

FOUNDATION NORTH

THIS TRUST DEED made and executed on 30 May 1988 is amended and restated as at the 18th day of June 2015 pursuant to the concurring votes of not less than 75 percent of the Trustees with the approval of

THE MINISTER OF FINANCE ("the Minister")

INTRODUCTION

A The Minister established the Trust on 30 May 1988 pursuant to section 14(1) of the Trustee Banks Restructuring Act 1988 which now carries on under the Community Trusts Act 1999 ("the Act").

B This amended and restated deed:

(a) Formally consolidates amendments which have been made to the Trust Deed since the establishment of the Trust by the Minister by separate deeds of variation; and

(b) Incorporates amendments:

(i) to remove references in the Trust Deed which over the passage of time have become redundant or obsolete;

(ii) to introduce changes which accord with the prudent administration of the Trust and the carrying out of the duties of the Trustees;

(iii) to ensure compliance with the Act

which amendments have been made in accordance with the procedure required under the Trust Deed, and with the approval of the Minister.

PROVISIONS OF DEED

1. Interpretation

In this Deed, unless the context requires:

"Act" means the Community Trusts Act 1999, unless some other Act is specified.

"financial year" means a year ending on 31 March.

"Inland Revenue Acts" means the Acts specified in the Schedule of the Tax Administration Act 1994.

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

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

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

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

"the Trust" means the Trust established by this Deed.

"the Trustees" means the Trustees for the time being of the Trust.

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

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

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

2 Name of Trust

The Trust hereby established shall be known as "Foundation North".

3 Declaration of Trust

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

4 Objects of the Trust

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

5 Raising of Funds

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

6. Appointment and Replacement of Trustees

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

7. Eligibility for and Disqualification from Appointment

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

- (iii) Convicted of an offence punishable by a term of imprisonment of less than 2 years and is sentenced to imprisonment for that offence;
- (iv) Subject to an order made under section 383 of the Companies Act 1993;
- (v) A person to whom section 151 (2) (ba) or section 151 (2) (c) of the Companies Act 1993 applies;
- (vi) Mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (vii) Not resident in the area or region of the Trust.

8 Termination of Office

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

the term of office of the Trustee who has died or resigned, provided that the Minister shall be under no obligation to fill any vacancy unless the number of Trustees shall have fallen below the minimum prescribed by clause 9.

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

9 Number of Trustees

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

10. Chair

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

11. Meetings and Voting

- (a) The Trustees may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Except where some other majority is required by this Deed, questions arising at any meeting shall be decided by a simple majority of votes. In the case of an equality of votes (where a simple majority is required), the Chair shall have a second or casting vote. The Chair or any 2 of the Trustees may at any time summon a meeting of the Trustees. Notice of each meeting of Trustees shall be given by sending by post or electronic means, or by delivering the same to the last known place of residence of, or other postal, physical or electronic address for service notified by, each Trustee.
- (b) The quorum necessary for the transaction of the business of the Trustees shall be fixed by the Trustees but shall not be less than a majority of the Trustees for the time being. A Trustee may participate

in a meeting by means of audio, audio and visual, or electronic communication. A Trustee participating in this manner will be considered present at the meeting and part of the quorum.

- (c) A resolution in writing signed by all the Trustees shall be as valid and effectual as if duly passed at a meeting of the Trustees. Any such resolution may consist of several documents (including by facsimile, email or other similar means of electronic communication) in like form each signed or assented to by one or more Trustees.
- (d) The Trustees shall cause minutes to be kept of their meetings.
- (e) The Trustees may from time to time delegate any of their powers to committees consisting of not less than 3 members of their body and of such other person (if any) as they think fit. Any committee so formed shall in exercise of the powers so delegated conform to any regulations that may be imposed on it by the Trustees. The Trustees may prescribe procedural rules for any such committee.

12. Disclosure of Interests

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

- (a) is a party to, or will or may derive a material financial benefit from any contract or proposed contract or arrangement or dealing with the Trust;
- (b) has a material financial interest in another party to any contract or proposed contract or arrangement or dealing with the Trust; or
- (c) is associated as a member, officer, adviser, or otherwise howsoever with any organisation to or for the benefit of which the Trustees are currently considering making any application of the Trust Fund;
- (d) is the parent, child, spouse, civil union partner, de facto partner or relative of any of the persons referred to in sub-clauses (a), (b) and (c) of this clause 12;

- (e) is otherwise interested in any matter being considered by the Trust,

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

13. Voting and Quorum

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

14. Investment Powers of Trustees

- (a) The Trustees shall in the administration, management and investment of the Trust Fund, have the rights powers and privileges of a natural person of full age and capacity with no restraints on the Trustees' power to invest the Trust Fund, subject to clauses 14(b), (c), and (d).

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

15. Financial Statements

- (a) The Trustees shall ensure that full and correct accounts of all the financial transactions for the Trust and its assets, liabilities, and funds are kept.
- (b) The Trustees must ensure that within five months after the balance date of the Trust financial statements that comply with generally accepted accounting practice (as that term is defined in section 8 Financial Reporting Act 2013) are:
 - (i) completed in relation to the Trust and that balance date; and
 - (ii) dated and signed on behalf of the Trust by two Trustees.
- (c) The financial statements must show separately:
 - (i) the names of persons or organisations to whom distributions of income or capital have been by the Trust approved or paid for the purposes of the Trust during the relevant accounting period; and
 - (ii) the amounts approved or paid.
- (d) The financial statements must be audited by a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013).

- (e) An auditor appointed by the Trustees:
 - (i) must, in carrying out the audit, comply with all applicable auditing and assurance standards; and
 - (ii) must ensure the auditor's report on the financial statements complies with the requirements of all applicable auditing and assurance standards; and
 - (ii) must not be a Trustee, employee or agent of the Trust.
- (f) Unless directed otherwise by the Minister, the Trustees of the Trust must, not later than 31 August in each year:
 - (i) Send the financial statements and the auditor's report to the Minister; and
 - (ii) Publish copies of the financial statements and the auditor's report on an internet site maintained by or on behalf of the Trust
- (g) Despite paragraph (f) above, the Trustees are not required to publish the information specified in paragraph (c) above if the Trustees publish on an internet site maintained by or on behalf of the Trust, with the financial statements and auditor's report, a statement that a list of all distributions of income and capital approved or paid by the Trust in the relevant accounting period is available, on request, from the office of the Trust.

16. Trustees must hold Public Meeting

- (a) The Trustees must hold a public meeting in the area or region of the Trust not later 31 October in each year.
- (b) The Trustees must give not less than 14 days' notice of the meeting in one (1) or more principal newspapers circulating in the area or region of the Trust.

- (c) At the meeting, the Trustees must report on:
 - (i) The operation of the Trust during the preceding financial year;
and
 - (ii) The financial statements of the Trust for that year.

17. Officers

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

18. Inspection of Trust Deed

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

19. Procedure for Variation of Trust Deed

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

20. Incorporation

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

21. Other Powers

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

- (a) to distribute any part of the capital or income of the Trust Fund in the implementation of the Objects of the Trust, and in doing so the Trustees may pay any amount available for distribution to any organisation or body (whether incorporated or not, but not one conducted for private profit) subject to any conditions which the Trustees may think fit to impose to ensure that the amount so paid is used for such specific purposes as the Trustees may direct, being purposes exclusively within the Objects of the Trust and the receipt of any such organisation or body acknowledging the conditions imposed shall be a sufficient discharge for the Trustees;
- (b) to accumulate the whole or any part of the current net annual income derived by the Trustees in any financial year and to designate all or any part of such accumulations as a reserve fund for, or provisionally for, any specified purpose if they should think fit, provided that any such designation or specification may at any time be revoked by the Trustees;
- (c) to sell all or any part of the real or personal property or interest therein comprising the Trust Fund or any part thereof at such price on such terms and subject to such conditions as they in their absolute discretion think fit with the power to allow the whole or any part of the purchase money to remain on mortgage of the property sold;

- (d) to lease or take on lease any freehold or leasehold property or interest therein with or without chattels for such period at such rent on such terms (including at the discretion of the Trustees a compulsory or optional purchasing clause) and subject to such conditions as they think fit and to accept or effect such renewals or surrenders of leases and tenancies as they think fit;
- (e) to borrow moneys on mortgage, bank overdraft or otherwise howsoever for such reasons upon such security by way of mortgage or otherwise such terms and subject to such conditions as the Trustees think fit;
- (f) to employ and pay any person, firm, company or corporation upon such terms as they think fit;
- (g) to appoint and remove a nominee, custodian or trustee to hold any part of the Trust Fund on such terms and conditions as they shall see fit, including as to remuneration, and to acquire and hold assets or interests which may be held registered for the Trustees in the name of, or in the name of a nominee of or depository for, a nominee, custodian or Trustee;
- (h) to permit any Trustee for the time being engaged in any profession or business and any firm with which the Trustee may be associated to charge and be paid all proper professional or other charges for any business done by the Trustee or firm for the Trust;
- (i) to make such arrangement as the Trustees think fit for the operation of and transacting of business in relation to any bank accounts held by the Trustees including electronic arrangements;
- (j) to pay out of the Trust Fund all proper costs incurred in the administration of the Trust including (without limiting the generality of the foregoing) rent, salaries, superannuation contributions for employees, accounting and audit fees, general office expenses and other outgoings;
- (k) generally, to maintain, repair, improve and develop any real or personal property which or an interest in which for the time being

forms part of the Trust Fund in such manner as the Trustees think fit and for that purpose to pay and apply such of the capital and income of the Trust fund as they think fit;

- (l) to act as directors or a director of any company in which the Trust Fund holds shares and to receive without being liable to account for the same to the Trust, any director's fees or other remuneration for so acting;
- (m) to appoint any person to act as the agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting assurances of, or managing or otherwise administering any property, real or personal, moveable or immovable forming party of the Trust Fund either within or outside New Zealand, or executing or exercising any discretion or trust or power vested in the Trustees in relation to any such property, with such ancillary powers and with and subject to such provision and restrictions as the Trustees may think fit, including a power to appoint substitutes, and shall not, by reason only of having made any such appointment, be responsible for any loss arising thereby;
- (n) with the prior approval of the Trustees, to effect insurance (including paying, whether directly or indirectly, the costs of the insurance) for a Trustee or former Trustee of the Trust but only in respect of:
 - (i) liability, not being criminal liability, for an act or omission in his or her capacity as a Trustee; or
 - (ii) costs incurred by that Trustee in defending or settling a claim or proceeding relating to that liability; or
 - (iii) costs incurred by that Trustee in defending criminal proceedings in which the Trustee is acquitted.
- (o) to act as nominee and/or as investment manager and/or as custodian for any other trust, corporation or other body having the same or equivalent objects to those of the Trust and to conduct any such functions themselves or by bodies corporate or other third parties established or appointed by them.

- (p) to exercise any other powers, authorities and discretions which the Trustees consider are ancillary or incidental to any of the powers, authorities and discretions set out in the preceding subclauses of this clause 21.

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

23. **Availability of Powers**

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

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

24. Remuneration and Reimbursement of Trustees

- (a) The Trustees shall be entitled in each Financial Year to such remuneration for their services as Trustees as may be reasonable having regard to their duties and responsibilities. The amount of such remuneration shall be set by the Minister, having regard to the recommendations of the Trustees. The amount of such remuneration shall be shown separately in the financial statements.
- (b) The Trustees shall be entitled to be reimbursed for expenditure incurred by them on behalf of the Trust, subject in every case to approval of the Trustees.