

- (a) neither the Trustee nor any Holder may enforce payment, repayment or recovery of any money against ASB Holdings personally or against any assets or property of ASB Holdings other than the Collateral;
- (b) neither the Trustee nor any Holder may obtain any judgment or seek or attempt to obtain any judgment for payment by ASB Holdings of any money in relation to any breach of the Trust Deed; and

- (c) the Trustee's and each Holder's rights of recovery against ASB Holdings are limited to the Collateral.

Nothing in these provisions prevents the Trustee from exercising its security rights in relation to the Collateral or in seeking declaratory or injunctive relief.

#### 10.6 DISTRIBUTIONS

Until a Default occurs (see under the heading "Default" below), ASB Holdings must apply all Dividends and other Distributions received in respect of the ASB Bank 2004 Perpetual Preference Shares in payment of interest on, or repayment of, the ASB Capital Loan.

After a Default has occurred, all Distributions in respect of the ASB Bank Preference Shares will be applied by the Trustee in or towards payment of the Secured Money.

#### 10.7 INDEMNITIES

The Trustee is not bound to comply with a request or direction of Holders unless the Trustee has first been indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may be rendered liable, and all costs, charges, damages and expenses which it may incur as a result.

#### 10.8 REPORTS FOR TRUSTEE

Within three Business Days after each Dividend Payment Date, ASB Capital No. 2 must deliver to the Trustee a directors' certificate stating whether a Dividend was paid on the Dividend Payment Date or cancelled, whether a Liquidation of ASB Capital No. 2 commenced during the relevant Dividend Period and whether ASB Capital No. 2 has complied with the Terms of the Perpetual Preference Shares during the relevant Dividend Period. ASB Capital No. 2 must also provide the Trustee with copies of any notices or other



communications sent by ASB Capital No. 2 to Holders.

Within 10 Business Days after 30 June and 31 December in each year, ASB Holdings must deliver to the Trustee a Directors' certificate stating whether during the six months prior to that certificate, a Default has occurred and whether ASB Holdings has complied with its obligations under the Trust Deed.

#### **10.9 REMUNERATION**

ASB Holdings will pay the Trustee such remuneration as is, from time to time, agreed between ASB Holdings and the Trustee. ASB Holdings will also pay all expenses of the Trustee in connection with the Trust Deed, and in connection with performance by the Trustee of its obligations and non-performance by ASB Holdings of its obligations, under the Trust Deed.

#### **10.10 NEW TRUSTEE**

The power of appointing a new Trustee or Trustees is vested in ASB Holdings but no new Trustee may be appointed unless the appointment is first approved by a Special Resolution passed at a meeting of Holders called for that purpose.

#### **10.11 DEFAULT**

The Security becomes enforceable if any of the following events occur:

- (a) a liquidation of ASB Capital No. 2 is commenced;
- (b) a liquidation of ASB Bank is commenced;
- (c) a liquidation of ASB Holdings is commenced;
- (d) ASB Holdings fails to comply with any of its obligations under the Trust Deed, and that failure continues for a period of 20 Business Days after

receipt by ASB Holdings of notice from the Trustee specifying the failure and requiring that it be remedied.

#### **10.12 TRUSTEE'S POWERS ON ENFORCEMENT**

After a Default, the Trustee may, and must upon being directed to do so by a Special Resolution (subject to the Trustee's right to call for an indemnity), require payment from ASB Holdings of the sum of the Secured Money due on that date and the aggregate Issue Price and Dividends accrued but unpaid at that date, and may:

- (a) (whether or not a Receiver has been appointed) exercise any of the powers of a Receiver, or which a person would have if appointed as a Receiver under the Trust Deed; and/or
- (b) pay any expenses incurred in the exercise of any of such powers out of the revenue from, or proceeds of realisation of, the Collateral.

#### **10.13 RECEIVER**

If a Default occurs, or if ASB Holdings requests, the Trustee may appoint a Receiver of all or any of the Collateral, and must (subject to the Trustee's right to call for an indemnity) appoint a Receiver upon being directed to do so by a Special Resolution.

#### **10.14 DISTRIBUTION OF PROCEEDS**

All amounts received by the Trustee or any Receiver, whether in the exercise of that person's powers or otherwise will be applied in accordance with the provisions of the PPSA.

All money received by the Trustee will be applied:

- (a) first, in or towards payment to the Holders, *pari passu* in proportion to the amounts owing to them, of

Dividends payable in accordance with Article 4 of the Constitution;

- (b) secondly, in or towards payment to Holders, *pari passu* in proportion to the amounts owing to them, of amounts payable pursuant to Article 4.13 of the Constitution; and
- (c) lastly, subject to any other security interests, in payment to ASB Holdings, or such other person or persons as ASB Holdings, or any court on the application of the Trustee, directs.

If a Liquidation of ASB Capital No. 2 has not commenced, the Trustee may at its entire discretion pay to ASB Capital No. 2 any amount held by the Trustee, if the Trustee is satisfied at its discretion that that amount will be applied by ASB Capital No. 2 in payments to Holders.

#### **10.15 ALTERATIONS TO TRUST DEED AND MEETINGS**

The provisions of the Trust Deed may be added to, or varied, by ASB Holdings and the Trustee:

- (a) without the consent of the Holders, if the addition or variation:
  - (i) is necessary or desirable to correct a manifest error, or to comply with the requirements of any statute or statutory regulations, or the listing rules of any stock exchange;
  - (ii) is of a formal or technical nature;
  - (iii) in the opinion of the Trustee, is not, or is not likely to become, prejudicial to the general interests of the Holders;
  - (iv) in the opinion of the Trustee, is in the interests of the Holders to take cognisance of a modification to the law in New Zealand;

- (v) is necessary or convenient for complying with any generally accepted financial market, banking or business practice and, in the opinion of the Trustee, is appropriate and reasonable in all the circumstances and is not, and is not likely to become, prejudicial to the general interests of the Holders; or

- (b) with the consent of the Holders given by Special Resolution.

#### **10.16 MEETINGS**

Meetings of Holders will be convened and held in accordance with the Constitution. ASB Capital No. 2 must convene a meeting of holders without delay after receiving from the Trustee a request to convene a meeting of Holders, or a request from Holders under Section 121 of the Companies Act. The Trustee has no liability to any Holder or any other person if the Directors, having been requested by the Trustee to convene a meeting of Holders, fail to do so.

# SECTION 11

## Statutory Information

As required by Regulation 3(1) of the Securities Regulations, the following information sets out (but is not limited to) the matters required to be stated by the First Schedule of the Securities Regulations.

### 11.1 MAIN TERMS OF THE OFFER

#### 11.1.1 Issuer of Perpetual Preference

**Shares:** The name of the issuer of the Perpetual Preference Shares is ASB Capital No. 2 Limited. ASB Capital No. 2's registered office is at Level 28, ASB Bank Centre, 135 Albert Street, Auckland.

#### 11.1.2 Brief description of Perpetual

**Preference Shares:** *The Perpetual Preference Shares* are not redeemable in any circumstances. They confer no right to attend or vote at meetings of shareholders, except at a meeting of holders of Perpetual Preference Shares to consider an amendment to the terms of the Perpetual Preference Shares or meetings called at the request of the Trustee for the purposes of the Trust Deed. They carry the right to a preferential dividend but the payment of dividends may be cancelled by the Board. Further details of the terms of the Perpetual Preference Shares are set out under the heading "*Terms of the Perpetual Preference Shares*" in section 8.

#### 11.1.3 Maximum number of Perpetual

**Preference Shares:** The maximum number of Perpetual Preference Shares being offered under this Offer Document is 350 million.

**11.1.4 Issue Price:** The issue price is \$1.00 for each Perpetual Preference Share.

### 11.2 DETAILS OF INCORPORATION OF ISSUER AND PLACE FILE KEPT

ASB Capital No. 2 was incorporated in New Zealand on 18 November 2004 under the Companies Act. ASB Capital No. 2's registered number is 1573605. A public file relating to the incorporation or registration of ASB Capital No. 2 is kept at the Companies Office, Business and Registries Branch, Ministry of Economic Development on its website [www.companies.govt.nz](http://www.companies.govt.nz). Where documents are not available on the website, a request for the documents can be made by contacting Searchlink at [info@searchlink.co.nz](mailto:info@searchlink.co.nz).

### 11.3 PRINCIPAL SUBSIDIARIES OF ISSUER

As at the date of registration of this Offer Document, there are no subsidiaries of ASB Capital No. 2.

### 11.4 DIRECTORATE AND ADVISORS

#### • Names, addresses and qualifications:

The names of the Directors of ASB Capital No. 2 and their technical or professional qualifications (if any) are set in section 4.2.

The Directors of ASB Capital No. 2 can be contacted at ASB Capital No. 2's registered office, the details of which are set out in the Directory.

- **No bankruptcy:** No Director of ASB Capital No. 2 has been adjudged bankrupt during the five years preceding the date of registration of this Offer Document.

- **Advisors:** The names of the auditor and share registrar of ASB Capital No. 2 and the names of the sharebrokers and solicitors who have been involved in preparing this Offer Document are set out in the Directory.

### **11.5 RESTRICTIONS ON DIRECTORS' POWERS**

- **The Constitution:** The Constitution provides that the holder of the ordinary shares in ASB Capital No. 2 can at any time exercise any of the powers of the Board (except that the holder of the ordinary shares cannot invalidate any previous act of the Board).
- **The Companies Act:** The Companies Act contains a number of other provisions which could have the effect or consequence, in certain circumstances, of restricting the powers of the Directors. For example, the Directors must not allow ASB Capital No. 2 to enter into any major transactions (as that term is defined in the Companies Act) without the prior approval by a majority of 75% of the votes of shareholders of ASB Capital No. 2 entitled to vote and voting. These provisions are common for any company registered under the Companies Act.

### **11.6 SUBSTANTIAL EQUITY SECURITY HOLDERS OF ISSUER**

**11.6.1 Names and shares held:** As at the date of registration of this Offer Document, CBA Funding (NZ) Limited is the registered holder of all of the ordinary shares in ASB Capital No. 2. There are no other holders of equity securities of ASB Capital No. 2 at the date of registration of this Offer Document.

### **11.6.2 No shareholder liability:**

CBA Funding (NZ) Limited undertakes no liability in relation to, nor guarantees, the Perpetual Preference Shares.

### **11.7 DESCRIPTION OF ACTIVITIES OF ISSUER**

**11.7.1 Activities:** ASB Capital No. 2 was incorporated on 18 November 2004. ASB Capital No. 2 has not undertaken any activities other than activities in relation to this issue of Perpetual Preference Shares, from the date of its incorporation to the date of registration of this Offer Document.

**11.7.2 Fixed Assets:** ASB Capital No. 2 does not own or lease any fixed assets.

### **11.8 SUMMARY OF FINANCIAL STATEMENTS**

ASB Capital No. 2 has not undertaken any business or activity. No financial statements for ASB Capital No. 2 have been prepared.

### **11.9 PROSPECTS AND FORECASTS**

ASB Capital No. 2 has been incorporated for the purpose of issuing preference shares (including the Perpetual Preference Shares). ASB Capital No. 2 will invest the proceeds of issues of preference shares (including the Perpetual Preference Shares) in loans to ASB Holdings. The Directors anticipate that ASB Capital No. 2 will carry on no business or activity other than issuing preference shares (including the Perpetual Preference Shares), holding loans made to ASB Holdings from the issue of preference shares, receiving interest on, or repayment of, such loans and paying dividends on the preference shares (including the Perpetual Preference Shares). For the principal risks, see section 6.6 headed "*What are my risks*".

### **11.10 PROVISIONS RELATING TO INITIAL FLOTATIONS**

**11.10.1 First offer:** The Offer is ASB Capital No. 2's first offer to the public of equity securities in ASB Capital No. 2.

**11.10.2 Directors' plans:** The Directors anticipate that ASB Capital No. 2 will carry on no business or activity other than issuing preference shares, holding loans to ASB Holdings, receiving interest on, or repayment of, the loan and paying dividends to holders of preference shares (including the Perpetual Preference Shares).

**11.10.3 Use of proceeds:** The Directors intend to lend the proceeds of the Offer to ASB Holdings. The proceeds of the Offer will not be applied towards any other undertaking.

### **11.11 PROSPECTIVE FINANCIAL INFORMATION**

*The prospective statement of cash flows for ASB Capital No. 2 showing the likely receipt and proposed use of the proceeds of the offer of Perpetual Preference Shares, and the principal assumptions on which it is based is set out in section 12.*

### **11.12 MINIMUM AMOUNT**

The minimum amount that, in the opinion of the Directors of ASB Capital No. 2, must be raised by the issue of the Perpetual Preference Shares in order to provide for the matters specified in clause 10(4) of the First Schedule to the Securities Regulations is \$50 million.

### **11.13 ACQUISITION OF BUSINESS OR SUBSIDIARY**

ASB Capital No. 2 has not acquired any business between the date of its incorporation and the date of registration of the Offer Document. As at the date of

registration of this Offer Document, ASB Capital No. 2 does not have any subsidiaries.

### **11.14 SECURITIES PAID UP OTHERWISE THAN IN CASH**

*ASB Capital No. 2 since the date on which it was incorporated, has not allotted any equity or participatory securities as fully or partly paid up otherwise than in cash.*

### **11.15 OPTION TO SUBSCRIBE FOR SECURITIES OF ISSUER**

*There are no options to subscribe for securities of ASB Capital No. 2 that have been granted to, or are proposed to be granted to, anyone by or on behalf of ASB Capital No. 2.*

### **11.16 APPOINTMENT AND RETIREMENT OF DIRECTORS**

**11.16.1 Existing appointments:** Directors may be appointed by the holder of the ordinary shares of ASB Capital No. 2 by written notice to ASB Capital No. 2. Two or more persons may be appointed as directors by a single notice. The existing Directors of ASB Capital No. 2 were appointed on incorporation of ASB Capital No. 2, other than Linley Wood who was appointed as alternate director to Peter Hall and John Duncan on adoption of the Constitution.

**11.16.2 Retirement age:** ASB Capital No. 2 has no rules or policies relating to the retirement age of directors.

### **11.17 DIRECTORS' INTERESTS**

**11.17.1 Remuneration:** Directors are not entitled to remuneration from ASB Capital No. 2 other than by way of directors' fees.

**11.17.2 Retirement:** There are no contracts or other provisions relating to retirement benefits or compensation for loss of office for Directors of ASB Capital No. 2.

### 11.17.3 Material transactions involving

**Directors:** ASB Capital No. 2 has not entered into any "material transactions" (as defined in the Securities Regulations) within the five years preceding the date of the registration of this Offer Document (and is not to enter into any such material transactions after the date of this Offer Document) with any of the persons named in clause 15(4) of the First Schedule to the Securities Regulations.

### 11.18 PROMOTERS INTERESTS

**11.18.1 Name of promoters:** ASB Bank is the promoter of the securities being offered. Because ASB Bank is the promoter, each of the directors of ASB Bank are also promoters. The full names of the directors of ASB Bank are set out below:

Gary James Judd  
Richard Boven  
Graham Hugh Burrett  
Leslie Gordon Cupper  
Stuart Ian Grimshaw  
Jonathan Peter Hartley  
Garry Lynton Mackrell  
James Michael Robert Syme

The directors of ASB Bank can be contacted at ASB Bank's registered office, the details of which are set out in the Directory.

### 11.18.2 Material transactions involving

**promoters:** No material transaction (as defined in the Securities Regulations) has been or is to be entered into between ASB Capital No. 2 and any of the persons named in clause 16(2) of the First Schedule to the Securities Regulations. However, ASB Capital No. 2 is to lend all of the proceeds of issue of the Perpetual Preference Shares to ASB Holdings, which is a related company of ASB Bank.

### 11.19 MATERIAL CONTRACTS

ASB Capital No. 2 has entered into:

- a Security Trust Deed dated 24 November 2004 between ASB Capital No. 2, ASB Holdings and the Trustee, which is described under the heading "*Summary of the Trust Deed*" in section 10;
- a Loan Agreement dated 24 November 2004, with ASB Holdings under which ASB Capital No. 2 has agreed to lend the proceeds of the issue of the Perpetual Preference Shares to ASB Holdings;
- a security agreement dated 24 November 2004, with ASB Holdings which grants security over the ASB Bank 2004 Perpetual Preference Shares to secure amounts payable under the Loan Agreement.

### 11.20 PENDING PROCEEDINGS

There are no legal proceedings or arbitrations pending at the date of registration of this Offer Document that may have a material adverse effect on ASB Capital No. 2.

### 11.21 PRELIMINARY AND ISSUE EXPENSES

**11.21.1 Issue expenses:** Issue expenses associated with the Offer comprising accounting and auditing fees, legal fees, listing fees, registry expenses, ratings agency fees, advertising, printing and distribution of this Offer Document and brokerage fees, are estimated to be \$5,652,648 and will be paid by ASB Bank and ASB Holdings.

**11.21.2 Brokerage fee:** NZX Primary Market Participants and approved financial intermediaries will receive a brokerage fee of 1.00% of the Issue Price in respect of Perpetual Preference Shares allotted pursuant to applications submitted by investors (other than Institutional Investors) bearing their stamp.

NZX Primary Market Participants and approved financial intermediaries will receive a brokerage fee of 0.50% of the Issue Price in respect of Perpetual Preference Shares allotted pursuant to applications bearing their stamp submitted by Institutional Investors (other than Institutional Investors that have given their consent to the Lead Manager to be included on a distribution exclusion list).

A firm allocation fee of 0.50% of the Issue Price will be payable to NZX Primary Market Participants, and approved financial intermediaries in respect of Perpetual Preference Shares allotted pursuant to applications submitted by investors under firm allocations (other than Institutional Investors that have given their consent to the lead Manager to be included on a distribution exclusion list).

**11.21.3 Preliminary expenses:** There are no preliminary expenses of ASB Capital No. 2, because all such expenses will be paid by ASB Bank and ASB Holdings.

## **11.22 RESTRICTIONS ON ISSUER**

The terms of the *Perpetual Preference Shares* provide that if dividends on the Perpetual Preference Shares are cancelled, ASB Capital No. 2 shall not make any Distribution to shareholders (other than dividends on the Perpetual Preference Shares) until ASB Capital No. 2 has paid in full two instalments of dividends on the Perpetual Preference Shares.

The Constitution provides that the only business or activity which ASB Capital No. 2 may carry on is to:

- (a) issue and maintain in existence preference shares;
- (b) advance the proceeds of preference shares to ASB Holdings, or a related company of that company; and

- (c) do all other things reasonably incidental to the activities referred to in paragraphs (a) and (b).

ASB Capital No. 2 has no power to:

- (d) carry on any other business or activity; or
- (e) apply amounts received by way of interest on, or repayment of, the loan referred to in paragraph (b) for any purpose other than in payments to the holders of the Perpetual Preference Shares.

For the purposes of paragraph (e), the directors of ASB Capital No. 2 may determine that amounts received in respect of a particular loan are to be applied in payment to the holders of a particular tranche of preference shares.

## **11.23 CLAUSES 23-38 OF FIRST SCHEDULE OF SECURITIES REGULATIONS**

As at the date of registration of this Offer Document, ASB Capital No. 2 has not commenced business, acquired an asset or incurred a debt.

## **11.24 PLACES OF INSPECTION OF DOCUMENTS**

The Constitution and the material contracts referred to in section 11.19, may be inspected at the Companies Office, Business and Registries Branch, Ministry of Economic Development for a fee on its website [www.companies.govt.nz](http://www.companies.govt.nz). Where documents are not available on the website, a request for the documents can be made by contacting Searchlink at [info@searchlink.co.nz](mailto:info@searchlink.co.nz). The documents may also be inspected at the offices of ASB Capital No. 2, Level 28, ASB Bank Centre, 135 Albert Street, Auckland, for free, during normal business hours.

### **11.25 OTHER MATERIAL MATTERS**

Other than the matters set out elsewhere in this Offer Document and below, and in contracts entered into in the ordinary course of business of ASB Capital No. 2, there are no material matters relating to this Offer of Perpetual Preference Shares.

NZX has ruled that the Perpetual Preference Shares are not Equity Securities as defined in, and for the purposes of, the Listing Rules. The effect of this ruling is that ASB Capital No. 2 is not required to comply, in respect of the Perpetual Preference Shares, with the provisions in the Listing Rules (including those set out in Appendix 5 of the Listing Rules) applying to Equity Securities.

### **11.26 AUDITOR'S REPORT**

A copy of the auditor's report and statement of findings required by clause 42 of the First Schedule of the Securities Regulations is set out in section 13 of this Offer Document. Ernst & Young has given and has not withdrawn its consent to be named in this Offer Document as auditor of ASB Capital No. 2 and to the issue of the Offer Document, with its audit report included in the form and context in which it appears. Ernst & Young takes no responsibility for, nor has it authorised the issue of, any part of this Offer Document, except for the auditor's report. While Ernst & Young is a professional advisor to ASB Capital No. 2, neither Ernst & Young nor any officer or employee of Ernst & Young is intended to be a director, officer, or employee of ASB Capital No. 2.



# SECTION 12

## Prospective Financial Information

### 12.1 INTRODUCTION AND BASIS OF PREPARATION

Set out below is certain prospective financial information for the year ending 24 November 2005. There is no present intention to update this prospective financial information or to publish prospective financial information in the future.

This prospective financial information constitutes a forecast as defined by the New Zealand Financial Reporting Standard 29, "Prospective Financial Information". As a forecast, the prospective financial information has been prepared on the basis of assumptions as to future events that the Directors reasonably expect to occur associated with the actions reasonably expected to take place as at the date that the information is prepared. The prospective financial information will vary from actual results.

The prospective financial information is forward looking and should be read in conjunction with the assumptions and sensitivities set out below and other information set out in this Offer Document. Because such statements involve risk and uncertainties, actual events may differ materially from those expressed or implied by such forward-looking statements. Factors that could cause such differences include, but are not limited to, those discussed under the heading "What are my risks?" in section 6.6.

The forecast financial information has been prepared on the basis of numerous assumptions, including those particular assumptions set out below. This presentation is intended to assist potential investors in assessing the validity of the assumptions on which the forecast financial information is based and the likelihood of the assumptions actually occurring. It is not intended to be a forecast that the assumptions will in fact occur and potential investors should be aware that events or outcomes which differ in size or timing from those assumed may occur and may have a positive or negative effect on the prospective financial information. In assessing the reliability of the forecast financial information potential investors should have regard to all of the information in this Offer Document, including information set out under the heading "What are my risks?" in section 6.6.

Inclusion of the prospective financial information set out below is a statement of the present belief of the Directors and management of ASB Bank as to the forecast financial information for the year ending 24 November 2005 and is not a representation by ASB Capital No. 2, the Directors, management of ASB Bank or any other person that the results set out below will be achieved.

ASB Capital No. 2 expects to adopt accounting policies consistent with those of the ASB Group of companies.

## 12.2 FORECAST STATEMENT OF CASH FLOWS

For the year ending 24 November 2005

\$ thousands

### Cash Flows From Operating Activities

Cash will be provided from:

Interest Received	17,563
-------------------	--------

Cash will be applied to:

Taxation Paid	(5,545)
---------------	---------

Net Cash Flows from Operating Activities	12,018
--	--------

### Cash Flows From Investing Activities

Cash will be applied to:

Loan to ASB Holdings	(250,000)
----------------------	-----------

Net Cash Flows from Investing Activities	(250,000)
--	-----------

### Cash Flows From Financing Activities

Cash will be provided from:

Contributions from Shareholders	250,001
---------------------------------	---------

Cash will be applied to:

Dividends Paid	(11,767)
----------------	----------

Net Cash Flows from Financing Activities	238,234
--	---------

### Summary of Movements in Cash Flows

Net increase in cash and cash equivalents	252
---	-----

Cash and Cash Equivalents at End of Year	252
--	-----

- the ultimate parent company of each of ASB Capital No. 2, ASB Bank and ASB Holdings will continue to be Commonwealth Bank of Australia.

## 12.4 PRINCIPAL ASSUMPTIONS

The principal assumptions underlying the above statement of cash flows are:

- a prospectus registration date of 24 November 2004;
- an issue of \$250 million of Perpetual Preference Shares allotted on 22 December 2004;
- a gross quarterly equivalent Dividend Rate of 7.80% (5.23% net of imputation credits) paid quarterly in arrears;
- a loan to ASB Holdings of \$250 million with a 7.80% gross interest rate;
- all issue costs are paid by ASB Bank or ASB Holdings.

## 12.3 GENERAL ASSUMPTIONS

The prospective financial information is based on events and conditions as at the date of this Offer Document and assumes that:

- there will be no material change in the general economic or fiscal environment in New Zealand;

# SECTION 13

## Auditor's Report



41 Shortland Street,  
P.O. Box 2146  
Auckland  
New Zealand

Telephone: 09 377 4790  
International: +64 9 377 4790  
Fax: 09 309 8137  
International: +64 9 309 8137  
DX CP24092

24 November 2004

Board of Directors  
ASB Capital No. 2 Limited  
PO Box 35  
AUCKLAND

Dear Directors

This report is issued in respect of the public offer by ASB Capital No. 2 Limited ("the Company") of up to 350 million perpetual preference shares in the Company, in terms of the Investment Statement and Prospectus to be dated 24 November 2004.

### **Directors' Responsibilities**

The directors are responsible for the preparation and presentation of the forecasts of the Company for the period ending 24 November 2005, including the assumptions on which the forecasts are based, as required by clause 10 of the First Schedule to the Securities Regulations 1983 ("the First Schedule").

### **Auditor's Responsibilities**

We are responsible for reporting, in accordance with clause 42(2) of the First Schedule, on the forecasts for the period ending 24 November 2005.

This report has been prepared for inclusion in the Investment Statement and Prospectus for the purpose of meeting the requirements of clause 42 of the First Schedule. We disclaim any assumption of responsibility for reliance on the forecasts for any other purpose other than that for which they were prepared. In addition, we take no responsibility for, nor do we report on, any part of the Investment Statement and Prospectus not mentioned in this report.

Other than in our capacity as auditor we have no relationship with, or interest in, the Company.

### **Basis of Opinion**

We have examined the forecast to confirm that, so far as the accounting policies and calculations are concerned, they have been properly compiled on the footing of the assumptions made or

adopted by the directors of the Company and are presented on a basis consistent with the accounting policies normally adopted by ASB Bank Limited. The assumptions relate to future events. However, we are not in a position to, and do not express an opinion on, these assumptions on a stand-alone basis.

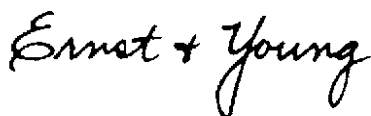
#### **Unqualified Opinion**

In our opinion the forecasts on page 57, so far as the accounting policies and calculations are concerned, have been properly compiled on the footing of the assumptions made or adopted by the directors of the Company set out on page 57 and are presented on a basis consistent with the accounting policies adopted by ASB Bank Limited.

Actual results are likely to be different from the forecast financial information since anticipated events frequently do not occur as expected and the variation could be material. Accordingly, we express no opinion as to whether the financial forecasts will be achieved.

We completed our work for the purposes of this report on 24 November 2004 and our unqualified opinion is expressed as at that date.

Yours faithfully

A handwritten signature in black ink that reads "Ernst & Young". The script is cursive and fluid, with the ampersand being a simple cross.

**ERNST & YOUNG**

Auckland, New Zealand

# SECTION 14

## Glossary

In this Offer Document, unless the context otherwise requires:

**"Application Form"** means the application form attached to this Offer Document;

**"APRA"** means the Australian Prudential Regulation Authority;

**"APRA Event"** means the occurrence in respect of Commonwealth Bank of one or more of the events described in paragraph 4 of a document published by APRA entitled "Guidance Note - AGN 111.3 - Criteria for Capital Issues Involving Use of Special Purpose Vehicles" dated July 2003, as that document may be amended, novated, supplemented or replaced from time to time. (For more details on those events, see section 5.3);

**"ASB Bank"** or the **"Bank"** means ASB Bank Limited;

**"ASB Bank 2004 Perpetual Preference Shares"** means the perpetual preference shares to be issued by ASB Bank to ASB Holdings in connection with the issue by ASB Capital No. 2;

**"ASB Bank 2002 Perpetual Preference Shares"** means the perpetual preference shares issued by ASB Bank on 10 December 2002 in connection with the issue by ASB Capital No. 1 of the 2002 Perpetual Preference Shares;

**"ASB Capital No. 1"** means ASB Capital Limited;

**"ASB Capital No. 2"** means ASB Capital No. 2 Limited;

**"ASB Holdings"** means ASB Holdings Limited;

**"Benchmark Rate"** on any day means the rate per annum expressed on a percentage yield basis, and rounded up to the nearest two decimal places, which is:

- (a) the average of the bid and offered swap rate displayed at or about 11 am on that day on page FISSWAP (or any successor page) of the Reuters monitor screen for an interest rate swap with a one year term; or
- (b) if a rate is unable to be determined in accordance with paragraph (a), or if ASB Capital No. 2 forms the view that the rate so determined is not an accurate reflection of market rates, the average of the mean and bid offered swap rates quoted by three registered banks in New Zealand other than ASB Bank at or about 11am on that day for an interest rate swap with a one year term;

**"Board"** means the board of directors of ASB Capital No. 2;

**"Business Day"** means any day other than a Saturday, Sunday or a statutory public holiday in New Zealand;

**"Closing Time"** means 5.00 pm on 21 December 2004, or such other time and date as ASB Capital No. 2 may select;

**"Commonwealth Bank"** means Commonwealth Bank of Australia;

**"Commonwealth Bank Subsidiary"** means CBA Funding (NZ) Limited or any other wholly owned subsidiary of Commonwealth Bank (which is not ASB Bank or a subsidiary of ASB Bank) to which CBA Funding (NZ) Limited assigns its right to buy the Perpetual Preference Shares;

**"Companies Act"** means the Companies Act 1993;

**"Constitution"** means the current constitution of ASB Capital No. 2;

**"Directors"** means the directors of ASB Capital No. 2;

**"Directory"** means the directory on page 69;

**"Distribution"** has the meaning set out in the Companies Act;

**"Dividend Rate"** means the rate referred to under the heading *"Dividend Rate"* in section 3.6;

**"Dividend Reset Date"** means 16 May 2005 and each subsequent 15 May, or if any such day is not a Business Day, the next Business Day;

**"Institutional Investor"** means a professional New Zealand based fund manager who manages money on behalf of third parties and is approved by ASB Capital No. 2 in its discretion;

**"Issue Price"** means \$1.00 per Perpetual Preference Share;

**"Listing Rules"** means the listing rules of NZX;

**"Loan Agreement"** means the loan agreement under which ASB Capital No. 2 lends the proceeds of the issue of the Perpetual Preference Shares to ASB Holdings;

**"NZX"** means New Zealand Exchange Limited;

**"NZX Primary Market Participant"** means an entity designated as such by NZX under NZX Participant Rules.

**"NZSX"** means the main equities market of NZX;

**"Offer"** means the offer of the Perpetual Preference Shares;

**"Offer Document"** means this combined Investment Statement and Prospectus;

**"Opening Date"** means 29 November 2004;

**"Perpetual Preference Shares"** means preference shares of ASB Capital No. 2 which are offered under this Offer Document;

**"Record Date"** means a date which is 10 days prior to the relevant dividend payment date, or if this day is not a Business Day, the next Business Day;

**"Registrar"** means Computershare Investor Services Limited or any other person appointed as registrar by ASB Capital No. 2 from time to time;

**"Regulatory Authority"** means the Reserve Bank of New Zealand, APRA or any other authority having jurisdiction in respect of banking in Australia or New Zealand;

**"Securities Act"** means the Securities Act 1978;

**"Securities Regulations"** means the Securities Regulations 1983;

**"Trust Deed"** means the trust deed dated 24 November 2004 between ASB Holdings, ASB Capital No. 2, and the Trustee;

**"Trustee"** means The New Zealand Guardian Trust Company Limited; and

**"2002 Perpetual Preference Shares"** means the 200 million perpetual preference shares issued by ASB Capital No. 1 on 10 December 2002.

# APPLICATION INSTRUCTIONS

## 1 APPLICATION INSTRUCTIONS

You should read this Offer Document carefully before completing the *Application Form*.

### 1.1 General: Applications for

ASB Capital No. 2 Perpetual Preference Shares under the Offer must be made on the Application Form contained in this Offer Document and must be made in accordance with the terms set out below.

### 1.2 Opening Date and Closing Time:

Applications for Perpetual Preference Shares may be lodged from the Opening Date. The Offer will remain open until 5.00 pm on 21 December 2004 or such other Closing Time as ASB Capital No. 2 may determine.

**1.3 Irrevocable Offer:** An application will constitute an irrevocable offer by the applicant to subscribe for and acquire the number of Perpetual Preference Shares specified on the Application Form (or such lesser number as ASB Capital No. 2 may determine) on the terms and conditions set out in this Offer Document and on the Application Form.

**1.4 Application Money:** Application amounts will be banked on receipt into a trust account. Other than where otherwise required by law, interest earned on the account will be paid to ASB Capital No. 2. If application money is paid by a cheque that does not clear, an application may be rejected or an allocation made in respect of that application may be cancelled. Applicants should ensure clearance will occur. Perpetual Preference Shares which are allotted will, nevertheless, accrue dividends from the date subscription monies are banked rather than the date of allotment.

**1.5 Refunds:** Money received in respect of applications that are declined in whole or in part will be refunded in whole or in part (as

the case may be). Refunds will be posted to unsuccessful applicants within five Business Days after allotment of Perpetual Preference Shares. Interest will not be paid on any application money refunded to applicants.

### 1.6 Liability of ASB Capital No. 2:

ASB Capital No. 2, and its directors, officers, employees or advisors will not accept any liability or responsibility if any person attempts to sell or otherwise deal with Perpetual Preference Shares before the statement showing the number of Perpetual Preference Shares allocated to the applicant is received by the applicant for those Perpetual Preference Shares.

### 1.7 Incomplete Applications:

If an Application Form is not completed correctly or if the accompanying payment is for the wrong amount, it may still be treated as valid. ASB Capital No. 2's decision as to whether to treat an application as valid, and how to construe, amend or complete it, shall be final. Applicants will not, however, be treated as having applied to purchase more Perpetual Preference Shares than the number indicated on the Application Form, or more Perpetual Preference Shares than those for which payment has been made.

**1.8 Right to Refuse:** ASB Capital No. 2 reserves the right to refuse any application in whole or in part, without giving any reason.

**1.9 Personal Information Rights:** Personal information provided by you will be held by ASB Capital No. 2, the Registrar or the Trustee at their respective addresses shown in the Directory on page 69 or at such other place as is notified upon your request. This information will be used for the purpose of managing your investment and contacting you in relation to this investment and any other future investment opportunities. Under the Privacy Act 1993, you have the

right to access and correct any personal information held about you. Sending your personal information indicates your acceptance of these Privacy Act provisions.

## 2 COMPLETING THE APPLICATION FORM

Please complete all relevant sections of the Application Form using CAPITAL BLOCK LETTERS.

**2.1** Enter your **FULL NAME**. Up to three applicants may apply jointly. Refer to the table on this page to ensure your details are entered correctly.

**2.2** Enter your **POSTAL ADDRESS** for all correspondence. All communications to you including statements of shareholding, dividends, periodic reports, correspondence etc will be mailed to the person(s) at the address as shown. For joint applicants, only one address is to be entered.

**2.3** Please let us know your **TELEPHONE NUMBER(S)** and contact name in case we need to contact you in relation to your application. It is optional to provide your e-mail address.

## 2.4 Insert the **DOLLAR VALUE OF THE PERPETUAL PREFERENCE SHARES**

you wish to apply for. The application must be for a minimum of 5,000 Perpetual Preference Shares (\$5,000), and thereafter in multiples of 1,000 Perpetual Preference Shares (\$1,000).

## 2.5 Please enter your **IRD NUMBER**.

For joint applicants, please fill in the IRD number of the first named applicant. Note that your application may be rejected if your IRD number is not entered. Indicate by ticking the appropriate box whether or not you hold a Resident Withholding Tax Exemption Certificate. (If you hold a certificate, ASB Capital No. 2 will not be obliged to deduct Resident Withholding Tax on dividends, provided it has seen the relevant certificate.) A copy of the certificate must be attached to the Application Form.

**2.6** If applicable, please enter your **COMMON SHAREHOLDER NUMBER (CSN) and COMPUTERSHARE INVESTOR SERVICES SHAREHOLDER NUMBER** in the respective boxes provided.

Type of Investor	Incorrect Way to Write Name	Correct Way to Write Name
Individual person	JJ SMITH	JOHN JAMES SMITH
More than one person	J & M SMITH	JOHN SMITH MARY SMITH
Company	ABC	ABC LTD
Trusts	SMITH FAMILY TRUST	JOHN SMITH PETER SMITH <SMITH FAMILY TRUST ACCOUNT>
Partnership	JOHN SMITH & SONS	JOHN SMITH JAMES SMITH <JOHN SMITH & SONS PARTNERSHIP ACCOUNT>
Clubs and unincorporated associations	SMITH INVESTMENT CLUB	JAMES SMITH <SMITH INVESTMENT CLUB ACCOUNT>



**2.7** If you receive interest or dividend payments from Computershare Investor Services Limited by direct credit and wish the dividend payments from the Perpetual Preference Shares to be direct credited to the same account, your dividends will be direct credited to this account and you DO NOT need to complete this section. If not, please complete the details required under either Option 1 to credit your **DIVIDENDS** directly to an account with your bank or Option 2 to receive your **DIVIDENDS** by cheque to your postal address.

**2.8** Read the declaration carefully and **SIGN AND DATE** the Application Form. It must be signed by all applicants personally. Companies or other bodies corporate must sign the same way as they would sign a formal deed or other formal legal document. Applications may, in either case, be executed by an attorney. If your Application Form is signed by an attorney, the power of attorney document is not required to be lodged, but the attorney must complete the non-revocation certificate on the reverse of the Application Form. Joint applicants must all sign the Application Form.

### **3. PAYMENT**

**3.1** Payment must accompany each Application Form. Payment must be made by cheque drawn on a New Zealand bank, for New Zealand dollars, for immediate value. Post-dated cheques will not be accepted. Please ensure that the total of the cheque equals the amount payable. Make the cheque payable to "ASB Capital No. 2 Offer" and cross it "Not Transferable".

**3.2** Sufficient cleared funds should be held in your account for the cheque to be paid, as cheques returned unpaid are likely to result in your application being rejected or your allotment being cancelled. Staple your cheque to the

Application Form. Institutional investors must pay in immediately cleared funds.

### **4. DIVIDEND PAYMENTS**

**4.1** Dividends will accrue from the date your application is processed by Computershare Investor Services Limited. The first dividend payment will be on 15 February 2005. Dividends are payable quarterly on each 15 February, 15 May, 15 August and 15 December or if any such day is not a Business Day, the next Business Day.

### **5. CLOSING TIME**

**5.1 Applications must be received by no later than 5.00 pm New Zealand time on 21 December 2004 unless this date is varied by ASB Capital No. 2.**

### **6. LODGING OF APPLICATIONS**

**6.1** Applications cannot be revoked or withdrawn. Application Forms must be mailed or delivered with payment to arrive before 5.00 pm on 21 December to:

**ASB Capital No. 2 Limited Offer  
C/- ASB Securities Limited  
Level 13, ASB Bank Centre  
135 Albert Street  
PO Box 35  
AUCKLAND  
Or**

if you received a firm allocation from an NZX Primary Market Participant, please send your Application Form to that NZX Primary Market Participant. The Application Form must be delivered to that NZX Primary Market Participant in time to enable it to be forwarded to the Registrar before the Closing Time.

**6.2** Please lodge your Application Form AS SOON AS POSSIBLE. There may not be any public pool and any applications received directly by the Registrar will be forwarded to the Organising Participant to process at its discretion.

# ASB Capital No. 2 Limited Application Form

(ATTACH CHEQUE HERE)

COMPLETING THE APPLICATION FORM - Read the combined Investment Statement and Prospectus and in particular the section "Answers to important questions" carefully before applying for Perpetual Preference Shares and lodging this Application Form.

This Application Form constitutes an Offer to acquire ASB Capital No. 2 Limited Perpetual Preference Shares as described in the combined Investment Statement and Prospectus prepared as at and dated 24 November 2004.

Completed Application Forms, together with payment of the application money payable in respect of the Perpetual Preference Shares applied for, must be received by ASB Capital No. 2 Limited, C/- ASB Securities Ltd, PO Box 35, Auckland by the Closing Time or if you have received a firm allocation from an NZX Primary Market Participant, this should be returned to that NZX Primary Market Participant in time for it to be forwarded to the Registrar before 5.00 pm on Tuesday, 21 December 2004 (or such other Closing Time as ASB Capital No. 2 Limited may determine).

This Application Form must not be issued, circulated or distributed to any person unless accompanied by the combined Investment Statement and Prospectus.

This Offer is made to New Zealand resident investors only.

Please refer to the instructions on the reverse of this Application Form, and on pages 62 to 64 for information regarding its completion and lodgement.

Broker's Stamp

ASB Securities  
Limited  
**ASBA**  
Auckland

Advisor Code

## INVESTOR DETAILS

Please print in block letters. Please enter name(s) in full (including first names)

TITLE FIRST NAMES  
☐ Mr ☐ Mrs ☐ Miss ☐ Ms

GENDER SURNAME  
☐ M ☐ F

TITLE FIRST NAMES  
☐ Mr ☐ Mrs ☐ Miss ☐ Ms

GENDER SURNAME  
☐ M ☐ F

TITLE FIRST NAMES  
☐ Mr ☐ Mrs ☐ Miss ☐ Ms

GENDER SURNAME  
☐ M ☐ F

CORPORATE NAME

POSTAL ADDRESS (including post code):

TELEPHONE HOME TELEPHONE WORK  
( ) ( )

CONTACT NAME EMAIL (optional)

## AGREEMENT OF TERMS

I/we irrevocably apply for the issue of Perpetual Preference Shares shown above (or such lesser amount as ASB Capital No. 2 may allot and allocate to me/us) on the terms and conditions set out in the combined Investment Statement and Prospectus, Trust Deed and the Application Form. I/we confirm the information I/we have given on this Application Form is true and correct.

SIGNATURE SIGNATURE SIGNATURE

DATE DATE DATE

## PRIVACY ACT

Your personal information will be held by ASB Securities Limited, PO Box 35 Auckland, for the purposes of processing your application and contacting you in relation to this limited public preference share offer, and any other future investment opportunities. Under the Privacy Act 1993, you have rights of access to, and correction of, this information. Sending your personal information to us indicates your acceptance of the Privacy Act provisions detailed above.

## APPLICATION AMOUNT

(Minimum of \$5,000, and thereafter in increments of \$1,000)

PRINCIPAL AMOUNT OF PERPETUAL PREFERENCE SHARES APPLIED FOR:  
\$

(\$1.00 = 1 Perpetual Preference Share.)

Cheques must be payable to "ASB Capital No. 2 Offer" and crossed 'not transferable'. Payment must be made in New Zealand dollars and drawn on a registered New Zealand bank. Cheques must not be post-dated.

## IRD NUMBER

IRD NUMBER

If you hold a current Resident Withholding Tax Exemption Certificate, please tick (✓) this box and attach a copy of the certificate.

## COMMON SHAREHOLDER AND SHAREHOLDER NUMBERS

If you have been issued with a **Common Shareholder Number (CSN)**, please enter that number:

If you already hold shares in a New Zealand company which has Computershare Investor Services Limited as its share registrar, please enter the shareholder number that appears on your **FASTER** statement:

## DIVIDEND PAYMENT DETAILS

If you currently receive interest or dividend payments from Computershare Investor Services Limited by direct credit and wish the dividend payments from the Perpetual Preference Shares to be direct credited to the same account, please tick here and DO NOT complete the section below.

(PLEASE COMPLETE ONLY ONE OPTION)

### OPTION 1 - Direct credit to bank account

New Zealand Bank Account Name:

New Zealand Bank Account Number

Bank Branch Account Number Suffix

### OPTION 2 - Pay by cheque to my postal address as stated above

## TERMS AND CONDITIONS OF APPLICATION

- 1.1 By signing this Application Form the applicant:
- a) offers to subscribe for ASB Capital No. 2 Perpetual Preference Shares on the terms set out in the combined Investment Statement and Prospectus dated 24 November 2004, this Application Form and the application instructions on pages 62 to 64 of this document.
  - b) acknowledges that this form was distributed with the combined Investment Statement and Prospectus; and
  - c) acknowledges that he/she/it has read and understood the combined Investment Statement and Prospectus, and the Privacy Act 1993 statements contained in the section entitled "Application Instructions".
- 1.2 Applicants must pay for the Perpetual Preference Shares applied for in this Application Form by attaching a cheque to the Application Form.
- 1.3 An application cannot be withdrawn or revoked.
- 1.4 ASB Capital No. 2 reserves the right to decline any application, in whole or in part, without giving any reason.
- 1.5 FASTER statements for the Perpetual Preference Shares will be dispatched to successful applicants as soon as practicable after allotment, but in any event no later than six Business Days after allotment.
- 1.6 Applicants must conform with the application instructions in the section of the combined Investment Statement and Prospectus entitled "Application Instructions".
- 1.7 Joint applications must be signed by all applicants. Only the address of the first named of the joint applicants will be recorded on the Perpetual Preference Share register and all notices and communications will be sent to that address.
- 1.8 If the Application Form is signed by an attorney, the non-revocation form below must be completed.
- 1.9 Terms defined in the combined Investment Statement and Prospectus have the same meaning in this Application Form. This Application Form, the Offer and any contract arising out of its acceptance is governed by New Zealand law.
- 1.10 The first dividend payment on Perpetual Preference Shares which are allotted will be calculated as from the date subscription monies are banked by ASB Capital No. 2. That means that the first dividend will be different for different Perpetual Preference Shares. The applicant acknowledges that if Perpetual Preference Shares are allotted to the applicant, the first dividend will be calculated in this way. By signing this application form, for the purposes of section 53 of the Companies Act 1993 the applicant waives the right to receive any dividend calculated in respect of a period before the date the applicant's subscription monies are banked.

## CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

(Only complete if the Application Form is to be signed by an attorney of the applicant)

I,  of   
(Name of Attorney) (Address and Occupation of Attorney)

### hereby certify that:

1. By Power of Attorney dated    
(Date of Power of Attorney and name of person for whom Attorney is signing)

of   
(Address and occupation of person for whom Attorney is signing)

("The Donor") appointed me his/her/its attorney on the terms and conditions set out in that Power of Attorney.

2. I have completed and executed this application for Perpetual Preference Shares as attorney under that Power of Attorney and pursuant to the powers thereby conferred upon me.

3. At the date of this certificate I have not received any notice or information of the revocation of that Power of Attorney, whether by the death or dissolution of the Donor or otherwise.

Signature of Attorney:

Signed at  this  day of  2004



## TERMS AND CONDITIONS OF APPLICATION

- 1.1 By signing this Application Form the applicant:
- a) offers to subscribe for ASB Capital No. 2 Perpetual Preference Shares on the terms set out in the combined Investment Statement and Prospectus dated 24 November 2004, this Application Form and the application instructions on pages 62 to 64 of this document.
  - b) acknowledges that this form was distributed with the combined Investment Statement and Prospectus; and
  - c) acknowledges that he/she/it has read and understood the combined Investment Statement and Prospectus, and the Privacy Act 1993 statements contained in the section entitled "Application Instructions".
- 1.2 Applicants must pay for the Perpetual Preference Shares applied for in this Application Form by attaching a cheque to the Application Form.
- 1.3 An application cannot be withdrawn or revoked.
- 1.4 ASB Capital No. 2 reserves the right to decline any application, in whole or in part, without giving any reason.
- 1.5 FASTER statements for the Perpetual Preference Shares will be dispatched to successful applicants as soon as practicable after allotment, but in any event no later than six Business Days after allotment.
- 1.6 Applicants must conform with the application instructions in the section of the combined Investment Statement and Prospectus entitled "Application Instructions".
- 1.7 Joint applications must be signed by all applicants. Only the address of the first named of the joint applicants will be recorded on the Perpetual Preference Share register and all notices and communications will be sent to that address.
- 1.8 If the Application Form is signed by an attorney, the non-revocation form below must be completed.
- 1.9 Terms defined in the combined Investment Statement and Prospectus have the same meaning in this Application Form. This Application Form, the Offer and any contract arising out of its acceptance is governed by New Zealand law.
- 1.10 The first dividend payment on Perpetual Preference Shares which are allotted will be calculated as from the date subscription monies are banked by ASB Capital No. 2. That means that the first dividend will be different for different Perpetual Preference Shares. The applicant acknowledges that if Perpetual Preference Shares are allotted to the applicant, the first dividend will be calculated in this way. By signing this application form, for the purposes of section 53 of the Companies Act 1993 the applicant waives the right to receive any dividend calculated in respect of a period before the date the applicant's subscription monies are banked.

## CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

(Only complete if the Application Form is to be signed by an attorney of the applicant)

I,  of   
(Name of Attorney) (Address and Occupation of Attorney)

### hereby certify that:

1. By Power of Attorney dated    
(Date of Power of Attorney and name of person for whom Attorney is signing)

of   
(Address and occupation of person for whom Attorney is signing)

("The Donor") appointed me his/her/its attorney on the terms and conditions set out in that Power of Attorney.

2. I have completed and executed this application for Perpetual Preference Shares as attorney under that Power of Attorney and pursuant to the powers thereby conferred upon me.

3. At the date of this certificate I have not received any notice or information of the revocation of that Power of Attorney, whether by the death or dissolution of the Donor or otherwise.

Signature of Attorney:

Signed at  this  day of  2004

# DIRECTORY

## **ISSUER - ASB CAPITAL NO. 2 LIMITED**

*Directors of ASB Capital No. 2 Limited:*

J W Duncan

P S Hall

J A te Wechel

L A Wood (Alternate Director for  
J W Duncan and P S Hall)

Registered office of ASB

Capital No. 2 Limited:

Level 28, ASB Bank Centre

135 Albert Street

Auckland

Trustee:

New Zealand Guardian Trust

Company Limited

Vero Centre

48 Shortland Street

PO Box 1934

Auckland

Auditors:

Ernst & Young

41 Shortland Street

PO Box 2146

Auckland

Arranger:

ASB Bank Limited

ASB Bank Centre

135 Albert Street

PO Box 35

Auckland

Telephone: +64 9 374 8366

Facsimile: +64 9 374 8716

Lead Manager:

ASB Bank Limited

ASB Bank Centre

135 Albert Street

PO Box 35

Auckland

Telephone: +64 9 374 8366

Facsimile: +64 9 374 8716

Organising Participant:

ASB Securities Limited

Level 13, ASB Bank Centre

135 Albert Street

PO Box 35

Auckland

Telephone: 0800 ASB BOND (0800 272 266)

Facsimile: +64 9 374 8123

Share Registrar:

Computershare Investor Services Limited

Level 2, 159 Hurstmere Road

Takapuna

Private Bag 92119

Auckland

Telephone: +64 9 488 8777

Facsimile: +64 9 488 8787

Legal Advisors:

Russell McVeagh

Royal & SunAlliance Centre

48 Shortland Street

PO Box 8

Auckland

## **PROMOTER - ASB BANK LIMITED**

Directors of ASB Bank:

G J Judd

R Boven

G H Burrett

L G Cupper

S I Grimshaw

J P Hartley

G L Mackrell

J M R Syme

Registered office of ASB Bank:


Level 28, ASB Bank Centre


135 Albert Street

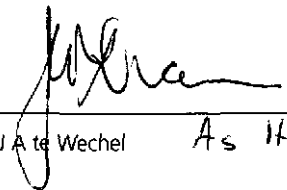
Auckland



**SIGNED BY:****AS DIRECTORS OF  
ASB CAPITAL NO. 2 LIMITED**



(or by their agent authorised in writing)

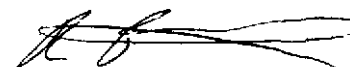
  
 J W Duncan


  
 P S Hall

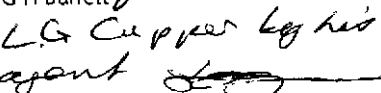
  
 J A te Wechel As His Agent

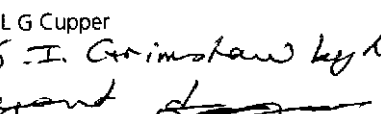
  
 L A Wood (Alternate Director)
**FOR AND ON BEHALF OF  
ASB BANK LIMITED**
  
 Director

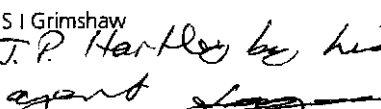
  
 Director
**AS DIRECTORS OF ASB BANK  
LIMITED (OR BY THEIR AGENT  
AUTHORISED IN WRITING)**
  
 G J Judd

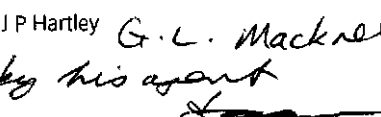
  
 R Boven

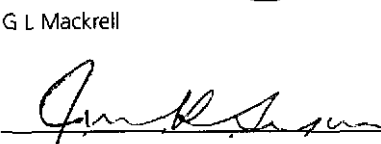
  
 G H Burrett

  
 L G Cupper by his agent

  
 S I Grimshaw by his agent

  
 J P Hartley by his agent

  
 J P Hartley G L Mackrell by his agent

  
 J M R Syme

24 November 2004

Board of Directors  
ASB Capital No. 2 Limited  
PO Box 35  
AUCKLAND

Dear Directors

This report is issued in respect of the public offer by ASB Capital No. 2 Limited ("the Company") of up to 350 million perpetual preference shares in the Company, in terms of the Investment Statement and Prospectus to be dated on 24 November 2004.

***Directors' Responsibilities***

The directors are responsible for the preparation and presentation of the forecasts of the Company for the period ending 24 November 2005, including the assumptions on which the forecasts are based, as required by clause 10 of the First Schedule to the Securities Regulations 1983 (the "First Schedule").

***Auditor's Responsibilities***

We are responsible for reporting, in accordance with clause 42(2) of the First Schedule, on the forecasts for the period ending 24 November 2005.

This report has been prepared for inclusion in the Investment Statement and Prospectus for the purpose of meeting the requirements of clause 42 of the First Schedule. We disclaim any assumption of responsibility for reliance on the forecasts for any other purpose other than that for which they were prepared. In addition, we take no responsibility for, nor do we report on, any part of the Investment Statement and Prospectus not mentioned in this report.

Other than in our capacity as auditor we have no relationship with, or interest in, the Company.

***Basis of Opinion***

We have examined the forecasts to confirm that, so far as the accounting policies and calculations are concerned, they have been properly compiled on the footing of the assumptions made or adopted by the directors of the Company and are presented on a basis consistent with the accounting policies normally adopted by ASB Bank Limited. The assumptions relate to future events. However, we are not in a position to, and do not express an opinion on, these assumptions on a stand-alone basis.



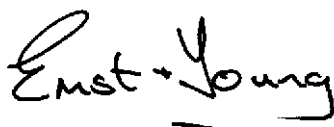
***Unqualified Opinion***

In our opinion the forecasts on page 57, so far as the accounting policies and calculations are concerned, have been properly compiled on the footing of the assumptions made or adopted by the directors of the Company set out on page 57 and are presented on a basis consistent with the accounting policies adopted by ASB Bank Limited.

Actual results are likely to be different from the forecast financial information since anticipated events frequently do not occur as expected and the variation could be material. Accordingly we express no opinion as to whether the financial forecasts will be achieved.

We completed our work for the purposes of this report on 24 November 2004 and our unqualified opinion is expressed as at that date.

Yours faithfully



ERNST & YOUNG  
Auckland, New Zealand

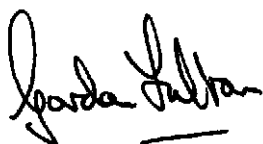
24 November 2004

The Directors  
ASB Capital No. 2 Limited  
PO Box 35  
AUCKLAND

Dear Sirs

We hereby consent to the inclusion of our report dated 24 November 2004 in the prospectus of ASB Capital No. 2 Limited dated 24 November 2004 in the form and the context in which it is included.

Yours faithfully  
ERNST & YOUNG



Gordon A Fulton  
Partner



22 November 2004

Registrar of Companies  
Private Bag  
AUCKLAND

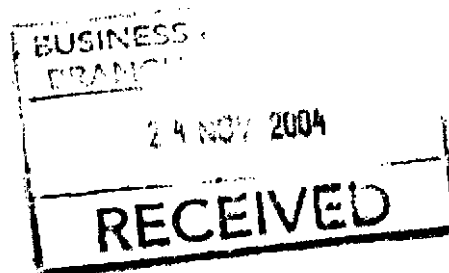
Dear Sir

**ASB Capital No. 2 Limited – Offer of up to \$350 million Perpetual Preference Shares (\$250 million with over subscriptions of up to \$100 million)**

New Zealand Exchange Limited (“NZX”) hereby confirms that in terms of Regulation 23(2) of the Securities Regulations 1983, application has been made to NZX for permission to list the securities the subject of the above prospectus, and all the requirements of NZX relating thereto that can be complied with on or before the date of the prospectus have been duly complied with. However, NZX accepts no responsibility for any statement in this prospectus.

Yours faithfully

  
Rachael Cross  
Solicitor



**NO. OF COMPANY: 1573605**

**APPOINTMENT OF AGENT TO SIGN PROSPECTUS**  
(Pursuant to Section 41(b)(i) of the Securities Act 1978)

**NAME OF COMPANY: ASB Capital No. 2 Limited**

**PRESENTED BY: Russell McVeagh**

I, **John Antonie te Wechel** being a director of ASB Capital No. 2 Limited ("the Company") in its capacity as Issuer of the Prospectus for the offer of Perpetual Preference Shares by ASB Capital No. 2 Limited, authorise **John William Duncan** or **Peter Sidney Hall**, both of Auckland, to sign on my behalf as my agent:

The Investment Statement and Prospectus for ASB Capital No. 2 Limited, which is intended to be dated on or about the 24<sup>th</sup> day of November 2004.

**DATED** 23 NOVEMBER 2004

A handwritten signature in dark ink, appearing to read 'John A te Wechel', written over a horizontal line.

John A te Wechel

**NO. OF COMPANY: 398445**

**APPOINTMENT OF AGENT TO SIGN PROSPECTUS  
(Pursuant to Section 41(b)(ii) of the Securities Act 1978)**

**NAME OF COMPANY: ASB Bank Limited**

**PRESENTED BY: Russell McVeagh**

I, **Leslie Gordon Cupper** being a director of ASB Bank Limited ("the Company") in its capacity as promoter of the Prospectus for the offer of Perpetual Preference Shares by ASB Capital No. 2 Limited, authorise **Gary James Judd** or **Graham Hugh Burrett**, both of Auckland, to sign on my behalf as my agent:

The Investment Statement and Prospectus for ASB Capital No. 2 Limited, which is intended to be dated on or about the 19<sup>th</sup> day of November 2004.

**DATED** 10 November 2004

  
\_\_\_\_\_  
L G Cupper

**NO. OF COMPANY: 398445**

**APPOINTMENT OF AGENT TO SIGN PROSPECTUS**  
**(Pursuant to Section 41(b)(ii) of the Securities Act 1978)**

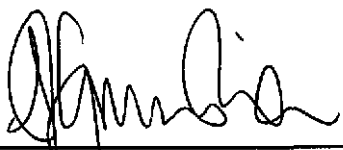
**NAME OF COMPANY: ASB Bank Limited**

**PRESENTED BY: Russell McVeagh**

I, **Stuart Ian Grimshaw** being a director of ASB Bank Limited ("the Company") in its capacity as promoter of the Prospectus for the offer of Perpetual Preference Shares by ASB Capital No. 2 Limited, authorise **Gary James Judd** or **Graham Hugh Burrett**, both of Auckland, to sign on my behalf as my agent:

The Investment Statement and Prospectus for ASB Capital No. 2 Limited, which is intended to be dated on or about the 19<sup>th</sup> day of November 2004.

**DATED** 10 November 2004

---

S I Grimshaw

**NO. OF COMPANY: 398445**

**APPOINTMENT OF AGENT TO SIGN PROSPECTUS**  
(Pursuant to Section 41(b)(ii) of the Securities Act 1978)


**NAME OF COMPANY: ASB Bank Limited**

**PRESENTED BY: Russell McVeagh**

I, **Jonathan Peter Hartley** being a director of ASB Bank Limited ("the Company") in its capacity as promoter of the Prospectus for the offer of Perpetual Preference Shares by ASB Capital No. 2 Limited, authorise **Gary James Judd** or **Graham Hugh Burrett**, both of Auckland, to sign on my behalf as my agent:

The Investment Statement and Prospectus for ASB Capital No. 2 Limited, which is intended to be dated on or about the 19<sup>th</sup> day of November 2004.

**DATED** 5 November 2004



Jonathan Peter Hartley

**NO. OF COMPANY: 398445**

**APPOINTMENT OF AGENT TO SIGN PROSPECTUS  
(Pursuant to Section 41(b)(ii) of the Securities Act 1978)**

**NAME OF COMPANY: ASB Bank Limited**

**PRESENTED BY: Russell McVeagh**

I, **Garry Lynton Mackrell** being a director of ASB Bank Limited ("the Company") in its capacity as promoter of the Prospectus for the offer of Perpetual Preference Shares by ASB Capital No. 2 Limited, authorise **Gary James Judd** or **Graham Hugh Burrett**, both of Auckland, to sign on my behalf as my agent:

The Investment Statement and Prospectus for ASB Capital No. 2 Limited, which is intended to be dated on or about the 19<sup>th</sup> day of November 2004.

**DATED** 10 November 2004

  
G L Mackrell



**ASB HOLDINGS LIMITED**  
**THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED**  
**ASB CAPITAL NO. 2 LIMITED**

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**SECURITY TRUST DEED**

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DEED dated 24 November 2004

## **PARTIES**

**ASB HOLDINGS LIMITED ("the Company")**

**THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED ("Trustee")**

**ASB CAPITAL NO. 2 LIMITED ("ASB Capital")**

## **INTRODUCTION**

- A. ASB Capital has issued certain perpetual preference shares.
- B. The Company wishes to grant certain covenants, and security, in favour of the holders from time to time of the perpetual preference shares referred to in paragraph A.
- C. The Trustee has accepted appointment to act as trustee on behalf of the holders from time to time of those shares.
- D. ASB Capital is party to this deed in order to give certain covenants in favour of the Trustee.

## **COVENANTS**

### **1. INTERPRETATION**

#### **1.1 Definitions:** In this deed unless the context otherwise requires:

**"APRA Event"** means the occurrence in respect of Commonwealth Bank, of one or more events described in paragraph 4 of a document published by the Australian Prudential Regulation Authority entitled "Guidance Note - AGN 111.3 - Criteria for Capital Issues Involving Use of Special Purpose Vehicles" dated July 2003 as that document may be amended, novated, supplemented or replaced from time to time.

**"ASB Bank"** means ASB Bank Limited.

**"ASB Bank Preference Shares"** means perpetual preference shares identified as "ASB Bank 2004 Preference Shares" issued by ASB Bank in December 2004 and thereafter and held by the Company.

**"ASB Capital Loan"** means a loan or loans made or to be made by ASB Capital to the Company, whereby ASB Capital has lent or will lend to the Company the proceeds of issue of the Preference Shares.

**"ASB Capital Security Interest"** means a security interest in the ASB Bank Preference Shares granted by the Company in favour of ASB Capital, to secure the ASB Capital Loan, which ranks after the security interest granted by this deed in favour of the Trustee.

**"Business Day"** means any day other than a Saturday, Sunday, or a statutory public holiday in New Zealand.

**"Commonwealth Bank"** means Commonwealth Bank of Australia Limited.

**"Collateral"** has the meaning in clause 4.1.

**"Constitution"** means the constitution of ASB Capital.

**"Default"** means any event specified in clause 13.1.

**"Date of Enforcement"** means the date on which the security created by this deed is enforced by the Trustee.

**"Distribution"** has the meaning in section 2(1) of the Companies Act 1993.

**"Dividend"** means any dividend on the Preference Shares payable pursuant to Article 4.2 of the Terms.

**"Dividend Payment Date"** has the meaning in the Terms.

**"Dividend Period"** has the meaning in the Terms.

**"Holder"** in respect of a Preference Share means a person whose name is entered in the Register as the holder for the time being of that Preference Share.

**"Liquidation"** means, in relation to a company, either:

- (a) the process of liquidation provided for in Part XVI of the Companies Act 1993; or
- (b) its becoming subject to statutory management under the Corporations (Investigation and Management) Act 1989 or the Reserve Bank of New Zealand Act 1989.

**"PPSA"** means the Personal Property Securities Act 1999.

**"Preference Share"** means a perpetual preference share issued by ASB Capital on the terms recorded in the Terms.

**"Receiver"** means a receiver, or receiver and manager, appointed under this deed.

**"Register"** means the share register of ASB Capital.

**"Registered Address"** in respect of a Holder means the address of that Holder for the time being recorded in the Register.

**"Rights"** has the meaning in clause 4.1.

**"Secured Money"** means all amounts of any nature which the Company is or may at any time become liable (whether actually or contingently) to pay or deliver to the Trustee (whether as trustee for the Holders, on its own account, or otherwise).

**"Special Resolution"** means a special resolution (as defined in section 2 of the Companies Act 1993) of Holders.

**"Terms"** means the rights, privileges, limitations and conditions of the Preference Shares recorded in the Constitution and set out in the appendix to this deed.

**"Transfer"** means, in relation to ASB Bank Preference Shares or Rights, a transfer thereof duly signed by the Company with the name of the transferee, date, and consideration left blank, but otherwise in proper form for registration by ASB Bank.

- 1.2 **Interpretation:** Unless the context otherwise requires or specially otherwise stated, in this deed:

- (a) headings are to be ignored;
- (b) "including" and similar words do not imply any limitation;
- (c) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (d) if a party comprises more than one person, each of those person's liability is joint and several;
- (e) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (f) every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at anytime;
- (g) singular includes plural and vice versa;
- (h) references to a gender covers any gender;
- (i) amounts are in NZ\$;
- (j) New Zealand time and dates apply;
- (k) any word or expression cognate with a definition in this deed has a meaning corresponding or construed to the definition;
- (l) references to sections, clauses, schedules, annexes or other identifiers are to those in this deed;
- (m) references to a document or agreement includes it as varied, novated or replaced;
- (n) each schedule and any other attachment is part of this deed;
- (o) the expressions "**attach**", "**document of title**", "**investment security**", "**proceeds**" and "**security interest**" have, if and where used, the respective meanings given to them under, or in the context of, the PPSA.

## **2. COVENANT - DIVIDENDS**

### **2.1 Unpaid Dividends: If:**

- (a) a Dividend is payable in respect of the Preference Shares pursuant to Article 4.2 of the Terms; and
- (b) payment of that Dividend is not cancelled pursuant to Article 4.7 or Article 4.9 of the Terms; and
- (c) within five Business Days after the Dividend Payment Date on which that Dividend is payable, ASB Capital has not paid to each Holder the amount of that Dividend,

then the Company shall (subject to clause 2.2) pay to the Trustee an amount equal to the amount of that Dividend in respect of all Preference Shares, or so much thereof as is unpaid.

- 2.2 **Limitation:** The Company has no obligation to make payment under clause 2.1 in respect of a Dividend if ASB Bank or Commonwealth Bank has given to ASB Capital a notice of the nature referred to in Article 4.8(c) or Article 4.8(d) of the Terms, except, if the party which gave that notice subsequently gives to ASB Capital a notice of the nature referred to in Article 4.10 of the Terms, in respect of Dividend Periods commencing after that party gives that notice under Article 4.10 of the Terms, and then only unless and until any of ASB Capital, ASB Bank or Commonwealth Bank give a notice under Article 4.7 of the Terms.

### 3. COVENANT - CAPITAL

#### 3.1 **Payment in Liquidation:** If:

- (a) a Liquidation of ASB Capital is commenced; and
- (b) all Holders do not, within one year after commencement of that Liquidation, receive in respect of the Preference Shares the amounts payable in respect of the Preference Shares pursuant to Article 4.13 of the Terms, then (subject to clause 3.2) the Company shall pay to the Trustee that amount or so much thereof as is unpaid.

- 3.2 **Limitations:** Clause 3.1 shall not take effect, and the Company is not required to make any payment under clause 3.1, and neither the Trustee nor any Holder may take any proceedings to enforce clause 3.1, unless and until a Liquidation of ASB Bank has commenced. For the avoidance of doubt, the Trustee may, after commencement of the Liquidation of ASB Bank, enforce the covenant in clause 3.1 in respect of an amount which became payable in the Liquidation of ASB Capital before the commencement of the Liquidation of ASB Bank.

### 4. SECURITY

#### 4.1 **Security interest:** As security for:

- (a) the payment or delivery of the Secured Money; and
- (b) the performance by the Company of all of the Company's other obligations to the Trustee under this deed;

the Company grants to the Trustee a security interest in:

- (c) the ASB Bank Preference Shares;
- (d) all;
  - (i) Distributions; and
  - (ii) other rights, money or investment securities of any nature, ("Rights") attributable to, or arising from, the ASB Bank Preference Shares;
- (e) all proceeds of any ASB Bank Preference Shares or Rights; and
- (f) all documents of title relating to any ASB Bank Preference Shares or Rights,

and all of the Company's present and future rights in relation to the ASB Bank Preference Shares, Rights, proceeds and documents of title ("**Collateral**"). So far as it

concerns each security interest over or in respect of any present or future account receivable and present and future rights in relation to any account receivable, the security interest granted shall take effect as a transfer (as "transfer" is used in the context of and for the purposes of the PPSA).

- 4.2 **No disposal:** The Company shall not dispose of, or permit the disposal of, or permit any other security interest (other than the ASB Capital Security Interest) to attach to, any Collateral.

## 5. LIMITED RECOURSE

- 5.1 **Limitation on recourse:** Notwithstanding anything to the contrary in this deed but subject to clause 5.2, the following provisions apply:

- (a) the Company remains liable in contract to meet the obligations assumed by the Company under this deed but the rights of the Trustee and Holders to enforce those obligations shall be limited in the manner provided in the following paragraphs;
- (b) neither the Trustee nor any Holder shall be entitled to enforce payment, repayment or recovery of any moneys owing to the Trustee or any Holder under this deed against the Company personally or against any assets or property of the Company other than the Collateral;
- (c) neither the Trustee nor any Holder shall, in relation to any obligation of the Company under this deed, obtain any judgment or seek or attempt to obtain any judgment for payment by the Company of any money in relation to any breach of this deed;
- (d) the Trustee's and each Holder's rights of recovery against the Company shall be limited to the Collateral,

provided that nothing in this limited recourse provision prevents the Trustee from:

- (i) exercising the Trustee's rights under this deed insofar as they enable the Trustee to exercise the Trustee's security rights in relation to the Collateral;
- (ii) seeking or obtaining an injunction or restraining order to restrain any breach of this deed or any security, or obtaining any declaratory relief.

- 5.2 **Trustee's remuneration:** Clause 5.1 does not apply to the obligation of the Company to pay to the Trustee or any Receiver amounts described in clause 12.1.

## 6. COVENANTS OF COMPANY

- 6.1 **Covenants:** The Company shall:

- (a) comply with all laws and all governmental requirements and orders so that neither the Collateral nor the security interest under this deed are adversely affected;
- (b) promptly notify the Trustee of any matter adversely affecting a material part of the Collateral, and of any Default;
- (c) promptly deposit with the Trustee:

- (i) documents of title (if any) to the ASB Bank Preference Shares and any Rights;
  - (ii) if required by the Trustee, a Transfer (or such number of separate Transfers as the Trustee may require) in respect of the ASB Bank Preference Shares and any Rights; and
  - (iii) any certificates or documents of title issued by ASB Bank in substitution for, or replacement of, any of the certificates or documents of title referred to in clauses 6.1(c)(i) and (ii);
- (d) do all other things which the Trustee reasonably requires to enable the Trustee to:
- (i) ensure that the Collateral is subject to an effective security interest having first priority (including, but not limited to, providing details of any Collateral, and delivering any Collateral to the Trustee where possession of that Collateral by a third party may have the result that the interest of that third party in that Collateral would take priority over the interest of the Trustee); and/or
  - (ii) assist the Trustee in exercising any of the Trustee's rights or powers under this deed, whether on enforcement of the security interest (including, but not limited to, the sale of any of the Collateral) or otherwise, including, but not limited to, exercising all rights of inspection, requesting all information and taking all necessary copies, which the Company is entitled to exercise, request or take and, for the purposes of section 216 of the Companies Act 1993, the Company hereby authorises the Trustee to inspect those records of ASB Bank which the Company is entitled to inspect by virtue of that Act.
- (e) Whenever requested, provide the Trustee, any Receiver or any other person appointed by the Trustee, within a reasonable time, any oral or written information relating to its business or affairs which the Trustee may reasonably require.

**6.2 Further assurance:** Without limiting in any way any other provisions of this deed, the Company shall deliver to the Trustee any transfer, assignment, security, instrument, or other deed or document, and shall do all other things, which the Trustee requires to enable it to:

- (a) ensure that the Collateral is subject to an effective security interest and/or charge (as applicable) having first priority; and/or
- (b) exercise, or facilitate the exercise of, all or any of the rights, powers and remedies conferred on the Trustee or any Receiver by, or pursuant to, this deed or by law, whether on enforcement of the security interest or charge (including, but not limited to, the sale of any of the Collateral) or otherwise,

and, for the purposes of this clause, a certificate signed by the Trustee to the effect that any particular transfer, assurance or other thing required by it is required shall be conclusive evidence of the fact.

## **7. DISTRIBUTIONS**

**7.1 Before default:** Until a Default occurs the Company shall:

- (a) apply all dividends received by the Company on the ASB Bank Preference Shares in payment of interest on the ASB Capital Loan;



- (b) apply any other Distributions made in respect of the ASB Bank Preference Shares in payment of interest on, or repayment of, the ASB Capital Loan.

7.2 **After default:** After a Default has occurred, all Distributions in respect of the ASB Bank Preference Shares shall be applied by the Trustee in or towards payment of the Secured Money, and if any such Distribution is received by the Company, the Company shall promptly pay or transfer it to the Trustee.

## 8. INDEMNITY

8.1 **Indemnity:** The Company shall indemnify the Trustee and any Receiver:

- (a) for all costs, losses and other liabilities incurred or sustained by the Trustee or the Receiver in relation to this deed and in exercising any right or recovering any Secured Money; and
- (b) against any claim by any person relating to the Collateral, or the exercise by the Trustee or the Receiver of any right or power under this deed.

## 9. ATTORNEY

9.1 **Power of attorney:** The Company irrevocably appoints the Trustee, every officer of the Trustee and every Receiver, individually, to be the Company's attorney ("**Attorney**") with full power to:

- (a) (at the Company's expense) do anything which the Company agrees to do under this deed and anything which, in the Attorney's opinion, is desirable to protect the Trustee's interests under this deed (even if the Attorney has a conflict of duty in doing so, or has a direct or personal interest in the means or result of the exercise of any of the Attorney's powers); and
- (b) delegate the Attorney's powers to any person for any period and to revoke a delegation,

and the Company ratifies anything done by the Attorney or any delegate in accordance with this clause.

## 10. REPORTS FOR TRUSTEE

10.1 **Reporting requirements of ASB Capital:** Within three Business Days after each Dividend Payment Date, ASB Capital shall deliver to the Trustee a certificate, signed by two directors of ASB Capital on behalf of all directors of ASB Capital, stating:

- (i) whether a Dividend was paid on the Dividend Payment Date and, if not, whether the Dividend was cancelled;
- (ii) whether a Liquidation of ASB Capital has commenced during the Dividend Period ending on the Dividend Payment Date;
- (iii) whether ASB Capital has complied with the Terms during the Dividend Period ending on the Dividend Payment Date and, if not, providing details of the non-compliance; and

10.2 **Notices:** ASB Capital shall provide to the Trustee, at the same time as they are sent to Holders, copies of any notices or other communications sent by ASB Capital to Holders.

- 10.3 **Reporting requirements of the Company:** Within 10 Business Days after 30 June and 31 December in each year, the Company shall deliver to the Trustee a certificate, signed by two directors of the Company on behalf of all directors, stating whether during the period commencing on the date of last certificate (or in the case of the first certificate, the date of this deed) and ending on the date as at which the certificate is given:

- (a) a Default has occurred; and
- (b) the Company has complied with its obligations under this deed.

## 11. RIGHTS AND POWERS OF THE TRUSTEE

- 11.1 **Rights:** The Trustee may at any time:

- (a) do all things as the Trustee thinks desirable to remedy any default by the Company or otherwise protect the Collateral or the security interest or charge under this deed;
- (b) notify ASB Bank of the security interest under this agreement;
- (c) after a Default has occurred:
  - (i) cause itself to be registered as the holder of any ASB Bank Preference Shares, or as the person entitled to any Rights, in order to hold those shares or Rights as the secured party under this deed;
  - (ii) complete and present any Transfer to ASB Bank for registration; and
  - (iii) complete in favour of any person (including the Trustee itself) who is purchasing the ASB Bank Preference Shares under the powers given to the Trustee by this agreement or by law, any Transfer or any other document signed by or on behalf of the Company.
- (d) retain and hold all documents of title and Transfers deposited with the Trustee in accordance with this deed until the Trustee delivers to the Company a final release of this deed;
- (e) determine whether or not to enforce this deed or any other security or right;
- (f) make any arrangement or compromise with the Company or any other person which the Trustee thinks fit.

- 11.2 **Powers of investment:** Any moneys held by the Trustee which are subject to the trusts of this deed may, at the discretion of the Trustee, be invested in the name of the Trustee, or its nominee, in any investment whatever, with power to vary such investments for others of a like nature and to deal with, or dispose of, such investments. The income arising from all such investments shall, until the Date of Enforcement, belong to the Company.

- 11.3 **Applications to court:** The Trustee may, on or at any time after the Date of Enforcement, apply to the court for an order that the powers and trusts contained in this deed be exercised under the direction of the court and/or for the appointment of a Receiver of the Collateral and/or for any other order or direction in relation to the execution and administration of the powers and trusts contained in this deed as the Trustee deems expedient and the Trustee may assent to, approve of, or oppose, any application to the court made by, or at the instance of, any Holder and shall be

indemnified by the Company against all costs, charges and expenses incurred by, and in relation to, any such application or proceedings.

**11.4 Waiver:** Subject to any direction or request given pursuant to clauses 14.1 or 15.1 or otherwise given by the Holders, the Trustee may, at any time, by written notice to the Company waive, in whole or in part, for a specified period or indefinitely and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Company of any provision expressed or implied in this deed, provided the Trustee is satisfied that the interests of the Holders will not be materially prejudiced as a result, but such waiver shall not prejudice the rights of the Trustee or the Holders in respect of any other breach. Any waiver by the Trustee in accordance with this clause 11.4 shall be binding on all Holders and the Company shall, if the Trustee considers that the circumstances warrant such notification and so certifies to the Company, notify the Holders as soon as reasonably practicable.

**11.5 Supplemental powers:** In addition to the provisions of the law relating to trustees, and to facilitate the discharge of its duties under this deed the following is expressly declared:

- (a) **Third party advice:** The Trustee may, without liability for loss, obtain and act on, or decline and elect not to act on:
  - (i) the opinion or advice of, or any information obtained from, any barrister, solicitor, valuer, stockbroker, chartered accountant or other expert, whether obtained by the Company or by the Trustee or otherwise, and although that opinion or advice may subsequently be found to contain some error or not be authentic;
  - (ii) a certificate signed by any two directors of the Company on behalf of the directors of the Company as to any fact or matter prima facie within the knowledge of the Company, or certifying that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of the Holders;
  - (iii) the statements contained in any certificate or report given pursuant to this deed as conclusive evidence of the facts stated in that certificate.
- (b) **Holders' resolution:** The Trustee shall not be responsible for acting, or relying, upon any resolution purporting to have been passed at any meeting of the Holders which the Trustee believes to have been properly passed even though it afterwards appears that the resolution is not binding or valid by reason of a defect in the convening of that meeting, or its proceedings, or for any other reason.
- (c) **Subscribers' money:** The Trustee is not responsible for the moneys subscribed by the applicants for, or by subscribers of, the Preference Shares, and is not bound to see to the application of any of those moneys.
- (d) **Defects in title:** The Trustee shall not be bound or concerned to examine or enquire into, or be liable for any defect or failure in, the title of the Company to any Collateral, whether such defect or failure might have been discovered upon an examination or enquiry and remedied or not.
- (e) **Breach:** Notwithstanding any other provision of this deed, the Trustee shall exercise reasonable diligence to ascertain whether or not the Company has committed any breach of this deed.

- (f) **Knowledge of default:** The Trustee may assume that the Company is performing its obligations and will not be deemed to have knowledge of the occurrence of any breach of this deed unless any of its officers actually becomes aware that such a breach has occurred or the Trustee has received written notice from a Holder or the Company stating that such a breach has occurred and describing that breach.
- (g) **Discretion:** Except as otherwise expressly provided in this deed, the Trustee:
  - (i) shall have absolute discretion as to the exercise of all trusts, powers, authorities and discretions vested in it by this deed and as to the conduct of any action, proceeding or claim and, provided it has acted with reasonable care and diligence, it shall not be responsible for any loss or cost that may result from the exercise or non-exercise of a trust, power, authority and/or discretion;
  - (ii) may refrain from exercising any discretion, power or authority vested in it by this deed until it has a direction to act from the Holders given by Special Resolution and the Trustee shall not be responsible for any loss or cost that may result from doing so.
- (h) **Determinations conclusive:** As between itself and the Holders, the Trustee may determine all questions and doubts arising in relation to any provision of this deed and every such determination, whether made on a question actually raised, or implied in the acts or proceedings of the Trustee, shall be conclusive and shall bind the Trustee and the Holders.
- (i) **Delegation:** The Trustee, whenever it thinks it expedient in the interests of the Holders to do so, may:
  - (i) delegate, at any time, to any person, any of the trusts, powers, authorities or discretions vested in the Trustee by this deed which cannot conveniently be exercised by it or through its employees, upon such terms and conditions and under such regulations (including power to sub-delegate) as the Trustee thinks fit, and the Trustee shall not be responsible for any loss incurred by any misconduct or default on the part of any such delegate or sub-delegate;
  - (ii) authorise such person as it thinks fit to act as its representative at any meeting; or
  - (iii) in addition to the exercise of the powers contained in clause 11.3, apply to the court for directions in relation to any question arising either before or after the Date of Enforcement.
- (j) **Interests of foreign Holders:** In the exercise of any trust, duty, power, authority or discretion under this deed, the Trustee shall have regard to the interests of the Holders as a whole and shall not have regard to the consequences of such exercise for individual Holders as a result of the Holder being, for any purpose, domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular country or place other than New Zealand.

**11.6 Represent Holders:** The Trustee may, either of its own volition or pursuant to any directions or in accordance with any policy given or indicated by any meeting of Holders, represent the Holders in any matter concerning them generally.

- 11.7 **No prejudice:** The rights, powers, authorities and discretions conferred upon the Trustee by this deed are without prejudice, and in addition, to any other rights, powers, authorities and discretions to which the Trustee is at any time entitled (whether under this deed or by law, contract or otherwise, and whether vested in the Trustee in its capacity as trustee for the Holders, or otherwise). Unless otherwise expressly provided in this deed, the Trustee's rights under this deed may be exercised by the Trustee without prior notice to the Company, any Holder or any other person.

## 12. OTHER PROVISIONS RELATING TO THE TRUSTEE

### 12.1 Remuneration:

- (a) The Company shall pay to the Trustee, for its services as Trustee, such remuneration as is, from time to time, agreed between the Company and the Trustee. If the Company and the Trustee fail to agree on any amount payable under this clause, the matter shall be referred to an arbitrator to be appointed by the parties, if they can agree on one, and otherwise to an arbitrator to be appointed by the President, for the time being, of the Institute of Chartered Accountants of New Zealand, in accordance with the Arbitration Act 1996.
- (b) The Company shall also pay all expenses (including legal fees on a full indemnity basis and travelling expenses) reasonably incurred by, or on behalf of, the Trustee in connection with:
  - (i) the preparation, execution and registration of this deed;
  - (ii) the exercise by the Trustee of any right, power, duty or privilege conferred by this deed on the Trustee or on any Holder, including the taking of any expert advice deemed necessary or expedient by the Trustee;
  - (iii) any breach or default in the observance or performance by the Company of any provision of this deed;
  - (iv) the convening, and holding, and carrying out of any directions or resolutions, of any meeting of Holders;
  - (v) any application under the trusts and provisions of this deed for its consent to, or approval of, any act or matter; or
  - (vi) the preparation, execution and registration of any release of this deed.
- (c) The remuneration and other amounts payable pursuant to this clause are payable on demand and shall continue to be payable until the trusts of this deed are finally wound up, whether or not a Receiver has been appointed or the trusts of this deed are in the course of administration by, or under the direction of, the court.
- (d) All expenses incurred, and payments made, by the Trustee or any Receiver in the lawful exercise of the powers conferred by this deed, and all remuneration payable to the Trustee or to any Receiver, are payable by the Company on demand, shall form part of the Secured Money, shall be secured by the security interest and charge under this deed, and shall be satisfied before any payment is made out of the Collateral to the Holders and, until payment, shall carry interest at the rate certified by the Trustee to be 2% per annum in excess of the 90 day bank bill rate fixed on such basis as the Trustee determines.

- 12.2 Indemnity out of Collateral:** Without prejudice to the right of indemnity given to trustees by law:
- (a) the Trustee and every Receiver, attorney, manager, agent or other person appointed by the Trustee pursuant to this deed shall be indemnified out of the Collateral in respect of all liabilities and expenses incurred in the execution or purported execution of the trusts, duties, powers, authorities and discretions of this deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted, or in any way relating to this deed, other than a claim arising out of wilful default, wilful breach of trust or gross negligence;
  - (b) the Trustee may retain and pay out of any moneys in its hands arising from the trusts of this deed all sums necessary to give effect to the indemnity given under clause 12.2(a) and to pay the remuneration and disbursements of the Trustee provided for in this deed; and
  - (c) all moneys payable to the Trustee under this clause 12.2 or otherwise arising in any way out of, or in connection with, this deed shall form part of the Secured Money and shall be secured by the security interest and charge under this deed.
- 12.3 Indemnity by Holders:** The Trustee is not bound to comply with a request or direction pursuant to the provisions of clauses 14.1 or 15.1, or its obligations under clause 20.1, unless the Trustee has first been indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may be rendered liable, and all costs, charges, damages and expenses which it may incur, by so doing, and such indemnity survives release of this deed.
- 12.4 Fiduciary relationship:** Nothing expressed in this deed or implied by law prohibits the Trustee or any of its related companies (in this clause, where the context permits, all being included in the term "**Trustee**") or the officers of the Trustee from being a shareholder, stockholder or other creditor of the Company or of any of its related companies or from acting in any representative capacity for a Holder. The Trustee may enter into any transaction with the Company or any of its related companies and is not accountable to the Holders for any profits arising from any such transaction.
- 12.5 Confidentiality:** The Trustee is not required to disclose to any Holder any confidential financial or other information made available to the Trustee by the Company, unless ordered to do so by a court of competent jurisdiction.
- 12.6 Retirement:** The Trustee may retire at any time, without assigning any reason for doing so, upon giving written notice to the Company of not less than 90 days, subject to the due appointment of a new Trustee and the transfer to that new Trustee of the securities (if any) collateral to this deed and the moneys and investments held by the Trustee pursuant to this deed.
- 12.7 Appointment of new Trustee:**
- (a) The power of appointing a new Trustee or Trustees is vested in the Company but no new Trustee shall be appointed unless the appointment is first approved by a Special Resolution.
  - (b) Upon any vacancy in the office of Trustee arising, the Company shall promptly call a meeting of the Holders for the purpose of approving the appointment of a new Trustee and, if approval is given, the Company shall exercise its power of appointment.

- (c) If, within 30 days after receiving notice of the Trustee's intention to retire, the Company fails to call a meeting of Holders in accordance with clause 12.7(b), or to exercise the power of appointing a new Trustee or new Trustees vested in it by this clause, the Holders may, by Special Resolution, exercise such power to the exclusion of the Company.

### 13. DEFAULT

13.1 **Enforcement:** Subject to clause 11.4, the security created under, and by, this deed becomes enforceable if any of the following events occur:

- (a) a Liquidation of ASB Capital is commenced;
- (b) a Liquidation of ASB Bank is commenced;
- (c) a Liquidation of the Company is commenced;
- (d) the Company fails to comply with any of its obligations under this deed, and that failure continues for a period of 20 Business Days after receipt by the Company of notice from the Trustee specifying the failure and requiring that it be remedied.

### 14. TRUSTEE'S POWERS ON ENFORCEMENT

14.1 **Powers on enforcement:** At any time after a Default occurs, the Trustee may, and shall immediately (subject to the provisions of clause 12.3) upon being directed to do so by a Special Resolution:

- (a) require payment to the Trustee of an amount calculated in accordance with clause 14.2;
- (b) (whether or not a Receiver has been appointed) exercise any of the powers of a Receiver, or which a person would have if appointed as a Receiver under this deed; and/or
- (c) pay any expenses incurred in the exercise of any of such powers out of the revenue from, or proceeds of realisation of, the Collateral, and the Trustee may for any such purpose, or for any other purpose expressed or implied in this deed, borrow or raise money on the security of the Collateral in priority to the Secured Money, on such terms as the Trustee thinks fit.

14.2 **Amount:** The amount referred to in clause 14.1(a) is the aggregate of:

- (a) any part of the Secured Money due and payable by the Company to the Trustee on the date the Trustee makes a requirement under clause 14.1(a); and
- (b) an amount equal to the aggregate amount which would be payable under Article 4.13 of the Terms if a Liquidation of ASB Capital commenced on the date on which the Trustee makes its requirement.

For the avoidance of doubt, the Trustee may require payment to the Trustee of any part of the Secured Money not referred to in clause 14.2(a) or (b) which becomes due and payable after the Trustee makes a requirement under clause 14.1(a), as and when the same becomes due and payable.

- 14.3 **No obligation to advise event of default:** The Trustee shall not be under any obligation to advise any Holder of any occurrence of the nature specified in clause 14.1, or to convene any meeting of Holders, unless in the Trustee's opinion the occurrence will or may have a material adverse effect on the interests of the Holders generally.

## 15. RECEIVER

- 15.1 **Appointment of Receiver:** The Trustee may (whether or not the Trustee has exercised any other power):

(a) at any time after a Default occurs; or

(b) if the Company requests,

appoint any person or persons to be a Receiver of all or any of the Collateral, and shall (subject to the provisions of clause 12.3) appoint a person or persons as Receiver upon being directed to do so by a Special Resolution. The Trustee may remove any Receiver and may appoint a new Receiver in place of any Receiver who has ceased for any reason to hold office, or in addition to a Receiver already appointed.

- 15.2 **Powers of Receiver:** In addition to, and without limiting or affecting, any other powers and authorities conferred on a Receiver (whether under the Receiverships Act 1993 or at law or otherwise), a Receiver has the power to do all things in relation to the Collateral as if the Receiver had absolute ownership of the Collateral. The Receiver shall, in the exercise of his or her powers, authorities and discretions, comply with any directions given by the Trustee.

- 15.3 **Moneys on trust:** Except as otherwise directed by the Trustee, all money from time to time held by the Receiver which is not required to be retained by the Receiver for the performance of his or her duties shall be paid to the Trustee to be held by it on the trusts declared in this deed.

## 16. PROTECTION OF TRUSTEE, RECEIVER AND OTHER PERSONS

- 16.1 **Accountability:** If the Trustee or a Receiver sells any Collateral (whether pursuant to this deed or otherwise), the Trustee or Receiver shall be accountable only for any purchase money which that person actually receives.

- 16.2 **Protection of persons dealing with the Trustee or Receiver:** No person dealing with the Trustee or any Receiver, or with any person acting on behalf of any of them, shall:

(a) be concerned to enquire whether any power which the Trustee, Receiver, or person acting on their behalf, as the case may be, is purporting to exercise have become exercisable (whether by a Default, the proper appointment of a Receiver, or otherwise), or otherwise as to any matter in connection with the exercise of any such power; or

(b) see to the application of any amount paid to the Trustee, Receiver, or person acting on their behalf, as the case may be,

and, in the absence of fraud on the part of that person, such dealing shall be deemed, so far as regards the safety and protection of that person, to be within the powers conferred by this deed and to be valid and effective accordingly, and the remedy of the Company in respect of any irregularity or impropriety whatever in the exercise of those powers shall be in damages only.



- 16.3 **No liability:** The Trustee or a Receiver shall not be liable to account, or for any loss, as mortgagee in possession and may at any time give up possession of any Collateral. Neither the Trustee nor a Receiver shall be liable for any losses which may occur in, or as a result of, the exercise, purported exercise or non-exercise of any of their rights, powers or remedies.
- 16.4 **Concurrent sale or receivership:** The Trustee may, upon such terms as it thinks proper, join in exercising its powers under this deed with any other secured creditor of the Company and in particular may, on such terms as it thinks proper, join in appointing a common Receiver of the Collateral or any part thereof, subject to the Trustee retaining such priority as is enjoyed by it in respect of the Collateral but with liberty for the Trustee to make any arrangements it thinks proper for the purpose of ensuring the respective priorities.
- 17. DISTRIBUTION OF PROCEEDS**
- 17.1 **Application of proceeds:** All amounts received by the Trustee or any Receiver, whether in the exercise of that person's powers or otherwise shall be applied in accordance with the provisions of the PPSA.
- 17.2 **Distribution of funds:** All money received by the Trustee pursuant to clause 17.1 and available for that purpose shall be held and applied:
- (a) first, in or towards payment to the Holders, *pari passu* in proportion to the amounts owing to them, of Dividends payable in accordance with the Terms;
  - (b) secondly, in or towards payment to Holders, *pari passu* in proportion to the amounts owing to them, of amounts payable pursuant to Article 4.13 of the Terms;
  - (c) lastly, subject to the rights of any subsequent encumbrancers, in payment to the Company, or such other person or persons as the Company, or any court of competent jurisdiction on the application of the Trustee, directs.
- 17.3 **Payments to ASB Capital:** Notwithstanding clause 17.2, if a Liquidation of ASB Capital has not commenced, the Trustee may at its entire discretion pay to ASB Capital any amount held by the Trustee, if the Trustee is satisfied at its discretion that that amount will be applied by ASB Capital in payments to Holders.
- 17.4 **Trustee's powers to postpone distribution:** If the moneys at any time available under clause 17.2 are less than 10% of the amounts then owing to Holders, the Trustee may, in its discretion, invest those moneys and those investments and the income from them may be accumulated until the accumulations and any other available funds amount to a sum sufficient to pay at least 10% of the amounts then owing to Holders.
- 17.5 **Reliance on Register:** For the purposes of determining the appropriate payment to be made to Holders pursuant to clause 17.2, the Trustee may rely absolutely on the Register.

## 18. ALTERATIONS TO TRUST DEED AND MEETINGS

18.1 **Trustee may concur in certain alterations:** The provisions of this deed may be added to, or varied, by deed executed by the Company and the Trustee:

- (a) without the consent of the Holders, if the addition or variation:
  - (i) is necessary or desirable to correct a manifest error, or to comply with the requirements of any statute or statutory regulations, or the listing rules of any stock exchange;
  - (ii) is of a formal or technical nature;
  - (iii) in the opinion of the Trustee, is not, or is not likely to become, prejudicial to the general interests of the Holders;
  - (iv) in the opinion of the Trustee, is in the interests of the Holders to take cognisance of a modification to the law in New Zealand; or
  - (v) is necessary or convenient for complying with any generally accepted financial market, banking or business practice and, in the opinion of the Trustee, is appropriate and reasonable in all the circumstances and is not, and is not likely to become, prejudicial to the general interests of the Holders; or
- (b) with the consent of the Holders given by Special Resolution.

18.2 **Meetings:** Meetings of Holders shall be convened and held in accordance with the Constitution. ASB Capital shall convene a meeting of Holders without delay after receiving from the Trustee a request in writing to convene a meeting of Holders, specifying the resolution or resolutions to be considered at that meeting or a request of Holders in accordance with section 121(b) of the Companies Act 1993. The Trustee shall have no liability to any Holder or any other person if the directors of ASB Capital, having been requested by the Trustee or Holders to convene a meeting of Holders, fail to do so.

## 19. NOTICES

19.1 **Form and method of service:** Any notice, requisition, demand or request under this deed ("**Notice**") may be signed by, or on behalf of, the Company, the Trustee or a Holder, by an officer, employee, agent, attorney or solicitor and may be given to:

- (a) a Holder by posting it, postage prepaid and air mail in the case of a Registered Address outside New Zealand, addressed to the Registered Address of the Holder;
- (b) the Company by delivering it, or posting it in accordance with clause 19.1(a), to the registered office of the Company;
- (c) the Trustee, by delivering it, or posting it in accordance with clause 19.1(a), to the office of the branch of the Trustee which normally undertakes and performs the administration of the trusts of this deed or to its registered office or principal place of business.

19.2 **Proof of service:** In proving the giving of a Notice by post, it shall be sufficient to prove that the person signing has signed for, or on behalf of, the person giving the Notice and that the envelope containing the Notice was properly addressed, stamped and

dispatched in the ordinary course of post, and the Notice shall be deemed to be served on the day following the day of posting.

- 19.3 **Notice to joint holders:** In the case of joint holders of Preference Shares, a Notice given to the Holder whose name stands first in the Register shall be deemed to have been given to all the joint holders.
- 19.4 **Notice by Trustee:** Any Notice may be given by the Trustee to the Company in accordance with sections 185 to 189 of the PPSA.

## 20. RELEASE, REINSTATEMENT AND REDEMPTION

- 20.1 **Release:** Subject to clause 20.3, the Trustee shall not be obliged to sign a release of this deed, or to release any Collateral from this deed, unless the Trustee is satisfied that:

- (a) the Trustee has received all of the Secured Money; and
- (b) no payment received, or to be received, by the Trustee may be avoided, or required to be repaid by the Trustee, whether under any law relating to insolvency or otherwise.

- 20.2 **Reinstatement:** Subject to clause 20.3, if any payment received or recovered by the Trustee, a Receiver, or any other person on behalf of the Trustee is or may be avoided, whether by law or otherwise, then (notwithstanding that the Trustee may have signed a release pursuant to clause 20.1):

- (a) such payment shall be deemed not to have affected or discharged the liability of the Company under this deed or any other security given by the Company in favour of the Trustee and the Trustee and the Company shall, to the maximum extent permitted by law, be restored to the position in which each would have been if such payment had not been received or recovered; and
- (b) the Trustee shall be entitled to exercise all rights which the Trustee would have been entitled to exercise if such payment had not been received or recovered.

- 20.3 **Compulsory Release:** If the Trustee receives a certificate, signed by two directors of the Company on behalf of all directors, stating that

- (a) an APRA Event has occurred; and
- (b) the ASB Bank Preference Shares will, immediately upon receipt by the Company of a release of this deed, be transferred to ASB Capital,

the Trustee shall execute and deliver to the Company a complete release of this deed, the security created by this deed, and the covenants in this deed.

## 21. PERSONAL PROPERTY SECURITIES ACT 1999

- 21.1 **No consent or subordination:** Nothing in this deed shall be construed as:

- (a) an agreement to subordinate the security interest under this deed in favour of any person; or
- (b) a consent by the Trustee to any security interest attaching to, or any other security subsisting over, any Collateral other than the ASB Capital Security Interest.

**21.2 Contracting out of PPSA rights:** The Company:

- (a) agrees that if, at any relevant time, the Trustee does not at that time have priority over all other secured parties in respect of any Collateral, then the Company and the Trustee will, for purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and for purposes of this deed and the operation and application of the PPSA, that section 109(1) (but amended only by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into;
- (b) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this deed, or the security under this deed; and
- (c) waives the Company's right to do any of the following:
  - (i) object to the Trustee's proposal to retain any Collateral under section 121 of the PPSA;
  - (ii) redeem any Collateral under section 132 of the PPSA.

**21.3 Name change:** If the Company wishes to change its name, it shall give the Trustee notice of the new name not less than 15 Business Days before the change takes effect, and shall do all things necessary to ensure that the security interest under this deed is maintained.

**22. MISCELLANEOUS**

**22.1 Other securities:** This deed is collateral to each other security (whenever executed or given) which is at any time held by the Trustee in respect of any Secured Money, and nothing in this deed shall prejudice any other security at any time held by the Trustee. The Trustee may exercise any of the Trustee's rights under this deed and any such other security separately or concurrently.

**22.2 Obligations independent:** Each of the obligations of the Company under section 8 and clause 12.2 of this deed, shall constitute a continuing obligation, separate and independent from the Company's other obligations under this deed and shall survive payment of the Secured Money and release of this deed. It shall not be necessary for the Trustee to incur any expense or make any payment before enforcing any of the Trustee's rights in respect of any obligation of the Company under this deed.

**22.3 No waiver:** No delay in acting, or failure to act, by the Trustee is a waiver of any of the Trustee's rights, and the Trustee shall not be liable to any person for any such delay or failure.

**22.4 No merger or marshalling:** The Trustee's right to payment of any Secured Money (including under any negotiable instrument or other agreement or arrangement) shall not merge the Company's obligation to pay that Secured Money under this deed. The Trustee has no duty to marshal in favour of the Company or any other person.

**22.5 Partial invalidity:** An invalid provision of this deed shall not affect the enforceability of the remaining provisions of this deed.

**22.6 Certificates:** A certificate of the Trustee as to any amount or fact which might reasonably be expected to be within the Trustee's knowledge shall be prima facie evidence of that amount or fact.

22.7 **Continuing security:** This deed is a continuing security and shall operate irrespective of any intervening payment, settlement of account or other matter or thing whatever, until a release has been signed by the Trustee and delivered to the Company.

22.8 **Governing law:** New Zealand law governs this deed, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

# **SIGNED AS A DEED**

**ASB HOLDINGS LIMITED** by:

  
Signature of director


G. H. BURRETT  
Name of director

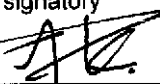
  
Signature of director

J. W. DUNCAN  
Name of director

Executed under the name and seal of  
**THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED:**

and witnessed by:

  
Authorised signatory


  
Authorised signatory



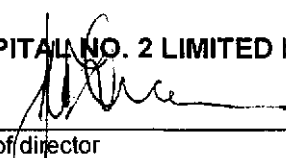
## **WITNESS TO BOTH SIGNATURES**

Signature of witness FULL NAME: KAREN ANNE DONALD  
RESIDENTIAL ADDRESS: 69A HAMLIN RD

MT WELLINGTON  
Occupation OCCUPATION: RECEPTIONIST

SIGNATURE:   
City/town of residence

**ASB CAPITAL NO. 2 LIMITED** by:

  
Signature of director

J. W. DUNCAN  
Name of director

  
Signature of director

P. S. HALL  
Name of director

**APPENDIX****Terms of Preference Shares**

**[TO BE INCORPORATED FROM CONSTITUTION] \_\_**

## **ASB CAPITAL NO 2. LIMITED**

# **CONSTITUTION**

Electronic Incorporation – This constitution has been registered electronically and does not require separate certification by a director

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**Companies Act 1993**

**CONSTITUTION**

**OF**

**ASB CAPITAL NO. 2 LIMITED**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Constitution, unless the contrary intention appears:

**"ASB"** means ASB Bank Limited;

**"ASB Holdings"** means ASB Holdings Limited;

**"Act"** means the Companies Act 1993;

**"Article"** means a provision of this Constitution as amended or added to from time to time;

**"Company"** means ASB Capital No. 2 Limited;

**"Constitution"** means this Constitution as amended or added to from time to time;

**"director"** means a person holding office as a director of the Company, and where appropriate includes an alternate director;

**"directors"** means all or some of the directors acting as a board and the term **"board"** shall be construed accordingly;

**"Holding Company"** means CBA Funding (NZ) Limited;

**"register"** means the register of members to be kept pursuant to the Act;

**"ordinary share"** means an ordinary share issued, or to be issued, by the Company as the case may require;

**"preference share"** means a perpetual preference share issued, or to be issued, by the Company as the case may require;

**"share"** means an ordinary share, a preference share or any class of share in the capital of the Company;

**"shareholder"** means any person who is the registered holder of a share;

**"special resolution"** means a resolution approved by a majority of seventy-five per cent (75%) of the votes of those shareholders entitled to vote and voting on the issue.

## **1.2 Interpretation**

In this Constitution, unless a contrary intention appears:

- (a) headings are inserted for convenience only and do not affect the construction of this Constitution;
- (b) words importing any gender include the other genders, words importing persons include bodies corporate and words importing the singular include the plural and vice versa;
- (c) a reference to a statute (or to a provision of a statute) means the statute or provision as modified or amended and in operation for the time being, or any statute or provision enacted in lieu thereof and includes any by-law, order, regulation, rule or other statutory instrument for the time being in force under the statute or provision;
- (d) unless the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

## **1.3 Relationship with Act**

- (a) The Company, the directors, each director and each shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this Constitution.
- (b) This Constitution has no effect to the extent that it contravenes, or is inconsistent with, the Act.

## **1.4 Amendment of Constitution**

- (a) Subject to the Act, this Constitution may be altered at any time by way of a special resolution.
- (b) An application to change the name of the Company is not an amendment of this Constitution for the purposes of Article 1.4(a) above and may be made by a director with the prior approval of the Holding Company.
- (c) Without limiting Articles 4.26 and 4.29, this Constitution shall not be altered or revoked without the written approval of ASB.

## **1.5 Preference Shares**

Without limiting any other provision of this Constitution, preference shares may be issued from time to time by the directors in different tranches. The rights, privileges, limitations and conditions attaching to each tranche of preference share shall be as set out in Article 4, and (insofar as Article 4 provides for the directors to determine matters affecting those rights, privileges, limitations and conditions) in the resolution of the directors resolving to issue the preference shares of that tranche. If there is any conflict between a provision in Article 4 and any other provision of this Constitution, the provision in Article 4 shall prevail.

## **1.6 Limitation on business**

The only business or activity which the Company may carry on is to:

- (a) issue and maintain in existence preference shares;
- (b) advance the proceeds of preference shares to ASB Holdings or a related company of that company;
- (c) do all other things reasonably incidental to the activities referred to in paragraphs (a) and (b).

The Company has no power to:

- (d) carry on any other business or activity; or
- (e) apply amounts received by way of interest on, or repayment of, any loan referred to in paragraph (b) for any purpose other than in payments to the holders of preference shares.

For the purposes of paragraph (e), the directors may determine that amounts received in respect of a particular loan are to be applied in payment to the holders of a particular tranche of preference shares.

## **2. ISSUES OF SHARES**

### **2.1 Directors to issue shares and other securities**

- (a) Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, shares in the Company shall be under the control of the directors who, with the written consent of the Holding Company, may issue, or grant rights or options in respect of, or otherwise dispose of, shares to such persons, for such price, upon such conditions, at such times and with such preferred, deferred or other special rights or restrictions, whether with regard to dividends, voting, return of capital or otherwise as the directors determine.
- (b) The directors may also issue other securities that are convertible into or exchangeable for Shares or options to acquire Shares, to any person and in any number the directors think fit.
- (c) The directors may issue shares paid up in full on allotment or partly paid in such amounts as the directors think fit.
- (d) Subject to the requirements of the Act, the directors shall have the right to settle the manner in which fractions of a share, however arising, are to be dealt with.
- (e) Nothing in section 45 of the Act shall apply to the issue of shares.

### **2.2 Recognition of interests**

- (a) No notice of a trust, whether express, implied, or constructive, may be entered on the share register.
- (b) Except as required by law, no person shall be recognised by the Company as holding any share upon trust and the Company shall not be bound by, nor compelled to recognise (even after notice), any equitable, contingent, future or partial interest in any share, or any interest in any fraction or part of a share or any other rights in respect of any share, except an absolute right of the registered holder to the entire share.

### **2.3 Right to and delivery of share certificate**

Subject to the Act, a shareholder may apply to the Company for a certificate in respect of some or all of the shareholder's shares in the Company.

### **2.4 Issue of further shares**

The Company may issue further shares ranking equally with, or in priority to, any existing shares, whether as to voting rights, distributions or otherwise and such an issue is deemed not to be an action affecting the rights attaching to the existing shares.

## **3. TRANSFER OF SHARES**

### **3.1 Instrument of transfer**

- (a) Subject to the terms of this Constitution:
  - (i) A share in the Company is transferable.
  - (ii) An ordinary share may be transferred by entry of the name of the transferee on the share register.
- (b) For the purposes of transferring shares, a form of transfer signed by the present holder of the ordinary shares or by the personal representative of the present holder must be delivered to:
  - (i) the Company; or
  - (ii) an agent of the Company designated by the board who maintains the share register.

The form of transfer must be signed by the transferee if registration as holder of the shares imposes a liability to the Company on the transferee.

### **3.2 Registration procedure**

- (a) On receipt of a form of transfer in accordance with Article 3.1(b), the Company must forthwith enter or cause to be entered the name of the transferee on the share register as holder of the ordinary shares, unless:
  - (i) the board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so;
  - (ii) notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the approval of the resolution by the board; and
  - (iii) the refusal or delay in the registration is permitted by Article 3.3.
- (b) A transferor of ordinary shares remains the holder of the ordinary shares transferred until the transfer is registered and the name of the transferee is entered in the share register and a transfer of ordinary shares shall not pass the right to any dividends declared on those shares until registration.

- (c) On registration of a transfer of ordinary shares, the Company shall cancel the certificate (if any) and, if so requested by the transferee or the transferor if retaining ordinary shares, issue a new certificate in the name of the transferee for the ordinary shares transferred and in the name of the transferor for the balance of ordinary shares retained (if any).
- (d) The Company shall retain every instrument or other record of transfer which is registered for such period as the directors determine.

### **3.3 Directors power to decline to register**

The directors may refuse or delay the registration of any transfer of ordinary shares:

- (a) which has not been approved in writing by the Holding Company;
- (b) if it is not accompanied by the certificate for the ordinary shares to which it relates, if a certificate has been issued.

## **4. PREFERENCE SHARES**

### **4.1 Definitions**

In Articles 4.1 to 4.31 of this Constitution, unless the context otherwise requires:

**"APRA"** means the Australian Prudential Regulation Authority.

**"ASB Capital No. 1"** means ASB Capital Limited.

**"Benchmark Rate"** on any day means the rate per annum expressed on a percentage yield basis, and rounded up to the nearest two decimal places, which is:

- (a) the average of the bid and offered swap rate displayed at or about 11am on that day on page FISSWAP (or any successor page) of the Reuters monitor screen for an interest rate swap with a one year term; or
- (b) if a rate is unable to be determined in accordance with paragraph (a), or if the Company forms the view that the rate so determined is not an accurate reflection of market rates, the average of the mean and bid offered swap rates quoted by three registered banks in New Zealand other than ASB at or about 11am on that day for an interest rate swap with a rate swap with a one year term.

**"Business Day"** means any day other than a Saturday, Sunday or a statutory public holiday in New Zealand.

**"Buy-Out Notice"** has the meaning in Article 4.22.

**"Buy-Out Price"** in respect of each preference share at any date means the aggregate of:

- (a) the Issue Price;
- (b) subject to Article 4.7, Dividends payable on that preference share as at that date calculated on a daily basis from the end of the most recent Dividend Period to that date.

**"Commonwealth Bank"** means Commonwealth Bank of Australia.

**"Commonwealth Bank Subsidiary"** means the Holding Company or any wholly owned subsidiary of Commonwealth Bank (which is not ASB or a subsidiary of ASB) to which the Holding Company assigns its rights under Articles 4.21 to 4.24.

**"Distribution"** has the meaning set out in section 2(1) of the Act.

**"Dividend"** means any dividend on the preference shares payable pursuant to Article 4.2.

**"Dividend Amount"** in respect of a Dividend Period means a sum in respect of each preference share calculated in accordance with the following formula:

$$\text{Issue Price} \times \frac{\text{Dividend Rate}}{4} \times (1 - t)$$

Where:

Dividend Rate is:

- (a) in respect of each Dividend Period ending on or before the first Reset Date and in respect of preference shares offered under an offer document dated 24 November 2004, 7.65% per annum (being the Benchmark Rate on 24 November 2004 plus the Margin, adjusted to a quarterly equivalent rate);
- (b) in respect of each Dividend Period ending on or before the first Reset Date and in respect of Preference Shares other than those referred to in (a), the rate specified in the Issue Resolution in respect of those preference shares; and
- (c) in respect of each subsequent Dividend Period, the Benchmark Rate on the Relevant Reset Date plus the Margin (adjusted to an equivalent quarterly rate).

$t$  is the basic rate of income tax applicable to the Company under Schedule 1 of the Tax Act.

provided that the Dividend Amount in respect of the first Dividend Period in respect of each preference share shall be an amount calculated in accordance with the following formula:

$$X \times \frac{Y}{91.25}$$

where:

X is an amount calculated in accordance with the first formula set out in this definition.

Y is the number of days from and including the date subscription monies in respect of each preference share are banked to but excluding the last day of the first Dividend Period.

**"Dividend Cancellation Notice"** means a notice given by the directors pursuant to Article 4.7.

**"Dividend Payment Date"** means in respect of each preference share, the quarterly dates fixed by the Issue Resolution in respect of that preference share.

**"Dividend Period"** means each period commencing on and including a Dividend Payment Date and ending on but excluding the next Dividend Payment Date, or, in respect of the first Dividend Period, in respect of any preference share the period from and including the Issue Date of that preference share to but excluding the first Dividend Payment Date in respect of that preference share.

**"Dividend Resumption Notice"** means a notice given pursuant to Article 4.10.

**"Fully Credited"** means in relation to a Dividend, that Imputation Credits are validly attached to the Dividend, so that the imputation ratio of the Dividend is the maximum imputation ratio permitted by law.

**"Holder"** in respect of a preference share means a person whose name is entered in the Share Register as the holder for the time being of that preference share.

**"Imputation Credit"** means an imputation credit as defined in section OB 1 of the Tax Act.

**"Issue Date"** in respect of a preference share, means the date on which that preference share is issued.

**"Issue Price"** means \$1 in respect of each preference share.

**"Issue Resolution"** in respect of any preference shares, means the resolution of the directors resolving to issue those preference shares.

**"Margin"** in respect of each preference share means the rate per annum fixed in the Issue Resolution in respect of that preference share.

**"Reset Date"** in respect of each preference share, means the dates specified in the Issue Resolution in respect of that preference share.

**"Relevant Reset Date"** means in respect of a Dividend Period, if that Dividend Period begins on a Reset Date, that Reset Date, and if that Dividend Period does not begin on a Reset Date, the Reset Date immediately preceding that Dividend Period.

**"Regulatory Authority"** means the Reserve Bank of New Zealand, the Australian Prudential Regulation Authority or any other authority having jurisdiction in respect of banking in Australia or New Zealand.

**"Share Registrar"** means an agent appointed by the Company to keep the register of the preference shares.

**"Tax Act"** means the Income Tax Act 1994.

**"Trust Deed"** means a trust deed dated 24 November 2004 between the Company, ASB Holdings and The New Zealand Guardian Trust Company Limited whereby the Company and ASB Holdings give certain covenants for the benefit of Holders.

**"2002 Preference Shares"** means certain perpetual preference shares issued in 2002 by ASB Capital No. 1.

Whenever in Articles 4.1 to 4.31, or in an Issue Resolution, there is a reference to a date, and that date is not a Business Day, the reference shall be deemed to be to the next day which is a Business Day.

## 4.2 Dividend

The preference shares carry the right to a dividend, payable in priority to other Distributions in accordance with Article 4.6, in respect of each Dividend Period equal to the Dividend Amount for that Dividend Period.

#### **4.3 Dividend to be Fully Credited**

All Dividend Amounts shall be Fully Credited. The only consequence of, or remedy for, a Dividend Amount not being Fully Credited shall be the payment by the Company of the amount referred to in Article 4.4.

#### **4.4 Imputation Credit shortfall**

If all or any part of a Dividend Amount is not Fully Credited the Company shall pay to each Holder an amount equal to the shortfall in Imputation Credits of which Holders would otherwise have had the benefit. The amount payable under this Article 4.4:

- (a) is due on the Dividend Payment Date of the Dividend Amount and, to the extent paid, substitutes for or replaces the corresponding obligation of the Company under Article 4.3; and
- (b) shall be regarded as a variation in the rate at which Dividends are calculated.

#### **4.5 Dividend Payment Date**

If a Dividend is paid in respect of any Dividend Period, it shall be paid on the Dividend Payment Date on which that Dividend Period ends.

#### **4.6 Dividends to have priority**

Dividends shall rank for payment in priority to the rights in respect of dividends or other Distributions of all holders of other classes of shares of the Company.

#### **4.7 Cancellation of Dividends**

Without limiting section 52(1) of the Act, but subject to Article 4.8, the directors may, by notice sent to Holders not later than five Business Days after the end of a Dividend Period, cancel the payment of Dividends in respect of that Dividend Period and all subsequent Dividend Periods, until such time as the board gives a Dividend Resumption Notice.

#### **4.8 Reasons for cancellation**

The board may give a Dividend Cancellation Notice if:

- (a) the board is not satisfied on reasonable grounds that immediately after payment of a Dividend the Company will satisfy the solvency test; or
- (b) the board has for any other reason determined in its discretion that a Dividend, or Dividends generally, should not be paid; or
- (c) ASB has given notice to the Company that the board of directors of ASB has determined that a Dividend, or Dividends generally, should not be paid and has also determined that dividends should not be paid on the 2002 Preference Shares; or
- (d) Commonwealth Bank has given notice to the Company that the board of directors of Commonwealth Bank has determined that a Dividend, or Dividends generally,



should not be paid and has also determined that dividends should not be paid on the 2002 Preference Shares; or

- (e) ASB Capital No. 1 has received notice from ASB or Commonwealth Bank that its board of directors has determined that dividends should not be paid on the 2002 Preference Shares.

#### **4.9 Automatic Cancellation**

If the directors of ASB Capital No. 1 give notice to the holders of the 2002 Preference Shares of the cancellation of dividends payable in respect of the 2002 Preference Shares, and the directors do not simultaneously give a Dividend Cancellation Notice, then the notice given by the directors of ASB Capital No. 1 shall (with the necessary modifications) take effect as if it were a Dividend Cancellation Notice, and Dividends shall be cancelled accordingly.

#### **4.10 Dividend Resumption Notice**

If the board has given a Dividend Cancellation Notice the board may at any time thereafter send notice to Holders to the effect that Dividends should again be paid. If such a notice is given, Dividends shall again be payable as from and including the first Dividend Period commencing after the giving of that notice, unless and until a further Dividend Cancellation Notice is given. If the board has given a Dividend Cancellation Notice following receipt from ASB or Commonwealth Bank of a notice of the nature referred to in Article 4.8(c) or 4.8(d) and the Company receives from the party which gave that notice a notice to the effect that Dividends should again be paid, the board shall give a Dividend Resumption Notice unless the board makes a determination of the nature referred to in Article 4.8(a) or (b). If ASB Capital No. 1 gives a dividend resumption notice under the provisions of the constitution of ASB Capital No. 1 corresponding with this Article 4.10, the board shall immediately give a Dividend Resumption Notice.

#### **4.11 Effect of cancellation**

If a Dividend Cancellation Notice is given, any obligation of the Company to pay, and any right of Holders to receive, the Dividends referred to in Article 4.7 shall be cancelled absolutely. The preference shares are not cumulative.

#### **4.12 Suspension period**

If a Dividend Cancellation Notice is given, then for the period from the date of that Dividend Cancellation Notice until the Company has paid in full Dividends for two consecutive Dividend Periods the Company shall not make any Distribution, other than Dividends.

#### **4.13 Capital**

Each Holder shall have the right in a liquidation of the Company to payment, in priority to the holders of other classes of shares of the Company, of the Issue Price of the preference shares held by that Holder and (subject to Article 4.7) Dividends payable on those preference shares at the date of commencement of liquidation calculated on a daily basis from the end of the most recent Dividend Period to the date of commencement of liquidation.

#### **4.14 Voting**

Holders shall have no right to receive notice of, attend, or vote at meetings of shareholders of the Company, other than meetings called under Articles 4.26 or 4.27.

#### **4.15 Transfer**

A Holder may, subject to Article 4.19, transfer any preference share:

- (a) under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company;
- (b) under any other share transfer system which operates in relation to the trading of securities on any stock exchange outside New Zealand on which preference shares are quoted and which is applicable to the Company; or
- (c) by an instrument of transfer which complies with this Constitution.

#### **4.16 Systems of Transfer**

A preference share which is disposed of in a transaction which complies with the requirements of a system of transfer authorised under Article 4.15(a) or 4.15(b) may be transferred in accordance with the requirements of that system. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or the Share Registrar.

#### **4.17 Instrument Requirements**

An instrument of transfer of preference shares to which the provisions of Article 4.16 are not applicable shall:

- (a) be in any common form or any other form approved by the Company or the Share Registrar; and
- (b) be signed or executed by or on behalf of the transferor.

#### **4.18 Delivery of instrument**

An instrument transferring preference shares must be delivered to the Company or to the Share Registrar, together with such evidence (if any) as the Company or the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the preference shares.

#### **4.19 Refusal to register**

Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the directors may refuse to register a transfer of any preference share if:

- (a) the Company has a lien on the preference share;
- (b) the transferor fails to produce such evidence as the Company or the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the preference share; or

- (c) registration of the transfer (together with registration of any further transfer or transfers then held by the Company and awaiting registration) would result in less than 5000 preference shares standing in the name of the transferee,

provided that the directors resolve to exercise its power under this Article within 30 Business Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Business Days of the resolution being passed by the directors.

#### **4.20 Transferor to remain Holder until registration**

A transferor of a preference share is deemed to remain the Holder of the preference share until the name of the transferee is entered in the register in respect of the share.

#### **4.21 Company to retain instruments**

If the Company registers an instrument of transfer it shall retain the instrument.

#### **4.22 Compulsory Buy-Out**

Subject to Article 4.23, Commonwealth Bank Subsidiary may give notice to all Holders in the manner specified in Article 12 (a "Buy-Out Notice") requiring Holders to transfer their preference shares to Commonwealth Bank Subsidiary. A Buy-Out Notice shall take effect, and the Buy-Out Price shall be paid, on the day specified in the Buy-Out Notice, being not less than 90 days, and not more than 120 days, after the date on which the Buy-Out Notice is given.

#### **4.23 Timing of Buy-Out Notice**

A Buy-Out Notice may be given only:

- (a) five years or more after the Issue Date; or
- (b) at any earlier time, if there has occurred any change in law (including any law relating to taxation) or in the interpretation or application thereof by any Court or governmental agency, or in any directive, regulation, request or requirement of a Reserve Bank Authority or other governmental agency, which materially adversely affects the benefits of the preference shares to the Company, ASB, or Commonwealth Bank;

provided that the prior approval of APRA to the buy-out of the Perpetual Preference Shares has been obtained.

#### **4.24 Effect of Buy-Out Notice**

If Commonwealth Bank Subsidiary gives a Buy-Out Notice then:

- (a) each Holder shall be deemed, on the day on which Commonwealth Bank Subsidiary pays to that Holder the Buy-Out Price, to transfer that Holder's Preference Shares to Commonwealth Bank Subsidiary, and the Company shall on that day enter the name of Commonwealth Bank Subsidiary on the register as the holder of those preference shares;
- (b) each Holder shall be deemed to have authorised the Company to act on behalf of that Holder in respect of the transfer of that Holder's Preference Shares to

Commonwealth Bank Subsidiary, and to sign any document necessary to effect or record that transfer.

- (c) Commonwealth Bank Subsidiary may pay the Buy-Out Price in the manner specified in Article 10.5 (with the necessary modifications).

#### **4.25 Partial Buy-Out**

Commonwealth Bank Subsidiary may give a Buy-Out Notice in respect of a specified proportion of the preference shares held by each Holder. If Commonwealth Bank Subsidiary does so, Articles 4.22 to 4.24 shall apply modified so as to refer to that proportion of each Holder's preference shares. Commonwealth Bank Subsidiary may give notice of the nature referred to in this clause on more than one occasion.

#### **4.26 Amendment**

Subject to Article 4.29, the rights, privileges, limitations and conditions attaching to the preference shares may be amended with the approval of:

- (a) the board; and
- (b) an ordinary resolution of the holders of ordinary shares; and
- (c) a special resolution of Holders.

A meeting of Holders for the purposes referred to in paragraph (c) may be convened by the board.

#### **4.27 Meeting for purposes of Trust Deed**

The board may at any time convene a meeting of Holders to consider a resolution proposed to be passed for a purpose referred to in the Trust Deed. The board shall convene such a meeting if the trustee under the Trust Deed so requests.

#### **4.28 Conduct of Meetings**

A meeting of Holders to consider a resolution of the nature referred to in Article 4.26 or 4.27 shall be convened and held in accordance with the first schedule to the Act. At any such meeting:

- (a) where voting is by show of hands or by voice every Holder present in person or by representative has one vote;
- (b) on a poll every Holder present in person or by representative has one vote in respect of each preference share held by that Holder; and
- (c) if the meeting is to consider a resolution of the nature referred to in Article 4.27, and the trustee under the Trust Deed nominates any person as chairperson for the meeting, that person shall chair the meeting.

#### **4.29 Restrictions on amendments**

No amendment of the nature referred to in Article 4.26 shall be made unless:

- (a) ASB has approved that amendment; and

- (b) that amendment will not affect the classification of the preference shares under the rules of any Regulatory Authority.

#### **4.30 Deductions**

The Company may make from Dividends any deduction or withholding on account of tax or on any other account which the Company is required by law to make.

#### **4.31 Supplementary dividend**

If the Company at any time:

- (a) pays a dividend (as defined in section LE 2(1) of the Tax Act and in section OB 1 of that Act for the purposes of Part LE of that Act) to a Holder who is not resident in New Zealand for tax purposes at that time; and
- (b) the Company attaches an Imputation Credit to such dividend pursuant to section ME 6 of the Tax Act;

then the Company may pay a single supplementary dividend (as defined in section OB 1 of the Tax Act) to that person.

### **5. THE DIRECTORS**

#### **5.1 Number and appointment of directors**

- (a) The number of directors is the number, not less than the minimum number required by the Act, who are appointed by the Holding Company from time to time.
- (b) A person must not be appointed a director of the Company unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of the Company.
- (c) The Holding Company shall, at all times, have the right to appoint the directors of the Company and to nominate the chairman of the board of directors. Notice in writing to the Company signed by an authorised representative of the Holding Company, whether express or implied, shall be conclusive evidence of the appointment of a director and the nomination of the chairman of the board of directors. The directors in office at the time of the adoption of this Constitution shall continue in office subject to this Constitution.

#### **5.2 Removal of a director**

The Holding Company may remove any director or chairman of the board of directors of the Company. Notice in writing to the Company signed by an authorised representative of the Holding Company, whether express or implied, shall be conclusive evidence of the removal of a director or chairman of the board of directors.

#### **5.3 Remuneration of directors**

- (a) Subject to Article 5.3(b), the board may authorise:
  - (i) The payment of remuneration or the provision of other benefits by the Company to a director for services as a director or in any other capacity;

- (ii) The payment by the Company to a director or former director of compensation for loss of office;
  - (iii) The making of loans by the Company to a director;
  - (iv) The giving of guarantees by the Company of debts incurred by a director;
  - (v) The entering into of a contract to do any of the things set out in paragraphs (i) to (iv) of this Article 5.3(a).
- (b) The board may authorise any of the matters set out in Article 5.3(a) only if it obtains the approval of the Holding Company and if it is satisfied that to authorise the matter is fair to the Company.
- (c) If a payment, benefit, loan, guarantee or contract under Article 5.3(a) is authorised:
- (i) the board must ensure that particulars thereof are forthwith entered in the interests register; and
  - (ii) directors who vote in favour thereof must sign a certificate stating that, in their opinion, it is fair to the Company, and the grounds for that opinion.
- (d) Subject to Articles 5.3(e) and 5.3(f), if all shareholders have agreed or concur in writing, any matter referred to in Article 5.3(a) may be authorised notwithstanding Articles 5.3(b) to 5.3(c) and section 161 of the Act.
- (e) Where consent has been given pursuant to Article 5.3(d), the board must not authorise any matter referred to in Article 5.3(a) unless the board is satisfied on reasonable grounds that the Company will, immediately after the authorisation, satisfy the solvency test.
- (f) The directors who vote pursuant to Article 5.3(e) in favour of the authorisation of any matter referred to in Article 5.3(a)(i) to (iv) must sign a certificate stating that, in their opinion, the Company will, after the authorisation, satisfy the solvency test.

#### **5.4 Vacation of office of director**

The office of director of the Company is vacated if the person holding that office:

- (a) Resigns by signing a written notice of resignation and delivering it to the address for service of the Company, such notice to be effective when it is received at that address or at a later time specified in the notice; or
- (b) Is removed from office in accordance with Article 5.2; or
- (c) Becomes disqualified from being a director pursuant to section 151 of the Act; or
- (d) Dies; or
- (e) Is absent without the consent of the directors from meetings of the directors held during a period of 6 months and the directors resolve that his or her office shall be vacated.

## **6. POWERS AND DUTIES OF DIRECTORS**

### **6.1 Directors to manage Company**

- (a) The business and affairs of the Company must be managed by, or under the direction or supervision of, the board, subject to Articles 6.5 and 6.6.
- (b) The board has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of a company.
- (c) Articles 6.1(a) and (b) are subject to any modifications, exceptions or limitations contained in the Act or this Constitution.
- (d) A director of the Company, when exercising powers or performing duties may act in a manner which he or she believes is in the best interests of the Holding Company even though it may not be in the best interests of the Company.

### **6.2 Appointment of attorney**

- (a) The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him or her.

### **6.3 Minutes**

The directors must ensure that minutes are kept of all proceedings at meetings of the board.

### **6.4 Execution of Company cheques**

All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner and by such persons as the directors determine from time to time.

### **6.5 Shareholders Unanimous Resolution**

Notwithstanding section 52 of the Act but subject to section 108 of the Act, if all shareholders have agreed or concur in writing:

- (a) A dividend may be authorised otherwise than in accordance with section 53 of the Act;
- (b) A discount scheme may be approved otherwise than in accordance with section 55 of the Act.
- (c) ordinary shares in the Company may be acquired otherwise than in accordance with sections 58-65 (inclusive) of the Act.

- (d) ordinary shares in the Company may be redeemed otherwise than in accordance with sections 69-72 (inclusive) of the Act.
- (e) Financial assistance may be given for the purpose of, or in connection with, the purchase of shares in the Company otherwise than in accordance with sections 76-80 (inclusive) of the Act.

## **6.6 Major Transactions**

The Company must not enter into a major transaction unless the transaction is:

- (a) approved by a special resolution; or
- (b) contingent upon approval by a special resolution.

The term "major transaction" has the meaning set out in section 129 of the Act.

## **6.7 Shareholders' Resolution in Lieu of Meeting**

- (a) A resolution in writing signed by:
  - (i) not less than 75% of the shareholders entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75% of the votes entitled to be cast on that resolution; or
  - (ii) in the case of a resolution required in terms of Article 6.5, all the shareholders entitled to vote on the resolution;

is as valid as if it had been passed at a meeting of those shareholders.

- (b) Within 5 working days of a resolution being passed under Article 6.7(a), the Company must send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed.
- (c) The resolution referred to in Article 6.7(a) may consist of one or more documents in a similar form (including letters, telegrams, cables, facsimiles, telex messages, electronic mail or other similar means of communication) each signed or assented to by or on behalf of the relevant shareholders.

## **7. PROCEEDINGS OF DIRECTORS**

### **7.1 Directors' meetings**

- (a) The provisions of the Third Schedule to the Act governing the proceedings of the board do not apply.
- (b) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (c) A director may at any time, and any employee appointed by the Holding Company for the purpose, shall on the request of a director, convene a meeting of the directors. Notice of every directors' meeting and of every adjourned meeting shall be given to every director.



- (d) A directors' meeting may be called or held using any technology consented to by each director. The consent may be a standing one. A director may only withdraw consent within a reasonable period before the meeting.
- (e) The chairman of the board of directors shall act as chairman at meetings of directors. If a chairman has not been appointed or if the chairman has signified his or her inability to be present at a meeting or is not present and able and willing to act within ten minutes after the time appointed for a meeting, the directors present shall elect one of their number to be chairman of the meeting.

## **7.2 Quorum for directors' meeting**

At a meeting of directors, no business shall be transacted unless a quorum is present. The number of directors whose presence is necessary to constitute a quorum is a majority of their number unless the directors determine otherwise. In determining whether a quorum is present, a director participating in a meeting held using technology consented to by each director in accordance with article 7.1(d) shall be taken to be present at the meeting.

## **7.3 Questions decided by majority**

- (a) Subject to this Constitution, questions arising at a meeting of directors shall be decided by a majority of votes of directors present and voting and any such decision shall for all purposes be deemed a decision of the directors.
- (b) In the event of there being an equality of votes, the chairman of the meeting, in addition to his or her deliberative vote, shall have a casting vote.

## **7.4 Written resolution by directors**

- (a) If all the directors have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the directors held on the day and at the time at which the document was last signed by a director and, where a document is so signed, the document shall be deemed to constitute a minute of that meeting and shall be recorded in the minute book.
- (b) For the purposes of article 7.4(a), two or more separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy. A copy may be signed or asserted to by letter, telegram, telex, facsimile, email or electronic form of communication.
- (c) A reference in article 7.4(a) to all the directors does not include a reference to a director who, at a meeting of directors, would not be entitled to vote on the resolution.

## **7.5 Validity of acts of directors**

All acts done by any meeting of the directors or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director, or to act as a director, or that a person so appointed was disqualified, or that proper notice had not been given, as valid as if the person had been duly appointed and was qualified to be a director or proper notice had been given, as the case may be.

## **7.6 Alternate director**

The Holding Company shall, at all times, have the right by notice in writing to the Company signed in the manner provided for in Article 5.1(c)] to appoint any person to act as an alternate director in the place of any director named in that notice at all or any times the director named in that notice is for any reason unable to attend or act personally. The Holding Company may remove the alternate director by the same manner of notice. An alternate director is subject to the same rights and obligations as the director for whom the alternate director is acting in substitution.

## **7.7 Committee of directors - Delegation**

The board may delegate to a committee of directors, a director or employee of the Company, or any other person, any one or more of its powers, other than those specified in the Second Schedule to the Act.

## **7.8 Power of the Delegate**

The board is responsible for the exercise of the power by the delegate as if the power had been exercised by the board, unless the board:

- (a) Believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on directors of the Company by the Act and this Constitution; and
- (b) Has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

# **8. DIRECTOR'S INTEREST**

## **8.1 The Interest Register**

- (a) A director of the Company must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the interests register, and, if the Company has more than one director, disclosed to the board;
  - (i) If the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
  - (ii) If the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.
- (b) A general notice entered in the interests register or disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.
- (c) A director of the Company is not required to comply with Article 8.1(a) if:
  - (i) the transaction or proposed transaction is between the director and the Company; and

- (ii) the transaction or proposed transaction is or is to be entered into in the ordinary course of the Company's business and on usual terms and conditions.

## **8.2 Transactions may be avoided**

- (a) A transaction entered into by the Company in which a director of the Company is interested may be avoided by the Company at any time before the expiration of three months after the transaction is disclosed to all the shareholders (whether by means of the Company's annual report or otherwise).
- (b) A transaction cannot be avoided if the Company receives fair value for it.

## **8.3 Other benefits**

Nothing in Articles 8.1 and 8.2 applies in relation to:

- (a) Remuneration or any other benefit given to a director in accordance with Article 5.3; or
- (b) An indemnity or other benefit given to a director in accordance with Articles 13.1 to 13.6.

## **8.4 Agreement**

- (a) If all entitled persons have agreed to concur in the Company entering into a transaction in which a director is interested, nothing in Articles 8.1 and 8.2 shall apply in relation to that transaction.
- (b) Subject to the Act, shareholders may, by ordinary resolution, ratify or approve any act or omission of a director or the board.

## **8.5 Actions by interested Directors**

A director of the Company who is interested in a transaction entered into, or to be entered into, by the Company, may:

- (a) Vote on a matter relating to the transaction; and
- (b) Attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and
- (c) Sign a document relating to the transaction on behalf of the Company; and
- (d) Do any other thing in his or her capacity as a director in relation to the transaction;

as if the director were not interested in the transaction.

## **8.6 Use of Company Information**

A director of the Company who has information in his or her capacity as a director or employee of the Company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:

- (a) For the purposes of the Company; or

- (b) As required by law; or
- (c) In accordance with Articles 8.7 or 8.8 of this Constitution; or
- (d) In complying with Article 8.1 of this Constitution.

#### **8.7 Disclosure – Nominee Director of Appointor**

A director of the Company may, unless prohibited by the board, disclose information to a person whose interests the director represents or in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties and, if the director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register.

#### **8.8 Disclosure & Use of Information Generally**

A director may disclose, make use of, or act on the information if:

- (a) Particulars of the disclosure, use, or the act in question are entered in the interests register; and
- (b) The director is first authorised to do so by the board; and
- (c) The disclosure, use, or act in question will not, or will not be likely to, prejudice the Company.

#### **8.9 Interest / Interested**

For the purposes of this Article 8, the terms "interest" and "interested" have the meaning set out in section 139 of the Act.

### **9. METHOD OF CONTRACTING**

9.1 A contract or other enforceable obligation may be entered into by the Company as follows:

- (a) An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
  - (i) Two or more directors of the Company; or
  - (ii) If there is only one director, by that director whose signature must be witnessed; or
  - (iii) A director, or other person or persons authorised to do so by the board whose signature or signatures must be witnessed; or
  - (iv) One or more attorneys appointed by the Company in accordance with section 181 of the Act.
- (b) An obligation which, if entered into by a natural person is, by law, required to be in writing, may be entered into on behalf of the Company by a person acting under the Company's express or implied authority.

- (c) An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

## **10. DIVIDENDS AND RESERVES**

### **10.1 Dividends**

- (a) Subject to the provisions of, and restrictions contained in Article 4, and in accordance with the Act, the directors may determine that a dividend is payable and may fix the amount, the time for payment and the method of payment.
- (b) Subject to the provisions of, and restrictions contained in Article 4, the directors may pay such interim dividends as in their judgment, and subject to the Act, the position of the Company justifies.
- (c) The directors who vote in favour of a distribution must sign a certificate stating that, in their opinion, the Company will, immediately after the distribution, satisfy the solvency test and giving the grounds for that opinion.
- (d) The board must not authorise a dividend in respect of some but not all of the shares in a class or that is not a greater value per share in respect of some shares of a class than it is in respect of other shares of that class, unless the amount of the dividend is in proportion to the amount paid to the Company in satisfaction of the liability of the shareholder under this Constitution or under the terms of the issue of the shares.
- (e) A shareholder's entitlement to receive a dividend may be waived by notice in writing to the Company signed by or on behalf of a shareholder.

### **10.2 Reserves and profits carried forward**

- (a) The directors may, before paying any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the directors, for any purpose for which the profits of the Company may be properly applied.
- (b) Pending any such application, the reserves may, at the discretion of the directors, be used in the business of the Company or be invested in such investments as the directors think fit.
- (c) The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

### **10.3 Distribution of specific assets**

- (a) Subject to the approval of the Holding Company, the directors may resolve that the payment of a dividend be satisfied wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, the Company or any other company.
- (b) Where a difficulty arises in regard to such a distribution, the directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any shareholders on the basis of the value so fixed in order to adjust the

rights of all parties, and may vest any such specific assets in trustees as the directors consider expedient.

#### **10.4 Capitalisation of profits**

- (a) Subject to the approval of the Holding Company, the directors may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to shareholders, and to apply the sum in any of the ways mentioned in paragraph (b) of this article for the benefit of shareholders in the proportions to which those shareholders would have been entitled in a distribution of the sum by way of dividend.
- (b) The ways in which a sum may be applied for the benefit of shareholders are as follows:
  - (i) in paying up any amounts unpaid on shares held by shareholders;
  - (ii) in paying up in full unissued shares or debentures to be issued to shareholders as fully paid; or
  - (iii) partly as mentioned in paragraph (i) and partly as mentioned in paragraph (ii).

#### **10.5 Method of Payment**

A dividend payable in cash may be paid in such manner as the board thinks fit to the entitled shareholders or, in the case of joint shareholders, to the shareholder named first in the register, or to such other person and in such manner as the shareholder or joint shareholders may in writing direct. Any one of two or more joint shareholders may give a receipt for any payment in respect of the shares held by them as joint shareholders.

### **11. ACCOUNTS AND AUDIT**

#### **11.1 Company to keep accounts**

Subject to the Financial Reporting Act 1993, the board must ensure that, within 5 months after the balance date of the Company, financial statements that comply with the Financial Reporting Act 1993 are:

- (a) Completed in relation to the Company and that balance date; and
- (b) Dated and signed on behalf of the directors by 2 directors of the Company, or, if the Company has only one director, by that director.

#### **11.2 Company to audit accounts**

The directors must cause the accounts of the Company to be audited in accordance with the requirements of the Financial Reporting Act 1993.

#### **11.3 Appointment of Auditor**

- (a) The Company must, at each annual meeting, appoint an auditor to:
  - (i) Hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and

- (ii) Audit the financial statements of the Company for the accounting period next after the meeting.
- (b) The board may fill any casual vacancy in the office of auditor but while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor.

## 12. NOTICES

- (a) A notice may be given to any member or to any other person entitled to notice under this Constitution either by serving it on that person personally or by sending it by post or facsimile transmission to the member's registered address or the address supplied by that other person to the Company for the purpose of notices.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (c) Where a notice is sent by facsimile transmission, service of the notice is deemed to be effected by properly addressing the facsimile transmission and the notice is deemed to have been served in the case of a facsimile transmission on the day following its despatch.

## 13. INSURANCE & INDEMNITY

- 13.1 Except as provided in Articles 13.2 to 13.6, the Company must not indemnify, or directly or indirectly effect insurance for, a director or employee of the Company or a related company in respect of:
- (a) Liability for any act or omission in his or her capacity as a director or employee; or
  - (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability.
- 13.2 The Company shall indemnify every director and every employee of the Company and of each wholly-owned subsidiary of the Company for any costs incurred by him or her in any proceeding:
- (a) That relates to liability for any act or omission in his or her capacity as a director or employee; and
  - (b) In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.
- 13.3 The Company shall indemnify every director and every employee of the Company and of each wholly-owned subsidiary of the Company in respect of:
- (a) Liability to any person other than the Company or a related company for any act or omission in his or her capacity as a director or employee; or
  - (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability.

Not being criminal liability or liability in respect of a breach, in the case of a director, of the duty to act in good faith, in what the director believes to be in the best interests of the Company or, in the case of an employee, of any fiduciary duty owed to the Company or related company.

- 13.4 The Company may, with the prior approval of the board, effect insurance for a director or employee of the Company and of each wholly-owned subsidiary in respect of:
- (a) Liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
  - (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or
  - (c) Costs incurred by that director or employee in defending any criminal proceedings:
    - (i) that have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee; and
    - (ii) in which he or she is acquitted.
- 13.5 The directors who vote in favour of authorising the effecting of insurance under Article 13.4 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.
- 13.6 The board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the Company or a related company are forthwith entered in the interests register.



**ASB HOLDINGS LIMITED**

**ASB CAPITAL NO. 2 LIMITED**

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**PERPETUAL LOAN NOTE AGREEMENT**

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**RUSSELL McVEAGH**

# PERPETUAL LOAN NOTE AGREEMENT dated 24 November 2004

## PARTIES

**ASB HOLDINGS LIMITED ("Borrower")**

**ASB CAPITAL NO. 2 LIMITED ("Lender")**

## INTRODUCTION

- A. The Lender has agreed to make a Loan to the Borrower upon the terms and subject to the conditions contained in this agreement.
- B. The Loan will be secured by a security given by the Borrower to the Lender over certain perpetual preference shares held by the Borrower in ASB Bank Limited ranking after a security in favour of The New Zealand Guardian Trust Company Limited (the **"Trustee"**).

## AGREEMENT

### 1. INTERPRETATION

#### 1.1 In this agreement unless the context otherwise requires:

**"Advance Date"** in respect of the Loan means a date notified by the Lender by at least one Business Day's notice to the Borrower.

**"APRA Event"** means the occurrence in respect of Commonwealth Bank of Australia group, of one or more of the events described in paragraph 4 of a document published by the Australian Prudential Regulation Authority entitled "Guidance Note - AGN 111.3 - Criteria for Capital Issues Involving Use of Special Purpose Vehicles" dated July 2003, as that document may be amended, novated, supplemented or replaced from time to time.

**"ASB Bank Preference Shares"** means perpetual preference shares identified as "ASB Bank 2004 Preference Shares" issued by ASB Bank Limited in December 2004 and thereafter.

**"Benchmark Rate"** on any day means the rate per annum expressed on a percentage yield basis, and rounded up to the nearest two decimal places, which is:

- (a) the average of the bid and offered swap rate displayed at or about 11 am on that day on page FISSWAP (or any successor page) of the Reuters monitor screen for an interest rate swap with a one year term; or
- (b) if a rate is unable to be determined in accordance with paragraph (a), or if the Lender forms the view that the rate so determined is not an accurate reflection of market rates, the average of the mean and bid offered swap rates quoted by three registered banks in New Zealand other than ASB Bank Limited at or about 11 am on that day for an interest rate swap with a one year term.

**"Business Day"** means any day other than a Saturday, Sunday, or a statutory public holiday in New Zealand.

**"Collateral"** has the meaning in the security referred to in paragraph B of the Introduction.

"**Interest Amount**" in respect of an Interest Period means a sum calculated in accordance with the following formula:

$$\text{Loan Amount} \times \frac{\text{Interest Rate}}{4}$$

where:

Interest Rate is

- (a) in respect of each Interest Period ending on or before the first Reset Date, [ ] % per annum;
- (b) in respect of each Interest Period commencing on or after the first Reset Date, the Benchmark Rate on the Relevant Reset Date plus the Margin (adjusted to an equivalent quarterly rate).

provided that the Interest Amount in respect of the first Interest Period in respect of each Loan shall be an amount calculated in accordance with the following formula:

$$X \times \frac{Y}{91.25}$$

where:

X is an amount calculated in accordance with the first formula set out in this definition.

Y is the number of days determined by the board of ASB Bank Limited for the purposes of the corresponding formula in the terms of the ASB Bank Preference Shares.

"**Interest Payment Date**" in respect of any Loan, means the quarterly dates notified by the Lender to the Borrower.

"**Interest Period**" means each period commencing on and including an Interest Payment Date and ending on but excluding the next Interest Payment Date, or, in respect of the first Interest Period, the period from and including the Advance Date to but excluding the first Interest Payment Date after the Advance Date.

"**Loan**" means the loan recorded in this agreement.

"**Loan Amount**" means the amount (as certified by the Lender) received by the Lender from the Offer.

"**Margin**" means the margin notified by the Lender to the Borrower.

"**Offer**" means an offer of perpetual preference shares to the public by the Lender.

"**Reset Date**" means each date notified by the Lender to the Borrower.

"**Relevant Reset Date**" means in respect of an Interest Period, if that Interest Period begins on a Reset Date, that Reset Date, and if that Interest Period does not begin on a Reset Date, the Reset Date immediately preceding that Interest Period.

Whenever in this agreement there is a reference to a date, and that date is not a Business Day, the reference shall be deemed to be to the next day which is a Business Day.

## **2. LOAN**

- 2.1 The Lender shall on the Advance Date lend to the Borrower the Loan Amount.

## **3. INTEREST**

- 3.1 The Borrower shall pay to the Lender, as interest on the Loan, the Interest Amount in respect of each Interest Period.
- 3.2 The Interest Amount in respect of an Interest Period shall be paid to the Lender on the last day of that Interest Period.

## **4. REPAYMENT OF LOAN**

- 4.1 The Borrower shall repay the Loan if:
- (a) the process of liquidation provided for in Part XVI of the Companies Act 1993 is commenced in respect of the Borrower; or
  - (b) the Borrower becomes subject to statutory management under the Corporations (Investigation and Management) Act 1989 or the Reserve Bank of New Zealand Act 1989; or
  - (c) an APRA Event occurs.
- 4.2 If the Borrower receives any amount in respect of ASB Bank Preference Shares other than dividends, the Borrower shall either:
- (a) if the Trustee so requires, pay that amount to the Trustee; or
  - (b) if the Trustee does not so require, pay that amount to the Lender in reduction of the Loan.
- 4.3 If the Borrower repays the Loan in accordance with clause 4.1(c), then simultaneously with the repayment of the Loan, the Lender shall purchase the ASB Bank Preference Shares on the following terms:
- (a) the purchase price shall be an amount equal to the amount of the Loan;
  - (b) the Borrower shall deliver to the Lender a transfer of the ASB Bank Preference Shares to the Lender and any share certificates which exist in respect of the ASB Bank Preference Shares.
- 4.4 Upon repayment of the Loan, the Lender shall release the security referred to in paragraph B of the Introduction.

## **5. LIMITED RECOURSE**

- 5.1 Notwithstanding anything to the contrary in this agreement, the following provisions apply:
- (a) the Borrower remains liable in contract to meet the obligations assumed by the Borrower under this agreement but the rights of the Lender to enforce those obligations shall be limited in the manner provided in the following paragraphs;

- (b) the Lender shall not be entitled to enforce payment, repayment or recovery of any moneys owing to the Lender under this agreement against the Borrower personally or against any assets or property of the Borrower other than the Collateral;
- (c) the Lender shall not, in relation to any obligation of the Borrower under this agreement, obtain any judgment or seek or attempt to obtain any judgment for payment by the Borrower of any money in relation to any breach of this agreement;
- (d) the Lender's rights of recovery against the Borrower shall be limited to the Collateral;

provided that nothing in this limited recourse provision prevents the Lender from:

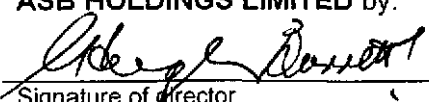
- (i) exercising the Lender's rights under this agreement insofar as they enable the Lender to exercise the Lender's security rights in respect of the Collateral;
- (ii) seeking or obtaining an injunction or restraining order to restrain any breach of this agreement or any security, or obtaining any declaratory relief.

## 6. JURISDICTION

- 6.1 This agreement will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.

## SIGNATURES

ASB HOLDINGS LIMITED by:


  
Signature of director

G. H. BURRETT  
Name of director

  
Signature of director

J. W. DUNCAN  
Name of director

ASB CAPITAL NO. 2 LIMITED by:

  
Signature of director

J. W. DUNCAN  
Name of director

  
Signature of director

P. S. HALL  
Name of director

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## SPECIFIC SECURITY AGREEMENT - INVESTMENT SECURITIES

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**AGREEMENT** dated 24 November 2004 given by ASB Holdings Limited ("**Debtor**") in favour of ASB Capital No. 2 Limited ("**Secured Party**")

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### OPERATIVE PROVISIONS

A. **Description of Relevant Agreement:** "**Relevant Agreement**" means the loan agreement dated 24 November 2004 between the Debtor and the Secured Party, as modified, novated, supplemented, varied or replaced from time to time.

B. **Charging clause:** As security for:

- (a) the payment or delivery of all amounts of any nature which the Debtor is, or may at any time become, liable (whether actually or contingently) to pay or deliver to the Secured Party under, pursuant to, or arising out of, the Relevant Agreement or this agreement ("**Secured Money**"); and
- (b) the performance by the Debtor of all the Debtor's other obligations to the Secured Party at any time under the Relevant Agreement and this agreement,

the Debtor grants to the Secured Party a security interest in:

- (c) the perpetual preference shares identified as "ASB Bank 2004 Preference Shares" issued by ASB Bank Limited in November 2004 held by the Debtor ("**Securities**");
- (d) all:
  - (i) distributions (as that term is defined in section 2 of the Companies Act 1993); and
  - (ii) all other rights, money or investment securities of any nature, ("**Rights**") attributable to, or arising from, any Securities;
- (e) all proceeds of any Securities or Rights;
- (f) all documents of title relating to any Securities or Rights,

and all of the Debtor's present and future rights in relation to those Securities, Rights, proceeds and documents of title, ("**Collateral**"). So far as it concerns each security interest over or in respect of any present or future account receivable and present and future rights in relation to any account receivable, the security interest granted shall take effect as a transfer (as "**transfer**" is used in the context of and for the purposes of the PPSA).

C. **Restriction on dealings with Collateral:** Other than a security interest in favour of The New Zealand Guardian Trust Company Limited, The Debtor shall not dispose of, or permit the disposal of, or permit any other security interest to attach to, any Collateral.


D. **Other fundamental provisions:** The Debtor acknowledges and agrees that the provisions set out in the Schedule of Terms attached are incorporated into this agreement.

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ASB HOLDINGS LIMITED by:

  
\_\_\_\_\_  
Signature of director

G H BURRETT.  
\_\_\_\_\_  
Name of director

  
\_\_\_\_\_  
Signature of director

J. W. DUNCAN  
\_\_\_\_\_  
Name of director

## SCHEDULE OF TERMS

**1. INTERPRETATION****1.1 Definitions:** In this agreement:

"ASB Bank" means ASB Bank Limited.

"Collateral" has the meaning given to that term in the Operative Provisions, and a reference to Collateral includes any part of it.

"Companies Act" means the Companies Act 1993.

"Default" means any failure by Debtor to pay to the Secured Party any sum payable under the Relevant Agreement, which is not remedied within 5 business days after receipt by the Debtor of notice from the Secured Party specifying the failure and requiring remedy.

"law" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute, treaty or other legislative measure.

"person" includes an individual, firm, company, corporation, unincorporated body of persons, organisation or trust, and any governmental agency or authority, in each case whether or not having separate legal personality.

"PPSA" means the Personal Property Securities Act 1999.

"Receiver" means a receiver, or receiver and manager, appointed under this agreement.

"Relevant Agreement" means an agreement or arrangement between the Debtor and the Secured Party (whether or not other persons are parties to it) relating to any Secured Money.

"Rights" has the meaning given to that term in the Operative Provisions, and "Right" means any of them.

"Secured Money" has the meaning given to that term in the Operative Provisions, and a reference to Secured Money includes any part of it.

"Securities" has the meaning given to that term in the Operative Provisions, and "Security" means any of them.

"security" includes a guarantee or indemnity, a security interest, any interest in land of a security nature, a lien or a pledge.

"Security Trust Deed" means the security trust deed amongst the Debtor, the Secured Party and The New Zealand Guardian Trust Company Limited, pursuant to which the Debtor grants first ranking security over the Collateral in favour of The New Zealand Guardian Trust Company Limited.

"tax" includes any present or future tax, levy, impost, duty, rate, deduction or withholding of any nature and whatever called, imposed or levied by any governmental agency or authority, together with any interest, penalty, charge, fee or other amount imposed or made on, or in relation to, any of the foregoing.

"Transfer" means, in relation to any Securities or Rights, a transfer thereof duly signed by the Debtor with the name of the transferee, date and consideration left blank, but otherwise, if appropriate, in proper form for registration by the relevant Issuer.

**1.2 PPSA references:** In this agreement, the expressions "account receivable", "attach", "document of title", "investment security", "proceeds", "purchase money security interest", "security interest" and "value" have, if and where used, the respective meanings given to them under, or in the context of, the PPSA.

**1.3 Miscellaneous:** Unless the context otherwise requires:

- (a) the singular includes the plural and vice versa, one gender includes other genders, and the expression "at any time" also means "from time to time";
- (b) references to a "person" include that person's successors, permitted assigns, executors and administrators (as applicable); and
- (c) references to any legislation include statutory regulations, rules, orders or instruments made pursuant to that legislation and any amendments, re-enactments, or replacements.

**2. PAYMENT**

- 2.1 The Debtor shall pay to the Secured Party the Secured Money at the times, and in the manner, provided for in the Relevant Agreement.

**3. OBLIGATIONS OF THE DEBTOR****3.1 Positive obligations:** The Debtor shall:

- (a) comply with all laws and all governmental requirements and orders such that neither the Collateral nor the security interest under this agreement are adversely affected;
- (b) promptly notify the Secured Party of any matter adversely affecting a material part of the Collateral; and
- (c) promptly deposit with the Secured Party if required by the Secured Party, a Transfer (or such number of separate Transfers as the Secured Party may require) in respect of the Securities and any Rights; and
- (d) do all other things which the Secured Party requires to enable the Secured Party to:
  - (i) ensure that the Collateral is subject to an effective security interest having the priority required by the Secured Party (including, but not limited to, providing serial numbers and other details of any Collateral, and delivering any Collateral to the Secured Party where possession of that Collateral by a third party may have the result that the interest of that third party in that Collateral would take priority over the interest of the Secured Party); and/or
  - (ii) assist the Secured Party in exercising any of the Secured Party's rights or powers under this agreement, whether on enforcement of the security interest (including, but not limited to, the sale of any of the Collateral) or otherwise, including, but not limited to, exercising all rights of inspection, requesting all information and taking all necessary copies, which the Debtor is entitled to exercise, request or take and, for the purposes of section 216 of



the Companies Act, the Debtor hereby authorises the Secured Party to inspect those records of each Issuer which the Debtor is entitled to inspect by virtue of that Act;

- (e) comply in all respects with the provisions of the Security Trust Deed.

**3.2 Negative obligations:** The Debtor shall not:

- (a) change the Debtor's name without first notifying the Secured Party of the new name not less than 21 days before the change takes effect;
- (b) do, or omit to do, or allow to be done or omitted to be done, anything which could adversely affect any Collateral or the security interest under this agreement.

**4. RIGHTS OF THE SECURED PARTY**

**4.1 Rights:** The Secured Party may:

- (a) do all things as the Secured Party thinks desirable to remedy any default by the Debtor or otherwise protect the Collateral or the security interest under this agreement;
- (b) notify ASB Bank of the security interest under this agreement;
- (c) after a Default has occurred:
  - (i) cause itself to be registered as the holder of any Securities, or as the person entitled to any Rights, in order to hold those Securities or Rights as the secured party under this agreement;
  - (ii) complete and present any Transfer to the relevant Issuer for registration; and
  - (iii) complete in favour of any person (including the Secured Party itself) who is purchasing the Securities under the powers given to the Secured Party by this agreement or by law, any Transfer or any other document signed by or on behalf of the Debtor; and
- (d) retain and hold all documents of title and Transfers deposited with the Secured Party in accordance with this agreement until the Secured Party delivers to the Debtor a final release of this agreement.

**4.2 No prejudice:** The Secured Party's rights under this agreement are without prejudice, and in addition, to any other right to which the Secured Party is at any time entitled (whether under this agreement or by law, contract or otherwise), and may be exercised by the Secured Party without prior notice to the Debtor or any other person.

**5. REPRESENTATIONS AND WARRANTIES**

**5.1** The Debtor represents and warrants (at the date of this agreement, and on the first day of each month by reference to the facts and circumstances existing on that day) that:

- (a) (if the Debtor is other than a natural person) the Debtor has the power, and has taken all necessary action to authorise the Debtor, to enter into, and comply with its obligations under, this agreement; and
- (b) this agreement constitutes legal, valid and binding obligations of the Debtor.

**6. DEFAULT**

**6.1 Powers on enforcement:** At any time after a Default occurs, the Secured Party may:

- (a) declare the Secured Money to be due and payable, whereupon it shall become immediately due and payable;
- (b) (whether or not a Receiver has been appointed) exercise any of the powers of a Receiver, or which a person would have if appointed as a Receiver under this agreement; and
- (c) pay any expenses incurred in the exercise of any of such powers out of the revenue from, or proceeds of realisation of, the Collateral.

**7. RECEIVER**

**7.1 Appointment of Receiver:** The Secured Party may (whether or not the Secured Party has exercised any other power):

- (a) at any time after a Default occurs; or
- (b) if the Debtor requests,

appoint any person or persons to be a Receiver of all or any of the Collateral. The Secured Party may remove any Receiver and may appoint a new Receiver in place of any Receiver who has been removed, retired or died.

**7.2 Powers of Receiver:** In addition to, and without limiting or affecting, any other powers and authorities conferred on a Receiver (whether under the Receiverships Act 1993 or at law or otherwise), a Receiver has the power to do all things in relation to the Collateral and the Debtor's business as if the Receiver had absolute ownership of the Collateral and carried on the Debtor's business for the Receiver's own benefit.

**8. PROTECTION OF SECURED PARTY, RECEIVER AND OTHER PERSONS**

**8.1 Accountability:** If the Secured Party or a Receiver sells any Collateral (whether pursuant to this agreement or otherwise), the Secured Party or Receiver shall be accountable only for any purchase money which that person actually receives.

**8.2 No liability:** The Secured Party or a Receiver shall not be liable to account, or for any loss, as mortgagee in possession and may at any time give up possession of any Collateral. Neither the Secured Party nor a Receiver shall be liable for any losses which may occur in, or as a result of, the exercise, purported exercise or non-exercise of any of their rights, powers or remedies.

**8.3 Indemnity:** The Secured Party and a Receiver shall each be indemnified out of revenue from, or proceeds of sale of, the Collateral against losses, expenses and liabilities resulting from the exercise of any rights or powers (including, but not limited to, losses, expenses and liabilities resulting from a mistake or error of judgment).

**8.4 Protection of persons dealing with the Secured Party or Receiver:** No person dealing with the Secured Party or any Receiver, or with any person acting on behalf of any of them, shall:

- (a) enquire whether any power which the Secured Party, Receiver, or person acting on their behalf, as the case may be, is purporting to exercise have become exercisable (whether by a Default occurring, the proper appointment of a Receiver, or otherwise), or otherwise as to any matter in connection with the exercise of any such power; or
- (b) see to the application of any amount paid to the Secured Party, Receiver, or person acting on their behalf, as the case may be.

## 9. INDEMNITY

### 9.1 The Debtor shall indemnify the Secured Party and any Receiver:

- (a) for all costs, losses and other liabilities incurred or sustained by the Secured Party or the Receiver in relation to this agreement and in exercising any right or recovering any Secured Money; and
- (b) against any claim by any person relating to the Collateral, or the exercise by the Secured Party or the Receiver of any right or power under this agreement.

## 10. ATTORNEY

### 10.1 The Debtor irrevocably appoints the Secured Party, every officer of the Secured Party and every Receiver, individually, to be the Debtor's attorney ("Attorney") with full power to:

- (a) (at the Debtor's expense) do anything which the Debtor agrees to do under this agreement and anything which, in the Attorney's opinion, is desirable to protect the Secured Party's interests under this agreement (even if the Attorney has a conflict of duty in doing so, or has a direct or personal interest in the means or result of the exercise of any of the Attorney's powers); and
- (b) delegate the Attorney's powers to any person for any period and to revoke a delegation,

and the Debtor ratifies anything done by the Attorney or any delegate in accordance with this clause.

## 11. NOTICES

### 11.1 Each notice to be given by either party to this agreement to the other may be given in accordance with sections 185 to 189 of the PPSA.

## 12. COSTS

### 12.1 **Costs:** The Debtor shall pay all the Secured Party's costs, losses and other liabilities (including legal expenses on a full indemnity basis) incurred or sustained by the Secured Party in connection with:

- (a) the negotiation, preparation, signing, administration and release of this agreement;
- (b) the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any right under this agreement, or in suing for or recovering any Secured Money; and
- (c) the granting of any waiver or consent under, or the giving of any variation or release of, this agreement,

and without limiting any of the above the Secured Party may charge the Debtor fees and/or costs for compliance with a demand given under section 162 of the PPSA, whether any such demand is given by the Debtor or any other person.

### 12.2 **Stamp duty and taxes:** The Debtor shall pay all stamp, documentary, transaction, registration and similar taxes (if any), which may be payable in connection with the signing, delivery, registration, performance, exercise of any right under, or enforcement or variation of, this agreement.

## 13. RELEASE, REINSTATEMENT AND DEBTOR'S REDEMPTION

### 13.1 **Release:** The Secured Party shall not be obliged to sign a release of this agreement, or to release any Collateral from this agreement, unless the Secured Party is satisfied that:

- (a) the Secured Party has received all of the Secured Money; and
- (b) no payment received, or to be received, by the Secured Party may be avoided, or required to be repaid by the Secured Party, whether under any law relating to insolvency or otherwise.

### 13.2 **Reinstatement:** If any payment received or recovered by the Secured Party, a Receiver, or any other person on behalf of the Secured Party is or may be avoided, whether by law or otherwise, then (notwithstanding that the Secured Party may have signed a release pursuant to clause 13.1):

- (a) such payment shall be deemed not to have affected or discharged the liability of the Debtor under this agreement or any other security given by the Debtor in favour of the Secured Party and the Secured Party and the Debtor shall, to the maximum extent permitted by law, be restored to the position in which each would have been if such payment had not been received or recovered; and
- (b) the Secured Party shall be entitled to exercise all rights which the Secured Party would have been entitled to exercise if such payment had not been received or recovered.

### 13.3 **Redemption:** At any time after a Default, but before the Secured Party sells any Collateral, or is deemed to have taken any Collateral in satisfaction of the Debtor's obligations, the Debtor may (unless the Debtor has otherwise agreed in writing after the Default) redeem the Collateral by tendering to the Secured Party, in cleared funds, an amount certified by the Secured Party as being equal to all the Secured Money as at the date such amount is tendered.

## 14. PPSA RIGHTS

### 14.1 **No consent or subordination:** Nothing in this agreement shall be construed as:

- (a) an agreement to subordinate the security interest under this agreement in favour of any person; or
- (b) a consent by the Secured Party to any other security interest attaching to, or any other security subsisting over, any Collateral.

### 14.2 **Verification statement:** The Debtor waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this agreement.

### 14.3 **Contracting out of PPSA rights:** The Debtor:

- (a) agrees that if, at any relevant time, the Secured Party does not at that time have priority over all other secured parties in respect of any Collateral, then the Debtor and the Secured Party will, for purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and for purposes of this agreement and the operation and application of the PPSA, that section 109(1) (but amended only by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into;
- (b) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this agreement, or the security under this agreement; and
- (c) waives the Debtor's right to do any of the following:

- (i) object to the Secured Party's proposal to retain any Collateral under section 121 of the PPSA;
- (ii) (without affecting clause 19.3) redeem any Collateral under section 132 of the PPSA.

## 15. MISCELLANEOUS

- 15.1 **Other securities:** This agreement is collateral to each other security (whenever executed or given) which is at any time held by the Secured Party in respect of any Secured Money, and nothing in this agreement shall prejudice any other security at any time held by the Secured Party. The Secured Party may exercise any of the Secured Party's rights under this agreement and any such other security separately or concurrently.
- 15.2 **Obligations independent:** Each of the obligations of the Debtor under clauses 8.3 and sections 9 and 12 shall constitute a continuing obligation, separate and independent from the Debtor's other obligations under this agreement and shall survive payment of the Secured Money and release of this agreement. It shall not be necessary for the Secured Party to incur any expense or make any payment before enforcing any of the Secured Party's rights in respect of any obligation of the Debtor under this agreement.
- 15.3 **No waiver:** No delay in acting, or failure to act, by the Secured Party is a waiver of any of the Secured Party's rights, and the Secured Party shall not be liable to any person for any such delay or failure.
- 15.4 **No merger or marshalling:** The Secured Party's right to payment of any Secured Money (including under any negotiable instrument or other agreement) shall not merge in the Debtor's obligation to pay that Secured Money under this agreement. The Secured Party has no duty to marshal in favour of the Debtor or any other person.
- 15.5 **Partial invalidity:** An invalid provision of this agreement shall not affect the enforceability of the remaining provisions of this agreement.
- 15.6 **Certificates:** A certificate of the Secured Party as to any amount or fact which might reasonably be expected to be within the Secured Party's knowledge shall be prima facie evidence of that amount or fact.
- 15.7 **Governing law:** New Zealand law governs this agreement, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

## **CERTIFICATE OF REGISTRATION OF PROSPECTUS**

**(Under Section 42(5) of the Securities Act 1978)**

**ASB CAPITAL NO. 2 LIMITED**

**1573605**

This is to certify that a Prospectus, for ASB CAPITAL NO. 2 LIMITED, dated the 24th day of November 2004 was registered on the 24th day of November 2004.

*Neville Harris*

Neville Harris  
Registrar of Companies  
Dated this 26th day of November 2004

